

E.26. Nebraska



FEMA



Nebraska Safety of Dams and Reservoirs Act

Overview

The Department's Dam Safety Program was peer reviewed by the Association of State Dam Safety Officials (ASDSO) in 2002. The peer review found that overall the department had a good program, but one of the deficiencies identified was a lack of clear statutory authority to implement the program. The peer review specifically recommended that the Department consolidate program authorization and legal requirements, provide for civil enforcement authority, update and simplify fee schedules, provide authority to establish dam safety rules and regulations, and incorporate other aspects of FEMA's Model Dam Safety Law.

LB619, the Safety of Dams & Reservoirs Act, was introduced by Senator Schrock on January 19, 2005 and signed by Governor Heineman on April 7, 2005 as part of LB335. LB335 will go into effect on September 3, 2005.

Some of the highlights of LB335:

- Makes it clear that dams that are regulated under a federal dam safety program may continue to be regulated primarily by the federal program provided that the federal program has objectives, standards, and requirements that meet or exceed the purposes of the Act, and the owner has entered into a cooperative agreement with the Department.
- Adds requirement that plans, specifications, and construction supervision be the responsibility of a licensed professional engineer.
- Provides that a city, village, or county may institute overlay zoning precluding construction of structures downstream of a state permitted dam that is classified as having other than a high hazard potential, if a breach inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting overlay zoning.
- Allows department employees to enter onto private property, as necessary, to perform their official duties.
- Modifies the criteria for a jurisdictional size dam: any dam 25 feet or more in height or having 50 acre-ft or more maximum storage capacity; or any dam in a high hazard location regardless of size. The following exemptions exist; any dam that is less than six feet tall or any dam with less than 15 acre-ft total storage is exempt; also canal control structures and highway and railroad embankments are exempt unless they are intended to be dams.

- Removes requirements for repair, operation, and maintenance from the law because these types of work are not, and have not been regulated by the Department in the past.
- Changes the fee structure from the current one dollar per foot in height of dam to a flat fee to be established by rule and regulation of not to exceed two hundred dollars for dams less than twenty-five feet in height, three hundred dollars for dams twenty-five feet in height to not more than fifty feet in height, and four hundred dollars for dams in excess of fifty feet in height.
- Adds a civil penalty provision that provides that any person who violates the Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the Act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day. The Department would have to bring an action in the court in the jurisdiction in which the violation occurred.
- Adds “no fault” language with respect to the state, department, its employees and agents.
- Adds provision for the appointment of a consulting board to report on safety matters when requested by the owner.
- Expands on the authority of the department to investigate or require the owner to investigate, gather data, study, etc. as necessary for safety.
- Restates and expands on department authority to adopt rules and regulations.
- Expands on and strengthens the construction completion certification requirement for new or reconstructed dams.
- Adds requirement for the department to issue an approval to operate prior to the dam going into service.
- Expands on the department’s action and authority upon receipt of a complaint relative to a dam.
- Expands on the owner’s responsibilities and actions during emergencies. Also, provides the department authority to take control of a dam during an emergency.
- States requirements for dams completed prior to the enactment of LB 335.
- Expands on requirements for emergency action plans.

Please contact our office for questions regarding the Safety of Dams and Reservoirs Act at 402-471-1222, or pdiederich@dnr.state.ne.us.

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Section 46-1601

Act, how cited.

Sections 46-1601 to 46-1670 shall be known and may be cited as the Safety of Dams and Reservoirs Act.

Source:

Laws 2005, LB 335, § 1
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1602

Definitions, where found.

For purposes of the Safety of Dams and Reservoirs Act, the definitions found in sections 46-1603 to 46-1634 apply.

Source:

Laws 2005, LB 335, § 2
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1603

Abandonment, defined.

Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

Source:

Laws 2005, LB 335, § 3
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1604

Adverse consequences, defined.

Adverse consequences means negative impacts that may occur upstream, downstream, or at locations remote from the dam, including, but not limited to, loss of human life, economic loss including property damage, and lifeline disruption.

Source:

Laws 2005, LB 335, § 4
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1605

Alterations, defined.

Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the department, but does not include maintenance and repair of the dam to retain its initial structural integrity.

Source:

Laws 2005, LB 335, § 5
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1606

Application approval, defined.

Application approval means authorization in writing issued by the department to an owner who has applied to the department for permission to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

Source:

Laws 2005, LB 335, § 6
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1607

Approval to operate, defined.

Approval to operate means authorization in writing issued by the department to an owner who has completed construction, reconstruction, enlargement, or alteration of a dam.

Source:

Laws 2005, LB 335, § 7
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1608

Appurtenant works, defined.

Appurtenant works include, but are not limited to: Structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

Source:

Laws 2005, LB 335, § 8
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1609

Breach, defined.

Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Source:

Laws 2005, LB 335, § 9
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1610

Completion certification, defined.

Completion certification means a statement signed by the design engineer, certifying the completion of work on a dam in conformance with the approved plans and specifications.

Source:

Laws 2005, LB 335, § 10
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1611

Dam, defined.

(1) Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

(2) Dam does not include:

(a) An obstruction in a canal used to raise or lower water;

(b) A fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department;

(c) Canals, including the diversion structure, and levees; or

(d) Water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Source:

Laws 2005, LB 335, § 11
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1612

Days, defined.

Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

Source:

Laws 2005, LB 335, § 12
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1613

Department, defined.

Department means the Department of Natural Resources.

Source:

Laws 2005, LB 335, § 13
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1614

Director, defined.

Director means the Director of Natural Resources.

Source:

Laws 2005, LB 335, § 14
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1615

Emergency, defined.

Emergency includes, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam that may be construed as unsafe or threatening to life.

Source:

Laws 2005, LB 335, § 15

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1616

Engineer, defined.

Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Source:

Laws 2005, LB 335, § 16

Effective date September 4, 2005.

Cross References:

Engineers and Architects Regulation Act, see section 81-3401.

~ Revised Statutes Supplement 2005

Section 46-1617

Enlargement, defined.

Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

Source:

Laws 2005, LB 335, § 17
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1618

Hazard potential classification, defined.

Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including, but not limited to, safety, structural integrity, or flood routing capacity.

Source:

Laws 2005, LB 335, § 18
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1619

High hazard potential, defined.

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Source:

Laws 2005, LB 335, § 19
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1620

September 20, 2005

Incremental, defined.

Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

Source:

Laws 2005, LB 335, § 20
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1621

Law hazard potential, defined.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Source:

Laws 2005, LB 335, § 21
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1622

Maximum storage, defined.

Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

Source:

Laws 2005, LB 335, § 22
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1623

Minimal hazard potential, defined.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

Source:

Laws 2005, LB 335, § 23
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1624

Normal storage, defined.

Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Source:

Laws 2005, LB 335, § 24
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1625

Owner, defined.

Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam:

(1) The United States Government and its departments, agencies, and bureaus;

(2) The state and its departments, institutions, agencies, and political subdivisions;

(3) A municipal or quasi-municipal corporation;

(4) A public utility;

(5) A district;

(6) A person;

(7) A duly authorized agent, lessee, or trustee of any person or entity listed in this section; and

(8) A receiver or trustee appointed by a court for any person or entity listed in this section.

Source:

Laws 2005, LB 335, § 25
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1626

Person, defined.

Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

Source:

Laws 2005, LB 335, § 26
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1627

Probable, defined.

Probable means likely to occur and reasonably expected.

Source:

Laws 2005, LB 335, § 27
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1628

Probable maximum flood, defined.

Probable maximum flood means the most severe flood that is considered

probable at a site.

Source:

Laws 2005, LB 335, § 28
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1629

Reconstruction, defined.

Reconstruction means partial or complete removal and replacement of an existing dam.

Source:

Laws 2005, LB 335, § 29
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1630

Removal, defined.

Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

Source:

Laws 2005, LB 335, § 30
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1631

Reservoir, defined.

Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

Source:

Laws 2005, LB 335, § 31

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1632

Significant hazard potential, defined.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Source:

Laws 2005, LB 335, § 32

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1633

Storage elevation, defined.

Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

Source:

Laws 2005, LB 335, § 33

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1634

Top of dam elevation, defined.

Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of foundation and embankment.

Source:

Laws 2005, LB 335, § 34
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1635

Purposes of act.

The purposes of the Safety of Dams and Reservoirs Act are to regulate all dams and associated reservoirs for the protection of public health, safety, and welfare and to minimize the adverse consequences associated with the potential failure of such dams and reservoirs.

Source:

Laws 2005, LB 335, § 35
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1636

Applicability of other law.

The Safety of Dams and Reservoirs Act does not relieve the owner or operator of a dam or reservoir from obtaining any necessary approvals from the department under sections 46-233 to 46-241 or from any other local, state, or federal regulatory authority.

Source:

Laws 2005, LB 335, § 36
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1637

Regulation by political subdivisions; restrictions; conditions.

(1) Except as provided in subsections (2) and (4) of this section, no city, village, or county may, by ordinance or resolution enacted by the legislative body thereof or adopted by the people, (a) regulate, supervise, or provide for the regulation or supervision of any dams and associated reservoirs or the construction, reconstruction, enlargement, repair, alteration, operation, breach, removal, or abandonment thereof or (b) limit the size or the impounding capacity of a dam if such action would conflict with the power and authority vested in the department pursuant to the Safety of Dams and Reservoirs Act.

(2) A city, village, or county may adopt ordinances or resolutions (a) regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that are not within the state's jurisdiction and are not subject to regulation, owned, or operated by another public agency or body or (b) which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to, roads and fences.

(3) A city, village, or county may institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if a breach-inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting such overlay zoning.

(4) The Safety of Dams and Reservoirs Act does not preempt or supersede any local zoning ordinances, resolutions, rules, or regulations regarding special use permits enacted by a political subdivision with respect to permit applications for livestock waste control facilities.

Source:

Laws 2005, LB 335, § 37

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1638

Plans and specifications; responsibility of engineer.

All plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams and supervision of construction shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.

Source:

Laws 2005, LB 335, § 38
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1639

Immunity from liability; when.

(1) No action shall be brought against the state, the department, or its agents or employees for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation thereof pursuant to the Safety of Dams and Reservoirs Act, including, but not limited to, any of the following:

(a) Design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment;

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam;

(c) Control and regulation of the dam;

(d) Measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or

(e) Failure to act.

(2) The Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Source:

Laws 2005, LB 335, § 39
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1640

Orders and approval; effect.

The findings and orders of the department, an application approval, and an approval to operate any dam issued by the department are final, conclusive, and binding upon all owners and state agencies, regulatory or otherwise, as to the safety of design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam.

The department may report all dam incidents as defined by the National Performance of Dams Program to the National Performance of Dams Program archive.

Source:

Laws 2005, LB 335, § 40
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1641

Change of ownership; notification.

The owner of any dam subject to the Safety of Dams and Reservoirs Act shall notify the department of any change in the ownership of the dam. Notification shall be in such form and include such evidence of ownership as the director may by rule and regulation require.

Source:

Laws 2005, LB 335, § 41
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1642

Livestock waste control facility; approvals required.

An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required but for which approval by the Department of Environmental Quality under section 54-2429 is required shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval from the Department of Natural Resources before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon pursuant to this section within sixty days after such application is submitted.

Source:

Laws 2005, LB 335, § 42
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1643

Administrative or judicial recourse; not affected.

The Safety of Dams and Reservoirs Act does not deprive the owner of any administrative or judicial recourse to the courts to which such owner is entitled under the laws of this state.

Source:

Laws 2005, LB 335, § 43
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1644

Department; employ personnel.

The department shall employ an engineer and such individuals otherwise qualified by training and experience in the design, inspection, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams as necessary to carry out the Safety of Dams and Reservoirs Act.

Source:

Laws 2005, LB 335, § 44
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1645

Consulting board required; when; liability for costs.

When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested in writing by the owner, the department shall appoint a consulting board of three or more consultants to report to the department on the safety features involved. The cost and expense of a consulting board, if appointed at the request of an owner, shall be paid by the owner.

Source:

Laws 2005, LB 335, § 45
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1646

Dams; review and approval required; when.

(1) The department shall review and approve the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property as provided in the Safety of Dams and Reservoirs Act.

(2) No person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval by the department.

(3) An owner of a dam who has entered into a cooperative agreement with the department pursuant to subdivision (2)(d) of section 46-1633 shall be deemed to be in compliance with the act.

Source:

Laws 2005, LB 335, § 46
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1647

Potentially hazardous dams; emergency action plans.

(1) In order to protect life and property, the owner of every high hazard potential dam shall develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dam. In order to protect life and property, the department may require the owners of any significant hazard potential dam to develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dams.

(2) Such emergency action plan shall include, but not be limited to, the following elements:

- (a) Emergency notification plan with flowchart;
- (b) A statement of purpose;
- (c) A project description;
- (d) Emergency detection, evaluation, and classification;
- (e) General responsibilities;
- (f) Preparedness;
- (g) Inundation maps or other acceptable description of the inundated area; and
- (h) Appendices.

(3) For purposes of evaluating the adequacy of an emergency action plan, the department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted under this section. The department shall accept emergency action plans developed for dams under a federal dam safety program.

(4) If the department determines that a dam constitutes an immediate risk to life or property, the department shall order the owner to take such action as is necessary to remove such risk.

Source:

Laws 2005, LB 335, § 47
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1648

Right of entry upon private property; when; immunity.

In making any investigation or inspection necessary to enforce or implement the Safety of Dams and Reservoirs Act, the department or its
September 20, 2005

representatives, upon reasonable notice, may enter upon private property of the dam and reservoir owner as necessary. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable for prosecution for trespass when performing their official duties.

Source:

Laws 2005, LB 335, § 48
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1649

Department; investigations and studies.

(1) The department may investigate and gather or cause the owner to gather such data, including advances made in safety practices elsewhere, as may be needed for a proper review and study of the various features of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams.

(2) The department may make or cause the owner to make such watershed investigations and studies as are necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam.

(3) The department may make or cause the owner to make such seismic investigations and studies as may be necessary to keep abreast of developments affecting seismic stability of a dam.

Source:

Laws 2005, LB 335, § 49
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1650

Department; enforcement; powers.

(1) The department may take any administrative or legal action necessary for the enforcement of the Safety of Dams and Reservoirs Act.

(2) An action or proceeding under this section may be initiated whenever any owner or any person acting as an agent of any owner:

(a) Fails to comply with the requirements imposed by the act or by any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act; or

(b) Commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act.

(3) Any action or proceeding under this section shall be initiated either administratively or in a court in a jurisdiction in which:

(a) The dam, area of hazard potential, or some part thereof exists;

(b) The person named in the complaint has its principal place of business; or

(c) The person named in the complaint resides.

Source:

Laws 2005, LB 335, § 50

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1651

Rules and regulations.

(1) The department may adopt and promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, abandonment, and periodic testing of emergency action plans of dams to carry out the purposes of the Safety of Dams and Reservoirs Act. Such rules and regulations may also include, but are not limited to, establishing:

(a) Standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) Requirements for operation of dams, including operational plans to be prepared and implemented by owners;

(c) Requirements for monitoring, inspection, and reporting of conditions affecting the safety of dams; and

(d) Requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

(2) In adopting rules and regulations applicable to dams which may have

a high hazard potential or a significant hazard potential, the department may consider:

(a) The state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) The economic impact of a failure of a structure upon the state and its citizens; and

(c) The relationship of dams in hydrologic management in the watershed as a whole.

Source:

Laws 2005, LB 335, § 51

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1652

Construction or enlargement of dam; application for approval; contents.

(1) Construction of any new dam or the enlargement of any dam shall not commence until the owner has applied for and obtained from the department written application approval of plans and specifications.

(2) A separate application for each dam shall be filed with the department upon forms provided by the department. Plans and specifications signed and sealed by the design engineer shall accompany the application.

(3) The application shall provide the following information:

(a) The name and address of the owner;

(b) The name and address of the applicant, if different from the owner;

(c) The name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;

(d) The location, type, size, purpose, and height of the proposed dam;

(e) The reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;

(f) Plans for proposed permanent instrument installations in the dam;

(g) The area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimates, if available;

(h) Maps and design drawings showing plans, elevations, and sections of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analyses, to determine safety, adequacy, and suitability of design;

(i) The estimated construction cost of the dam; and

(j) Such other pertinent information as the department requires.

(4) The department may, when in its judgment it is necessary, also require the following:

(a) Data concerning subsoil and rock foundation conditions and the materials involved in the construction of the dam;

(b) Investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;

(c) Investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and

(d) Other appropriate information.

(5) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

Source:

Laws 2005, LB 335, § 52
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1653

Modifications to existing dam; application for approval; contents; exemption.

(1) Before commencing the reconstruction or alteration of a dam or the abandonment, breach, or removal of a dam so that it no longer constitutes a dam, the owner shall file an application and secure the written application approval of the department.

(2) The application shall give such pertinent information or data concerning the dam as may be required by the department.

(3) The application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval.

(4) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

(5) In case of an emergency in which the department declares that repairs or breaching of the dam are necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner or by the department at the owner's expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner.

(6) The proposed repairs or breaching shall conform to any orders issued by the department.

Source:

Laws 2005, LB 335, § 53
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1654

Application approval; issuance; public hearing.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved. Approval under the act and approval under such sections shall be issued simultaneously.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source:

Laws 2005, LB 335, § 54
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1655

Fees.

(1) The application for approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam shall be accompanied by a filing fee as established by rule and regulation of the department but not to exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height.

(2) Only one filing fee shall be collected for an enlargement by flashboards, sandbags, earthen levees, gates, or other works, devices, or obstructions which are from time to time to be removed and replaced or opened and shut and thereby operated so as to vary the surface elevation of the reservoir.

(3) A dam subject to the Safety of Dams and Reservoirs Act and for which plans and specifications have been approved prior to September 4, 2005, shall not be required to pay any additional fee or submit an additional application for approval unless such dam requires reconstruction, enlargement, alteration, breach, removal, or abandonment.

(4) An application shall not be considered by the department until the filing fee is received.

(5) Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Dam Safety Cash Fund.

Source:

Laws 2005, LB 335, § 55
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1656***Dam Safety Cash Fund; created; use; investment.***

The Dam Safety Cash Fund is created. The fund shall consist of fees credited pursuant to section 46-1655 and any money specifically appropriated to the fund by the Legislature. Money in the fund shall not be subject to any fiscal-year limitation or provision for lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department. Money in the fund may be expended by the department for costs incurred by the department in the administration of the Safety of Dams and Reservoirs Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source:

Laws 2005, LB 335, § 56
Effective date September 4, 2005.

Cross References:

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

~ Revised Statutes Supplement 2005

Section 46-1657***New or modified dam; owner; filing requirements; approval to operate; issuance.***

(1) Upon completion of a new or reconstructed dam and reservoir or of the enlargement of a dam and reservoir, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the work as actually completed. Such supplementary materials may include, but need not be limited to, the following as determined by the department:

(a) A record of all geological boreholes and grout holes and grouting;

(b) A record of permanent location points, benchmarks, and instruments embedded in the structure;

(c) A record of tests of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and

(d) A record of initial seepage flows and embedded instrument readings.

(2) In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

(3) An approval to operate shall be issued by the department upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

Source:

Laws 2005, LB 335, § 57
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1658

Alteration of dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of the alteration of any dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer, showing or describing the work as actually completed.

(2) An approval to operate shall be issued upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner of the dam shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

Source:

Laws 2005, LB 335, § 58
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1659

Removal, breach, or abandonment of dam; design engineer; duties; department; powers.

(1) Upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification.

(2) Before final approval of the removal of a dam is issued, the department may inspect the site of the work and determine that all work was accomplished in substantial conformance with the application approval.

(3) Following the removal of a dam, the department may report such removal to the National Performance of Dams Program and to the National Inventory of Dams.

Source:

Laws 2005, LB 335, § 59
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1660

Approval to operate; department; powers; hearing; notice.

(1) Each approval to operate issued by the department under the Safety of Dams and Reservoirs Act shall contain such terms and conditions as the department may prescribe.

(2) The department shall revoke, suspend, or amend any approval to operate whenever it determines that the dam constitutes a danger to life and property.

(3) Before any approval to operate is revoked by the department, the department shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed to the owner at least thirty days before the date set for the hearing. Any interested persons may appear at the hearing and present their views and objections to the proposed action.

Source:

Laws 2005, LB 335, § 60
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1661

Complaint; department; duties; unsafe condition; modification.

(1) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department shall cause an inspection and investigation to be made unless the data, records, and inspection reports on file are found adequate to make a determination whether the complaint is valid. The complainant shall be provided with a copy of the official report of the inspection and investigation.

(2) If it is found that an unsafe condition exists, the department shall notify the owner of the dam to take such action as is necessary to correct the condition, including breaching or removal of any dam found to be beyond repair.

Source:

Laws 2005, LB 335, § 61
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1662

Periodic inspections; when; department; powers and duties.

(1) During the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans and specifications. The department shall require the owner to direct the design engineer to provide adequate supervision during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment and to provide sufficient information to enable the department to determine that conformity with the approved plans and specifications is being attained.

(2) If, after any inspection or investigation, during the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam or at any time prior to issuance of an approval to operate, it is found by the department that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise his or her plans and specifications. The owner may, pursuant to section 46-1645, request an independent consulting board to review the order of the department.

(3) If at any time during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department finds that the work is not being done in accordance with the approved plans and specifications, the department shall deliver a written notice

of noncompliance to the owner. The notice shall be delivered by registered mail or by personal service to the owner, shall state the particulars in which the approved plans and specifications are not being or have not been complied with, and shall order immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and approved by the department.

(4) Failure to comply with the notice delivered under subsection (3) of this section may cause revocation of application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

Source:

Laws 2005, LB 335, § 62
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1663

Record-keeping requirements; maintenance, operation, and inspection; department; powers.

