

TABLE OF CONTENTS

CHAPTER Env-Wq 1300 NEW HAMPSHIRE CLEAN LAKES PROGRAM

PART Env-Wq 1301 PURPOSE AND APPLICABILITY

- Section Env-Wq 1301.01 Purpose
- Section Env-Wq 1301.02 Applicability

PART Env-Wq 1302 CHAPTER DEFINITIONS

- Section Env-Wq 1302.01 Bottom Barrier
- Section Env-Wq 1302.02 Commissioner
- Section Env-Wq 1302.03 Cultivar
- Section Env-Wq 1302.04 Department
- Section Env-Wq 1302.05 Diagnostic and Feasibility Study
- Section Env-Wq 1302.06 Exotic Aquatic Weeds
- Section Env-Wq 1302.07 Herbaria
- Section Env-Wq 1302.08 Infested Waters
- Section Env-Wq 1302.09 Integrated Pest Management (IPM)
- Section Env-Wq 1302.10 Limited Infestations
- Section Env-Wq 1302.11 Maintenance Project
- Section Env-Wq 1302.12 New Infestation
- Section Env-Wq 1302.13 Public Access
- Section Env-Wq 1302.14 Public Boat Access Area
- Section Env-Wq 1302.15 Public Bodies of Water
- Section Env-Wq 1302.16 Restricted Use Area
- Section Env-Wq 1302.17 Surface Waters of the State

PART Env-Wq 1303 LISTING OF PROHIBITED EXOTIC AQUATIC WEEDS; EXEMPTIONS

- Section Env-Wq 1303.01 Criteria for Listing Exotic Aquatic Weeds as Prohibited
- Section Env-Wq 1303.02 Prohibited Exotic Aquatic Weeds
- Section Env-Wq 1303.03 Synonymy
- Section Env-Wq 1303.04 Inspections
- Section Env-Wq 1303.05 Exemptions for Transportation
- Section Env-Wq 1303.06 Acceptable Means of Disposal
- Section Env-Wq 1303.07 Exemptions for Preserved Specimens, Research or Education and Field Experimentation
- Section Env-Wq 1303.08 Notification Requirement

PART Env-Wq 1304 RESTRICTED USE AREAS

- Section Env-Wq 1304.01 Designation and De-listing of Restricted Use Areas
- Section Env-Wq 1304.02 Notice of Restricted Use Areas
- Section Env-Wq 1304.03 Delineation and Markers for Restricted Use Areas
- Section Env-Wq 1304.04 Type of Warning Buoy
- Section Env-Wq 1304.05 Marking of Restricted Use Areas by Municipalities
- Section Env-Wq 1304.06 Navigation Prohibition
- Section Env-Wq 1304.07 Public Access and Public Boat Access
- Section Env-Wq 1304.08 Signs
- Section Env-Wq 1304.09 Installation and Removal of Buoys

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Env-Wq 1305 RESPONSE PROTOCOLS FOR NEW INFESTATIONS OF EXOTIC AQUATIC WEEDS

Section Env-Wq 1305.01 Emergency Response Protocol for Small New Infestations

Section Env-Wq 1305.02 Documentation of Infestation

Section Env-Wq 1305.03 Recommendation for Non-Emergency Response

PART Env-Wq 1306 MAINTENANCE PROJECT GRANTS

Section Env-Wq 1306.01 Eligibility for Maintenance Project Grant

Section Env-Wq 1306.02 Application for Maintenance Project Grant

Section Env-Wq 1306.03 Funding Determinations

Section Env-Wq 1306.04 Prioritizing Maintenance Projects

Section Env-Wq 1306.05 Contracting Procedures

Section Env-Wq 1306.06 Reporting Requirements

Section Env-Wq 1306.07 Recordkeeping Requirements

PART Env-Wq 1307 DIAGNOSTIC AND FEASIBILITY STUDIES

Section Env-Wq 1307.01 Eligibility for Diagnostic and Feasibility Studies

Section Env-Wq 1307.02 Application to Participate in Diagnostic and Feasibility Study

Section Env-Wq 1307.03 Participation Determinations

CHAPTER Env-Wq 1300 NEW HAMPSHIRE CLEAN LAKES PROGRAM

Statutory Authority: RSA 487:18 and 24

REVISION NOTE:

Document #8703-A, effective 9-5-06, readopted with amendments and redesignated former Chapter Env-Ws 1300 entitled Exotic Aquatic Weed Control as Env-Wq 1300, pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05 and changed the chapter heading to New Hampshire Clean Lakes Program.

Former Chapter Env-Ws 1300 was filed under document #6852, effective 9-5-98.

