

CHAPTER Env-Ws 400 PROTECTION OF STATE SURFACE WATERS

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CHAPTER Env-Ws 400 PROTECTION OF STATE SURFACE WATERS

PART Env-Ws 401 STATE SURFACE WATER DISCHARGE PERMITS

Statutory Authority: RSA 485-A:6, VII

Env-Ws 401.01 Purpose. The purpose of these rules is to establish the standards and procedures by which a facility can obtain a state discharge permit under RSA 485-A:13, I.

Source. #589, eff 11-12-74; ss by #2239, eff 12-31-82; ss by #2670, eff 4-12-84, exp. 4-12-90; ss by #5063, eff 2-4-91; EXPIRED 2-4-97

New. #6460, INTERIM, eff 2-21-97; EXPIRED 6-21-97

New. #6533, eff 6-28-97; ss by #8361, eff 5-28-05

Env-Ws 401.02 Applicability.

(a) These rules shall apply to all discharges of pollutants from a point source to surface waters of the state that require only a state discharge permit.

(b) These rules shall not apply to:

(1) Facilities that require both a state discharge permit and a federal National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the Clean Water Act, which are regulated pursuant to 40 CFR Part 122;

(2) Those activities requiring water quality certifications pursuant to section 401 of the Clean Water Act, which are regulated pursuant to Env-Ws 451 through 455; or

(3) Discharges to a POTW, which are regulated pursuant to Env-Ws 904.

Source. #8361, eff 5-28-05

Env-Ws 401.03 Definitions.

(a) “Biochemical Oxygen Demand (BOD)” means a measurement of the amount of oxygen used by the decomposition of organic material in a wastewater sample over a 5-day period.

(b) “Bypass” means bypass as defined in RSA 485-A:2, XVII, namely, “the intentional diversion of waste streams from any portion of the wastewater facilities.”

(c) “Carbonaceous Biochemical Oxygen Demand (CBOD)” means a measurement of the amount of oxygen used by carbon-containing substances in a wastewater sample over a 5-day period.

(d) “Clean water act (CWA)” means the Federal Clean Water Act, pub. L. 92-500 as amended by pub. L. 95-217, pub. L. 95-576, pub. L. 96-483, pub. L. 97-117, pub. L. 100-4, 33 USC 1251 et seq.

(e) “Department” means the department of environmental services.

(f) “Discharge” means the addition, introduction, leaking, spilling, or emitting of a pollutant to surface waters of the state, whether done intentionally, unintentionally, negligently, or otherwise.

(g) “Effluent limitations” means any restriction(s) imposed by the department pursuant to RSA 485-A or by the United States Environmental Protection Agency (EPA) pursuant to 40 CFR 122 on quantities,

discharge rates, characteristics, or concentrations of pollutants which are discharged to surface waters of the state.

(h) “Existing uses” means those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in Env-Ws 1700. The term does not include assimilation or transport of pollutants.

(i) “Harmonic mean flow” means the number of daily stream flow measurements divided by the sum of the reciprocals of the daily stream flows.

(j) “Industrial waste” means “industrial waste” as defined in RSA 485-A: 2, VI, namely, “any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.”

(k) “Municipality” means a city, town, borough, county, parish, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the CWA.

(l) “Other waste” means “other waste” as defined in RSA 485-A:2, VIII, namely, “garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.”

(m) “Point source” means a discernible, confined, and discrete conveyance from which pollutants are or might be discharged. The term includes but is not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft. The term does not include return flows from irrigated agriculture.

(n) “Pollutant” means any dredged material, solid waste, incinerator residue, sewage, filter backwash, garbage, sewage sludge, septage, munitions, chemical wastes, biological materials, genetically engineered or altered materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, or any other industrial, municipal, or agricultural waste or any other substance in concentrations or amounts that when in contact with surface waters of the state, could create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; to plant, animal or aquatic life; or to other designated or existing uses.