(1) The department shall require owners to keep original records and any modifications to construction available and in good order.

(2) The department may:

(a) Adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;

(b) Require engineering and geologic investigations to safeguard life and property;

(c) Accept approvals and reports of equivalent inspections prepared for dams under a federal dam safety program; and

(d) Enter into cooperative agreements with the owners of dams which are required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Source:

Laws 2005, LB 335, § 63
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1664

Safety inspections; when; department; powers and duties.

(1) The department shall inspect dams for the purpose of determining their safety. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, and every five years for low hazard potential dams and every five years or more for minimal hazard potential dams. The department may vary the inspection frequency of some sites based on an evaluation of the site performance history. The department may conduct additional inspections at any time. If serious safety concerns are found by the department during the inspections, the department shall require the owner to conduct tests and investigations sufficient for the department to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal, or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam.

(2) The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.

Source:

Laws 2005, LB 335, § 64

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1665

Emergency actions involving a dam; owner; duties; department; duties.

(1) The owner of a dam has the primary responsibility for determining when an emergency exists. When the owner of a dam determines that an emergency exists involving a dam, the owner shall immediately implement the emergency action plan as required pursuant to section 46-1647. The owner shall immediately notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if, in its judgment, either:

(a) The condition of any dam is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods or any other condition threatens the safety of any dam.

(2) In applying the remedial means provided for in this section, the department may in an emergency, with its own forces or by other means at its disposal, do any or all of the following:

(a) Take full charge and control of any dam;

(b) Lower the water level by releasing water from the reservoir;

(c) Completely drain the reservoir;

(d) Perform any necessary remedial or protective work at the site; or

(e) Take such other steps as may be essential to safeguard life and property.

(3) The department shall continue in full charge and control of such dam and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take back full charge and control. The department's taking full charge and control under this section does not relieve the owner of such dam of liability for any negligent acts of such owner.

(4) The department may report emergency actions involving the safety of a dam to the National Performance of Dams Program in a timely manner.

Source:

Laws 2005, LB 335, § 65

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1666

Violations; penalties.

(1) Violation of the Safety of Dams and Reservoirs Act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act is a Class V misdemeanor. Each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the act commits a Class IV misdemeanor.

(3) Any owner or any person who engages in the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam or who knowingly does work on or permits work to be done on the dam without the approval of the department or in violation of the act and who fails to immediately notify the department thereof commits a Class V misdemeanor.

Source:

Laws 2005, LB 335, § 66
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1667

Notice of violation; orders; procedure.

(1) If the department has reason to believe that an owner or other person is violating or has violated the Safety of Dams and Reservoirs Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department issued or adopted pursuant to the act, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the act. The owner or other person shall have thirty days from the mailing of such notice to respond or to request a hearing before the department as to why the owner or other person should not be ordered to cease and desist from the violation. The notice shall inform the owner or other person how to request the hearing and the consequences of failure to request a hearing.

(2) If the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam without having first obtained the required application approval, the department shall issue a temporary order for the owner or person to cease and desist the construction, reconstruction, enlargement, alteration,

breach, removal, or abandonment pending final action by the department pursuant to subsection (3) of this section. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated.

(3) After a response to a notice or a hearing pursuant to subsection (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a decision and final order. The decision and final order may take such form as the department determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected may appeal the hearing decision as provided in section 61-207.

(4) If the owner or person continues the violation after the department has issued a final decision and order pursuant to subsection (3) of this section or a temporary order pursuant to subsection (2) of this section, the department may apply for a temporary restraining order or preliminary or permanent injunction from a court of competent jurisdiction. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

Source:

Laws 2005, LB 335, § 67

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1668

Violations; civil penalty.

(1) Any person who violates the Safety of Dams and Reservoirs Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the act may be assessed a civil penalty in an amount not to exceed five hundred dollars per day for each day the violation continues.

(2) The department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurred.

(3) In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Source:

Laws 2005, LB 335, § 68
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1669

Appeal.

Any affected person aggrieved by any final order or decision made by the director pursuant to the Safety of Dams and Reservoirs Act may appeal the order as provided in section 61-207. For purposes of this section, affected person means the applicant or holder of any approvals under the act and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by such final order or decision.

Source:

Laws 2005, LB 335, § 69
Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

Section 46-1670

Existing unapproved dams; requirements.

(1) Every owner of a dam subject to the Safety of Dams and Reservoirs Act that was completed prior to September 4, 2005, and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam.

(2) A separate application for each dam shall be filed with the department upon forms supplied by the department and shall include such appropriate information concerning the dam as the department requires.

(3) The department may give notice, by certified mail to the owner's last address of record in the office of the county assessor of the county in which the dam is located, to the owner of dams required under this section to file an application who or which have failed to do so, and a failure to file within sixty days after receipt of such notice shall be punishable as provided in the act.

(4) The department may make inspections of such dams and may require owners of such dams and reservoirs to perform, at the owner's expense, such work or tests as may reasonably be required to disclose information sufficient to enable the department to determine whether to issue an approval to operate or to issue orders directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the department may require an owner to lower the water level of or to drain the reservoir.

(5) If, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued.

(6) If at any time the department finds that the dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. Written notice of the time and place of the hearing shall be mailed, at least thirty days prior to the date set for the hearing, to the owner. Any interested person may appear at the hearing and present his or her views and objections to the proposed action.

Source:

Laws 2005, LB 335, § 70

Effective date September 4, 2005.

~ Revised Statutes Supplement 2005

NEBRASKA ADMINISTRATIVE CODE

TITLE 458, NEBRASKA ADMINISTRATIVE CODE,
CHAPTERS 1-13

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

RULES FOR THE SAFETY OF DAMS AND RESERVOIRS

Adopted June 27, 2008

NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 458 - DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS
 AND RESERVOIRS

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT OF TITLE</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Change of Address	§ 46-1641 § 61-206	008
Change of Ownership	§ 46-1641 § 46-206 §76-2,124	007
Completion Certification	§ 46-1651 § 46-1657 § 46-1658 § 46-1659 § 61-206	010
Consulting Board	§ 46-1645 § 46-1651 § 61-206	011
Definitions Applicable to Title 458	§ 46-1601 to 46-1670 § 61-206	001
Documentation of Signatures	§§ 46-1601 to 46-1670	002
Fees	§ 46-1655 § 33-105(8) § 61-206	003

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT OF TITLE</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Hazard Potential Classifications	§ 46-1651 § 61-206	012
Notice of Construction, Reconstruction, Enlargement, Alteration, Breach, Removal or Abandonment	§ 46-1654(5) § 46-1651 § 61-206 § 33-105(8)	009
Operation and Maintenance of a Dam and Reservoir	§ 46-1651 § 61-206	013
Outlet Works	§ 46-241 § 61-206 § 33-105(8)	006
Requirements for Dams Constructed Prior to September 4, 2005, Subject to the Safety of Dams and Reservoirs Act and not Previously Approved by the Department	§ 46-241 § 46-1611 § 46-1651 § 46-1652 § 46-1653 § 46-1670 § 61-206	005
Requirements for Application Approval	§ 46-1651 § 46-1652 § 46-1653 § 61-206	004

NEBRASKA DEPARTMENT OF NATURAL RESOURCES
 TITLE 458 - DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS
 AND RESERVOIRS

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT OF TITLE</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Definitions Applicable to Title 458	§§ 46-1601 to 46-1670 § 61-206	001
Documentation of Signatures	§§ 46-1601 to 46-1670	002
Fees	§ 46-1655 § 33-105(8) § 61-206	003
Requirements for Application Approval	§ 46-1651 § 46-1652 § 46-1653 § 61-206	004
Requirements for Dams Constructed Prior to September 4, 2005, Subject to the Safety of Dams and Reservoirs Act and§ 46-1651 not Previously Approved by the Department	§ 46-241 § 46-1611 § 46-1652 § 46-1653 § 46-1670 § 61-206	005
Outlet Works	§ 46-241 § 61-206 § 33-105(8)	006

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT OF TITLE</u>	<u>STATUTORY AUTHORITY</u>	<u>CODE SECTION</u>
Change of Ownership	§ 46-1641 § 46-206 § 76-2,124	007
Change of Address	§ 46-1641 § 46-1651 § 61-206	008
Notice of Construction, Reconstruction, Enlargement, Alteration, Breach, Removal or Abandonment	§ 46-1654(5) § 46-1651 § 61-206 § 33-105(8)	009
Completion Certification	§ 46-1651 § 46-1657 § 46-1658 § 46-1659 § 61-206	010
Consulting Board	§ 46-1645 § 46-1651 § 61-206	011
Hazard Classifications	§ 46-1651 § 61-206	012
Operation and Maintenance of a Dam and Reservoir	§ 46-1651 § 61-206	013

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 1 – DEFINITIONS APPLICABLE TO TITLE 458

001 For purposes of Title 458 rules, the following definitions shall apply:

001.01 Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

001.02 Adverse consequences means the negative impacts that may occur upstream, downstream, or at locations remote from the dam, including but not limited to, loss of human life, economic loss including property damage and lifeline disruption.

001.03 Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the Department, but do not include maintenance and repair of the dam to retain its initial structural integrity.

001.04 Application includes an application form, plans and specifications.

001.05 Application approval means authorization in writing issued by the Department to an owner who has applied to the Department for permission to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

001.06 Appurtenant works include, but are not limited to: structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

001.07 Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Title 458
Chapter 1

001.08 Consulting Board means board appointed by the Department under the provisions of Neb. Rev. Stat. § 46-1645.

001.09 Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam. Dam does not include: (1) an obstruction in a canal used to raise or lower water; (2) a fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department; (3) canals, including the diversion structure, and levees; or (4) water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

001.10 Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

001.11 Department means the Department of Natural Resources.

001.12 Diversion dam means dam constructed solely for the purpose of raising water to divert it into a canal. The height of the dam must be limited such that it provides only this function and does not create unnecessary storage.

001.13 Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Title 458
Chapter 1

001.14 Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

001.15 Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including but not limited to, safety, structural integrity, or flood routing capacity.

001.16 High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

001.17 Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

001.18 Landowner means person or persons with recorded title to land where dam and reservoir are or will be located.

001.19 Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

001.20 Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

001.21 Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

001.22 Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Title 458
Chapter 1

001.23 Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam: (1) The United States Government and its departments, agencies, and bureaus; (2) the state and its departments, institutions, agencies, and political subdivisions; (3) a municipal or quasi-municipal corporation; (4) a public utility; (5) a district; (6) a person; (7) a duly authorized agent, lessee, or trustee of any person or entity listed in this section; and (8) a receiver or trustee appointed by a court for any person or entity listed in this section.

001.24 Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

001.25 Plan or plans mean engineering drawings, design reports, hazard classification studies, geotechnical reports, and other studies as required.

001.26 Probable means likely to occur and reasonably expected.

001.27 Probable maximum flood means the most severe flood that is considered probable at a site.

001.28 Reconstruction means partial or complete removal and replacement of an existing dam.

001.29 Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

001.30 Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

001.31 Safety of Dams and Reservoirs Act means Neb. Rev. Stat. Sections 46-1601 to 46-1670.

Title 458
Chapter 1

001.32 Significant hazard potential means hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

001.33 Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

001.34 Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of the foundation and embankment.

STATUTORY AUTHORITY: Neb. Rev. Stat. §§ 46-1601 to 46-1670
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES
RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 2 – DOCUMENTATION OF SIGNATURES

001 The following documentation must be submitted when applicable with any document required to be filed and signed under the provisions of these rules.

001.01 Persons signing as landowner shall submit a copy of the deed or other document conveying ownership of all lands under the project.

001.02 Persons signing as owners shall submit the trust agreement, lease, memorandum of agreement, deed, or other document showing sufficient interest to operate and maintain the dam or reservoir.

001.03 If an owner or landowner is a trust, they shall submit a copy of the trust agreement and the name of the trust and the names of all the trustees.

001.04 Persons signing as attorney-in-fact (power of attorney) shall submit a copy of the document granting power of attorney.

001.05 Persons signing as the personal representative shall submit a copy of the document appointing the person personal representative.

001.06 Persons signing as an agent of the owner shall submit a copy of the document granting him or her authority to act as the owner's agent.

STATUTORY AUTHORITY: Neb. Rev. Stat. §§ 46-1601 to 46-1670
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 3 – FEES

001 The filing fee for an application for approval of the construction, enlargement, reconstruction, alteration, abandonment, breach, or removal of a dam shall be determined by measuring the height of the dam from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum storage elevation.

001.01 The fee shall be one-hundred and fifty dollars (\$150.00) for dams less than twenty-five feet in height.

001.02 The fee shall be two-hundred and fifty dollars (\$250.00) for dams twenty-five feet in height to not more than fifty feet in height.

001.03 The fee shall be three-hundred and fifty dollars (\$350.00) for dams in excess of fifty feet in height.

002 The amount of the filing fee for the approval of plans of a previously constructed dam is the same as the amount for construction of a new dam of the same size.

003 The filing fee for a request for consulting board review is \$10.

004 The filing fee for a request for a waiver to install outlet works is \$10.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1655
Neb. Rev. Stat. § 33-105(8)
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 4 – REQUIREMENTS FOR APPLICATION APPROVAL

001 Applications. Any person intending to construct, enlarge, reconstruct, alter, abandon, breach, or remove a dam must file an application and obtain application approval prior to construction, enlargement, reconstruction, alteration, abandonment, breach or removal of the dam. The application must be accompanied by the filing fee.

001.01 The applicant's engineer is required to meet with the Department in a pre-design conference prior to submission of an application for a significant or high hazard class dam.

001.02 Applications must be made on a form provided by the Department. Plans and specifications must be submitted with the application form.

001.03 If the proposed project will also require a surface water storage appropriation under Neb. Rev. Stat. § 46-241, the application may be submitted with the application for a surface water storage appropriation or anytime within six months of the filing of the application for the surface water appropriation. If the application is not filed within the six month period the application for a surface water storage appropriation shall be dismissed.

001.04 If the owner of the dam is not the landowner of the land where the dam and reservoir will be located, the application shall be accompanied by documentary evidence describing the relationship and responsibilities of the owner of the dam and the owner of the land as it relates to the dam and reservoir. Acceptable documentary evidence includes but is not limited to leases, contracts, memoranda of agreements, easements, options to buy or authority to condemn under existing laws for purposes of construction of a dam and reservoir. The application will not be approved if the owner of the dam does not have sufficient legal authority to construct, operate, and maintain the dam and reservoir for its anticipated design life or sufficient authority to comply with any order the Department issues regarding the safety of the dam or operation of the dam and reservoir.

Title 458
Chapter 4

001.05 The application must be signed by all the owners of the dam and reservoir.

001.06 The application shall include the name, mailing address, electronic address and telephone number of the person or persons responsible for maintaining and operating the dam and reservoir. Each person's responsibilities shall be described in sufficient detail to provide the Department with an understanding of who is responsible for each aspect of the dam's maintenance and operation along with accurate information about how each person can be contacted. The application must include copies of all contracts or other agreements between the applicant and the person responsible for operation and/or maintenance of the dam and reservoir.

001.07 Dams are required to have an outlet for releasing water in compliance with Neb. Rev. Stat. § 46-241(5). If the dam is designed without an outlet, a request for a waiver as described in Department rule Title 458, Chapter 6 must accompany the application for approval.

001.08 The Department will return applications that are incomplete or incorrectly filled out to the applicant. The corrected or completed application must be returned to the Department within ninety days or the application will be dismissed. Any associated application for a surface water appropriation will also be dismissed. Fees will not be refunded.

002 Plans and Specifications.

002.01 An engineer shall prepare all plans and specifications assisted by qualified engineering geologist, geotechnical engineers, geologists, and other specialists as necessary. Plans and specifications submitted to the Department shall be as detailed as they would be for submission to contractors bidding on the work.

002.02 Detailed specifications or references to standard specifications for both materials and construction aspects shall accompany the plans. The specifications shall be those currently acceptable and normally used by design and construction professionals. Material specifications are those specifications which will cover the materials proposed to be used. Construction specifications are those specifications describing how the work (construction, enlargement, reconstruction, alteration, abandonment, breach, or removal)

Title 458
Chapter 4

is to be accomplished, the sequence of procedures to be followed, the limitations, and the desired results.

002.03 Plans for construction, enlargement, reconstruction, alteration, abandonment, breach, or removal of a dam shall conform to the following:

002.03A Be made on sheets with minimum dimensions of 11 inches by 17 inches and maximum dimensions of 22 inches by 34 inches and shall have adequate margins on all sides.

002.03B Be of such clarity and with distinct characters of such size as to retain clarity and resolution when reduced to 11 inches by 17 inches. Characters shall not be smaller than one-tenth inch on the 11 inches by 17 inches drawings and two-tenths inch on the 22 inches by 34 inches drawings.

002.04 Plans shall include the following information:

002.04A A map showing the outside limits of the reservoir water line at maximum storage elevation and at normal storage elevation, the dam location, the government subdivisions in which the dam and reservoir are located including the quarter section, section, township, range, and county; the location and name of any and all streams which are the source of water or on which the dam is located and, if applicable, the location of any pump or diversion facility used to provide water to the reservoir.

002.04B The latitude and longitude of the intersection of the dam centerline with the natural stream channel. Latitude and longitude must be referenced to the North American Datum of 1983.

002.04C The course of the stream or watercourse and the drainage area boundary upstream from the proposed or existing dam.

002.04D The area, time of concentration and runoff curve number of the drainage basin.

Title 458
Chapter 4

002.04E The elevations, dimensions, materials, and maximum capacities of all spillways. Elevations shall be referenced to the North American Vertical Datum of 1988.

002.04F All pertinent hydrologic and hydraulic data. For each design storm analyzed, indicate the following:

002.04F1 The design rainfall and runoff amount,

002.04F2 The recurrence interval,

002.04F3 The peak inflow into the reservoir,

002.04F4 The maximum discharge from each spillway,

002.04F5 The peak reservoir elevation and flow velocity in the auxiliary spillway, and

002.04F6 The results of the auxiliary spillway stability analysis.

002.04G A topographic map of the dam site and the return area to the natural channel from all conduits and spillway(s). The map must be derived from on site or photogrammetric survey and show 2-foot contour intervals or less.

002.04H A topographic map of the reservoir within the reservoir area. The map must be derived from on site or photogrammetric survey and show 2-foot contour intervals or less.

002.04I A table showing the reservoir surface area and incremental and cumulative reservoir storage at 2-foot elevation intervals and at the crest elevation of the drawdown, principal and auxiliary spillways, other outlets and the top of dam elevation.

002.04J The cross sections listed below, with all elevations referred to in the cross sections referenced to the North American Vertical Datum of 1988 or an assumed benchmark.

Title 458
Chapter 4

002.04J1 The valley along the centerline of the dam showing the profile of the top of the dam and the original ground line;

002.04J2 A maximum cross section perpendicular to the dam centerline and other cross-sections or views to clarify construction details;

00204J3 Other cross-sections, profiles or plan views showing the location and elevations of the drawdown works, spillways and other components.

002.04K If there are multiple owners or there are easements appurtenant to the land where the dam and reservoir are located, a plan of survey showing the boundary line of each ownership and easement. The plan of survey shall include labels to indicate separate ownerships or easements. This drawing must agree with the information provided in the application described in Chapter 4.001.04 of these rules.

002.04L The certificate of the engineer responsible for design of the facility. Examples of engineer's certificates are available on the Department's web site. The engineer's certificate shall include a designation of the hazard classification for the dam. The certificate shall be on the first sheet of the drawings.

003 Emergency Action Plans.

003.01 An emergency action plan that meets the requirements of Neb. Rev. Stat. § 46-1647 must be submitted with an application if the dam is classified as a high hazard dam. If the dam is classified as a significant hazard dam, the Department will notify the applicant if an emergency action plan is required and when the plan must be filed.

003.02 An emergency action plan shall include:

003.02A an emergency notification plan with flowchart;

003.02B a statement of purpose;

003.02C a project description;

Title 458
Chapter 4

003.02D the plan for emergency detection, evaluation, and classification;

003.02E a chart identifying the general responsibilities of emergency personnel and their names and telephone numbers;

003.02F a preparedness plan;

003.02G inundation maps or other acceptable description of the inundated area;

003.02H appendices.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 46-1652
Neb. Rev. Stat. § 46-1653
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 5 - REQUIREMENTS FOR DAMS CONSTRUCTED PRIOR TO SEPTEMBER 4, 2005, AND NOT PREVIOUSLY APPROVED BY THE DEPARTMENT.

001 This Chapter applies to all dams that were completed prior to September 4, 2005, but have not been approved by the Department.

002 Applications. Application must be made on a form provided by the Department. Plans and specifications for the dam must be submitted to the Department with the application form. The filing fee shall accompany the application.

002.01 If a surface water appropriation is required for the storage reservoir in accordance with Neb. Rev. Stat. § 46-241, the plans, specifications and application for approval shall be submitted at the same time as the application for a surface water appropriation.

002.02 If the owner of the dam is not the landowner of the land where the dam and reservoir are, the application shall be accompanied by documentary evidence describing the relationship and responsibilities of the owner of the dam and the landowner. Acceptable documentary evidence includes but is not limited to leases, contracts, memoranda of agreement, or easements. The application will not be approved if the owner of the dam does not have sufficient legal authority to operate and maintain the dam and reservoir for its anticipated design life or sufficient authority to comply with any order the Department issues regarding the safety of the dam or operation of the dam and reservoir.

002.03 The application form must be signed by all the owners of the dam and reservoir.

002.04 The application shall include the name, mailing address, electronic address and telephone number of the person or persons responsible for maintaining and operating the dam and reservoir. Each person's responsibility shall be described in sufficient detail to provide the Department a complete description of each person's duties and responsibilities and accurate information about how each person can be contacted. The application must include copies of all contracts or other agreements between the

Title 458
Chapter 5

applicant and the person responsible for operation and/or maintenance of the dam and reservoir.