PART Env-Wq 1301 PURPOSE AND APPLICABILITY

Env-Wq 1301.01 Purpose. The purpose of these rules is to implement the following statutory provisions:

- (a) RSA 487:16-a, which prohibits the sale, distribution, importation, purchase, propagation, transportation, or introduction of exotic aquatic weeds into the state;
- (b) RSA 487:17 relative to limiting the eutrophication of lakes and ponds, controlling exotic aquatic weeds, designating restricted use areas, and making financial grants for management of exotic aquatic weeds;
- (c) RSA 487:18 relative to project prioritizations;
- (d) RSA 487:20 relative to eligibility requirements;
- (e) RSA 487:21 relative to cost sharing; and
- (f) RSA 487:22 relative to municipal agreements.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1301.02 Applicability. These rules shall apply to people who live, work, and recreate on the surface waters of New Hampshire, as well as people who own or manage places of business that offer the sale or other distribution of exotic aquatic weeds.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

PART Env-Wq 1302 DEFINITIONS

Env-Wq 1302.01 “Bottom barrier” means a semi-permeable, fine mesh screening, laid over an area of sediments in a surface water to shade and physically inhibit plant growth.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.02 “Commissioner” means the commissioner of the department of environmental services.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.03 “Cultivar” means a cultivated species of plant for which there is no wild form.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.04 “Department” means the department of environmental services.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.05 “Diagnostic and feasibility study” means a study as contemplated by RSA 487:21, I, to identify sources of pollution to a surface water and recommend the most cost effective practices to restore or preserve water quality.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.06 “Exotic aquatic weeds” means “exotic aquatic weeds” as defined by RSA 487:16, II, namely “only those species of vascular aquatic plants which were not part of New Hampshire’s native aquatic flora before 1950. Cabomba caroliniana and Myriophyllum heterophyllum are examples of exotic aquatic weeds.”

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.07 “Herbaria” means collections of dried, pressed plants for the purposes of education and scientific study.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.08 “Infested waters” means water and water bodies having populations of prohibited exotic aquatic weeds such as milfoil or fanwort.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.09 “Integrated pest management (IPM)” means an aquatic plant management approach that includes:

- (a) Defining the problem or need;
- (b) Identifying the desired exotic aquatic plant management goals;
- (c) Making decisions based on site-specific information;
- (d) Using ecosystem, watershed, and cost perspectives to determine long-term strategies;
- (e) Developing a system of integrated exotic plant control methods, including mechanical-physical, biological, chemical, and cultural BMPs; and
- (f) Quantitatively assessing the results of the control methods.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.10 “Limited infestations” means an infestation of 5 acres or less.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.11 “Maintenance project” means a project designed to remediate a water impairment through the short-term control of an exotic aquatic weed infestation or a water quality problem by treating the problem but not the underlying cause.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.12 “New infestation” means an infestation that was not previously reported to or otherwise identified by the department.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.13 “Public access” means “public access” as defined by RSA 271:20-a, I, namely “legal passage to any of the public waters of the state by way of designated contiguous land owned or controlled by a state agency, assuring that all members of the public shall have access to and use of the public waters for recreational purposes.”

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.14 “Public boat access area” means an area adjacent to a public body of water that is owned or controlled by the state, is accessible by the public, and has been designated by the fish and game department as a boat launching area under the statewide public boat access program.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.15 “Public bodies of water” means:

- (a) Public waters as defined in RSA 271:20;
- (b) Any impoundment of a stream, lake, pond, or tidal or marine waters of 10 acres or more; and
- (c) Any other body of water owned by the state or by a state agency or department.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.16 “Restricted use area” means a marked area or marked areas of a water body where infestations of exotic aquatic weeds have been delineated in accordance with Env-Wq 1304, which is closed to entry by boaters, anglers, or other water users and their equipment except in emergency situations where property or human life is endangered.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1302.17 “Surface waters of the state” means “surface waters of the state” as defined by RSA 485-A:2, XIV, namely, “perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction

of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial.”

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

PART Env-Wq 1303 LISTING OF PROHIBITED EXOTIC AQUATIC WEEDS; EXEMPTIONS

Env-Wq 1303.01 Criteria for Listing Exotic Aquatic Weeds as Prohibited. The department shall list an aquatic plant species as prohibited if it meets any of the following criteria:

(a) The species does not naturally occur in New Hampshire and will cause or is likely to cause economic or environmental harm or harm to human health or safety if introduced to the area, because it grows or is likely to grow more rapidly than native plants so as to impair an ecosystem’s ability to function by altering its productivity, decomposition, water fluxes, nutrient cycling and loss, soil fertility, erosion, dissolved oxygen concentrations, or its ability to maintain its existing species diversity;

(b) The species is known to invade and disrupt aquatic and wetland ecosystems in other geographic areas where the climate is similar to that of New Hampshire;