(o) “Publicly owned treatment works (POTW)” means any device or system used in the collection and treatment of municipal sewage or industrial wastes of a liquid nature which is owned by a municipality, county, or state.

(p) “Receiving water” means the surface waters of the state into which pollutants are or may be discharged.

(q) “Sewage” means sewage as defined in RSA 485-A:2, X, namely, “the water carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.”

(r) “7Q10” means the lowest average flow which occurs for 7 consecutive days on an annual basis with a recurrence interval of once in 10 years on average, expressed in terms of volume per time period.

(s) “Steady-state model” means a model that requires single, constant inputs for effluent flow, effluent concentration, background receiving water concentration, and receiving water flow.

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(t) “Surface waters of the state” means “surface waters of the state” as defined in 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.” The term includes wetlands and “waters of the united states” as defined in 40 CFR Part 122.2. The term does not include nontidal drainage ditches which were designed, built and used to convey wastewater or stormwater. The term also does not include constructed wetlands, cooling ponds, lagoons, and other treatment systems designed and built solely as wastewater or stormwater treatment systems, provided such facilities were not initially constructed in surface waters of the state or were not constructed to serve other mitigation purposes.

(u) “Tidal waters” means those portions of the Atlantic Ocean within the jurisdiction of the state, and other surface waters of the state subject to the rise and fall of the tide.

(v) “TSS” means the pollutant parameter total suspended solids.

(w) “Wetland” means “wetlands” as defined by RSA 482-A:2, X, namely “an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” Wetlands include swamps, marshes, bogs, and similar areas.

Source. #8361, eff 5-28-05

Env-Ws 401.04 Permit Application Required; Application Content.

(a) The applicant for a state surface water discharge permit or modification thereto shall submit the information required in (b), below, in writing to the department.

(b) The applicant shall provide the following:

- (1) The name and location of the facility;
- (2) The name, title, and daytime telephone number of the individual in responsible charge of the facility;
- (3) The name, mailing address, and daytime telephone number of the owner of the facility and, if the owner is other than an individual, the name, title, and daytime telephone number of an individual who can be contacted regarding the application;
- (4) The mailing address of the facility;
- (5) The North American Industry Classification System (NAICS) code;
- (6) A list of any other environmental permits that the facility has obtained or is in the process of obtaining;
- (7) A description of the business conducted at the facility;
- (8) A unit process flow diagram and design data for existing and proposed wastewater treatment facilities;
- (9) A list of the water supply source(s) for the facility and, if water from more than one source is discharged, the percent of the total that each source represents;

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- (10) An original or a color copy of a 7 1/2 minute series USGS Quadrangle map showing the location of the facility and all discharge pipes to the receiving water body, provided, however that if a 7 1/2 minute map is unavailable, a 15 minute series shall be acceptable;
- (11) A facility site plan showing buildings, outfall locations, surface waters, and drainage in sufficient detail so that they can be located on site;
- (12) The name of the receiving water;
- (13) If applicable, facility plans and specifications for design and construction stamped by a New Hampshire professional engineer;
- (14) A description and location of the uses of the receiving water located within 5 miles of the discharge(s); and
- (15) Any available water quality data of the receiving water or, if applicable, effluent data not previously submitted to the department.

(c) An applicant that is requesting a new discharge or an increased discharge of pollutants at an existing facility shall contact the department prior to submitting the application to determine if any instream water quality information shall be required. If the department lacks the instream water quality data necessary to assess the impact of the discharge on the receiving water, the department shall require the applicant to submit the necessary data.

Source. #8361, eff 5-28-05

Env-Ws 401.05 Signature Required.

- (a) The applicant and, if the applicant is other than the owner of the facility, the owner shall sign the application submitted pursuant to Env-Ws 401.04.
- (b) The signature(s) shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
 - (2) The signer understands that any permit granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #8361, eff 5-28-05

Env-Ws 401.06 Completeness Review; Hearing Notice.