002.05 If the dam does not have an outlet for releasing water in compliance with Neb. Rev. Stat. § 46-241(5), a request for a waiver as described in Department rule Title 458, Chapter 6 must accompany the application for approval.

002.06 The Department will return applications that are incomplete or incorrectly filled out to the applicant. The corrected or completed application must be returned to the Department within ninety days. Failure to refile within 90 days will result in the forfeiture of the fees, and dismissal of the application. If applicable, the application for an associated surface water storage appropriation will also be dismissed.

003 Plans. All plans and specifications shall be prepared by an engineer, assisted by qualified engineering geologists, geotechnical engineers, geologists and other specialists as necessary. Plans and specifications shall be as detailed as they would be for submission to contractors bidding on work. Plans shall include:

003.01 A topographic map of the reservoir area as determined by on-site or photogrammetric surveys with 2 foot contour intervals or less.

003.02 A table showing the incremental and cumulative reservoir surface area and reservoir storage at 2-foot elevation intervals and at the crest elevation of the drawdown, the principal and auxiliary spillways, other outlets and the top of dam elevation.

003.03 A map showing the outside limits of the reservoir water line at maximum storage elevation and at normal storage elevation, the dam location, the government subdivisions in which the dam and reservoir are located including the quarter section, section, township, range, and county; the location and name of any and all streams which are the source of water or on which the dam is located and, if applicable, the location of any pump or diversion facility used to provide water to the reservoir.

003.04 The height of the dam from the downstream toe of the dam to the maximum storage elevation.

Title 458
Chapter 5

003.05 The cross sections listed below. All elevations referred to in the cross sections must refer to the North American Vertical Datum of 1988 or an assumed benchmark.

003.05A The valley along the centerline of the dam showing the profile of the top of the dam and the original ground line;

003.05B A maximum cross section perpendicular to the dam centerline and other cross-sections or views to clarify construction details;

003.05C Other cross-sections, profiles or plan views showing the location and elevations of the drawdown works, spillways, and other components.

003.06 Elevations, dimensions, materials, and maximum capacities of all spillways.

003.07 If there are multiple owners or there are easements appurtenant to the land where the dam and reservoir are located, a plan of survey showing the boundary line of each ownership and easement. The plan of survey shall include labels to indicate separate ownerships or easements. This drawing must agree with the information provided in the application described in Chapter 5.002.02 of these rules.

003.08 A statement, certified by an engineer, as to the hazard classification of the dam and whether it is subject to the Safety of Dams and Reservoirs Act.

004 Emergency Action Plans.

004.01 An emergency action plan that meets the requirements of Neb. Rev. Stat. § 46-1647 must be submitted with an application if the dam is classified as a high hazard dam. If the dam is classified as a significant hazard dam, the Department will notify the applicant if an emergency action plan is required and when the plan must be filed.

004.02 An emergency action plan shall include:

004.02A an emergency notification plan with flowchart;

004.02B a statement of purpose;

Title 458
Chapter 5

004.02C a project description;

004.02D the plan for emergency detection, evaluation, and classification;

004.02E a chart identifying the general responsibilities of emergency personnel and their names and telephone numbers;

004.02F a preparedness plan;

004.02G inundation maps or other acceptable description of the inundated area;

004.02H appendices.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-241
Neb. Rev. Stat. § 46-1611
Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 46-1652
Neb. Rev. Stat. § 46-1653
Neb. Rev. Stat. § 46-1670
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 6 - OUTLET WORKS

001 REQUIREMENT. In order to protect the rights of persons downstream and to facilitate compliance with interstate compacts, decrees and agreements, all dams, including all structures subject to Chapter 4 and 5 of these rules, are required to have an outlet works. The Department may waive the requirement for an outlet works if the owner of the dam has an acceptable alternative method for passing water when ordered to do so. A request for a waiver must be filed on a form provided by the Department and must describe why an outlet works is not necessary, and how the owner of the dam will meet the requirements of Neb. Rev. Stat. § 46-241(5) and be accompanied by the filing fee. The Department will not allow waivers for dams associated with public roadways, or for dams required to have emergency action plans.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-241
Neb. Rev. Stat. § 61-206
Neb. Rev. Stat. § 33-105(8)

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 7 - CHANGE OF OWNERSHIP

001 The owner of any dam shall notify the Department of any change in the ownership of the dam or reservoir or of the land where the dam and reservoir are located. The notification shall be made on a form provided by the Department. All forms shall include the following:

001.01 For those instances where the ownership of the land has changed, a copy of the deed or other document transferring ownership of the land occupied by the dam and reservoir shall be submitted with the form.

001.02 For those instances where the ownership of the dam has changed, and the owner of the dam is not the owner of the land where the dam and reservoir are located, a copy of the trust agreement, lease, memorandum of agreement, deed, or other document transferring ownership of the dam and describing the responsibilities and authorities of the new owner shall be submitted with the form.

001.03 If the dam and reservoir are located on a tract not under one contiguous ownership, or there are holders of easements on the land where the dam and reservoir are located, the owner of the dam shall submit with the change of ownership form, a copy of an agreement, signed by all owners and applicable holders of easements, describing: (1) who is responsible for the operation of the dam and reservoir, including any releases from the reservoir; (2) who is responsible for maintenance of the structure; and (3) for reservoirs that are permitted under the provisions of Neb. Rev. Stat. § 46-241, what amount of the appropriation to impound is to be appurtenant to each owner's property and what is the basis for the distribution. Such agreements are not required when the deed or document transferring ownership or an easement describes such information and such document is submitted with the form.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1641
Neb. Rev. Stat. § 61-206
Neb. Rev. Stat. § 76-2,124

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES
RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 8 - CHANGE OF ADDRESS

001 The owner of any dam shall promptly notify the Department in writing of any change of address of the owner or person responsible for maintenance or operation of the dam or reservoir.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1641
Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES
RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 9 - NOTICE OF CONSTRUCTION, RECONSTRUCTION, ENLARGEMENT,
ALTERATION, BREACH, REMOVAL, OR ABANDONMENT

001 The owner of a dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notice shall be given immediately after foundation preparation and principal spillway construction and at least two days prior to backfilling the spillway. Notices must be in writing and addressed to the Chief Engineer or the Construction Inspector of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile or electronic mail.

002. This rule does not apply to dams associated with livestock waste control facilities.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1654(5)
Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 61-206
Neb. Rev. Stat. § 33-105(8)

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NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 10 - COMPLETION CERTIFICATION

001 The owner of a dam shall file with the Department a completion certification after completion of a new or reconstructed dam and reservoir or enlargement of a dam and reservoir, or the alteration of any dam. The completion certification shall be on a form provided by the Department accompanied by supplementary drawings or descriptive matter signed and sealed by the engineer, showing or describing the work as actually completed. The drawings and descriptive matter shall substantially conform to the requirements for plans and specifications in Chapter 4 of these regulations. If the construction, reconstruction, enlargement or alteration of the dam and reservoir meet the requirements of the Safety of Dams and Reservoirs Act and these regulations, the Department will issue an approval to operate to the owner.

002 The owner of a dam shall file with the Department a completion certification after completion of the removal, breach, or abandonment of the dam. The completion certification shall be made on a form provided by the Department accompanied by supplementary drawing or descriptive matter, signed and sealed by the engineer responsible for the work, showing or describing the work as actually completed. The drawings or descriptive matter shall substantially conform to the requirements for plans and specifications in Chapter 4 of these regulations.

003 For dams classified as high hazard, and for those significant hazard dams that are required to have an emergency action plan, the owner of the dam shall file a report of initial fill signed and sealed by the engineer. The report shall be filed by the first May 30 after the approval to operate was issued. The report shall include information on the initial seepage flows, information regarding the integrity of the dam, and the elevations and quantity of water impounded. The owner shall continue to file a report of initial fill by May 30 of each year until the reservoir has filled to the normal permitted storage capacity. After the reservoir has filled to

Title 458
Chapter 10

its normal permitted storage capacity, the owner shall submit the report of final fill. No further reports shall be required unless the Department orders the owner to submit a report to address a safety concern.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 46-1657
Neb. Rev. Stat. § 46-1658
Neb. Rev. Stat. § 46-1659
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 11 - CONSULTING BOARD

001 When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested by the owner, the Department shall appoint a Consulting Board of three or more engineers to report to the Department on the safety features involved. The cost and expense of a Consulting Board, if appointed at the request of an owner, shall be paid by the owner.

002 Dam owners interested in having an independent third-party review performed shall submit their request to the Department in writing. The Department will not accept a request for review from anyone other than the owner of a dam. The request must be accompanied by the filing fee and include the following information:

002.01 The purpose of requesting a Consulting Board review.

002.02 The application number or plan number assigned to the project by the Department.

002.03 A statement acknowledging that the dam owner understands that the fees associated with the Consulting Board review are the responsibility of the dam owner and that the dam owner agrees to pay such fees.

002.04 A statement acknowledging that the conclusions and recommendations of the Consulting Board are not binding upon the Department and that the Department maintains the final authority for the approval of all designs, reports, studies, and other engineering documents.

003 Any engineer willing to serve on a Consulting Board may submit their qualifications to the Department.

004 The Department shall maintain a list of all engineers willing to serve on a Consulting Board on its website whom the Department has found to be qualified.

Title 458
Chapter 11

005 Upon receipt of a request for a Consulting Board review, the Department shall randomly appoint engineers on the list that are able to serve for the project described. Those appointed cannot have any conflict of interest concerning the project subject to review and shall not have been employed by the dam owner within the last five years.

006 Once the board is formed, the Department will schedule a meeting with the dam owner, Department and the Consulting Board. The purpose of the meeting is to discuss the purpose and extent of the review and the time frame for completing the review. The dam owner shall pay to the Board members one-half the probable costs of review prior to the start of the review.

007 The Consulting Board's role is to provide an independent review. Therefore, when reviewing plans and specifications of another engineer, the Consulting Board shall send to the Department in writing any questions it has for the design engineer, or shall request the Department to schedule a meeting with the design engineer.

008 The dam owner, the engineer or any agent of the owner are prohibited from contacting or lobbying the Consulting Board except for contact made during meetings scheduled and attended by the Department. Any contact by the dam owner, the engineer or any agent of the owner with a member of the Consulting Board shall be documented in writing by the board member and provided to the Department.

009 The Consulting Board shall compile a final report of its review and submit a copy to the Department and to the dam owner.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1645
Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 12 - HAZARD POTENTIAL CLASSIFICATION

001 All dams shall be classified as high hazard potential, significant hazard potential, low hazard potential, or minimal hazard potential as defined in these rules. The Department will accept only those hazard potential classifications made by an engineer with experience in classifying dam hazard potential.

002 Any dam located within three miles of the jurisdictional limits of a city of the metropolitan class or primary class, or any dam within two miles of the jurisdictional limits of a city of the first class, or any dam within one mile of the jurisdictional limits of a city of the second class or a village, shall be classified as high hazard potential unless such dam and hazard classification were previously approved by the Department.

Classification can be mitigated or adjusted if development in the breach route area is sufficiently curtailed due to zoning restrictions, easements, deed restrictions, or other methods of restriction acceptable.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

NEBRASKA ADMINISTRATIVE CODE

Title 458 - NEBRASKA DEPARTMENT OF NATURAL RESOURCES
RULES FOR SAFETY OF DAMS AND RESERVOIRS

Chapter 13 - OPERATION AND MAINTENANCE OF A DAM AND RESERVOIR

001 Requirement. It is the responsibility of the owner(s) of the dam and reservoir to notify the Department of any changes in responsibility for the maintenance or operation of the dam or reservoir, including who is responsible for any releases from the reservoir. Notification shall be made on a form provided by the Department and include the name, mailing address, electronic address and telephone number of the person or persons responsible for maintaining and operating the dam and reservoir. The owner(s) shall provide a complete description of each person's duties and responsibilities and accurate information about how each person can be contacted. Copies of all contracts or other agreements between the dam owner and the person(s) responsible for operation and/or maintenance of the dam and reservoir shall be submitted with the notification form.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 46-1651
Neb. Rev. Stat. § 61-206

EFFECTIVE DATE: July 2, 2008

E.27. Nevada



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Forms Room
Water Planning
Administration
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Hearings and Adjudications
Mapping/GIS
Online Data
Water Rights
Links

DAM SAFETY GUIDELINES

SPILLWAY DESIGN

The single most common cause of earthen dam failures is overtopping of the embankment. **An undersized spillway will lead to overtopping**, therefore spillway design is critical to reservoirs. Very often, the cost of a spillway of ample capacity will only be moderately higher than that of one that is woefully inadequate. The spillway must be located such that discharge will not erode or undermine the toe of the dam. If the banks of the spillway are made of erosive material, provision must be made for their protection. An emergency spillway must have sufficient capacity to allow for the conveyance of peak flows during floods. Consideration must be given to the hazard to human life and potential property damage that may result from the failure of the dam or excessive flow rates through the spillway. Further consideration must be given to the likelihood of downstream development that may result in an elevation of the hazard classification.

The following flood criteria should be used when designing a spillway given the different dam hazard designations ([NAC 535.240](#)):

High Hazard: Probable Maximum Flood (PMF) on all dams.

Significant Hazard: PMF if no provision for a spillway is incorporated into the design or it is classified as a "large" dam.

The greater of 1/2PMF or a "500-year" flood (0.2 percent chance of exceedence in any year) for "medium" and "small" dams.

Low Hazard: "100-year" flood (1 percent chance of exceedence in any year) on all dams.

Most effluent, process fluid and tailing impoundments are exempt from

having a spillway, however, there must be diversion channels to route flood flows around the structure and/or sufficient freeboard designed into the structure to accommodate the required precipitation event.

A dam may also be designed to either impound the design flood or accommodate overtopping in which case no separate emergency spillway is necessary.

[Rev. 2/18/2010 11:16:04 AM]

CHAPTER 535 - DAMS AND OTHER OBSTRUCTIONS

NRS 535.005	Chapter does not authorize use of state land without authorization from State Land Registrar.
NRS 535.010	Construction, reconstruction or alteration of dam: Permit to appropriate water required; notice; approval of plans and specifications; inspection; exemptions; penalty.
NRS 535.020	State Engineer to file copy of application to construct dam with Board of Wildlife Commissioners; installation of fishways; protection and preservation of fish.
NRS 535.030	Inspection of dams by State Engineer; powers of State Engineer to protect life or property.
NRS 535.040	Statutes and performance of State Engineer's duties do not constitute warranty.
NRS 535.050	State Engineer may order removal of dam, diversion works or obstruction; limitation; procedure; payment of costs.
NRS 535.060	Obstruction of water by beaver's dam: Procedure for removal of beaver and dams.
NRS 535.070	Construction of weir in dam situated within 2 miles of incorporated city or town.
NRS 535.080	Attorney General and County Commissioners of Washoe County authorized to institute actions to maintain flow of Truckee River.
NRS 535.090	Unlawful obstruction of appropriator's water; penalty.
NRS 535.100	Injury or obstruction of flow of water by sawmill, slaughterhouse, brewery or tannery; civil action.
NRS 535.110	Unlawful removal, damage or destruction of piling, dike, dock or lock; unlawful structures.
NRS 535.200	Additional penalties.
NRS 535.210	Injunctive and other relief.

NRS 535.005 Chapter does not authorize use of state land without authorization from State Land Registrar. Nothing in this chapter authorizes a person to use any state land administered by the Division of State Lands of the State Department of Conservation and Natural Resources without the appropriate authorization for such a use from the State Land Registrar.

(Added to NRS by 1993, 1460)

NRS 535.010 Construction, reconstruction or alteration of dam: Permit to appropriate water required; notice; approval of plans and specifications; inspection; exemptions; penalty.

1. Any person proposing to construct a dam in this state shall, before beginning construction, obtain from the State Engineer a permit to appropriate, store and use the water to be impounded by or diverted by the dam.

2. Any such person obtaining or possessing such a permit shall:

(a) Before constructing, reconstructing or altering in any way any dam, notify the State Engineer thereof; and

(b) Where the dam is or will be 20 feet or more in height, measured from the downstream toe to the crest of the dam, or is less than 20 feet in height and will impound more than 20 acre-feet of water, submit to the State Engineer in triplicate plans and specifications thereof for approval 30 days before construction is to begin.

3. The State Engineer shall examine such plans and specifications and if the State Engineer approves them the State Engineer shall return one copy with such approval to the applicant. If the State Engineer disapproves any part of the plans and specifications the State Engineer shall return them to the applicant for correction or revision.

4. The construction and use of any dam is prohibited before approval of the plans and specifications by the State Engineer.

5. The State Engineer may at any time inspect or cause to be inspected the construction work while it is in progress to determine that it is being done in accordance with the approved plans and specifications.

6. This section applies to new construction, reconstruction and alteration of old structures.

7. The provisions of this section relating to approval of plans and specifications and inspection of dams do not apply to works constructed by the United States Bureau of Reclamation or the United States Army Corps of Engineers; but such federal agencies shall file duplicate plans and specifications with the State Engineer.

8. Any person beginning the construction of any dam before approval of the plans and specifications by the State Engineer, or without having given the State Engineer 30 days' advance notice of any proposed change, reconstruction or alteration thereof, is guilty of a misdemeanor. Each day of violation of this section constitutes a separate offense and is separately punishable.

[Part 77 1/2:140:1913; added 1951, 132]—(NRS A 1981, 1844; 1993, 206)

NRS 535.020 State Engineer to file copy of application to construct dam with Board of Wildlife Commissioners; installation of fishways; protection and preservation of fish.

1. Whenever an application for approval of plans and specifications for a new dam or for the alteration and enlargement of any dam in any stream in this state is filed with the State Engineer, the State Engineer shall file a copy of the application with the Board of Wildlife Commissioners.

2. In the construction of a dam, or the alteration or enlargement of a dam, the owner shall conform with the provisions of law for the installation of fishways over or around dams and for the protection and preservation of fish in streams obstructed by dams.

[Part 77 1/2:140:1913; added 1951, 132]—(NRS A 1979, 913)

NRS 535.030 Inspection of dams by State Engineer; powers of State Engineer to protect life or property.

1. The State Engineer from time to time shall:
 - (a) Make inspections of dams at state expense for the purpose of determining their safety; and
 - (b) Require owners to perform at their expense such work as may be necessary to supply the State Engineer with information as to the safety of such dams.
2. The owners shall perform at their expense any other work necessary to maintenance and operation which will safeguard life and property.
3. If at any time the condition of any dam becomes so dangerous to the safety of life or property as not to permit sufficient time for the issuance and enforcement of an order relative to the maintenance or operation thereof, the State Engineer may, if he or she deems it necessary, immediately employ the following remedial measures to protect either life or property:
 - (a) Lower the water level by releasing water from the reservoir.
 - (b) Completely empty the reservoir.
 - (c) Take such other steps as may be essential to safeguard life and property.
4. The provisions of this section shall not apply to works constructed by the United States Bureau of Reclamation or the United States Army Corps of Engineers.
[Part 77 1/2:140:1913; added 1951, 132]

NRS 535.040 Statutes and performance of State Engineer's duties do not constitute warranty. The provisions of [NRS 535.010](#), [535.020](#) and [535.030](#) and the performance by the State Engineer of the duties of the State Engineer under them do not constitute a warranty in favor of anyone concerning the water to be impounded or diverted.

[Part 77 1/2:140:1913; added 1951, 132]—(NRS A 1973, 1170; 1981, 1844)

NRS 535.050 State Engineer may order removal of dam, diversion works or obstruction; limitation; procedure; payment of costs.

1. The State Engineer has the right, power and authority to order the removal of any dam, diversion works or obstruction that has been placed in any stream channel or watercourse when the dam, diversion works or obstruction has not been legally established and recognized through a valid claim of vested right, by decree of court or by a permit issued by the State of Nevada.
2. Nothing in this section is to be construed as giving the State Engineer any right or authority to remove any dam or diversion works that has been so legally recognized and established.
3. If the dam, diversion works or obstruction has not been removed after 30 days' notice in writing given by the State Engineer and served upon the owner or person controlling the dam, diversion works or obstruction, or if no appeal has been taken from the order of the State Engineer as is provided for in [NRS 533.450](#), then the State Engineer may remove the dam, diversion works or obstruction.
4. The State Engineer shall charge the actual cost of that removal to the water distribution account and thereafter present an itemized statement of the charge to the board of county commissioners of the county wherein those expenses were incurred. The board of county commissioners shall thereupon present a bill for the expenses to the person liable therefor under this section, and if that person neglects for 30 days thereafter to pay it, the bill and costs become a lien upon the lands and property of the person so liable for the payment of the bill, and must be collected as delinquent taxes against the lands and property are collected.
[56 1/2:140:1913; added 1951, 132]—(NRS A 1979, 670)

NRS 535.060 Obstruction of water by beaver's dam: Procedure for removal of beaver and dams.