(c) The species is able to create dense, monospecific stands or monotypic stands that displace or destroy native plant habitat, destroy fish and wildlife habitats, inhibit water circulation, hinder navigation or irrigation, or severely restrict the recreational use of waterways; and

(d) The species resists effective control by present technology or available management practices.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.02 Prohibited Exotic Aquatic Weeds. Subject to Env-Wq 1303.03, the following exotic aquatic weeds, identified in “A Manual of Aquatic Plants” by Norman C. Fassett and “Aquatic and Wetland Plants of Northeastern North America” by Garrett Crow and C. Barre Hellquist, both copyrighted by The University of Wisconsin Press, shall be prohibited from being offered for sale, distributed, sold, imported, purchased, propagated, transported, or introduced in the state, pursuant to RSA 487:16-a, because they pose a substantial threat to native species in the state:

(a) All Myriophyllum species, including but not limited to Myriophyllum heterophyllum, Myriophyllum spicatum, and Myriophyllum aquaticum, and commonly referred to as milfoils or feather-foils;

(b) All Cabomba species, including but not limited to Cabomba caroliniana and commonly referred to as fanworts;

(c) Hydrilla verticillata; commonly referred to as Hydrilla or Anacharis;

(d) All Trapa species, commonly referred to as water chestnuts;

(e) Potamogeton crispus, commonly referred to as curly leaf pondweed;

(f) Lythrum salicaria, L. virgatum, L. alatum and their cultivars, commonly referred to as purple loosestrife;

(g) Phragmites australis or P. communis, commonly referred to as common reed;

(h) Egeria densa, commonly referred to as Brazilian elodea;

(i) Hydrocharis morsus-ranae, commonly referred to as frogbit;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (j) Butomus umbellatus, commonly referred to as flowering rush;
- (k) Najas minor, commonly referred to as European naiad;
- (l) Nymphoides peltata, commonly referred to as yellow floating heart;
- (m) Crassula helmsii, commonly referred to as swamp stonecrop;
- (n) Epilobium hirsutum, commonly referred to as great willow herb or hairy willow herb;
- (o) Glyceria maxima, commonly referred to as reed sweet grass or manna grass;
- (p) Hygrophila polysperma, commonly referred to as East Indian hygrophila;
- (q) Ipomoea aquatica, commonly referred to as water spinach;
- (r) Iris pseudocarus, commonly referred to as yellow iris or yellow flag iris;
- (s) Lagarosiphon major, commonly referred to as African oxygen weed;
- (t) Limnophila sessiliflora, commonly referred to as ambulia;
- (u) Marsilea quadrifolia, commonly referred to as water fern;
- (v) Myosotis scorpioides, commonly referred to as water forget-me-not;
- (w) Sagittaria japonica, commonly referred to as double flowering arrowhead, Japanese arrowhead, or old world arrowhead;
- (x) Sagittaria sagittifolia, commonly referred to as giant sagittaria;
- (y) Typha gracilis, commonly referred to as slender cattail;
- (z) Typha laxmanii, commonly referred to as dwarf cattail or Laxman's cattail; and
- (aa) Typha minima, commonly referred to as miniature cattail or micro-mini cattail.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.03 Synonymy. The prohibited status of exotic aquatic weeds shall apply not only to the most recent and accepted scientific and common names of the species as listed in Env-Wq 1303.02 but also to undesignated synonyms for the listed species. Plant status shall be determined using the Latin name of the species.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.04 Inspections.

(a) For purposes of this section, "business" means a commercial establishment that is open to the public and maintains stocks of aquatic plants for sale or other distribution, including pet stores and nurseries.

(b) The department shall inspect, during a business's normal business hours, the aquatic plants on display to the public.

(c) If the department's inspector observes plants that are on the list of prohibited species, the inspector shall inform the on-site manager of the business of the prohibitions of RSA 487:16-a and request the manager to discontinue the sale or other distribution of the plants.

(d) If the department's inspector observes plants that could be on the list of prohibited species, the inspector shall inform the on-site manager of the business of the prohibitions of RSA 487:16-a and request the manager to provide a sample of the questionable aquatic plant material of sufficient size to allow identification of the plant material at no compensation.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.05 Exemptions for Transportation. Transportation of any exotic aquatic weed(s) on any road or highway in the state shall be exempt from the transportation prohibition of RSA 487:16-a, if:

(a) The transportation is for the purpose of disposal as part of a harvest control activity under the supervision of the department; or

(b) The transportation is for the purpose of identifying a species or reporting the presence of a species, and the plant material is in a sealed container.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.06 Acceptable Means of Disposal.

(a) Any exotic aquatic weed shall be immediately disposed of away from water or moist areas where it might survive.