- (a) Within 60 days of receipt of an application, the department shall determine if the application is complete.
- (b) If the department determines that the application is not complete, the department shall notify the applicant in writing of the items listed in Env-Ws 401.04(b) that were not received.
- (c) The notice sent pursuant to (b), above, shall also inform the applicant that:
 - (1) If the information is not provided within 60 days of the department's request, the application will be denied; and

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- (2) The time that elapses between the date of the notice and the receipt by the department of all information required to complete the application shall not be included in the 120-day period referenced in Env-Ws 401.08(c).
- (d) If the department does not receive the information needed to complete the application, the department shall inform the applicant in writing that the application is denied due to the incompleteness.
- (e) When the department determines that the application is complete, the department shall:
- (1) Give notice of the application as required by RSA 485-A:4, XVII, by first-class mail to the clerk of the municipality in which the point of discharge is located and all adjacent municipalities located on the same receiving water as the point of discharge;
 - (2) Provide notice of a public hearing and comment period for the pending permit application in a newspaper of local circulation;
 - (3) Schedule and hold the hearing no sooner than 30 days after the publication of the notice in the municipality in which the activity is proposed to occur; and
 - (4) Conduct the hearing in accordance with Env-C 200 and Env-Ws 401.07.
- (f) The newspaper notice shall contain the following information:
- (1) The name and mailing address of the applicant;
 - (2) The location, date, and time of the public hearing;
 - (3) The locally-accessible place where the application can be reviewed;
 - (4) The name, address, and telephone number of the individual in the department to whom comments can be sent;
 - (5) The type of activity proposed to be conducted;
 - (6) The proposed location of the facility;
 - (7) The name of the owner; and
 - (8) The deadline for submission of written comments.
- (g) A determination that the application is complete shall not be construed as a decision on the merits of the application.

Source. #8361, eff 5-28-05

Env-Ws 401.07 Public Hearing.

- (a) At the hearing, the applicant shall:
- (1) Make at least 2 copies of the application available for people to review at the hearing, with additional copies being provided at the applicant's discretion;
 - (2) Make a presentation to the public, summarizing all the information required in the application; and
 - (3) Respond to questions concerning the proposed activity.

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(b) After the applicant has responded to all questions concerning the proposed activity, the department shall receive public comment on the application, including any comment and supporting information as to its accuracy and completeness.

(c) The department shall allow 15 days from the date of the hearing to receive written comments.

Source. #8361, eff 5-28-05

Env-Ws 401.08 Application Review; Decision.

(a) After the conclusion of the public comment period, the department shall determine whether the information submitted with the application demonstrates that the criteria of Env-Ws 401.09 are met.

(b) If the information submitted with a complete application is insufficient for the department to make a determination that the criteria specified in Env-Ws 401.09 are met, the department shall request such additional information from the applicant as the department deems necessary to make the determination. Such request shall be in writing and shall include the information specified in Env-Ws 401.06(c).

(c) Within 120 days of receipt of a complete application and any information requested pursuant to (b), above, the department shall:

(1) Approve the application and issue a permit; or

(2) Deny the application.

(d) The department shall send written notice of its decision to the applicant and to the governing body of the municipality(ies) to which the notice specified in Env-Ws 401.06(c)(1) was sent.

(e) If the department denies the application, the notice sent pursuant to (d), above, shall:

(1) Specify the reason(s) for the denial; and

(2) Inform the applicant that the decision may be appealed to the water council in accordance with Env-WC 200.

Source. #8361, eff 5-28-05

Env-Ws 401.09 Criteria for Issuance of Permit. The department shall issue a permit if it determines that the information provided by the applicant establishes that the proposed discharge:

(a) Will not violate any applicable provision of RSA 485-A; and

(b) Will not cause a violation of Env-Ws 1700.

Source. #8361, eff 5-28-05

Env-Ws 401.10 Suspension, Revocation, or Refusal to Renew.

(a) If, after issuing a permit to a facility, the department receives information that indicates that good cause, as set forth in (f), below, exists to suspend or revoke the permit, the department shall proceed in accordance with Env-C 200.