1. On any stream system and its tributaries in this state the distribution of the waters of which are vested in the State Engineer by law or the final decree of court, where beaver, by the construction of dams or otherwise, are found to be interfering with the lawful and necessary distribution of water to the proper users thereof, the State Engineer, upon complaint of any interested water user, shall investigate or cause the investigation of the matter.
2. The State Engineer and his or her assistants and water commissioners and the Department of Wildlife and its agents may enter upon privately owned lands for the purposes of investigating the conditions complained of and the removal and trapping of beaver.
3. If satisfied that such beaver are interfering with the flow of water to the detriment of water users, the State Engineer shall serve a written notice on the owner of the land, if it is privately owned, stating:
 - (a) That the beaver thereon are interfering with or stopping the flow of water necessary for the proper serving of water rights; and
 - (b) That unless, within 10 days from receipt of the notice, written objection to the removal of such beaver is filed with the State Engineer by the landowner, the Department of Wildlife will remove such beaver or as many thereof as will rectify the existing conditions.
4. Failure of the landowner to file such written objections shall be deemed a waiver thereof. Upon receipt of written objections, the State Engineer may make further investigation and may sustain or overrule the objections as the facts warrant. Upon the overruling of the objections, the landowner may have them reviewed by the district court having jurisdiction of the land by filing therein a petition for review within 10 days from the receipt of the order of the State Engineer overruling the objections. The proceedings on the petition must be informal and heard by the court at the earliest possible moment.
5. Upon the landowner's waiver of objections to the removal of beaver from his or her land, or upon final determination by the court that the beaver should be removed, the State Engineer shall immediately notify the Department of Wildlife of the waiver or determination and the Department or its agents shall enter upon the land from which the beaver are to be removed and remove them or as many as may be necessary to prevent the improper flow of water as directed by the State Engineer.
6. The State Engineer may remove or cause the removal of any beaver dam found to be obstructing the proper and necessary flow of water to the detriment of water users.
[Part 1:61:1949; 1943 NCL § 3148.01] + [2:61:1949; 1943 NCL § 3148.02]—(NRS A 1969, 1561; 1979, 914; 1993,

1702; [2003, 1581](#))

NRS 535.070 Construction of weir in dam situated within 2 miles of incorporated city or town.

1. The term “water of such river,” as used in this section, means the normal and natural flow of water in the river unaffected by flood, storm or other abnormal natural causes.

2. Any person owning, leasing or constructing any dam in any river of this State within 2 miles of an incorporated city governed by a board of county commissioners shall make or construct a weir in the dam of such size as to admit of the free passage of the water of such river during such portions of the year as such water is not being used for irrigating purposes.

3. If any person fails, neglects or refuses to comply with the provisions of subsection 2, the district attorney of the county wherein the dam is situated or being constructed shall commence mandamus proceedings to compel the person to comply with the provisions of subsection 2, or the board of county commissioners of the county may order the weir to be constructed at the expense of the county, and the county has a right of action against the owner or lessee of the dam for all expenses incurred by the county in constructing the weir and may recover judgment on the right of action and satisfy the judgment in the manner provided by law.

4. The provisions of this section do not apply to dams constructed or being constructed or hereafter to be constructed for the purpose of permanently storing the waters of such river for beneficial purposes.

[1:182:1913; 1919 RL p. 2668; NCL § 8002] + [2:182:1913; 1919 RL p. 2669; NCL § 8003] + [3:182:1913; 1919 RL p. 2669; NCL § 8004] + [4:182:1913; 1919 RL p. 2669; NCL § 8005]—(NRS A 1987, 1725)

NRS 535.080 Attorney General and County Commissioners of Washoe County authorized to institute actions to maintain flow of Truckee River. The Attorney General and the Board of County Commissioners of Washoe County are authorized and empowered to commence suits or take such other action as may be necessary to maintain a regular or natural flow of water in the Truckee River, and in all suits so instituted, if necessary, to use the name of “The State of Nevada.”

[1:120:1879; cited BH § 5013; RL § 4140; NCL § 7326]

NRS 535.090 Unlawful obstruction of appropriator’s water; penalty.

1. Whenever any appropriator of water has the lawful right-of-way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his or her works or prevent convenient access thereto.

2. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

[82:140:1913; 1919 RL p. 3247; NCL § 7968] + [83:140:1913; 1919 RL p. 3247; NCL § 7969]—(NRS A 1967, 610)

NRS 535.100 Injury or obstruction of flow of water by sawmill, slaughterhouse, brewery or tannery; civil action.

1. Any person who is the owner of or in possession of any sawmill used for the making of lumber, or any slaughterhouse, brewery or tannery shall not injure or obstruct the natural flow of water in any river, creek or other stream.

2. Any city or county government, or any person, who is the owner of or in possession of any agricultural lands and who is injured by reason of the violation on the part of any person of the provisions contained in subsection 1 may commence and maintain an action against the person for any damage sustained, in such manner as may be provided by law.

[Part 1:98:1862; B § 3847; BH § 353; C § 432; RL § 4718; NCL § 8248] + [2:98:1862; B § 3848; BH § 354; C § 433; RL § 4719; NCL § 8249] + [3:98:1862; B § 3849; BH § 355; C § 434; RL § 4720; NCL § 8250]—(NRS A 1967, 610; [2007, 2022](#))

NRS 535.110 Unlawful removal, damage or destruction of piling, dike, dock or lock; unlawful structures.

1. Every person who willfully and maliciously removes, damages or destroys a pile or other material fixed in the ground and used for securing any bank or dam of any river or other water, or any dike, dock, quay, jetty or lock is guilty of a misdemeanor.

2. Every person who:

- (a) Moors any vessel, scow, barge, raft or boom to any bridge; or
- (b) Erects or maintains any unlawful structure in any stream or river,

is guilty of a misdemeanor.

[Part 1911; C&P § 487; RL § 6752; NCL § 10434]—(NRS A 1993, 864)

NRS 535.200 Additional penalties.

1. In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#) to pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

2. If an administrative fine is imposed against a person pursuant to subsection 1, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney’s fees.

3. An order imposing an administrative fine or requiring the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to [NRS 533.450](#).

(Added to NRS by [2007, 2021](#))

NRS 535.210 Injunctive and other relief.

1. The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#).

2. On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#), the court may issue, without a bond,

any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

5. Any proceeding conducted or injunction or order issued pursuant to this section is in addition to, and not in lieu of, any other penalty or remedy available for a violation of this chapter.

(Added to NRS by [2007, 2021](#))

E.28. New Hampshire



FEMA

TABLE OF CONTENTS

CHAPTER Env-Wr 100 ORGANIZATIONAL RULES

PART Env-Wr 101 DEFINITIONS

- Section Env-Wr 101.01 100 – Year Flood
- Section Env-Wr 101.02 50-Year Flood
- Section Env-Wr 101.03 Acre-Foot
- Section Env-Wr 101.04 Applicant
- Section Env-Wr 101.05 Breached Dam
- Section Env-Wr 101.06 Class AA Structure
- Section Env-Wr 101.07 Class A Structure
- Section Env-Wr 101.08 Class B Structure
- Section Env-Wr 101.09 Class C Structure
- Section Env-Wr 101.10 Construction Engineer
- Section Env-Wr 101.11 Controlled Breach
- Section Env-Wr 101.12 Dam
- Section Env-Wr 101.13 Dam in Disrepair
- Section Env-Wr 101.14 Days
- Section Env-Wr 101.15 Department
- Section Env-Wr 101.16 Discharge Capacity
- Section Env-Wr 101.17 Emergency Condition
- Section Env-Wr 101.18 Environmentally-Sensitive Site
- Section Env-Wr 101.19 Flashboards
- Section Env-Wr 101.20 Freeboard
- Section Env-Wr 101.21 Great Pond
- Section Env-Wr 101.22 Height
- Section Env-Wr 101.23 Inflow Design Flood
- Section Env-Wr 101.24 Inland Public Water
- Section Env-Wr 101.25 Menace to Public Safety
- Section Env-Wr 101.26 Mills
- Section Env-Wr 101.27 Low Economic Loss
- Section Env-Wr 101.28 Non-Permitted
- Section Env-Wr 101.29 Normal Storage Capacity
- Section Env-Wr 101.30 Owner
- Section Env-Wr 101.31 Person
- Section Env-Wr 101.32 Plans
- Section Env-Wr 101.33 Reconstruction
- Section Env-Wr 101.34 Removal
- Section Env-Wr 101.35 Repair
- Section Env-Wr 101.36 Reversible Environmental Losses
- Section Env-Wr 101.37 Ruins
- Section Env-Wr 101.38 Specifications
- Section Env-Wr 101.39 Stage
- Section Env-Wr 101.40 Storage Capacity
- Section Env-Wr 101.41 Stream
- Section Env-Wr 101.42 Sunny Day Flow
- Section Env-Wr 101.43 Wave Run-Up

PART Env-Wr 102 DUTIES OF THE DEPARTMENT

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Section Env-Wr 102.01 Summary of Duties

PART Env-Wr 103 ACCESS TO FILES

Section Env-Wr 103.01 Public Records; Access to Files

CHAPTER Env-Wr 200 PROCEDURES

PART Env-Wr 201 PURPOSE AND APPLICABILITY

Section Env-Wr 201.01 Purpose

Section Env-Wr 201.02 Applicability

Section Env-Wr 201.03 Waiver

Section Env-Wr 201.04 Definitions

PART Env-Wr 202 WAIVERS

Section Env-Wr 202.01 Applicability

Section Env-Wr 202.02 Waiver Request

Section Env-Wr 202.03 Action on Waiver Request

PART Env-Wr 203 PROCEEDINGS

Section Env-Wr 203.01 Public Hearings

Section Env-Wr 203.02 Permit Proceedings

PART Env-Wr 204 DECISION AND APPEALS

Section Env-Wr 204.01 Department Decisions

Section Env-Wr 204.02 Appeals

Section Env-Wr 204.03 Form and Appearance of Documents

Section Env-Wr 204.04 Subscription and Veracity of Documents

Section Env-Wr 204.05 Filing of Documents with the Department

Section Env-Wr 204.06 Service of Documents

PART Env-Wr 205 CONSOLIDATION AND SEVERANCE

Section Env-Wr 205.01 Consolidation

Section Env-Wr 205.02 Severance

PART Env-Wr 206 FORMAT FOR ADJUDICATORY HEARINGS

Section Env-Wr 206.01 Applicability

Section Env-Wr 206.02 Commencement, Notice of Hearing

Section Env-Wr 206.03 Time Periods and Publication of Notice

Section Env-Wr 206.04 Intervention

Section Env-Wr 206.05 Subpoena

Section Env-Wr 206.06 Evidence

Section Env-Wr 206.07 Burden of Proof

Section Env-Wr 206.08 Methods of Proceeding, Conduct of Oral Hearings

PART Env-Wr 207 DECISION AND APPEALS

Section Env-Wr 207.01 Department Order

Section Env-Wr 207.02 Appeals

PART Env-Wr 208 NON-ADJUDICATORY PUBLIC HEARINGS

Section Env-Wr 208.01 Applicability

Section Env-Wr 208.02 Non-Adjudicatory Public Hearings

Section Env-Wr 208.03 Record

Section Env-Wr 208.04 Presiding Officer

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Env-Wr 208.05 Opening the Hearing
- Section Env-Wr 208.06 Testimony
- Section Env-Wr 208.07 Closing the Hearing
- Section Env-Wr 208.08 Continuances

CHAPTER Env-Wr 300 EXISTING DAMS

PART Env-Wr 301 PURPOSE AND APPLICABILITY

- Section Env-Wr 301.01 Purpose
- Section Env-Wr 301.02 Applicability
- Section Env-Wr 301.03 Roadway Culverts

PART Env-Wr 302 DAM INSPECTIONS; REPAIRS; ALTERNATIVES TO REPAIR

- Section Env-Wr 302.01 Dam Inventory
- Section Env-Wr 302.02 Dam Inspections
- Section Env-Wr 302.03 Repairs Required
- Section Env-Wr 302.04 Alternatives to Repairing or Reconstruction a Dam
- Section Env-Wr 302.05 Controlled Breach; Modifications to Lower Impoundment
- Section Env-Wr 302.06 Notification to Public

PART Env-Wr 303 REQUIREMENTS FOR EXISTING DAMS

- Section Env-Wr 303.01 Annual Registration Fee
- Section Env-Wr 303.02 Review of Hazard Classification
- Section Env-Wr 303.03 Appeal of Classification
- Section Env-Wr 303.04 Dam Monitoring
- Section Env-Wr 303.05 Operation and Maintenance Plan
- Section Env-Wr 303.06 Emergency Action Plan Required
- Section Env-Wr 303.07 Dam Repair and Reconstruction
- Section Env-Wr 303.08 Transfer of Ownership
- Section Env-Wr 303.09 Emergency Breach
- Section Env-Wr 303.10 Other Emergency Measures
- Section Env-Wr 303.11 Discharge Capacity
- Section Env-Wr 303.12 Meeting Discharge Capacity Requirements
- Section Env-Wr 303.13 Request for Time Extension

PART Env-Wr 304 NON-PERMITTED EXISTING DAMS

- Section Env-Wr 304.01 Application to Permit Existing Dam
- Section Env-Wr 304.02 Inspection
- Section Env-Wr 304.03 Notice to Municipality
- Section Env-Wr 304.04 Procedure if Approved
- Section Env-Wr 304.05 Issuance of Permit
- Section Env-Wr 304.06 Limitations on Permit Issuance

CHAPTER Env-Wr 400 CONSTRUCTING OR RECONSTRUCTING A DAM

PART Env-Wr 401 PURPOSE AND APPLICABILITY

- Section Env-Wr 401.01 Purpose
- Section Env-Wr 401.02 Applicability

PART Env-Wr 402 APPLICATION PROCEDURES

- Section Env-Wr 402.01 Application Filing

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Env-Wr 402.02 Content of Application
- Section Env-Wr 402.03 Statutory Requirements for Certain Dams
- Section Env-Wr 402.04 Notice to Owner
- Section Env-Wr 402.05 Classification Procedure
- Section Env-Wr 402.06 Additional Information Required
- Section Env-Wr 402.07 Notice to Municipality

PART Env-Wr 403 SPECIFIC DESIGN REQUIREMENTS

- Section Env-Wr 403.01 Purpose
- Section Env-Wr 403.02 Minimum Design Requirements of All Dams
- Section Env-Wr 403.03 Additional Requirements Based on Hazard Classifications
- Section Env-Wr 403.04 Design Floods for New Dams
- Section Env-Wr 403.05 Hydrologic Investigations
- Section Env-Wr 403.06 References for Hydraulic Determinations
- Section Env-Wr 403.07 Concrete Design Criteria
- Section Env-Wr 403.08 Steel Design Criteria
- Section Env-Wr 403.09 Timber Design Criteria
- Section Env-Wr 403.10 Earth Embankment Design Criteria

PART Env-Wr 404 ISSUANCE AND CONDITIONS OF PERMITS

- Section Env-Wr 404.01 Approval
- Section Env-Wr 404.02 Issuance and Recordation of Permit/Registration
- Section Env-Wr 404.03 Conditions of Permit
- Section Env-Wr 404.04 Time Expansion
- Section Env-Wr 404.05 Design Changes

PART Env-Wr 405 DAM CONSTRUCTION INSPECTIONS

- Section Env-Wr 405.01 Purpose
- Section Env-Wr 405.02 Applicability
- Section Env-Wr 405.03 Construction Engineer
- Section Env-Wr 405.04 Inspection During Construction or Reconstruction
- Section Env-Wr 405.05 Work Items to be Inspected
- Section Env-Wr 405.06 Inspection Frequency
- Section Env-Wr 405.07 No Design Changes Without Prior Approval
- Section Env-Wr 405.08 Final Inspection Report
- Section Env-Wr 405.09 Affidavit of Compliance
- Section Env-Wr 405.10 As-built Drawings
- Section Env-Wr 405.11 Requirements Prior to Impounding

CHAPTER Env-Wr 500 EMERGENCY ACTION PLANS

PART Env-Wr 501 PURPOSE AND APPLICABILITY

- Section Env-Wr 501.01 Purpose and Applicability

PART Env-Wr 502 BREACH ANALYSIS

- Section Env-Wr 502.01 When Required
- Section Env-Wr 502.02 Exemption from Breach Analysis
- Section Env-Wr 502.03 Repeal of Breach Analysis Exemption
- Section Env-Wr 502.04 Expansion of Study Area
- Section Env-Wr 502.05 Breach Analysis Required Due to Reconstruction
- Section Env-Wr 502.06 Specific Requirements and Breach Parameters
- Section Env-Wr 502.07 Breach Routing Methods

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Section Env-Wr 502.08 Downstream Dams
- Section Env-Wr 502.09 Review of Breach Analysis by Department

PART Env-Wr 503 INUNDATION MAPPING

- Section Env-Wr 503.01 Inundation Map Requirements
- Section Env-Wr 503.02 Simplified Inundation Map
- Section Env-Wr 503.03 Department Review

PART Env-Wr 504 COORDINATION WITH LOCAL COMMUNITIES

- Section Env-Wr 504.01 Communication with Community(ies)
- Section Env-Wr 504.02 Acknowledgment of EAP by Local Community(ies)

PART Env-Wr 505 PREPARATION AND FORMAT OF EAP DOCUMENT

- Section Env-Wr 505.01 Submittal of Draft EAP
- Section Env-Wr 505.02 Format of the EAP
- Section Env-Wr 505.03 Notification Flow-chart
- Section Env-Wr 505.04 Responsibilities
- Section Env-Wr 505.05 Notification Checklists
- Section Env-Wr 505.06 Preventive Action
- Section Env-Wr 505.07 Dam and Watershed Description
- Section Env-Wr 505.08 Impact of Breach
- Section Env-Wr 505.09 Dam Monitor and Testing
- Section Env-Wr 505.10 Local Evacuation Procedure and Recovery
- Section Env-Wr 505.11 List of Official EAP Holders
- Section Env-Wr 505.12 Documentation

PART Env-Wr 506 FINAL DISTRUBUTION; PUBLIC NOTICE

- Section Env-Wr 506.01 EAP Distribution
- Section Env-Wr 506.02 Public Notice

PART Env-Wr 507 TESTING AND UPDATING PROCEDURES

- Section Env-Wr 507.01 Notification Test
- Section Env-Wr 507.02 EAP Review and Changes
- Section Env-Wr 507.03 Reprinting of EAP

CHAPTER Env-Wr 600 REMOVAL OF DAMS

PART Env-Wr 601 PURPOSE AND APPLICABILILTY

- Section Env-Wr 601.01 Purpose
- Section Env-Wr 601.02 Applicability

PART Env-Wr 602 DAM REMOVAL PROPOSALS

- Section Env-Wr 602.01 Qualifying Removals
- Section Env-Wr 602.02 Dam Removal Proposal
- Section Env-Wr 602.03 Attachment for Dam Removal Projects

PART Env-Wr 603 REVIEW PROCEDURES

- Section Env-Wr 603.01 Notification
- Section Env-Wr 603.02 Review

PART Env-Wr 604 APPROVAL; REPORT

- Section Env-Wr 604.01 Dam Removal Approval
- Section Env-Wr 604.02 Post-Removal Report

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wr 700 LAKE LEVEL DETERMINATIONS

PART Env-Wr 701 PURPOSE AND APPLICABILITY

Section Env-Wr 701.01 Purpose

Section Env-Wr 701.02 Applicability

PART Env-Wr 702 REQUEST; PRELIMINARY INVESTIGATION

Section Env-Wr 702.01 Formal Request

Section Env-Wr 702.02 Preliminary Investigation

PART Env-Wr 703 FURTHER INVESTIGATIONS; PUBLIC HEARING

Section Env-Wr 703.01 Further Investigation and Public Hearing

Section Env-Wr 703.02 Determinations

PART Env-Wr 704 FINDINGS; DECISION

Section Env-Wr 704.01 Findings

Section Env-Wr 704.02 Report of Findings; Decision

CHAPTER Env-Wr 800 ADMINISTRATIVE FINES - **EXPIRED**

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Department of Environmental Services
Water Division
29 Hazen Drive
Concord, New Hampshire 03301
Tel. No. (603) 271-3406

CHAPTER Env-Wr 100 ORGANIZATIONAL RULES

PART Env-Wr 101 DEFINITIONS

Env-Wr 101.01 “100-year flood” means the flood that has a one chance in 100 of being equaled or exceeded in a period of one year.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.02 “50-year flood” means the flood that has a one chance in 50 of being equaled or exceeded in a period of one year.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.03 “Acre-foot” means the volume of water that would cover one acre to a depth of one foot.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.04 “Applicant” means the person or persons filing an application to construct or reconstruct a dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; rpld by #4491, eff 9-20-88

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.05 “Breached dam” means a dam which no longer impounds water at the level of the primary spillway or outlet structure because of a partial or full dam failure, or because a portion of the dam has been removed.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.06 “Class AA structure” means a dam that is not a menace because it is in a location and of a size that failure or misoperation of the dam would not result in probable loss of life or loss to property, provided the dam is:

- (a) Less than 6 feet in height if it has a storage capacity greater than 50 acre-feet; or
- (b) Less than 25 feet in height if it has a storage capacity of 15 to 50 acre-feet.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.07 “Class A structure” means a dam that has a low hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in any of the following:

- (a) No probable loss of life;
- (b) Low economic loss to structures or property;
- (c) Structural damage to a town or city road or private road accessing property other than the dam owner’s which could render the road impassable or otherwise interrupt public safety services;
- (d) The release of liquid industrial, agricultural, or commercial wastes, septage, or contaminated sediment if the storage capacity is less than 2 acre-feet and is located more than 250 feet from a water body or water course; or
- (e) Reversible environmental losses to environmentally-sensitive sites.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.08 “Class B structure” means a dam that has a significant hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in any of the following:

- (a) No probable loss of life;
- (b) Major economic loss to structures or property;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) Structural damage to a Class I or II road which could render the road impassable or otherwise interrupt public safety services;

(d) Major environmental or public health losses, including:

(1) Damage to a public water system, as defined by RSA 485:1-a, XV, which will take longer than 48 hours to repair; or

(2) The release of liquid industrial, agricultural, or commercial wastes, septage, sewage, or contaminated sediments if the storage capacity is 2 acre-feet or more; or

(3) Damage to an environmentally-sensitive site that does not meet the definition of reversible environmental losses.