(b) Acceptable means of disposal shall include:

- (1) Burning or incinerating;
- (2) Land filling;
- (3) Disposing in a trash container whose contents are destined for incineration or land filling;
- (4) Desiccating;
- (5) Composting, if applied away from surface waters; and
- (6) Any other method that ensures the plant material will not enter surface waters.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.07 Exemptions for Preserved Specimens, Research or Education, and Field Experimentation.

(a) Subject to (b) and (c), below, and as authorized by RSA 487:16-a, the following uses of exotic aquatic weeds shall be exempt from the prohibitions of RSA 487:16-a:

- (1) Exotic aquatic weeds in the form of herbaria or other preserved specimens;
- (2) Exotic aquatic weeds being used in a controlled environment, such as in a laboratory for research or for educational display; and



NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) Exotic aquatic weeds that are subjected to experimental processes or equipment in the field for the purpose of finding control mechanisms for such exotic aquatic weeds.

(b) All specimens shall be destroyed as specified in Env-Wq 1303.06 when they are no longer used as specified in (a), above.

(c) For plants subjected to experimental processes or equipment in the field, the exemption shall apply only if such experimental processes or equipment are conducted in a way that prevents the spread of such weeds.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1303.08 Notification Requirement.

(a) Any person, other than an employee of the department acting in his or her official capacity, who participates in any of the activities exempted pursuant to Env-Wq 1303.05 and Env-Wq 1303.07, shall notify the department prior to or within 24 hours after performing such activity, by calling 271-3503 and asking for the Exotic Species Program or Limnology Center.

(b) Notification shall not be required for disposal after removal from recreational watercraft and equipment such as trailers, motors, fishing equipment, or diving gear.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

PART Env-Wq 1304 RESTRICTED USE AREAS

Env-Wq 1304.01 Designation and De-listing of Restricted Use Areas.

(a) Subject to (e), below, the commissioner shall designate as a restricted use area any area that contains a limited infestation of exotic aquatic weeds, such as:

- (1) Areas with new infestations;
- (2) Infestations in areas with a high risk of fragmentation; and
- (3) Areas in waterbodies with previously documented infestations where treatments or management practices have removed all but a small area of exotics that can be contained with the establishment of a restricted use area until such time that other management practices can remove the remainder of the population.

(b) After designation, a restricted use area shall be in place until the area is no longer infested as determined using the criteria in (a), above, or until a period of 3 years has expired since the time of designation, whichever is sooner.

(c) Subject to (e), below, when an infestation has been eradicated or cannot be successfully treated or managed within the 3-year time limit, or the 3-year time limit has been reached, the commissioner shall evaluate the designated area to determine whether the area will be de-listed or the area's designation as restricted use will be extended.

(d) The commissioner shall issue press releases to the newspapers in the towns-surrounding the water body(ies) in which a restricted use area is designated or de-listed and post the list of waterbodies with restricted use areas or de-listed areas on the department's website by June 1 of each year.

(e) In considering whether to designate a restricted use area pursuant to (a), above, or whether to extend the designation pursuant to (c), above, the commissioner shall proceed as directed by RSA 487:17, II(d).

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.02 Notice of Restricted Use Areas.

(a) The department shall post signs and place buoys warning of a restricted use area in accordance with Env-Wq 1304.03 and Env-Wq 1304.04.

(b) The commissioner shall post on the department's website a list of restricted use areas that includes the following information:

- (1) The town(s) in which the water body containing the restricted use area is located;
- (2) The name of the water body containing the restricted use area;
- (3) The specific location of the infestation within the water body;
- (4) The type of infestation; and
- (5) The general dimensions of the restricted use area.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.03 Delineation and Markers for Restricted Use Areas. The department or its designee shall mark restricted use areas using buoys and signs as specified below:

(a) At least one sign meeting the requirements of Env-Wq 1304.08 shall be posted at each public access site and public boat access area on the surface water in which the restricted use area is located;

(b) A minimum of 3 buoys shall be placed around the actual restricted use area;

(c) The buoys shall:

- (1) Be placed not more than 300 feet apart;
- (2) Be connected by rope with small floats every 8 feet; and
- (3) Meet the requirements of Env-Wq 1304.04; and

(d) Buoys and signs shall be removed at the end of each growing season, unless removed sooner pursuant to the de-listing process.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.04 Type of Warning Buoy. The buoy used to warn of a restricted use area shall:

- (a) Be a standard state danger buoy;
- (b) Be white and international orange in color;
- (c) Have an orange diamond symbol with an X through it; and

(d) Read as follows: "Restricted Use Area, pursuant to RSA 487. NH Dept. of Environmental Services 603-271-3503."

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.05 Marking of Restricted Use Areas by Municipalities.

(a) Any municipality with a method of marking restricted use areas within municipal surface water supplies that is similar to the method described in Env-Wq 1304.03 and Env-Wq 1304.04 may request the department to approve the use of the method in lieu of Env-Wq 1304.03 and Env-Wq 1304.04, by submitting a request in writing to the department.