(b) After proceeding in accordance with Env-C 200, the department shall revoke the permit if the department determines that the reason for good cause cannot be corrected to conform to applicable requirements.

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(c) After proceeding in accordance with Env-C 200, the department shall suspend the permit, subject to (d) below, if the department determines that, while good cause exists, the reason that good cause exists can be corrected to conform to applicable requirements.

(d) If a permit is suspended pursuant to (c), above, the department shall not reinstate the permit until:

- (1) The reason for good cause has been corrected to conform with applicable requirements; and
- (2) The permit holder submits a written request to the department requesting that the permit be reinstated.

(e) If after receiving a request for renewal of a permit, the department receives information which indicates that good cause, as set forth in (f), below, exists to refuse to renew the permit, the department shall proceed in accordance with Env-C 200 and refuse to renew the permit, until the reason for good cause has been corrected to conform with applicable requirements.

(f) Good cause to suspend, revoke or refuse to renew a permit shall include the following:

- (1) The permit holder has not complied with the conditions of the permit or these rules;
- (2) The plans submitted with the application do not accurately portray the actual site and facility;
- (3) Information submitted in support of the application is not true and complete or is misleading;
- (4) The permit holder has failed to comply with an order of the department relative to wastewater management, including an order to undertake corrective measures;
- (5) The permit holder has failed to comply with an order of the department relative to a violation of any other statute administered by the department; or
- (6) The permit holder has failed to pay any administrative, civil, or criminal penalties owed to the department.

(g) If the department determines, based on all available scientific and valid information, that the permitted activity is creating an immediate danger to human health or the environment, the department shall proceed in accordance with RSA 541-A:30, III.

(h) The department shall inform the applicant that the decision to suspend, revoke, or refuse to renew may be appealed to the water council in accordance with Env-WC 200.

Source. #8361, eff 5-28-05

Env-Ws 401.11 Permit Transfers.

(a) In order to transfer a permit, the permit holder shall submit to the department:

- (1) A copy of the original application;
- (2) A copy of the permit;
- (3) The name, mailing address, and daytime telephone number of the person(s) to whom the permit will be transferred;
- (4) An application for a permit modification pursuant to Env-Ws 401.13(b); and

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(5) A copy of a notarized notification signed by the new permittee stating the date that the new permittee will assume the responsibility of the requirements of the permit.

(b) The person to whom the permit is proposed to be transferred shall submit a statement declaring whether the person has been convicted of a misdemeanor under any statute administered by the department within the 5 years prior to the date of application or of a felony in any state or federal court within the 10 years prior to the date of application.

(c) The department shall approve such transfer if:

(1) The permit holder is in compliance with these rules and the permit;

(2) Good cause as defined by Env-Ws 401.10(f) to suspend, revoke, or refuse to renew the permit does not exist, unless the reason that good cause exists can be corrected prior to or as a result of the permit transfer; and

(3) The person to whom the permit is proposed to be transferred has not been convicted of a misdemeanor under any statute administered by the department within the 5 years prior to the date of application, or of a felony in any state or federal court within the 10 years prior to the date of application.

Source. #8361, eff 5-28-05

Env-Ws 401.12 Transfer of Land Ownership.

(a) If a facility that has an existing state discharge permit is located on land that is transferred to a new owner, the permit holder shall notify the department within 10 days of the transfer and shall suspend all activities covered by the permit until the statement described in (c), below, is signed by the new property owner, notarized, and received by the department.

(b) If a signed statement as described in (c), below, does not accompany the notice of land transfer, then upon receipt of the notice the department shall commence a proceeding under RSA 541-A:31 and Env-C 200 to revoke the permit. If the permit holder obtains and submits the signed statement, the proceeding shall be terminated.

(c) The statement from the new owner shall state that the new owner:

(1) Is aware that the facility exists on the land;

(2) Agrees to the continued operation of the facility;

(3) Has given permission to the permit holder to enter upon the land for purposes of operation, including the implementation of remedial measures if ordered by the department; and

(4) Is aware that the department must be allowed access to the property to conduct inspections, review and copy records, and monitor and sample a facility's wastewater and the surface water to which the facility discharges.