Source. #1702, eff 1-1-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.09 “Class C Structure” means a dam that has a high hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in probable loss of human life as a result of:

(a) Water levels and velocities causing the structural failure of a foundation of a habitable residential structure or a commercial or industrial structure which is occupied under normal conditions;

(b) Water levels rising above the first floor elevation of a habitable residential structure or a commercial or industrial structure which is occupied under normal conditions when the rise due to dam failure is greater than one foot;

(c) Structural damage to an interstate highway which could render the roadway impassable or otherwise interrupt public safety services;

(d) The release of a quantity and concentration of materials which qualify as “hazardous waste” as defined by RSA 471-A:2 VI; or

(e) Any other circumstance which would more likely than not cause one or more deaths.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.10 “Construction engineer” means a professional engineer, licensed in New Hampshire, who has been hired by the owner to oversee construction or reconstruction of a dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.11 “Controlled breach” means an opening in a dam which extends from the top of the dam to the streambed made specifically for the purpose of lowering the level of impounded water to a safe level for the dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.12 “Dam” means “dam” as defined by RSA 482:2, II, namely “any artificial barrier, including appurtenant works, which impounds or diverts water, and which has a height of 4 feet or more, or a storage capacity of 2 acre-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 industrial, or commercial wastes or municipal sewage, regardless of height or storage capacity, shall be considered dams”.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.13 “Dam in disrepair” means “dam in disrepair” as defined by RSA 482:2, V, namely “a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or 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.”

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.14 “Days” means calendar days unless otherwise specified.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.15 “Department” means the department of environmental services.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.16 “Discharge capacity” means the amount of water which can safely pass the structure through its normal discharge channels.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.17 “Emergency condition” means:

- (1) A situation has arisen at a dam which could jeopardize the integrity of the dam; or
- (2) Failure of the dam is imminent or has occurred.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.18 “Environmentally-sensitive site” means:

- (a) A site listed and tracked by the natural heritage inventory, as maintained by the department of resource and economic development;
- (b) A prime wetland designated per RSA 482-A:15;
- (c) A river segment designated pursuant to RSA 483;
- (d) A prime habitat for resident or migratory fishes, as determined by the fish and game department; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) Surface waters immediately downstream of a dam that support coldwater fish communities, as determined by the fish and game department.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.19 “Flashboards” means boards which temporarily raise the pond elevation above the permanent spillway crest and are designed to automatically fall over when the water level rises to a particular level.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.20 “Freeboard” means the vertical distance from the water surface to the lowest elevation at which water would flow over the dam at a section not designed to be overflowed.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4278, eff 6-30-87; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.21 “Great Pond” means a water body of 10 acres or more in its natural condition.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.22 “Height” means the vertical distance from the lowest point of natural ground on the downstream side of the dam to the highest part of the dam which would impound water.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.23 “Inflow design flood” is the flood flow above which dam failure would not contribute to endangering public safety or property downstream of the dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.24 “Inland public water” as used in RSA 482:79 means any public water of 10 acres or more whose level is controlled by a dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.25 “Menace to public safety” as used in RSA 482:2, V and “menace to the public safety” as used in RSA 482:9, III, means that the failure or misoperation of the dam would threaten human life or public health or interrupt safety services. The term includes any class A, class B, or class C dam but does not include any class AA dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.26 “Mills” means “mills” as defined by RSA 482:2, VII, namely “manufacturing plants and plants at which electric power is generated for public distribution or for the operation of mills, railroads or public utilities.”

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.27 “Low economic loss” means economic loss to undeveloped agriculture, uninhabited structures such as storage sheds, or minor impact to sites listed or tracked by the natural heritage inventory, as maintained by the department of resource and economic development.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.28 “Non-permitted” means:

(a) For a dam constructed subsequent to 1917, that a permit, order, or authorization for construction or registration by the department or a predecessor state agency responsible for such at the time has never been issued; or

(b) For a dam constructed prior to 1917, that the location of the dam is not on file with the department.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.29 “Normal storage capacity” means the volume of water and material which could be impounded above the natural ground elevation, when the water level is at the elevation of the lowest free-flowing discharge structure.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.30 “Owner” means the person or persons who own a dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.31 “Person” means “person” as defined by RSA 482:2,VIII, namely “any individual, partnership, association, corporation, company, organization or legal entity of any kind.”

Source. #4399, eff 4-19-88, EXPIRED 4-19-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.32 “Plans” means engineering drawings including plan views, elevations, sections, and details.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.33 “Reconstruction” means “reconstruction” as defined by RSA 482:2, X, namely:

- “(a) A change in the height, length or discharge capacity 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.”

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.34 “Removal” means the physical elimination of a dam as governed by Env-Wr 600.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

Env-Wr 101.35 “Repair” means work on a dam that does not change the height, length or discharge capacity of the structure and that does not constitute reconstruction.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, *eff 8-20-05*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.36 “Reversible environmental losses” means damage to an ecosystem which is expected to self-remediate within 5 years.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.37 “Ruins” means the remains of a dam which no longer impounds water and whose deterioration is to the extent that the original configuration can no longer be determined.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.38 “Specifications” means the descriptions of materials and methods of work sufficient in quantity and detail to convey the intent of the designer.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.39 “Stage” means the depth of water or elevation of water surface.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.40 “Storage capacity” means the maximum volume of water and material which could be impounded by a dam above the natural ground elevation when the water level is at:

- (a) The top of dam; or
- (b) The highest elevation which could be hydrologically attained, if this elevation is below the top of dam.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.41 “Stream” means any watercourse delineated on a USGS topographic map as a dashed or solid line, or any watercourse not delineated on a USGS topographic map that flows continuously in a well-defined channel for at least 30% of the year.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

Env-Wr 101.42 “Sunny day flow” means the flow occurring in a river or stream channel during normal hydrologic conditions.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 101.43 “Wave run-up” means the height of water above the still water level which would be expected to occur at a dam as a result of high winds.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

PART Env-Wr 102 DUTIES OF THE DEPARTMENT

Env-Wr 102.01 Summary of Duties. Pursuant to its statutory authority under RSA 482, the department performs the following duties:

- (a) Enters interstate compacts for conserving and regulating flow, lessening flood damages and removing or preventing sources of pollution, pursuant to RSA 482:91;
- (b) Monitors flow by establishing and maintaining a network of stream flow gauging stations with cooperation from the United States Geological Survey, pursuant to RSA 482:85;
- (c) Constructs, maintains and operates small watershed projects with cooperation from the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), pursuant to RSA 482:77;
- (d) When duly-authorized by the legislature, accepts, repairs, maintains, and operates certain dams, pursuant to RSA 482:48;
- (e) Makes determinations whether it will be in the public interest to grant the right to erect a dam, pursuant to RSA 482:9, V(a) and RSA 482:31;
- (f) Maintains a current list of existing dams, including their size, location, classification and owner, pursuant to RSA 482:8;
- (g) Regulates the construction and reconstruction of dams, pursuant to RSA 482:7-11;
- (h) Makes determinations of whether dams are in disrepair and conduct follow-up proceedings, pursuant to RSA 482:11-a and RSA 482:61;
- (i) Periodically inspects dams, pursuant to RSA 482:12;
- (j) Makes determinations of public use and benefit, pursuant to RSA 482:17 and RSA 482:31;
- (k) Grants owners of mill dams certain rights when in the public interest, pursuant to RSA 482:31;
- (l) Makes channel improvements in the public interest, pursuant to RSA 482:1;
- (m) Makes orders, conduct hearings, subpoena and examine under oath persons and their books, records, documents, correspondence, and accounts, as necessary to carry out its obligations, pursuant to RSA 482:87;
- (n) Adopts and enforces rules, pursuant to RSA 482:87;
- (o) Investigates the levels of inland public waters, pursuant to RSA 482:79;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(p) Contracts with village districts for the purpose of impounding water, pursuant to RSA 52:25;

(q) Monitors the ground water resources with the cooperation of the United States Geological Survey, pursuant to RSA 482:3, II;

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

PART Env-Wr 103 ACCESS TO FILES

Env-Wr 103.01 Public Records; Access to Files.

(a) The files of the department relating to activities under RSA 482 shall be open to public inspection.

(b) Information which is available for public distribution may be copied. A fee of \$0.15 per page shall be assessed for photocopies made at the department's public information center by the person requesting the copies, and a fee of \$0.25 per page shall be assessed for photocopies prepared by department personnel.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; #4278, eff 6-30-87; ss by #4580, eff 2-27-89; rpld by #5080, eff 2-22-91

New. #6462-A, eff 2-21-97 (formerly Env-Wr 105.01); ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05

CHAPTER Env-Wr 200 RULES OF PRACTICE AND PROCEDURE

PART Env-Wr 201 APPLICABILITY, PURPOSE AND DEFINITIONS

Env-Wr 201.01 Applicability. The rules within this chapter shall govern proceedings before the department. These rules shall be construed to secure a just and speedy determination of every proceeding.

(a) The rules in this chapter are intended to supplement Env-C 200 and RSA 541-A in governing proceedings before the department under RSA 482. These rules shall be construed to secure a just and speedy determination of every proceeding.

(b) The purpose of any proceeding governed by this chapter shall be to allow the department to acquire sufficient information to make a reasonable decision, and to afford persons who may be affected by decisions of the department the opportunity to present evidence and argument to the department prior to the making of that decision.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

Env-Wr 201.02 Applicability. These rules shall apply to all proceedings initiated under RSA 482 relative to dams and lake level determinations.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

PART Env-Wr 202 WAIVERS

Env-Wr 202.01 Applicability. The rules contained in subtitle Env-Wr are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all rules prescribed herein might not fit every conceivable situation. Thus, any person who is or would be directly and adversely affected by the strict application of these rules may request a waiver of the rule(s) or portion(s) thereof which so affect that person.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

Env-Wr 202.02 Waiver Request.

(a) The person requesting a waiver shall submit the request in writing unless the need for a waiver does not become apparent until a hearing is underway, in which case the request shall be presented orally and made part of the record.

(b) The request for a waiver shall contain the following information:

- (1) A description of the dam to which the waiver request relates, including name, address, and dam number;
- (2) A citation to the specific section(s) of the rules from which a waiver is sought;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) A full explanation of why a waiver is being requested, including an explanation of the hardship that would be caused by compliance with the rule;
- (4) A full explanation of the alternative(s) to the rule(s) for which a waiver is sought, with backup data for support; and
- (5) A full explanation of how the alternative(s) are consistent with the intent of RSA 482:11-a and RSA 482:12 and would adequately protect human life, public safety, and the environment.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

Env-Wr 202.03 Action on Waiver Request.

(a) The department shall approve a request for a waiver upon determining that:

- (1) The alternatives proposed are adequate to ensure that the intent of RSA 482 is met;
- (2) The requirement is not one that is prescribed by statute; and
- (3) Human life, public safety, and the environment will be protected.

(b) The department shall issue a written decision on a request for a waiver. If the request is denied, the decision shall specify the reason(s) for the denial.

Source. #8413, eff 8-20-05

PART Env-Wr 203 PROCEEDINGS

Env-Wr 203.01 Public Hearings. Any hearing held to receive public comment under the following statutory provisions shall be conducted in accordance with the provisions of Env-C 200 applicable to non-adjudicative hearings:

- (a) RSA 482:6 relative to the management and control of the outlet of a great pond;
- (b) RSA 482:9, V(a) relative to public benefit of a proposed class B or class C dam;
- (c) RSA 482:30 relative to public benefit of a dam proposed under RSA 482:29; and
- (d) RSA 482:79 relative to lake level determinations.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

Env-Wr 203.02 Permit Proceedings. An application for approval to construct or reconstruct a dam shall be considered a non-adjudicative proceeding in accordance with RSA 541-A:29, II(a).

Source. #8413, eff 8-20-05

PART Env-Wr 204 DECISION AND APPEALS

Env-Wr 204.01 Department Decisions.

- (a) All final department decisions under RSA 482 shall be issued in writing.
- (b) A final decision to grant a permit application shall be distributed as follows:
 - (1) Subject to Env-Wr 404.02(b), the original shall be sent to the applicant; and
 - (2) Copies shall be sent to all municipalities which were notified of the application pursuant to Env-Wr 304.03 or Env-Wr 402.07.
- (c) A final decision to deny a permit application shall be distributed as follows:
 - (1) The original shall be sent to the applicant; and
 - (2) Copies shall be sent to all municipalities which were notified of the application pursuant to Env-Wr 304.03 or Env-Wr 402.07.
- (d) Copies of a final decision in a lake level investigation shall be sent to:
 - (1) The owner of the dam that is the subject of the order;
 - (2) The person(s) who requested the investigation, if any;
 - (3) Each municipality in which the impounded water is located; and
 - (4) Each person who participated in the investigation who specifically requested to be notified of the decision.
- (e) Copies of an order issued pursuant to RSA 482:11 or RSA 482:12 shall be sent to:
 - (1) The owner of the dam that is the subject of the order; and
 - (2) Each municipality in which the impounded water is located.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4336, eff 11-5-87; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 205.01); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

Env-Wr 204.02 Appeals. Appeals of department decisions under RSA 482 shall be directed to the water council in accordance with Env-WC 200.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 205.02); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05

CHAPTER Env-Wr 300 EXISTING DAMS

PART Env-Wr 301 PURPOSE AND APPLICABILITY

Env-Wr 301.01 Purpose. The purpose of this chapter is to ensure that existing dams are maintained in a manner so that public health, safety, and the environment are protected.

Source. #4399, eff 4-19-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 301.02 Applicability.

(a) Subject to (b), below, the requirements in this chapter shall apply to:

- (1) Any structure which qualifies as a dam in accordance with RSA 482:2, II; and
- (2) Any roadway culvert meeting the requirements of Env-Wr 301.03.

(b) The requirements in this chapter shall apply to a dam regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act, 16 U.S.C. Chapter 12, Subchapter I, only when they do not conflict with rules, standards, protocols, licenses, certificates, or orders promulgated by the FERC pursuant to that authority.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4399, eff 4-19-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 301.03 Roadway Culverts.

(a) A roadway embankment whose culvert is set at the natural streambed shall be considered a dam if during the 25 year storm:

- (1) The water surface elevation at the culvert inlet is 6 feet or more above the water surface elevation at the culvert outlet; and
- (2) It impounds 2 acre-feet or more of water over the crown, or top, of the culvert.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4399, eff 4-19-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

PART Env-Wr 302 DAM INSPECTIONS; REPAIRS; ALTERNATIVES TO REPAIR

Env-Wr 302.01 Dam Inventory. The department shall maintain an inventory of all dams in the state as to ownership, height, location, and hazard classification.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 302.02 Dam Inspections.

(a) The department shall inspect dams in accordance with the following frequency:

- (1) Class A structures shall be inspected at least once every 6 years;
- (2) Class B structures shall be inspected at least once every 4 years;
- (3) Class C structures shall be inspected at least once every 2 years; and
- (4) Class AA structures having a height of 25' or more or having a storage capacity of 50 acre-feet or more shall be inspected at least once every 6 years.

(b) An individual may request the department to inspect any dam by putting such request in writing to the department.

(c) The written request for inspection shall include:

- (1) The location of the dam or water body on which the dam is located;
- (2) The name, mailing address, and daytime telephone number of the owner, if known; and
- (3) A statement explaining why the requestor believes the dam should be inspected.

(d) The department shall review the request and any other available information on the dam. If the department determines that public safety requires the dam to be inspected, the department shall schedule an inspection of the dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 302.03 Repairs Required.

(a) Subject to (c), below, if the department determines as a result of an inspection that repairs or reconstruction to a dam are needed to maintain the dam in a safe condition, it shall notify the owner in writing of such repairs or reconstruction as are necessary and request the owner to undertake such repairs within the time period specified in the notice.

(b) If the owner does not undertake the needed repairs or reconstruction within the time period indicated in a notice sent pursuant to (a), above, the department shall proceed under RSA 482:12 to order the owner to undertake the repairs or reconstruction.

(c) The department shall not issue a request but instead shall directly issue an order requiring repairs or reconstruction if:

- (1) The condition of the dam poses an imminent threat to public safety; or
- (2) The owner of the dam has been non-responsive to department requests relating to other compliance issues.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 302.04 Alternatives to Repairing or Reconstructing a Dam.

(a) In lieu of repairing or reconstructing a dam as required pursuant to Env-Wr 302.03, the owner may:

- (1) Remove the dam in accordance with Env-Wr 600; or
- (2) Breach or modify the dam in accordance with Env-Wr 302.05.

(b) Such removal, breach, or modification shall be equivalent to complying with the repair or reconstruction order.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 302.05 Controlled Breach; Modifications to Lower Impoundment.

(a) The owner may request approval from the department to perform a controlled breach or to modify the dam so that the impoundment is lowered to a level that is safe for the dam.

(b) To request approval for a controlled breach or modification, the owner shall submit the following information in writing to the department:

- (1) The name, mailing address, and daytime telephone number of the owner;
- (2) The date of the department's order to repair or reconstruct the dam, if any, and if none, the:
 - a. Tax map and lot number of the property on which the dam is located;
 - b. Location of the dam on the applicable USGS Quadrangle map;
 - c. Name of the stream, river, or other water body on which the dam is located, if applicable;
 - d. Reason(s) for the proposed breach or modification; and
 - e. Hazard classification of the dam;
- (3) The amount of water currently impounded by the dam, in acre-feet;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Whether the request is for a controlled breach or other modification;
 - (5) A detailed explanation of the specific work that will be performed, including anticipated flows during the work and the effect of such flows on upstream and downstream property and public safety;
 - (6) The name(s), mailing address(es), and daytime telephone number(s) of the person(s) proposed to perform the work; and
 - (7) A proposed schedule for the work, which shall include time for the notice and hearing required by RSA 482:13.
- (c) The department shall approve the proposed breach or modification if the department determines that:
- (1) The proposed breach or modification will cause the structure to no longer meet the definition of a dam; and
 - (2) The work will be performed in a manner that will not cause flows that would result in property damage or threaten public safety upstream or downstream of the dam.
- (d) If the department determines that after the proposed breach or modification the structure will still meet the definition of a dam, the department shall approve the breach or modification of the dam provided that:
- (1) The work will be performed in a manner that will not cause property damage or threaten public safety upstream or downstream of the dam;
 - (2) The threat posed to life or property after completion of the work is no more than it would have been if the work required by the department pursuant to Env-Wr 302.03 had been completed, if applicable; and
 - (3) The requirements of Env-Wr 303.11 relative to discharge capacity will be met as a result of the proposed work.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 302.06 Notification to Public. After receiving approval pursuant to Env-Wr 302.05, the owner shall refrain from undertaking the work until the requirements of RSA 482:13 relative to notice to municipalities and hearing have been met.

Source. #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

PART Env-Wr 303 REQUIREMENTS FOR EXISTING DAMS

Env-Wr 303.01 Annual Registration Fee.

(a) Pursuant to RSA 482:8-a, annual registration fees for dams in the amount specified in RSA 482:8-a shall be payable to the department on January 1 of each calendar year.

(b) The department shall send a written notice, by October 31 of each year, to each owner specifying the amount of the registration fee that shall be due.

(c) The department shall send a second notice to each owner who fails to submit the annual registration fee by January 1. Such notice shall inform the owner that the payment is overdue and that if the owner fails to submit the registration fee within 10 days, the owner shall be subject to the penalties authorized by RSA 482:15 and RSA 482:89.

(d) Notices sent pursuant to (b) and (c), above, shall include whatever information the department has relative to the tax map and lot number of the dam and the volume and page number of the deed to the dam and to the property on which the dam is located, if different. At the time of paying the annual registration fee, the owner shall confirm or, if necessary, provide or correct the information.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-10-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.02 Review of Hazard Classification.

(a) The department shall review the classification of a dam in conjunction with any inspection conducted pursuant to Env-Wr 302.02.

(b) If the department determines that a dam no longer meets the criteria of the class to which it had been assigned, the department shall reassign the dam to the proper classification.

(c) Upon reassigning a dam to a different classification, the department shall notify the owner in writing of:

- (1) The new classification; and
- (2) Any new requirements that may apply as a result of the reclassification .

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.03 Appeal of Classification.

(a) If the owner disagrees with the department's decision to reclassify a dam's hazard classification, the owner may request that the department reconsider the decision.

(b) To request reconsideration, the owner shall submit a written request to the department that includes the following:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) The name, mailing address, and daytime telephone number of the owner;
 - (2) The dam number assigned by the department, if known, and if not known, the location of the dam by:
 - a. Tax map and lot number of the property on which the dam is located;
 - b. Location of the dam on the applicable USGS Quadrangle map; and
 - c. Name of the stream, river, or other water body on which the dam is located, if applicable;
 - (2) The results of a dam breach analysis, including routing of the flow downstream of the dam, completed in accordance with Env-Wr 502; and
 - (3) An assessment of all structures potentially impacted by a dam failure, including the depth of flooding at critical structures or groups of structures.
- (c) If the department determines that the information requested in (b) is insufficient to grant the requested reconsideration, the department shall:
- (1) Deny the request; or
 - (2) If the department believes that a favorable decision might be made if inundation mapping is provided, request the owner to provide inundation mapping completed in accordance with Env-Wr 503.01.
- (d) The department shall notify the owner of its decision in writing within 60 days of receiving complete information.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.04 Dam Monitoring.

- (a) The owner of a class A, class B, or class C dam, or the owner's designee, shall monitor the dam in accordance with this section.
- (b) The dam monitor shall:
 - (1) Be trained in the operation of the dam;
 - (2) Be trained to detect and assess conditions that could affect the safety of the dam;
 - (3) Have authority from the owner to operate the structure during emergency situations;
 - (4) For a class B or class C dam, be available at the dam within 2 hours at all times; and
 - (5) For a class A dam, be available at the dam within 2 hours during periods of heavy precipitation, high water levels, or receipt of notification of other events that could threaten the structural integrity of the dam.
- (c) The owner of a class A, class B, or class C dam shall provide:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) A communication system between the monitor and the local communities; and
 - (2) The means, materials, and equipment needed to make emergency repairs to the structure.
- (d) The owner of a class B or class C dam also shall provide the training and equipment, including alternative power sources, necessary to operate the structure.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.05 Operation and Maintenance Plan.