(b) The request shall describe the municipality's method of marking restricted use areas and identify the area(s) to which it is to be applied.

(c) The department shall authorize the municipality to mark municipal surface water supplies using the municipality's method if the municipality's method is equivalent to or more stringent than the method identified in Env-Wq 1304.03 and Env-Wq 1304.04.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.06 Navigation Prohibition. Subject to Env-Wq 1304.07, no person or equipment, including boaters, anglers, or other water users and private or commercial watercraft of any type, shall enter a restricted use area except in emergency situations where property or human life is endangered.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.07 Public Access and Public Boat Access. If an infestation occurs at an access point to a marina, private residence, or public or private boat access ramp, a bottom barrier shall be put over the infestation to keep it from spreading and the access point may remain open.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.08 Signs. The-signs posted pursuant to Env-Wq 1304.03(a) shall:

(a) Be at least 8 ½ by 11 inches in size;

(b) Include a picture of a warning buoy; and

(c) Inform people that the purpose of the buoys is to mark a restricted use area and that the area must not be entered except in emergencies where property or human life is endangered.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1304.09 Installation and Removal of Buoys.

(a) The department shall install buoys during weekday office hours.

(b) The department shall remove the buoys at the end of each growing season, unless removed sooner pursuant to the de-listing process.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

PART Env-Wq 1305 RESPONSE PROTOCOLS FOR NEW INFESTATIONS OF EXOTIC AQUATIC WEEDS

Env-Wq 1305.01 Emergency Response Protocol for Small New Infestations.

(a) Upon notification of a possible new infestation of exotic aquatic weeds, the department shall:

- (1) Document the infestation in accordance with Env-Wq 1305.02; and
- (2) Determine whether the infestation is small enough that eradication is reasonably possible based on the criteria specified in (b), below.

(b) The department shall determine that eradication is reasonably possible if:

- (1) The infestation is present as:
  - a. A small patch or scattered individual stems, such that the infestation can be controlled by hand-pulling the subject plant stems using snorkeling or SCUBA diving activities; or
  - b. A single dense mat or a series of separate dense mats wherein each mat covers an area less than 400 square feet, such that the infestation can be controlled by installing bottom barriers; and
- (2) The infestation is a new infestation in a previously-uninfested water body or in a previously-uninfested area of a water body having already-controlled or otherwise minimal infestations.

(c) If the infestation meets the criteria specified in (b), above, the department shall undertake hand-pulling or install bottom barriers, or both, as is most likely to control the infestation.

(d) If the infestation is not small enough to be controlled with hand-pulling or bottom barriers, the department shall develop a recommendation for an appropriate non-emergency response in accordance with Env-Wq 1305.03.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1305.02 Documentation of Infestation. To document a new infestation, the department shall:

- (a) Conduct a site inspection of subject waterbody within 72 hours of a new report;
- (b) Collect a specimen of the suspect plant;
- (c) Determine if the plant is a native or exotic species per RSA 487:16, II, as follows:
  - (1) When fruit or flower is present, the department shall make an identification directly; and
  - (2) When no fruit or flower is present, the department shall send the specimen for DNA analysis to verify the species level identification;
- (d) Map and characterize the extent of the infestation;

(e) Document any native plant abundances and community structure around and dispersed within the exotic plant population; and

(f) Identify potential impacts to downstream habitats as a result of the infestation or possible control activities.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1305.03 Recommendation for Non-Emergency Response.

(a) If the infestation does not qualify as a small new infestation per Env-Wq 1305.01, the department shall develop a management plan in consultation with interested stakeholders, including affected municipalities and lake associations, to address the infestation over the longer-term.

(b) If the management plan developed pursuant to (a), above, calls for action by the department, the department shall implement the portion(s) of the plan calling for department action.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

PART Env-Wq 1306 MAINTENANCE PROJECT GRANTS

Env-Wq 1306.01 Eligibility for Maintenance Project Grant. The following criteria shall be met in order to be eligible for a grant under RSA 487:21, III for a maintenance project:

(a) The subject water body shall:

(1) Be a surface water of the state; and

(2) Be infested with an exotic aquatic weed listed in Env-Wq 1303.02; and

(b) The proposed maintenance project shall incorporate integrated pest management (IPM) strategies.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06; ss by #9488, eff 6-23-09

Env-Wq 1306.02 Application for Maintenance Project Grant.

(a) The applicant for a maintenance project grant shall submit a completed application for funding assistance on a form provided by the department to the department's Exotic Species Program by November 1 of the year preceding the year for which the grant is requested.