(d) If the new owner chooses to discontinue the activities covered by the state discharge permit, the permit holder shall:

(1) Submit a written statement to the department indicating that the permit-related activities have been discontinued; and

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(2) Remove sufficient infrastructure specific to the activities that were subject to the permit so as to eliminate the discharge to the receiving water.

Source. #8361, eff 5-28-05

Env-Ws 401.13 Modification of a Permit.

- (a) The permit holder shall apply to the department for approval to modify the permit prior to:
- (1) Transferring the permit to a new permittee; or
 - (2) Modifying any processes or procedures that will result in a change to the volume or quality of the discharge from the facility.
- (b) To apply for a permit modification, the permit holder shall provide the following information to the department:
- (1) The facility permit number;
 - (2) The name, address, and telephone number of the permit holder, owner, and operator;
 - (3) A detailed description of all proposed modifications;
 - (4) If applicable, revised plans and specifications for construction stamped by a New Hampshire professional engineer;
 - (5) An explanation of the necessity of the proposed change(s);
 - (6) The effect of the modification on the facility's discharge;
 - (7) The identification and status of all other federal or state permits or approvals needed to effect the necessary modification(s);
 - (8) The permit holder's proposed schedule for implementing such changes; and
 - (9) A list and status of any outstanding violations, accompanied by a statement from the permit holder indicating how full compliance shall be attained prior to approval of the modification.
- (c) The department shall approve the modification if it determines that:
- (1) All applicable requirements of these rules have been met;
 - (2) If the applicant is other than the owner, the owner has given permission to the applicant for the modification;
 - (3) All other state permits which are necessary for the proposed modification have been applied for; and
 - (4) The permit holder has paid all fees and administrative, civil, or criminal penalties owed to the department.

Source. #8361, eff 5-28-05

Env-Ws 401.14 Duration of State Surface Water Discharge Permits. State surface water discharge permits issued pursuant to these rules shall be valid for 5 years from the date of issuance.

Source. #8361, eff 5-28-05

Env-Ws 401.15 Permit Conditions Common to all Permits. The state discharge permit shall contain the following conditions:

(a) The permittee shall not at any time, either alone or in conjunction with any person or persons, cause directly or indirectly the discharge of any pollutant into receiving waters except pollutants that have been treated in such a manner as shall not lower the applicable class water quality, interfere with the existing uses or designated uses assigned to waters by the legislature, exceed the effluent limitations, or violate the conditions listed in the permit.

(b) The permittee shall provide effective operation and maintenance of the pollution control facilities, which means that the facility shall be operated and maintained in accordance with the plant operation and maintenance manuals and manufacturer's equipment manuals, so as to meet the permit's effluent limitations.

(c) The permittee shall use only those laboratories that have adequate controls and quality assurance procedures in accordance with 40 CFR 122.41(e) as confirmed by the DES laboratory for performing analyses required by the permit.

(d) The permittee shall monitor all discharges in accordance with the conditions specified in the permit. All analyses shall be performed in accordance with 40 CFR 136 unless other test procedures have been specified in the permit.

(e) The permittee shall submit monitoring results on forms supplied by the department, postmarked no later than the 15th day of the month following the completed reporting period.

(f) The permittee shall retain records at the permitted facility of the following:

- (1) Monitoring data;
- (2) Monitoring equipment calibration records;
- (3) Monitoring equipment maintenance records;
- (4) Original strip chart recordings from continuous monitoring instrumentation;
- (5) Copies of all reports required by the permit; and
- (6) Records of all data used to complete the application for the permit.

(g) The records shall be retained for a period of 3 years from the date of the sample, measurement, report or application. This period shall be extended through the duration of any enforcement action.

(h) The permittee shall allow any authorized employee or agent of the department to enter any land or establishment of the company during the normal business hours for the purpose of collecting samples, conducting dye tests, making video recordings, examining and copying any records, or taking photographs, necessary to the investigation and enforcement of the water pollution control laws of the State of New Hampshire.