- (a) The owner of a class A, class B, or class C dam shall submit a written operation and maintenance plan for approval by the department.
- (b) The operation and maintenance plan shall:
- (1) Describe the seasonal control of impoundment levels;
 - (2) Describe regular maintenance activities; and
 - (3) Identify the name(s) and address(es) of the dam monitor(s) required by Env-Wr 303.04 and any other emergency contacts for operation of the dam that the owner wishes to designate.
- (c) The department shall approve the plan if:
- (1) The information submitted addresses the items specified in (b), above; and
 - (2) Compliance with the submitted plan will result in a dam that will be operated safely during all flow conditions and not become a dam in disrepair.
- (d) The owner shall update the operation and maintenance plan as necessary and shall submit a written update to the department within 15 days of any changes.
- (e) An owner that is required to complete an emergency action plan (“EAP”) pursuant to Env-Wr 303.06 may incorporate the operation and maintenance plan as an appendix to the EAP.
- (f) The owner shall operate and maintain the dam in accordance with the approved operation and maintenance plan.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4354, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.06 Emergency Action Plan Required.

- (a) As required by RSA 482:11-a, the owner shall develop an emergency action plan (EAP) for any dam, the failure of which may threaten life or property.

(b) The owner of a class B or class C dam shall develop an EAP in accordance with Env-Wr 500.

(c) The operation and maintenance plan prepared by the owner of a class A dam shall constitute the EAP for that dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 303.07 Dam Repair and Reconstruction.

(a) Pursuant to RSA 482:9, the owner shall not initiate, or authorize anyone else to initiate, work on a dam which qualifies as reconstruction without first obtaining a permit from the department pursuant to Env-Wr 400.

(b) The owner may undertake repairs other than those qualifying as reconstruction without prior department approval.

(c) An owner wishing to perform a controlled breach or otherwise modify the dam to lower the impoundment to a safe level shall proceed in accordance with Env-Wr 302.05.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; rpld by #5080, eff 2-22-91

New. #8414, eff 8-20-05

Env-Wr 303.08 Transfer of Ownership.

(a) The owner shall provide the information specified in (b), below, to any prospective owner prior to transferring:

(1) Title to the dam; or

(2) If ownership of the dam is tied to ownership of the property, the property on which the dam is located.

(b) The owner shall provide the following information:

(1) The existence of the dam;

(2) The dam number assigned by the department; and

(3) Any letters or orders issued by the department relative to the condition of the dam.

(c) Within 30 days of the transfer of ownership of a dam or the property on which a dam is located, the new owner shall inform the department in writing of the transfer of ownership by providing the following information:

(1) The name of the former owner;

(2) The dam number assigned by the department;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The name, mailing address, and daytime telephone number of the new owner;
- (4) The tax map and lot number of the dam; and
- (5) The volume and page number of the deed which transferred ownership of the dam or the property on which the dam is located.

Source. #8414, eff 8-20-05

Env-Wr 303.09 Emergency Breach.

- (a) An owner may purposefully breach a dam without prior approval from the department only when a threat to public safety or public health exists or significant damage to public or private property is imminent.
- (b) The owner shall notify the department and the local police and fire departments prior to performing an emergency breach, if possible.
- (c) If it is not possible to notify the department and local police and fire departments prior to performing an emergency breach, the owner shall make such notification as soon as reasonably possible, but never more than one hour after the initiation of the emergency breach.
- (d) Within 30 days of performing an emergency breach, the owner shall submit an application to the department:
 - (1) To reconstruct the dam in accordance with Env-Wr 400, indicating whether the owner plans to further modify or rebuild the dam; or
 - (2) To remove the dam in accordance with Env-Wr 600.

Source. #8414, eff 8-20-05

Env-Wr 303.10 Other Emergency Measures.

- (a) An owner may take measures which otherwise would require a permit to reconstruct a dam, other than emergency breaches, when it is necessary to do so in order to eliminate or reduce the risk of full or partial dam failure. Emergency repairs shall be limited to temporary stabilization of the site or mitigation of the immediate threat.
- (b) The owner shall notify the department prior to taking such measures if possible but never more than 24 hours after the initiation of necessary repairs.
- (c) Within 48 hours of completing the emergency repairs, the owner shall submit a written statement to the department that explains the nature of the emergency and what corrective measures were taken.
- (d) Within 30 days of performing the emergency repairs, the owner shall submit an application to the department to reconstruct a dam in accordance with Env-Wr 400.

Source. #8414, eff 8-20-05

Env-Wr 303.11 Discharge Capacity.

- (a) All class A, class B, or class C dams constructed prior to February 19, 1981 shall pass the flows indicated below with one foot of freeboard and without manual operations:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Class A dams shall pass a 50-year flood, or at the owner's option, the site specific inflow design flood;
- (2) Class B dams shall pass the 100-year flood, or at the owner's option, the site specific inflow design flood; and
- (3) Class C dam shall pass 250% of the 100-year flood, or at the owner's option, the site specific inflow design flood.

(b) Dams constructed after February 19, 1981 shall pass the flow required by the administrative rules in place at the time of the dam's construction, in accordance with the classification of the dam at the time of construction.

Source. #8414, eff 8-20-05

Env-Wr 303.12 Meeting Discharge Capacity Requirements.

(a) If a dam does not have adequate discharge capacity to pass the flood specified in Env-Wr 303.11 with one foot of freeboard, the owner shall submit a plan to the department to address the deficiency.

(b) The plan submitted pursuant to (a), above, shall:

- (1) Specify the action to be taken, per (c), below;
- (2) Specify the proposed timeframe for taking the action; and
- (3) Include the results of hydrologic analyses completed pursuant to Env-Wr 403.05, assessing the floods and discharge capacity of the structure.

(c) The plan shall specify which of the following actions the owner intends to pursue:

- (1) Increase the capacity of the dam to pass the flood with one foot of freeboard and without manual operations;
- (2) Submit a stability analysis to the department showing that the dam is safe against sliding, overturning, or erosion by overtopping, as applicable, during the specified flood, using the methods outlined in "Engineering Guidelines for Evaluation of Hydropower Projects" published by the Federal Energy Regulatory Commission, October 2002;
- (3) Stabilize the dam so that it is safe under the specified flood conditions; or
- (4) Modify the dam so that the hazard classification is lowered and the dam passes the appropriate flow for the new classification.

(d) The department shall approve the plan if the department determines that:

- (1) The proposed action will bring the dam into compliance with Env-Wr 303.11;
- (2) The work can be done in a way that will not:
 - a. Endanger life or property downstream of the dam; or
 - b. Cause environmental losses that are not reversible environmental losses; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) The time frame for the work is reasonable under the circumstances, including the risk posed by the deficiency, the owner's financial resources, and the timing of the work in relation to other uses of the impounded water.

(e) The department shall notify the owner in writing of its decision. If the plan is not approved, the notice shall specify the reason(s) for the non-approval.

(f) If work under the plan as approved constitutes reconstruction of the dam, the owner shall submit an application in accordance with Env-Wr 400.

Source. #8414, eff 8-20-05

Env-Wr 303.13 Request for Time Extension.

(a) An owner may request a time extension to comply with any directive of the department issued pursuant to RSA 482:12.

(b) The request shall be submitted in writing to the department with the following information:

- (1) The reason(s) why an extension is needed;
- (2) The current status of the repairs or investigations; and
- (3) The length of time of extension requested.

(c) The department shall grant the request for time extension if it determines that:

- (1) The owner has in good faith pursued the work required by the directive;
- (2) The owner is unable to complete the work during the time period specified;
- (3) The current condition of the dam is such that it is not expected to fail under flow conditions anticipated during the extension; and
- (4) The condition of the dam will not deteriorate so as to pose a threat to public safety under flow conditions anticipated during the extension.

(d) The department shall notify the owner of the decision on the request in writing. If the department denies the request, the department shall state the reason(s) for the denial.

Source. #8414, eff 8-20-05

PART Env-Wr 304 NON-PERMITTED EXISTING DAMS

Env-Wr 304.01 Application to Permit Existing Dam.

(a) When the department gains knowledge of the existence of a non-permitted dam, either by its own reconnaissance or by reports of others, it shall send a letter by certified mail to the owner of the property on which the dam is located stating the non-permitted status of the dam and the requirements with which the owner shall comply.

(b) The department shall include with the letter an "application to permit an existing dam" and a copy of RSA 482:5.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) Upon written notice from the department that an existing dam is non-permitted, the owner shall file the following information on or with, as applicable, the permit application form:

- (1) The height and length of the dam, in feet;
 - (2) The volume and page number at the county registry of deeds of the deed to the dam and of the property on which the dam is located, if different;
 - (3) The tax map and lot number of the property on which the dam is located;
 - (4) The location of the dam on the applicable USGS Quadrangle map;
 - (5) The name of the stream, river, or water body on which the dam is located, if applicable;
 - (6) The type and purpose of the dam;
 - (7) A description of the dam foundation material;
 - (8) The size of the drainage area, normal pond area, maximum pond area, normal storage capacity, and maximum storage capacity of the dam;
 - (9) An operation and maintenance plan prepared as specified in Env-Wr 303.05;
 - (10) Plans and specifications which shall, at a minimum, include the following:
 - a. A scaled plan view;
 - b. A scaled cross-section view of the dam through the outlet, showing elevations of pipe inlet and outlet, if applicable, watertight connections, and embankment material; and
 - c. Design and cover of embankment slopes; and
 - (11) The name, address, and daytime telephone number of the owner.
- (d) The owner shall include the following with the application:
- (1) The fee required by RSA 482:5, II; and
 - (2) A statement that the owner has legal flowage rights on all lands which will be permanently or temporarily flooded by the dam and an indication of whether those rights are fee simple ownership, a flowage easement, prescriptive rights, or mill privileges.
- (e) The owner shall sign the application and the statement required by (d)(2), above, if such statement is separate from the application.
- (f) The owner's signature shall constitute certification that the information provided is true and complete to the knowledge and belief of the owner.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(g) The owner shall return the completed permit application within 30 days of receiving the letter sent pursuant to (a), above.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 304.02 Inspection. Within 30 days of receipt of the permit application, the department shall inspect the dam and area affected by the dam for conditions and factors affecting the hazard potential classification, and determine whether repair or reconstruction of the dam is required for the public safety.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 304.03 Notice to Municipality.

(a) Pursuant to RSA 541-A:39, when the department receives an application to permit a non-permitted dam, the department shall issue a notice to the municipality in which the dam is located to invite the municipality to submit data or information pertaining to the department's assessment of the dam's potential hazard. If the department receives such correspondence within 20 days of the town's receipt of the notice, it shall consider the information in issuing a permit.

(b) For structures that are likely to be classified as class B or class C, the department shall notify the municipality in which the structure is located and any municipalities which could be affected by a failure of the structure of a public hearing to be held by the department in the municipality in which the dam is located or in a municipality which could be affected by a failure of the structure. At the public hearing, the owner shall present information about the dam and a draft emergency action plan, and the department shall receive comment from the public.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 304.04 Issuance of Permit. Subject to Env-Wr 304.05, the department shall issue a permit for the dam pursuant to RSA 482:5 if:

(a) The application is complete, including all information required by Env-Wr 304.01;

(b) The department has determined that the dam's condition is such that it does not pose an imminent threat to public safety; and

(c) Issuance of the permit is consistent with RSA 482:1.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 304.05 Limitations on Permit Issuance.

(a) A permit for a class B or class C non-permitted dam built on or after July 25, 2000 shall be issued only if the dam meets the criteria established in RSA 482:9, V.

(b) A permit for a dam on a great pond shall be issued only in accordance with RSA 482:6.

Source. #8414, eff 8-20-05

CHAPTER Env-Wr 400 CONSTRUCTION OR RECONSTRUCTING A DAM

PART Env-Wr 401 PURPOSE AND APPLICABILITY

Env-Wr 401.01 Purpose. The purpose of this chapter is to implement RSA 482:9 by specifying the procedures for applying for a permit to construct or reconstruct a dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 401.02 Applicability.

(a) Subject to (b), below, the requirements in this chapter shall apply to any person who:

(1) Plans to construct or reconstruct a structure that qualifies as a dam pursuant to Env-Wr 301.02; or

(2) Has taken emergency measures as specified in Env-Wr 303.09 or Env-Wr 303.10.

(b) The requirements in this chapter shall apply to a dam regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act, 16 U.S.C. Chapter 12, Subchapter I, only when they do not conflict with rules, standards, protocols, licenses, certificates, or orders promulgated by the FERC pursuant to that authority.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

PART Env-Wr 402 APPLICATION PROCEDURES

Env-Wr 402.01 Application Filing.

(a) An application to construct a dam shall be filed by the owner(s) of the property on which the dam is proposed to be located.

(b) An application to reconstruct a dam, including an application relative to emergency measures pursuant to Env-Wr 401.02(a)(2), shall be filed by the owner(s) of the dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 402.02 Content of Application.

(a) The applicant shall submit a completed “application to construct or reconstruct a dam” form to the department.

(b) The applicant shall provide the following information on or with the form:

- (1) The name, mailing address, and daytime telephone number of each applicant;
- (2) The volume and page number of the deed for the property on which the dam is or is proposed to be located and, for an existing dam that was conveyed separately from the property, the volume and page number of the deed for the dam;
- (3) The location of the existing or proposed dam on the applicable USGS Quadrangle map;
- (4) The city/town tax map number and lot number for the property on which the dam is or is proposed to be located;
- (5) The name of the stream, river, or other water body on which the dam is or will be located, if applicable;
- (6) The height and length of the existing or proposed dam;
- (7) The type and purpose of the existing or proposed dam;
- (8) A description of the type of existing or proposed foundation material;
- (9) The size of the drainage area, normal pond area, maximum pond area, normal storage capacity, and maximum storage capacity of the existing or proposed dam; and
- (10) A plan and cross-section sketch of proposed dam.

(c) The owner shall include the following with the application:

- (1) The fee required by RSA 482:9, II; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) A statement that the owner has legal flowage rights on all lands which will be permanently or temporarily flooded by the dam and an indication of whether those rights are fee simple ownership, a flowage easement, prescriptive rights, or mill privileges.

(d) All forms shall be printed in ink, or typed.

(e) The owner shall sign the application and the statement required by (c)(2), above, if such statement is separate from the application.

(f) The owner's signature shall constitute certification that the information provided is true and complete to the knowledge and belief of the owner.

(g) Incomplete or improperly completed forms shall be returned by the department to the applicant or applicants with a statement for the reason(s) for the return and the additional information required.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 402.03 Statutory Requirements for Certain Dams.

(a) Pursuant to RSA 482:7, a new dam on a great pond shall not be constructed without specific authorization from the legislature.

(b) The department shall hold a public hearing pursuant to RSA 482:30 and RSA 482:31 upon receipt of an application for construction or reconstruction of dams falling within the scope of RSA 482:17.

(c) The public hearing shall be conducted in accordance with the provisions of Env-C 200 relative to non-adjudicative proceedings.

(d) Pursuant to RSA 482:9, V, no permit to construct a class B or class C dam shall be issued unless the requirements of that section are met.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 402.04 Notice to Owner.

(a) Within 10 days of receipt of an application, the department shall provide the owner with the following:

(1) The dam number;

(2) The date of receipt of the application; and

(3) A statement that construction shall not commence until the department and all other appropriate state or federal agencies have granted final approval.

(b) Within 30 days of classification by the department, the department shall provide the owner with the following:

- (1) Design and construction requirements for the particular structure depending upon classification;
- (2) Specific information needed for design review per Env-Wr 403 if the submitted design is lacking in particular areas; and
- (3) For class B and C structures, notification that a permit will not be issued until a draft EAP has been submitted to the department for review and a public hearing held by the department in the community in which the dam is located.

Source. #8414, eff 8-20-05

Env-Wr 402.05 Classification Procedure.

(a) The department shall review all new dam applications to classify the structure in accordance with Env-Wr 101.06 through Env-Wr 101.09.

(b) If the owner disagrees with the department's hazard classification, the owner shall submit, for review by the department, the following:

- (1) The results of a dam breach analysis performed in accordance with Env-Wr 502.06;
- (2) Breach routing in accordance with Env-Wr 502.07; and
- (3) Inundation mapping in accordance with Env-Wr 503.01.

(c) The owner of a proposed dam shall meet specific requirements relative to design, construction, inspection and maintenance of the structure in accordance with the applicable provisions of Env-Wr 403.

Source. #8414, eff 8-20-05

Env-Wr 402.06 Additional Information Required. If the dam will be a class A, class B, or class C structure, the owner shall submit:

(a) Plans and specifications which shall, at a minimum, include the following:

- (1) Scaled plan view;
- (2) Scaled cross-sectional view of dam through the outlet, showing elevations of inlet and outlet, watertight connections, embankment material;
- (3) Design of and cover treatment for embankment slopes;
- (4) Gradation analysis for all soils to be used during construction;
- (5) Compaction specifications in accordance with Env-Wr 403.02(d) and (e);
- (6) Construction sequence; and
- (7) For reconstruction, the plans shall be of sufficient detail to show the location of the proposed work in relation to the entire dam; and

- (b) A written operation and maintenance plan, which:
 - (1) Describes the seasonal control of impoundment levels;
 - (2) Describes regular maintenance activities; and
 - (3) Includes the name(s) and address(es) of the dam monitor(s).

Source. #8414, eff 8-20-05

Env-Wr 402.07 Notice to Municipality.

(a) Subject to (b) and (c), below, when the department receives an application to construct or reconstruct a dam, it shall issue a notice to the municipality in which the proposed dam will be located pursuant to RSA 541-A:39, to inform the municipality of the location, height and size of the impoundment of the proposed dam. The municipality may submit data or information pertinent to the department's consideration of the application. If the department receives such correspondence within 20 days of the town's receipt of the notice, it shall consider the information in issuing a permit to construct or reconstruct the dam.

(b) When the department receives an application to construct a Class B or class C structure, the department shall send the notice to the municipality and any municipalities which could be affected by a failure of the dam, and shall include notice of a public hearing to be held by the department in the municipality in which the dam is located or in a municipality that may be affected by a failure of the dam. At the public hearing, the owner shall present information about the dam and a draft emergency action plan, and the department shall receive comment from the public.

(c) If the application is to construct a dam on a great pond, the department shall send the notice to all municipalities in which the great pond is located.

Source. #8414, eff 8-20-05

PART Env-Wr 403 SPECIFIC DESIGN REQUIREMENTS

Env-Wr 403.01 Purpose. The purpose of this part is to set forth the minimum design requirements for all new dams and the minimum design requirements for the specific work proposed for reconstruction of existing dams.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 403.02 Minimum Design Requirements of All Dams. An application for construction of a new dam or reconstruction of an existing dam shall incorporate the following design requirements:

- (a) The embankment slopes shall be no steeper than 2.5 horizontal to 1 vertical unless a specific design for a steeper slope shows that the embankment is stable and capable of being safely maintained;
- (b) The embankment top width shall be 6 feet or greater;
- (c) Any earthen spillway shall be constructed in natural ground;
- (d) Soil compaction specifications shall be shown on the plans; and

(e) Pre-compacted lift thickness shall be compatible with the material and equipment to be used, but no greater than 12 inches in depth.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 403.03 Additional Requirements Based on Hazard Classification.

(a) For the construction or reconstruction of a class A, class B, or class C dam:

(1) All final plans and design documents shall be stamped by a professional engineer, licensed in the State of New Hampshire, with a minimum of 5 years of engineering experience related to the design and construction of similar dam projects, as determined by the department after a review of the engineer's resume;

(2) The project shall be inspected in accordance with Env-Wr 405; and

(3) A construction inspection plan, prepared in accordance with Env-Wr 405.04, shall accompany the application for construction or reconstruction.

(b) A design for construction of a new class A, class B, or class C dam, with the exception of dams impounding liquid industrial, agricultural, or commercial wastes, or municipal sewage, shall be equipped with a pond drain.

(c) A design for construction of a class B or class C dam shall also include the following:

(1) The results of a stability analysis of the structure for overturning, sliding, and slope failure, as applicable, including factors of safety, using the methods outlined in the Federal Energy Regulatory Commission's publication, Engineering Guidelines for Evaluation of Hydropower Projects, October, 2002;

(2) The results of a seepage analysis;

(3) The results of subsurface explorations, including, but not limited to borings and test pits; and

(4) A draft emergency action plan (EAP), or if an EAP has already been approved, an updated EAP, in accordance with Env-Wr 500.

(d) A design for reconstruction of a class B or class C dam shall include the items identified in (c), above, if the department determines that the items are applicable based on the type of work to be done.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 403.04 Design Floods for New Dams.

(a) A new dam shall be designed to safely pass the flows indicated below without manual operation and with the freeboard requirements indicated:

(1) A class AA structure shall pass the 50-year flood or, at the owner's option, the site-specific inflow design flood, with one foot of freeboard or, at the owner's option, freeboard equal to the effects of maximum wave run-up;

(2) A class A structure shall pass the 100-year flood or, at the owner's option, the site-specific inflow design flood, with one foot of freeboard or, at the owner's option, freeboard equal to the effects of maximum wave run-up;

(3) A class B structure shall pass ½ of the probable maximum flood (PMF) as determined using Hydrometeorological Report No. 52 (HMR 52) from the National Oceanic and Atmospheric Administration (NOAA) or the site-specific inflow design flood, with freeboard equal to the effects of maximum wave run-up; and

(4) A class C structure shall pass the PMF as determined using HMR 52, or the site-specific inflow design flood, with freeboard equal to the effects of maximum wave run-up;

(b) Wave run-up calculations shall identify maximum wind speeds and fetch limitations.

(c) For a class B or class C dam, and when the option is applied for a class AA or class A dam, the owner shall submit wave run-up calculations with the application.