(b) The application shall include the following information:

(1) The applicant's name and mailing address and the name, mailing address, and daytime telephone number of an individual who can be contacted on behalf of the applicant with questions regarding the application;

(2) The amount of the grant being requested and the amount of the local match;

(3) The name of the surface water for which the grant is sought and whether it is public or private;

(4) The type and availability of public access sites and public boat access sites on the surface water;

- (5) The predominant use(s) of the surface water;
- (6) The type(s) of exotic aquatic species with which the surface water is infested;
- (7) The size and location of the infestation;
- (8) The impact of the infestation to recreational, ecological, and economic values of the surface water; and
- (9) Which IPM strategies will be used.

(c) The application shall be signed by a responsible official of the organization or political subdivision that is applying for the grant. Such signature shall constitute certification that the information contained in the application is true and complete to the signer's information and belief.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1306.03 Funding Determinations.

(a) The department shall review the grant applications, rank them using the prioritization criteria specified in Env-Wq 1306.04, and assign funding amounts based on available funds.

(b) The department shall notify each applicant in writing regarding whether or not a grant was awarded. If a grant is not awarded, the written notice shall specify the reason(s) for the decision.

(c) Upon notification of grant award, the applicant shall provide the following to the department:

- (1) A new or updated W-9 form, as appropriate;
- (2) An original Certificate of Good Standing or a Certificate of Existence from the New Hampshire Secretary of State's Office;
- (3) A signed and notarized standard state contracting form; and
- (4) A signed and notarized certificate of authority.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1306.04 Prioritizing Maintenance Projects. Pursuant to RSA 487:18, project priority shall be determined by totaling the points assigned under each of the following categories:

(a) Based on the type of infestation in the surface water, points shall be assigned as follows:

- (1) A surface water having one or more widespread and well-established infestations shall receive one point;
- (2) A surface water having one or more established infestations that are showing signs of spreading to uninfested portions of the waterbody shall receive 2 points;
- (3) A surface water having one or more infestations that have remained small or localized shall receive 3 points; and
- (4) The score for this category shall be multiplied by a weighting factor of 4;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (5) The score for this category shall be multiplied by a weighting factor of 4;
- (b) Based on the type of proposed treatment, points shall be assigned as follows:
- (1) Projects where only herbicides will be used shall receive 0 points;
  - (2) Projects where herbicide treatment will be followed by non-chemical management efforts, such as hand removal or bottom barriers, shall receive one point;
  - (3) Projects where only non-herbicide controls will be used shall receive 2 points;
  - (4) Projects where a new or innovative approach will be tried shall receive 3 points; and
  - (5) The score for this category shall be multiplied by a weighting factor of 3;
- (c) Based on the type and availability of public access sites and public boat access sites, points shall be assigned as follows:
- (1) Private ponds shall receive 0 points;
  - (2) Public bodies of water with no known access point shall receive one point;
  - (3) Public bodies of water where public access exists only as open land or beach and there is no public boat access area shall receive 2 points;
  - (4) Public bodies of water where a public boat access area exists shall receive 3 points; and
  - (5) The score for this category shall be multiplied by a weighting factor of 2;
- (d) Based on the predominant use(s) of the surface water, points shall be assigned as follows:
- (1) Surface waters where less than 30% of the shorefront is developed shall receive 0 points;
  - (2) Surface waters where the surrounding land use is mostly residential and boating is predominantly small boats and canoes shall receive one point;
  - (3) Surface waters where the surrounding land use is both residential and transient and boating is a mix of large and small boats, including unmotorized boats, shall receive 2 points;
  - (4) Surface waters designated as public water supplies shall receive 3 points; and
  - (5) The score for this category shall be multiplied by a weighting factor of 2;
- (e) Based on the impact of the infestation to recreational and economic values of the surface water, points shall be assigned as follows:
- (1) Infestations in mostly-undeveloped areas of a surface water where there is little cultural impact shall receive 0 points;
  - (2) Infestations with mostly residential impacts shall receive one point;
  - (3) Infestations with impacts to residential boat access or beaches as well as to residents shall receive 2 points; and
  - (4) Infestations with impacts to commercial operations, such as marinas, public beaches, motels, restaurants, and public docks, shall receive 3 points;

(f) Based on the impact of the infestation to ecological values of the surface water, points shall be assigned as follows:

- (1) Infestations that are physically contained and do not threaten the life cycle of native aquatic plant or animal communities shall receive 0 points;
- (2) Infestations that are rapidly spreading and threaten the life cycle of native plant and animal communities shall receive 2 points; and
- (3) Infestations that pose a risk to rare, threatened, or endangered plant or animal species within a surface water shall receive 4 points;

(g) Based on the treatment history of the surface water, points shall be assigned as follows:

- (1) Projects funded within the last 2 years shall receive 0 points;
- (2) Projects not funded within the last 2 years where there was no request for funding in those 2 years shall receive one point;
- (3) Projects not funded within the last 2 years where funding was requested and denied shall receive 2 points; and
- (4) Projects not previously funded shall receive 3 points; and

(h) Based on the amount of local match, points shall be assigned as follows:

- (1) Projects where the applicant proposes to provide not more than 50% match for the project shall receive 0 points;
- (2) Projects where the applicant proposes to provide at least 50% but less than 65% match for the project shall receive one point;
- (3) Projects where the applicant proposes to provide at least 65% but less than 80% match for the project shall receive 2 points; and
- (4) Projects where the applicant proposes to provide 80% or more match for the project shall receive 3 points.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06; amd by #9488, eff 6-23-09

Env-Wq 1306.05 Contracting Procedures. All contracts for control or eradication of exotic aquatic weeds shall be advertised, bid, and contracted in accordance with applicable state contractual procedures established by the New Hampshire department of administrative services.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1306.06 Reporting Requirements.

(a) For maintenance projects using aquatic herbicides, the grant recipient shall submit a report at the end of the growing season on the type of herbicide, rate of chemical application, success of the treatment, total project cost, and impacts to any non-target aquatic or land-based plant or animal species, as well as a summary of IPM strategies used during the grant period.



(b) To satisfy the reporting requirement of (a), above, the grant recipient may submit a photocopy or electronic copy of the report submitted to the department of agriculture, markets and foods pursuant to Pes 603.03(c)(26) that has been supplemented with the information not already contained in the report that is otherwise required by (a), above.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1306.07 Recordkeeping Requirements. All grant recipients shall keep detailed records of documented grant disbursements, match, and project tasks and deliverables for a period of 3 years from the end of the contractual period for the grant.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

#### PART Env-Wq 1307 DIAGNOSTIC AND FEASIBILITY STUDIES

Env-Wq 1307.01 Eligibility for Diagnostic and Feasibility Studies. To be eligible for participation in the diagnostic and feasibility study program established under RSA 487:21, I, the subject water body shall:

(a) Be a surface water of the state and be:

- (1) Listed as impaired on the current or draft list prepared pursuant to §303(d) of the federal Clean Water Act as specified in 40 CFR 130.7;
- (2) Identified as being at risk of being impaired in documented Volunteer Lake Assessment Program (VLAP) data demonstrating a statistically-significant decline in water quality; or
- (3) Experiencing change(s) within its boundaries or within its watershed that are deemed a significant risk to the water quality and designated water uses by the department pursuant to section 305(b) of the federal Clean Water Act as specified in 40 CFR 130.8;

(b) Be sponsored by an organized association or a municipality providing matching funds and volunteer time; and

(c) Be the subject of an organized and coordinated water quality monitoring program that has collected water quality data spanning 10 or more consecutive years, such that:

- (1) The surface water is monitored at least 3 times from May 15 through October 1, with the samples taken at least 30 days apart; and
- (2) All analyses were performed by the department's laboratory or a laboratory certified by EPA or another government agency using National Environmental Laboratory Accreditation Committee standards.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06; amd by #9488, eff 6-23-09

Env-Wq 1307.02 Application to Participate in Diagnostic and Feasibility Study.

(a) The application to participate in a diagnostic and feasibility study shall be filed:

- (1) By a municipality or an organization, such as a lake association, that is in good standing with the New Hampshire Secretary of State; and
- (2) For a surface water that is eligible to participate as specified in Env-Wq 1307.01.

(b) The application shall be in writing and addressed to the DES Limnology Center Director and Clean Lakes Program Coordinator.

(c) The application shall include the following:

- (1) The applicant's name and mailing address and the name, mailing address, and daytime telephone number of an individual who can be contacted on behalf of the applicant with questions regarding the application;
- (2) The name of the surface water that would be the subject of the study and whether it is public or private;
- (3) Certification that the surface water meets the eligibility criteria specified in Env-Wq 1307.01;
- (4) The reason for request;
- (5) Observations related to declines in the recreational, ecological, and economic value of the surface water due to impairment;
- (6) Specific areas of concern in the surface water or watershed, or both;
- (7) Desired outcomes for surface water and watershed conditions; and
- (8) The level of financial support and volunteer participation donated by the applicant during the study and implementation phases.

(d) The application shall be signed by a responsible official of the organization or political subdivision that is applying to participate. Such signature shall constitute certification that the information contained in the application is true and complete to the signer's information and belief.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1307.03 Participation Determinations.

(a) The department shall review the participation applications to:

- (1) Determine whether they meet the criteria of Env-Wq 1307.02; and
- (2) Rank them using the prioritization criteria specified in Env-Wq 1307.04.

(b) The department shall notify each applicant in writing regarding whether or not the proposed project was selected for participation. If the proposed project was not selected, the written notice shall specify the reason(s) for the decision.