(i) The effluent limitations contained in the permit and the stream classification requirements as provided by RSA 485-A:8 shall be met and maintained at all times. Whenever it is demonstrated that the effluent limitations are not adequate to maintain said stream classification requirements, the permittee shall be required to conform to such effluent limitations as shall be necessary for the maintenance of such requirements.

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(j) The department shall periodically review and revise, as necessary, the conditions of the permit so that water quality standards, existing uses and designated uses shall be maintained and protected at all times.

(k) The permit to discharge treated wastes shall not be transferable except in accordance with Env-Ws 401.11.

(l) The permittee shall give notice in accordance with RSA 485-A:13, I(c), whenever a bypass or upset of a treatment facility occurs.

(m) Permittees that discharge treated wastewater to tidal waters shall provide immediate notification to the department and the New Hampshire department of health and human services in the event of a discharge of untreated sewage or the bypass of a disinfection system.

Source. #8361, eff 5-28-05

Env-Ws 401.16 Additional Permit Conditions.

(a) If additional conditions or effluent limitations are necessary to ensure that the discharge does not violate Env-Ws 1700, the department shall include such conditions or effluent limitations in the permit.

Source. #8361, eff 5-28-05

Env-Ws 401.17 Application of Criteria in Establishing Effluent Permit Limits.

(a) The effluent limits for bacteria and pH for all permits shall be applied at the end of the pipe with no allowance for dilution by the receiving water.

(b) Subject to (c) and (d) below, all other applicable effluent limits shall be developed using the following steady-state conditions:

(1) For rivers and streams, the harmonic mean flow shall be used to develop effluent limits for all human health criteria for carcinogens;

(2) For rivers and streams, the 7Q10 flow shall be used to develop monthly average and maximum daily effluent limits for aquatic life criteria for toxics, human-health criteria for non-carcinogens and for non-toxic pollutants, such as BOD; and

(3) For tidal waters, the flow condition for computing effluent permit limits for toxic substances and for non-toxic pollutants such as BOD shall be equivalent to the conditions that result in a dilution that is exceeded 99% of the time.

(c) Should an applicant want to have the effluent limits developed using a flow condition other than those specified in (b) above, the applicant shall provide the department with any additional information necessary to ensure that the discharge will not violate Env-Ws 1700 or the applicable provisions of RSA 485-A:8. Prior to initiating any sampling, the applicant shall submit, for approval by the department, a scope of work along with a quality assurance project plan (QAPP) in accordance with EPA Requirements for Quality Assurance Project Plans (QA/R-5), EPA/240/B-01/003, March 2001, for the additional work.

Source. #8361, eff 5-28-05

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APPENDIX

RULE	STATUTE(S) IMPLEMENTED
Env-Ws 401.01	RSA 485-A:13, I(a); RSA 485-A:6, VII
Env-Ws 401.02	RSA 485-A:13, I(a)
Env-Ws 401.03	RSA 485-A:13, I(a)
Env-Ws 401.04	RSA 485-A:13, I(a)
Env-Ws 401.05	RSA 485-A:13, I(a)
Env-Ws 401.06	RSA 485-A:13, I(a)
Env-Ws 401.07	RSA 485-A:13, I(a)
Env-Ws 401.08	RSA 485-A:13, I(a)
Env-Ws 401.09	RSA 485-A:13, I(a)
Env-Ws 401.10	RSA 485-A:13, I(a); RSA 541-A:30
Env-Ws 401.11	RSA 485-A:13, I(a)
Env-Ws 401.12	RSA 485-A:13, I(a)
Env-Ws 401.13	RSA 485-A:13, I(a)
Env-Ws 401.14	RSA 485-A:13, I(a)
Env-Ws 401.15	RSA 485-A:13, I(a)
Env-Ws 401.16	RSA 485-A:13, I(a)
Env-Ws 401.17	RSA 485-A:13, I(a)