(d) The owner shall submit the results of calculations performed for hydrologic and hydraulic analyses pursuant to (a), above, and Env-Wr 403.05 with the application.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 403.05 Hydrologic Investigations.

(a) Hydrologic investigations shall be performed on the entire contributing drainage area.

(b) Precipitation estimates for the design flood shall be obtained from:

(1) NRCC Research Publication RR 93-5, Atlas of Precipitation Extremes for Northeastern United States and Southeastern Canada, 1995; or

(2) U.S. Dept. of Commerce, National Oceanic and Atmospheric Administration, Hydrometeorological Report No. 51, Probable Maximum Precipitation Estimates, United States East of the 105th Meridian, June 1978.

(c) Hydrologic modeling for 50-year or 100-year storms shall incorporate the following:

(1) The size of the drainage area;

(2) The shape of the drainage area;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Antecedent moisture condition 2, as defined in the USDA NRCS National Engineering Handbook, 210-VI-NEH-630.10, August 1, 1969;
- (4) Ground slopes;
- (5) Soil types;
- (6) Vegetation;
- (7) Land use;
- (8) Distribution of varying precipitation amounts throughout the watershed; and
- (9) Ponds, swamps, and other factors affecting the amount and rate of runoff.

(d) The storm duration used in the modeling shall exceed the time for water to flow from the outermost point in the system to the subject location so as to ensure that the total runoff volume will be included in the routing of the storm through the dam structure.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 403.06 References for Hydraulic Determinations.

(a) Because the engineering science of hydraulics is documented in many competent texts, most of which rely on the same basic concepts, relationships and formulas, the designer may use any text, combination of texts, or related computer software applications for their design analysis.

(b) One or more of the following texts shall be used in evaluating the competence of the submitted design:

(1) “National Engineering Handbook, Section 5, Hydraulics” by USDA NRCS 1956; or

(2) “Handbook of Hydraulics”, Sixth Edition, by Horace W. King and Earnest F. Brater, McGraw Hill Book Co., 1982.

Source. #8414, eff 8-20-05

Env-Wr 403.07 Concrete Design Criteria.

(a) Because the design of concrete structures is documented in many competent texts, the designer may use any text, combination of texts or related computer software application.

(b) One or more of the following texts shall be used in evaluating the competence of the submitted design:

(1) “Building Code Requirements for Structural Concrete & Commentary,” ACI 318-05, American Concrete Institute, dated 2005;

(2) “Design of Small Dams” by US Department of Interior, Bureau of Reclamation, third Edition, 1987; or

- (3) “National Engineering Handbook, Section 6, Structural Design”, USDA NRCS, 1980.

Source. #8414, eff 8-20-05

Env-Wr 403.08 Steel Design Criteria.

(a) Because the design of steel structures is documented in many competent texts, the designer may use any text, combination of texts or related computer software applications.

(b) One or more of the following texts shall be used in evaluating the competence of the submitted design:

(1) “Manual of Steel Construction” by the American Institute of Steel Construction, Ninth Edition, First Revision, 1991; or

(2) “National Engineering Handbook, Section 6, Structural Design” USDA NRCS, 1980.

Source. #8414, eff 8-20-05

Env-Wr 403.09 Timber Design Criteria.

(a) Because the design of timber structures is documented in many competent texts, the designer may use any text, combination of texts or related computer software applications.

(b) One or more of the following texts shall be used in evaluating the competence of the submitted design:

(1) “Timber Construction Manual” by the American Institute of Timber Construction, Fourth Edition, dated 1994; or

(2) “National Engineering Handbook, Section 6, Structural Design” USDA NRCS, 1980.

Source. #8414, eff 8-20-05

Env-Wr 403.10 Earth Embankment Design Criteria.

(a) Because the design of earth embankments is documented in many competent texts, the designer may use any text, combination of texts or related computer software applications.

(b) One or more of the following texts shall be used in evaluating the competence of the submitted design:

(1) USDA NRCS Technical Release 60 (TR 60) revised October 1985;

(2) “Design of Small Dams” U.S. Department of the Interior, Bureau of Reclamation, third edition, 1987;

(3) ACER Technical Memorandum No. 9, “Guidelines for Controlling Seepage Along Conduits Through Embankments” by the U.S. Department of the Interior, Bureau of Reclamation, 1987; or

(4) For class AA and class A dams only:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. "Detention and Retention Basins" BMP in the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire publication dated August 1992; or
- b. U.S. Department of Agriculture, NRCS Agricultural Handbook No. 590, September 2000.

Source. #8414, eff 8-20-05

PART Env-Wr 404 ISSUANCE AND CONDITIONS OF PERMITS

Env-Wr 404.01 Approval.

(a) Subject to (b) through (d), below, the department shall approve an application to construct or reconstruct a dam if:

- (1) The requirements of Env-Wr 402 and Env-Wr 403 have been met; and
- (2) Issuance of the permit is consistent with RSA 482:1 and any other applicable provisions of RSA 482.

(b) If the proposed dam is a class B or class C dam, the application shall not be approved until:

- (1) A final emergency action plan has been completed and approved in accordance with Env-Wr 505; and
- (2) The department has determined that the dam will serve a public benefit as required by RSA 482:9, V.

(c) If the proposed dam is a new dam on a great pond, the application shall not be approved until the owner has been granted authority by the legislature to construct or reconstruct the dam.

(d) If the dam is proposed under RSA 482:17, the application shall not be approved until the department has determined after holding a non-adjudicative hearing in accordance with the applicable provisions of Env-C 200 that it is in the public benefit to grant the permit pursuant to RSA 482:31.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 404.02 Issuance and Recordation of Permit/Registration.

(a) Upon review and approval of the application, the department shall issue a permit authorizing the construction or reconstruction. The permit shall include any restrictions, requirements or disclaimers as specified in Env-Wr 404.03.

(b) The department shall send the original permit to the registry of deeds for the county in which the dam is located to be recorded.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The department shall send a copy of the permit to the owner at the time of approval. The department shall send the original permit to the owner upon receiving it back from the registry of deeds.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 404.03 Conditions of Permit. The following conditions shall apply to all permits to construct or reconstruct a dam:

- (a) The permit shall be valid for 2 years from the date of issuance;
- (b) Work under the permit shall be completed within 2 years unless the owner has requested and received a time extension in accordance with Env-Wr 404.04;
- (c) All work on the dam shall comply with the approved plans and specifications, subject to design changes approved and documented in accordance with Env-Wr 404.05;
- (d) The construction engineer shall provide a final inspection report in accordance with Env-Wr 405.08;
- (e) The construction engineer shall certify to the department that the work was completed in accordance with the approved plans and specification and design intent as required by Env-Wr 405.09;
- (f) Inspections shall be performed in accordance with the plan submitted pursuant to Env-Wr 405.04;
- (g) At least 10 days prior to commencing work, the owner shall notify the department by certified mail of the date that the work is expected to commence;
- (h) The owner shall notify the department upon completion of the work in accordance with Env-Wr 405.10(a);
- (i) If an emergency action plan is required, no liquid shall be impounded until the EAP is approved by the department.
- (j) The owner shall maintain a current mailing address with the department;
- (k) The owner shall operate and maintain the structure in accordance with the written operation and maintenance procedures submitted in accordance with Env-Wr 402.06(b); and
- (l) The department shall include in the permit any other conditions necessary to ensure protection of public safety that are based on the specific design, site, and watershed.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 404.04 Time Extension. The department shall grant a 2-year time extension to construct a dam if:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (a) The owner requests the extension in writing prior to the permit's expiration date;
- (b) The hazard classification or the design requirements outlined in Env-Wr 403 have not changed since the issuance of the original permit; and
- (c) The site is stabilized and the condition of the project is such that granting a time extension to complete the construction will not threaten human life, public safety, or the environment.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 404.05 Design Changes.

(a) No changes shall be made to the plans and specifications approved by the department, either before or during construction, unless:

- (1) The changes are approved by the design engineer; and
- (2) The changes are approved by the department in writing.

(b) To request a change, the owner or the owner's designee shall submit a request for the change in writing to the department, which shall include:

- (1) The specific information regarding the requested change; and
- (2) The reason the change is being requested.

(c) The department shall approve the change if the overall design as revised would have been approved if it had been submitted originally.

(d) The department shall notify the owner and the owner's designee, if applicable, of the decision on the request in writing. If the request is denied, the decision shall state the reason(s) for the denial.

(e) If time is of the essence, the department shall convey verbal approval prior to issuing written approval.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

PART Env-Wr 405 DAM CONSTRUCTION INSPECTIONS

Env-Wr 405.01 Purpose. The purpose of this part is to set forth the requirements for dam construction inspections.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.02 Applicability. These rules shall apply to construction inspections which are required during construction and reconstruction of a class A, class B, or class C dam pursuant to RSA 482:11.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.03 Construction Engineer.

(a) Prior to any work on the dam starting, the owner shall engage a construction engineer to ensure compliance with approved plans and specifications.

(b) The construction engineer shall have a minimum of 5 years of engineering experience related to construction inspection or design of similar dam construction projects.

(c) The owner shall submit the construction inspector's resume of related construction inspection or design experience to the department for review and approval. Department approval shall be based upon satisfaction of the criterion of (b), above.

(d) The construction engineer shall have ultimate responsibility for:

- (1) The accurate completion of all inspection tasks; and
- (2) Compliance with approved plans and specifications.

(e) The construction engineer may assign some inspection tasks to a duly-authorized agent provided that the agent's inspection tasks are explicitly identified in the construction inspection plan described in submitted pursuant to Env-Wr 405.04.

(f) Prior to any work on the dam starting, the construction engineer shall sign, date, and submit to the department a completed acknowledgement form provided by the department, as specified in (g), below.

(g) The construction engineer shall provide the following on the acknowledgement form:

- (1) The name and address of the owner of the dam;
- (2) The name of the dam and the dam's location, by town;
- (3) The dam number assigned by the department;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) The construction engineer's name and professional engineer's license number;
- (5) The name and professional engineer's license number of the design engineer;
- (6) The date of the plans, specifications, supporting assumptions, and calculations reviewed by the construction engineer; and
- (7) A certification that he or she has reviewed the plans, specifications, supporting assumptions, and calculations, and understands the design and the intent of the design.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.04 Inspections During Construction or Reconstruction.

- (a) Prior to any work on the dam starting, the owner shall submit a written inspection plan to the department.
- (b) The plan required by (a) above shall contain detailed information relative, but not limited, to the following:
 - (1) Which activities shall be monitored and by whom;
 - (2) Field tests to be performed and the frequency of testing;
 - (3) Material testing requirements; and
 - (4) Documentation and reporting requirements, including inspection reports and construction progress photographs.
- (c) The department shall approve the plan if it determines that the plan is adequate to ensure that the dam will be constructed or reconstructed in accordance with the approved plans and specifications.
- (d) The department shall inform the owner of its decision on the plan in writing. If the plan is not approved, the decision shall state the reason(s) for the non-approval.
- (e) Inspections during construction or reconstruction shall be performed in accordance with the approved plan.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.05 Work Items to be Inspected. The construction engineer shall inspect, document, and photograph the following work items:

- (a) Excavation and sub-grade preparation;

- (b) Pipe placement;
- (c) Placement of graded aggregate drain materials;
- (d) Earthfill;
- (e) Cut-off construction;
- (f) Steel placement;
- (g) Final grading; and
- (h) Pouring of concrete.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.06 Inspection Frequency. The frequency of inspections for construction and reconstruction projects shall be as follows:

(a) Class A dam inspections shall be as frequent as needed to ensure compliance with approved plans and specifications; and

(b) Class B and Class C dam inspections shall be conducted continuously by on-site inspectors unless specifically exempted by the approved inspection plan for particular items of work.

Source. #8414, eff 8-20-05

Env-Wr 405.07 No Design Changes Without Prior Approval. No changes from the approved plans and specifications shall be implemented unless the change is approved in accordance with Env-Wr 404.05.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.08 Final Inspection Report.

(a) The construction engineer shall submit an inspection report to the department within 30 days of the completion of the project.

(b) The report shall include:

- (1) A copy of all test results;
- (2) The construction engineer's observations of the work items specified in Env-Wr 405.05;
- (3) Representative construction progress photographs;
- (4) Documentation of department-approved changes in design;

- (5) Documentation and results of all construction inspections, including photographs;
- (6) Foundation conditions observed during excavation; and
- (7) Any other data pertinent to determining the integrity of the structure.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; rpld by #6462-B, eff 2-21-97

New. #8414, eff 8-20-05

Env-Wr 405.09 Affidavit of Compliance. Within 10 days of completing the project, the construction engineer shall provide the department with an affidavit of compliance indicating that the construction or reconstruction was completed in accordance with approved plans, specifications, and the intent of the design, including any design changes approved in accordance with Env-Wr 404.05.

Source. #8414, eff 8-20-05

Env-Wr 405.10 As-built Drawings. The construction engineer shall submit as-built drawings of the project to the department within 180 days of submitting the affidavit of compliance.

Source. #8414, eff 8-20-05

Env-Wr 405.11 Requirements Prior to Impounding.

(a) The owner shall notify the department in writing upon the completion of construction or reconstruction of any class A, class B, or class C dam and prior to filling the reservoir. The notice shall include the dam number and the location of the dam.

(b) Within 10 working days of receipt of notice from the owner, the department shall perform a final visual inspection with the reservoir drained.

(c) The department shall either authorize filling of the reservoir by issuance of a certificate of approval or order remedial action for noncompliance with the approved plans and specifications.

(d) No person shall close gates or take other actions that cause the dam to impound water until the owner is authorized by the department in writing to fill the reservoir.

(e) The department shall authorize the owner to fill the reservoir only after the department:

- (1) Determines that the construction was completed in accordance with the approved plans and specifications;
- (2) Performs a final visual inspection of the dam;
- (3) Approves the emergency action plan; and
- (4) Receives the construction engineer's final inspection report and affidavit of compliance.

Source. #8414, eff 8-20-05

CHAPTER Env-Wr 500 EMERGENCY ACTION PLANS

PART Env-Wr 501 PURPOSE AND APPLICABILITY

Env-Wr 501.01 Purpose and Applicability.

(a) The purpose of the rules in this chapter is to establish the requirements for an emergency action plan (EAP), whose purpose is to assist emergency responders in the event of a specific dam failure by:

- (1) Delineating the area which could be affected;
- (2) Providing notification procedures; and
- (3) Identifying the responsibilities of individuals or agencies in a response.

(b) The owner shall prepare an EAP in accordance with these rules for:

- (1) Any class C dam; and
- (2) Any class B dam, unless:
 - a. The dam is classified as a class B structure only because it impounds a public water supply and the owner has submitted to the department an emergency plan for a community water system pursuant to Env-Ws 360.14; or
 - b. The dam is classified as a class B structure only because it impounds liquid industrial, agricultural, or commercial waste, septage, sewage, or contaminated sediments and the owner maintains a list of emergency contact numbers as a condition of the dam's permit under RSA 485-A or RSA 485-C.

(c) EAPs for dams subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) shall be prepared in accordance with Chapter 6 of FERC's Engineering Guidelines for the Evaluation of Hydropower Projects (November 1998) and filed with the department.

(d) EAPs for the following U.S. Army Corps of Engineers (USACE) dams shall be prepared in accordance with Chapter 6 of USACE "Dam Safety Preparedness", EP 1110-2-13 (June 1996) and filed with the department:

- (1) Franklin Falls Dam;
- (2) Blackwater Dam;
- (3) Hopkinton-Everett Dams;
- (4) Edward MacDowell Dam;
- (5) Otter Brook Dam; and
- (6) Surrey Mountain Dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

PART Env-Wr 502 BREACH ANALYSIS

Env-Wr 502.01 When Required. Unless exempted pursuant to Env-Wr 502.02, prior to preparing an EAP the owner shall have a dam breach analysis performed in accordance with this part.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 502.02 Exemption from Breach Analysis.

(a) Subject to Env-Wr 502.03, an owner shall be exempted from the development of a breach analysis if the department determines that the hazard classification is based solely on the potential damage to one or more isolated and easily identified bridges, roadways, or other structures located below the dam, and no other damages will result from a dam breach.

(b) If this exemption applies to a dam, department shall:

- (1) Notify the owner in writing of the exemption; and
- (2) Inform the owner of the exact structures to be delineated on a simplified inundation map, as required by Env-Wr 503.02.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 502.03 Repeal of Breach Analysis Exemption.

(a) If downstream developments change such that additional bridges, roadways, or other structures would be affected by a dam failure and these structures are not isolated and easily identifiable, the department shall notify the owner in writing that a dam breach analysis, as described in Env-Wr 502.06, shall be required due to the new developments downstream of the dam.

(b) Within 90 days of notification pursuant to (a), above, the owner shall:

- (1) Complete a breach analysis in accordance with this part; and
- (2) Produce and distribute an inundation map in accordance with Env-Wr 503.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 502.04 Expansion of Study Area.

(a) If after approving a breach analysis the department determines that downstream development has changed such that new structures would be affected by a dam failure and the threat to these structures is not

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

easily identifiable, the department shall notify the owner in writing that the scope of the dam breach analysis previously performed must be expanded

(b) Within 90 days of notification pursuant to (a), above, the owner shall:

- (1) Expand the scope of the previously-approved breach analysis to include the newly developed area(s); and
- (2) Produce an amended inundation map and distribute it to all EAP holders

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4580, eff 2-27-89; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 502.05 Breach Analysis Required Due to Reconstruction. The owner shall complete a new or revised breach analysis, as applicable, to ascertain the impacts of a dam failure if:

- (a) The dam is reconstructed, resulting in a larger or higher impoundment; or
- (b) A change in the discharge capacity would result in reducing or increasing the effects of a dam failure.

Source. #8414, eff 8-20-05

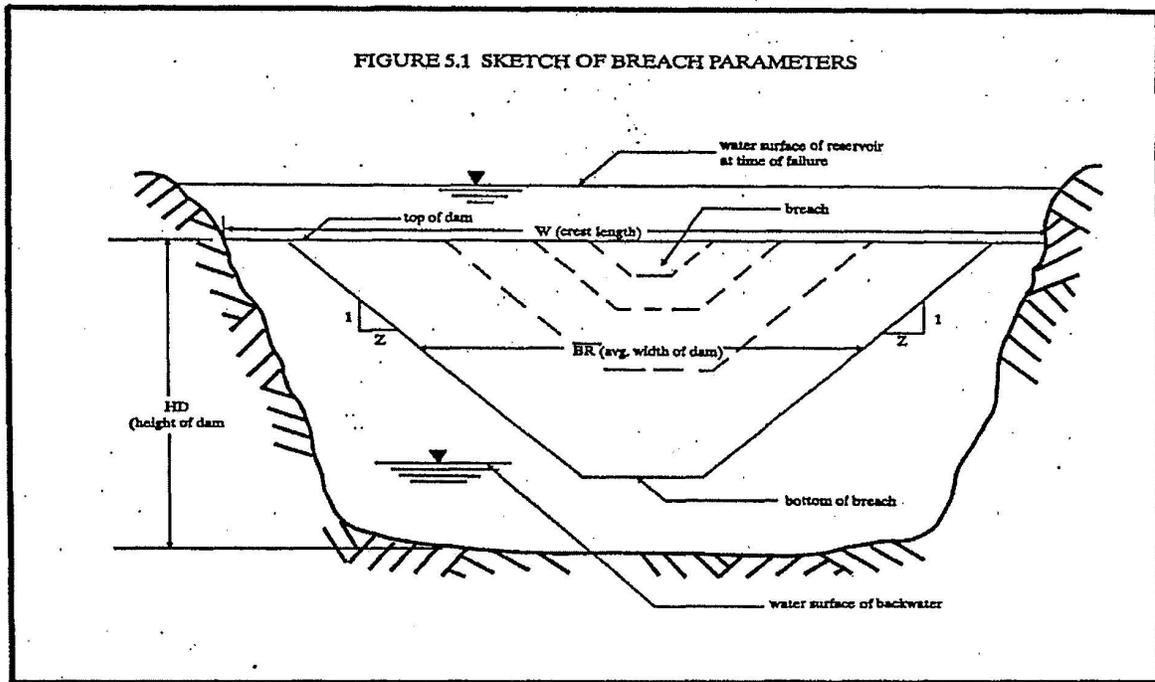
Env-Wr 502.06 Specific Requirements and Breach Parameters.

(a) The dam breach analysis shall be performed under the direction of and stamped by a professional engineer licensed in New Hampshire and experienced in hydrology and hydraulics.

(b) The breach parameters shall be in accordance with Table 5.1 and Figure 5.1 below, unless the department approves the use of other parameters pursuant to (c), below:

Table 5.1 Dam Breach Parameters

PARAMETER	TYPE OF DAM	VALUE
Average Width of Breach (BR)	Arch	BR = Crest Length
	Masonry, Gravity	BR = Width of one or more monoliths, usually $BR \leq 0.5 W$
	Earth, Rockfill, Timber Crib	$HD \leq BR \leq 5HD$ (usually between 2HD and 4HD)
Horizontal Component of Side Slope of Breach (Z)	Arch	$0 \leq Z \leq$ slope of valley walls
	Masonry, Gravity	$Z = 0$
	Earth, Rockfill, Timber Crib	$1/4 \leq Z \leq 1$
Time to Failure (TFH) in hours	Arch	$TFH \leq 0.1$
	Masonry, Gravity	$0.1 \leq TFH \leq 0.3$
	Earthen (Engineered, Compacted) Timber Crib	$0.1 \leq TFH \leq 1.0$
	Earthen (Non-Engineered, Poor Construction)	$0.1 \leq TFH \leq 0.5$



(c) The department shall allow use of different parameters due to specific dam or site conditions, if the applicant requests to use different parameters and demonstrates by clear and convincing evidence that the use of the alternative parameters would result in an accurate model and would not underestimate the effects of a dam failure.