(c) The department shall maintain a ranked list of accepted applications.

(d) As funds become available, the department shall conduct diagnostic and feasibility studies in the order on the ranked list.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

Env-Wq 1307.04 Prioritizing Diagnostic and Feasibility Studies. Pursuant to RSA 487:18, project priority shall be determined by totaling the points assigned under each of the following categories:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (a) Based on the degree of impairment of the surface water, points shall be assigned as follows:
- (1) Lakes and ponds not listed as impaired on the current or draft list prepared pursuant to section 303(d) of the federal Clean Water Act as specified in 40 CFR 130.7 shall receive 0 points;
  - (2) Lakes and ponds not listed as impaired on the current or draft list prepared pursuant to section 303(d) of the federal Clean Water Act as specified in 40 CFR 130.7, but identified as being at risk of being impaired in documented Volunteer Lake Assessment Program (VLAP) data demonstrating a statistically-significant decline in water quality shall receive one point;
  - (3) Lakes and ponds listed as impaired on the current or draft list prepared pursuant to section 303(d) of the federal Clean Water Act as specified in 40 CFR 130.7 shall receive 3 points; and
  - (4) The score for this category shall be multiplied by a weighting factor of 4;
- (b) Based on the type and availability of public access sites and public boat access sites, points shall be assigned as follows:
- (1) Private lakes and ponds shall receive 0 points;
  - (2) Public bodies of water with no known access point shall receive one point;
  - (3) Public bodies of water where public access exists only as open land or beach and there is no public boat access area shall receive 2 points;
  - (4) Public bodies of water where a public boat access area exists shall receive 3 points; and
  - (5) The score for this category shall be multiplied by a weighting factor of 2;
- (c) Based on the predominant use(s) of the surface water, points shall be assigned as follows:
- (1) Surface waters where less than 30% of the shorefront is developed shall receive 0 points;
  - (2) Surface waters where the surrounding land use is mostly residential and boating is predominantly small boats and canoes shall receive one point;
  - (3) Surface waters where the surrounding land use is both residential and transient and boating is a mix of large and small boats, including unmotorized boats, shall receive 2 points;
  - (4) Surface waters designated as public water supplies shall receive 3 points; and
  - (5) The score for this category shall be multiplied by a weighting factor of 2;
- (d) Based on the impact of the impairment or potential impairment to recreational and economic values of the surface water, points shall be assigned as follows:
- (1) The impairment is to mostly-undeveloped surface water where there is little cultural impact shall receive 0 points;
  - (2) The impairment is on lakes and ponds with mostly residential impacts shall receive one point;
  - (3) The impairment impacts residential or public beaches shall receive 2 points; and
  - (4) The impairment impacts commercial operations, such as marinas, public beaches, motels, restaurants, and public docks, shall receive 3 points;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) Based on the impact of the impairment or potential impairment to ecological values of the surface water, points shall be assigned as follows:

- (1) Impairments to mostly non-native plant or animal communities in the lake or pond shall receive 0 points; and
- (2) Impairments to native plant or animal species, such that the identified impairment would reduce the habitat for those species to the point where their abundance may be altered, shall receive 2 points; and

(f) Based on the amount of local match, points shall be assigned as follows:

- (1) Projects where the applicant proposes to provide not more than 50% match for the project shall receive 0 points;
- (2) Projects where the applicant proposes to provide at least 50% but less than 65% match for the project shall receive one point;
- (3) Projects where the applicant proposes to provide at least 65% but less than 80% match for the project shall receive 2 points; and
- (4) Projects where the applicant proposes to provide 80% or more match for the project shall receive 3 points.

Source. (See Revision Note at chapter heading for Env-Wq 1300) #8703-A, eff 9-5-06

**Appendix**

<b>Rule</b>	<b>State Statute(s) Implemented</b>
Env-Wq 1301	RSA 487:15-23
Env-Wq 1302	RSA 487:15-23
Env-Wq 1303	RSA 487:16-a; RSA 487:24, VII
Env-Wq 1304	RSA 487:17, II (d); RSA 487:24, VII-c
Env-Wq 1305	RSA 487:17, II (c); RSA 487:24, VII-b
Env-Wq 1306	RSA 487:17, I (c), II, & III; RSA 487:18, :20, :21; RSA 487:24, II-VI
Env-Wq 1306.01	RSA 487:17, I(c), II, & III; RSA 487:18, :20, :21
Env-Wq 1306.04(a)	RSA 487:17, :18
Env-Wq 1307	RSA 487:17, I (a) & (b); RSA 487:18, :20, :21, :22; RSA 487:24, I-VI
Env-Wq 1307.01	RSA 487:17, I(c), II, & III; RSA 487:18, :20, :21