(d) A dam breach flow shall be routed together with each of the following base flows:

- (1) The sunny day flow as defined in Env-Wr 101.42; and
- (2) The 100-year flood flow.

(e) The breach flow together with the base flows in (d), above, shall:

- (1) Be routed downstream of the dam; and
- (2) Include provisions to identify the number of hours or minutes from the start of a failure to the time when the river initially starts to rise and the time to reach peak stage.

(f) Peak flow velocities also shall be determined and shown on the inundation map for critical stations such as road crossings and populated areas below the dam.

(g) The routing shall continue downstream until:

- (1) The point at which the water surface elevation due to dam failure is no more than 2 feet above the non-failure conditions in areas of potential threat to life and major property damage; or
- (2) A point upstream of the point determined pursuant to (1), above, if the owner shows that there is no longer a threat to public safety beyond that point.

Source. #8414, eff 8-20-05

Env-Wr 502.07 Breach Routing Methods.

- (a) The owner shall use one of the following routing methods for dam breach analysis:
- (1) Methods and procedures used by the United States Department of Agriculture, Natural Resources Conservation Service in:
 - a. Technical Release T.R. 66 “Simplified Dam Breach Routing Procedures”, March 1979;
 - b. Computer Program for Project Formulation Hydrology, T.R. 20, March 1986; and
 - c. WSP 2 Computer Program, T.R. 61, May 1976, which shall be used in conjunction with each other; or
 - (2) Methods and procedures using the National Weather Service Dam-Break Flood Forecasting Model authored by Dr. Danny L. Fread, from the National Weather Service in Silver Springs, Maryland, dated July 18, 1984, reprinted February 1987; or
 - (3) Methods and procedures for dam breach simulation and routing developed by the U.S. Army Corps of Engineers’ Hydrologic Engineering Center, and incorporated in HEC-RAS, version 3.1.
- (b) An owner wishing to use other techniques for breach routing shall submit a written request for approval of the technique to the department for each particular site prior to using the technique. The request shall contain a description of the technique, including how the technique addresses the parameters addressed by the techniques identified in (a), above.
- (c) If the department determines that the technique can be correctly applied to the hydrologic and topographic conditions of the dam and downstream area, within the limitations and capabilities of the modeling technique, and that it will provide the detailed information required by these rules, the department shall approve the technique for use on that site and shall so notify the owner in writing.
- (d) The department shall not require previously-approved dam breach analyses that were completed using methods other than those specified in (a), above, to be reassessed using those methods, provided, however, that if an expansion of the breach analysis is required pursuant to Env-Wr 502.04, the owner shall use a technique specified in (a) or approved pursuant to (b) and (c), above.

Source. #8414, eff 8-20-05

Env-Wr 502.08 Downstream Dams.

- (a) When there are dams downstream located within the study area as determined by Env-Wr 502.06(g), the owner shall evaluate the effect of the breach flow on these dams.
- (b) If a downstream dam would not be overtopped, no stability analysis of this structure shall be required.
- (c) If a downstream dam would be overtopped by failure of the subject dam, the owner shall:
- (1) Include the downstream dam’s failure in the breach model; or
 - (2) Submit to the department the results of a stability analysis for overturning and sliding or slope failure, as applicable, including factors of safety, on the downstream dam.

(d) If the stability analysis performed pursuant to (c)(2), above, indicates that a downstream dam is unstable during overtopping, the owner shall include the failure of the downstream dam in the breach model.

(e) If the stability analysis performed pursuant to (c)(2), above, indicates that a downstream dam is stable, its failure shall not be required to be modeled in the dam breach analysis.

Source. #8414, eff 8-20-05

Env-Wr 502.09 Review of Breach Analysis by Department.

(a) The owner shall submit the following to the department for review:

- (1) Structural and hydraulic breach assumptions and base flow criteria;
- (2) Methods for determining base flows;
- (3) Structural stability analyses of downstream dams, if applicable; and
- (4) Summary of the results of the breach analysis.

(b) The owner shall submit inundation maps prepared in accordance with Env-Wr 503 for review, by submitting draft inundation maps with the information listed in (a), above, or after receiving approval of the breach analysis.

(c) If the information submitted pursuant to (a), above, is incomplete or the dam failure is incorrectly modeled, the department shall, within 60 days of receipt of the information, notify the owner in writing of the items which need to be addressed and the deadline for submittal of the amended analysis, which shall be 60 days from the date of the notice.

(d) If the information submitted pursuant to (a), above, is complete and failure is correctly modeled, the department shall, within 60 days of receipt of the submitted information:

- (1) Determine whether the sunny day failure or the 100-year flood failure represents the most critical threat to the downstream community; and
- (2) Notify the owner in writing of which failure scenario to use in the mapping.

Source. #8414, eff 8-20-05

PART Env-Wr 503 INUNDATION MAPPING

Env-Wr 503.01 Inundation Map Requirements.

(a) The owner shall produce an inundation map to provide the local emergency responders with a tool for planning evacuation procedures.

(b) The inundation map shall delineate the area impacted by a potential dam failure, as determined by the breach analysis required by Env-Wr 502.

(c) The inundation map shall meet the following criteria:

- (1) The map shall be at a scale of 1:2,000 or of greater detail;
- (2) Residences, commercial, and industrial structures or clusters of structures, when located in close proximity to each other, within the inundation area shall be shown on the most recent USGS

topographic mapping, supplemented by locations derived from aerial photography available on the DES website, www.des.nh.gov;

(3) Roads within the inundation area and within at least 0.5 mile from the exterior boundary of the inundation area shall be shown;

(4) The time for the floodwave to reach critical areas, including those outlined in (2) and (3), above, including time to rise and time to peak shall be shown;

(5) Peak flood wave velocities at critical areas shall be shown;

(6) Peak flood wave depths shall be shown;

(7) Political boundaries shall be shown;

(8) The map shall indicate whether the inundation area represents a sunny day failure or a storm day failure scenario; and

(9) The date on which the map was prepared shall be included on the map.

(d) If the inundation map consists of 3 or more pages, the owner shall provide an index map which clearly directs the user to the appropriate map for a given area.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; rpld by #4534, eff 11-30-88

New. #6462-B, eff 2-21-97 (from Env-Wr 504.01); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-04

Env-Wr 503.02 Simplified Inundation Map.

(a) An owner who has been exempted from the requirement of a breach analysis pursuant to Env-Wr 502.02 shall submit a simplified inundation map.

(b) The simplified inundation map shall include the elements specified in Env-Wr 503.01(a), (c)(1) - (3), and (8).

Source. #8414, eff 8-20-05

Env-Wr 503.03 Department Review.

(a) The owner shall submit the inundation map to the department for review and approval prior to incorporating it into the emergency action plan.

(b) The department shall inform the owner in writing within 60 days of receipt whether the inundation map is approved or what changes are necessary.

Source. #8414, eff 8-20-05

PART Env-Wr 504 COORDINATION WITH LOCAL COMMUNITIES

Env-Wr 504.01 Communications with Community(ies).

(a) Prior to finalizing the EAP, the owner shall supply all local community(ies) located within the inundation area with an inundation map to assist them in determining their response to a potential dam failure.

(b) The owner shall discuss with the local emergency management director, or at the emergency management director's discretion, the local fire department or police department, to determine which individuals or agencies shall be notified during an actual or impending emergency condition at the dam. These discussions shall be held with the appropriate personnel in each of the towns which could be impacted, as shown on the inundation map. If a municipality has not designated an emergency management director, the owner shall meet with the local governing body.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 505.01); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 504.02 Acknowledgment of EAP by Local Community(ies).

(a) The owner shall request that each affected community in the inundation area sign a form acknowledging its role in the EAP.

(b) If a community refuses to provide such statement, the owner shall notify the department certifying that a copy of the draft EAP has been delivered to the community.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 505.02); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Part Env-Wr 505 PREPARATION AND FORMAT OF EAP DOCUMENT

Env-Wr 505.01 Submittal of Draft EAP.

(a) The owner shall submit a copy of the draft EAP prepared pursuant to Env-Wr 505.02 to the department for review. The draft may be submitted as unbound pages.

(b) The department shall review the document for compliance with this chapter. Within 60 days of submittal, the department shall notify the owner in writing of its approval of the EAP or of any inadequacies.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4580, eff 2-27-89; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.01); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.02 Format of the EAP.

(a) The format of the EAP shall be 8½ x 11 loose-leaf paper in a 3-ring binder to allow for ease of supplementation and revision as required.

(b) The content of the EAP shall be standardized as follows:

- (1) Table of Contents;
- (2) Section 1, Notification flow-chart;
- (3) Section 2, Responsibilities under the EAP;
- (4) Section 3, Notification checklists;
- (5) Section 4, Preventive action; and
- (6) Appendices, including:
 - a. Appendix A, Dam and watershed description;
 - b. Appendix B, Summary of breach analysis;
 - c. Appendix C, Inundation map;
 - d. Appendix D, Monitor training and testing procedures;
 - e. Appendix E, Local evacuation procedure;
 - f. Appendix F, List of EAP holders; and
 - g. Appendix G, Documentation.

(c) The required contents of each section or appendix shall include the information identified in Env-Wr 505.03 through Env-Wr 505.12, as applicable.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4452, eff 8-1-88; amd by #4580, eff 2-27-89; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.02); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.03 Notification Flow-chart.

(a) Section 1 of the EAP shall be a chart identifying the individuals and local and state government agencies to be notified during a potential or actual emergency condition at the dam.

(b) The notification flow-chart shall be developed in accordance with local and state emergency responders and shall conform with the community's current notification protocol.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.03); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.04 Responsibilities. Section 2 of the EAP shall describe the roles and responsibilities of each individual and local or state government agency in an emergency response.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.04); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.05 Notification Checklists.

(a) Section 3 of the EAP shall include a notification checklist for each individual and local or state government agency responsible for making calls during an emergency situation or during a test of the EAP.

(b) The notification checklist shall include a table to be filled in by the participating individual or agency making notifications, including the name(s) of the agency(ies) or individual(s) to be contacted and the time at which the contact was made.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.05); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.06 Preventive Action. Section 4 of the EAP shall:

- (a) Indicate actions which the monitor shall take to correct a malfunction of the dam;
- (b) Identify the means, materials, and equipment needed to make emergency repairs to the structure;
- (c) Identify the necessary training and equipment including alternative power sources to operate the structure;
- (d) Include a list of preventive and mitigative action measures to be undertaken during emergency situations.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.06); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.07 Dam and Watershed Description. Appendix A of the EAP shall include the following information:

- (a) The height and length of the dam, in feet;
- (b) The normal and maximum surface area of the impoundment, in acres;
- (c) The normal and maximum volume of the impoundment, in acre-feet;
- (d) The size of the drainage area, in square miles; and
- (e) A description of all outlet works, including the length of the spillway and a description of any gates.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.07); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.08 Impact of Breach. Appendix B of the EAP shall be a summary of the breach analysis, written so as to be easily understood during an actual emergency, in order to provide local emergency responders with a brief description of the areas downstream of the dam which would be affected by a dam failure.

Source. #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.08); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.09 Dam Monitor and Testing. Appendix D of the EAP shall include:

- (a) The following information regarding the monitor(s) required by Env-Wr 303.04:
 - (1) Name, address and home and business telephone numbers;
 - (2) Type of training provided by owner; and
 - (3) Type of communication system between dam and local community; and
- (b) The following information regarding EAP testing:
 - (1) A narrative describing the testing procedures, as outlined in Env-Wr 507.04;
 - (2) A summary of the responsibilities of the owner and the roles of any individuals or state or local agencies involved in the testing; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) The name and mailing address of the person responsible for collecting the notification checklists after testing or after an actual emergency condition.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.09); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.10 Local Evacuation Procedure and Recovery. Appendix E shall include any evacuation and recovery plans developed by the communities. If the communities have not developed such plans, the owner shall so indicate in this appendix.

Source. #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 506.10); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

Env-Wr 505.11 List of Official EAP Holders. Appendix F shall be a listing of all individuals and local and state agencies holding official copies of the EAP, as follows:

- (a) The mailing addresses and telephone numbers of the local emergency responders, including police and fire departments in accordance with the town's procedures;
- (b) The mailing addresses and telephone numbers of dispatchers for local emergency responders;
- (c) The mailing addresses and telephone numbers of the local emergency management director(s);
- (d) The telephone number of the contact person at the New Hampshire department of safety, bureau of emergency management;
- (e) The telephone number of the contact person at the department's division of water;
- (f) The telephone number of the contact person at the New Hampshire department of safety, state police;
- (g) The names, mailing addresses, and telephone numbers of the owners of downstream dams that would be affected by a dam breach;
- (h) The telephone number of the contact person at the New Hampshire department of transportation, highway district 5, dispatch section;
- (i) If state roads would be impacted by a dam failure, the name and telephone number of the contact person at the appropriate New Hampshire department of transportation highway district office; and
- (j) The telephone number of the contact person at the New Hampshire department of safety, emergency communications section (911).

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.11); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 505.12 Documentation. Appendix G shall include copies of signed acknowledgement forms, as described in Env-Wr 504.02, and any correspondence relative to the EAP's development.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (formerly Env-Wr 506.12); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8414, eff 8-20-05

PART Env-Wr 506 FINAL DISTRIBUTION; PUBLIC NOTICE

Env-Wr 506.01 EAP Distribution. Upon receiving department approval of the draft EAP pursuant to Env-Wr 505.01, the owner shall distribute the EAP to local and state emergency response personnel who have responsibilities for implementing the EAP, as listed in Env-Wr 505.11.

Source. #8414, eff 8-20-05

Env-Wr 506.02 Public Notice. If the local community(ies) request information relative to the EAP to be given to the general public, the owner shall provide such information either by mail to all residential, industrial, and commercial buildings within the inundation area or by holding an informal meeting at a location near the dam or the inundation area.

Source. #8414, eff 8-20-05

PART Env-Wr 507 TESTING AND UPDATING PROCEDURES

Env-Wr 507.01 Notification Test.

(a) The owner shall conduct a test of the emergency communication network within one month of approval of the EAP and every 2 years thereafter for a class C dam and every 4 years thereafter for a class B dam.

(b) The test shall consist of the owner making the primary contact as shown on the flow-chart and indicating that a required test of the EAP is being conducted.

(c) The owner shall request each individual or agency contacted during the test to execute its duties relative to the notification flow-chart, complete the checklists, and return the checklists to the owner.

(d) Within 30 days of conducting the test, the owner shall inform the department of the results of the test, indicating the time it took each individual and agency to make their notifications and whether miscommunications occurred.

(e) The owner shall provide records of communication for each individual and agency, including time of contact and person contacted, if the notifications were not made within a 15-minute time period.

Source. #8414, eff 8-20-05

Env-Wr 507.02 EAP Review and Changes.

(a) If the owner becomes aware of any changes necessary to the notification flow-chart, either as a result of the notification test or by other means, the owner shall:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(1) Make the changes to the notification flow-chart and in other portions of the EAP as necessary; and

(2) Distribute update pages to all holders of the EAP.

(b) The owner shall review the entire EAP annually to ensure the accuracy of the communication flow-chart and inundation areas.

(c) If development has occurred within the inundation area, the owner shall:

(1) Revise the inundation map to show the new development; and

(2) Distribute the updated map to all holders of the EAP.

(d) The owner shall submit written documentation to the department that the annual review of the EAP was performed, by providing one of the following:

(1) A statement that the EAP was reviewed and that no changes to the EAP were necessary; or

(2) Any applicable sections of the EAP which required revision.

Source. #8414, eff 8-20-05

Env-Wr 507.03 Reprinting of EAP.

(a) The owner shall reprint the entire EAP document and distribute the pages to all holders of the EAP every 8 years, to ensure that all holders have complete and orderly copies, unless:

(1) No changes have been required; or

(2) Changes have been made only to the notification flow-chart, and copies of the updated flow-chart have been distributed to all EAP holders.

(b) When a reprint of the EAP is required, the owner shall:

(1) Send the reprint return receipt requested; or

(2) Include forms with the mailing to be signed by the EAP holders and returned to the owner, indicating that a copy of the reprinted EAP was received.

(c) If there have been no changes to the inundation map since the last reprint of the EAP and the owner does not include an inundation map in the mailing, the owner shall:

(1) Specify the date of the current inundation map; and

(2) Include a check-off item on the form required by (b), above, indicating the EAP holder has a copy of the current inundation map.

(d) If an EAP holder does not have the current inundation map, the owner shall provide a copy of the map to the EAP holder upon being so notified by the EAP holder.

Source. #8414, eff 8-20-05

CHAPTER Env-Wr 600 REMOVAL OF DAMS

PART Env-Wr 601 PURPOSE AND APPLICABILITY

Env-Wr 601.01 Purpose. The purpose of the rules in this chapter is to specify the procedures to be followed when proposing to remove a dam under the auspices of the department's river restoration program and the criteria that will be applied in reviewing such proposals.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

Env-Wr 601.02 Applicability. The requirements of this part shall apply to any person who seeks to remove a dam under the auspices of the department's river restoration program.

Source. #8414, eff 8-20-05

PART Env-Wr 602 DAM REMOVAL PROPOSALS

Env-Wr 602.01 Qualifying Removals.

(a) In order to qualify as a dam removal under this chapter, the structure shall be removed:

- (1) To at least the depth of the natural streambed elevation; and
- (2) Subject to (b) and (c), below, to the width of the free-flowing ordinary high water mark of the river or stream in the area of the footprint of the dam from bank to bank.

(b) The person seeking to remove a dam pursuant to this chapter may request the department to approve a narrower opening by submitting the request in writing with the following:

- (1) The width of the free-flowing ordinary high water mark of the river or stream in the area of the footprint of the dam from bank to bank, in feet;
- (2) The width of the proposed opening, in feet, at:
 - a. The natural streambed elevation;
 - b. The ordinary high water mark; and
 - c. The widest point of the opening, if other than the natural streambed elevation or ordinary high water mark;
- (3) The shape of the proposed opening; and
- (4) An explanation of how the narrower opening will meet the criteria specified in (c), below.

(c) The department shall approve the request for a narrower opening if the department determines that:

- (1) The structure will no longer be considered a dam as defined in RSA 482:2, II;
- (2) The remains of the dam between the ordinary high water marks on both sides of the river will not create a safety hazard to the public when using the river;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The natural flow of sediment and nutrients will not be impeded; and
- (4) The passage of fish and other aquatic species will not be impeded.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

Env-Wr 602.02 Dam Removal Proposal. The person seeking to remove a dam shall submit:

- (a) A “standard dredge and fill application” as required under RSA 482-A and Wt 500, including the plans and specifications required for that application; and
- (b) An “attachment to the standard dredge and fill application for dam removal projects” as specified in Env-Wr 602.03.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

Env-Wr 602.03 Attachment for Dam Removal Projects. The information provided on the “attachment to the standard dredge and fill application for dam removal projects” shall include the following:

- (a) The name, mailing address, and daytime telephone number of the applicant and, if the applicant is not the owner, the name and mailing address of the owner;
- (b) The state dam identification number;
- (c) The hazard classification of the dam;
- (d) The current use of the dam;
- (e) The height and length of the dam, in feet;
- (f) The type of construction of the dam;
- (g) The approximate surface area of the impoundment, in acres;
- (h) The name(s), mailing address(es), and daytime telephone number(s) of the person(s) proposed to remove the dam;
- (i) A description of the proposed methods to remove the dam, including construction sequence, so as to meet the criteria of Env-Wr 602.01 and Env-Wr 604.01(a)
- (j) An explanation of the purpose for removing the dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

PART Env-Wr 603 REVIEW PROCEDURES

Env-Wr 603.01 Notification.

(a) The person proposing to remove a dam shall notify the local governing body of the municipality or municipalities in which the dam or the water body formed by the dam is located in accordance with RSA 482:13, I.

(b) The person proposing to remove the dam shall provide a copy of the notice sent pursuant to (a), above, to the department.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

Env-Wr 603.02 Review.

(a) Upon receiving an application to remove a dam, the department shall review the application to determine whether it is complete.

(b) If the department determines that all of the information required by Env-Wr 602.02 or the notice required by Env-Wr 603.01(b) has not been submitted, the department shall notify the person proposing to remove the dam of what is needed to complete the application.

(c) After receiving a complete application and after the meeting required by RSA 482:13, II has been held, the department shall review the application.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

PART Env-Wr 604 APPROVAL; REPORT

Env-Wr 604.01 Dam Removal Approval.

(a) The department shall approve the removal of the dam if the applicant:

- (1) Proposes a dam removal project that meets the criteria of Env-Wr 602.01; and
- (2) Demonstrates that the dam removal will be performed in a manner that:
 - a. Will not cause damage to structures downstream of the dam; and
 - b. Will not cause environmental damage that cannot self-restore within one year.

(b) The department shall notify the applicant and the owner, if the applicant is not the owner, in writing of its decision.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wr 604.02 Post-Removal Report. Upon completion of the removal, the person removing the dam shall file with the department a written statement certifying that the removal was completed in accordance with the approved plans and specifications.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #8414, eff 8-20-05

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

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

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:

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)

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

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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)

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), 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)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Ws 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 identified by the owner within the jurisdiction of the department under RSA 482.

(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)

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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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)

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

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wr 800 ADMINISTRATIVE FINES - EXPIRED

Source. #5082, eff 2-22-91, EXPIRED: 2-22-97; Env-Wr 802.01(e) was amd by #5495, eff 10-27-92, EXPIRED: 10-27-98

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Appendix

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
Env-Wr 301	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 302	RSA 482:5; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 303	RSA 482:5; RSA 482:8-a; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 304	RSA 482:5; RSA 482:87
Env-Wr 401	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 402	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 403	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 404	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 405	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 501	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 502	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 503	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 504	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 505	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 506	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 507	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 601	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 602	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 603	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 604	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 701	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87
Env-Wr 702	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87
Env-Wr 703	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87
Env-Wr 704	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87