

TABLE OF CONTENTS

CHAPTER Env-Wq 400 GROUNDWATER PROTECTION

PART Env-Wq 401 BEST MANAGEMENT PRACTICES FOR GROUNDWATER PROTECTION

- Section Env-Wq 401.01 Purpose
- Section Env-Wq 401.02 Applicability
- Section Env-Wq 401.03 Definitions
- Section Env-Wq 401.04 Storage of Regulated Substances
- Section Env-Wq 401.05 Transferring Regulated Substances
- Section Env-Wq 401.06 Floor Drains
- Section Env-Wq 401.07 Work Sinks
- Section Env-Wq 401.08 Holding Tanks
- Section Env-Wq 401.09 Release Response Information
- Section Env-Wq 401.10 Waivers

CHAPTER Env-Wq 400 GROUNDWATER PROTECTION

PART Env-Wq 401 BEST MANAGEMENT PRACTICES FOR GROUNDWATER PROTECTION

Statutory Authority: RSA 485-C:4, VII; RSA 485-C:11

REVISION NOTE:

Document #8786, effective 1-5-07, readopted with amendments and redesignated former Part Env-Ws 421 titled Best Management Practices as Env-Wq 401 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for former Env-Ws 421 include the following documents:


#5543, eff 12-24-92

#6947, eff 2-25-99

Env-Wq 401.01 Purpose. The purpose of these rules is to establish the minimum required management practices to be employed when using, storing, or otherwise handling regulated substances, so that the risk of groundwater contamination is minimized.

Source. (See Revision Note at part heading for Env-Wq 401)
#8786, eff 1-5-07

Env-Wq 401.02 Applicability.

(a) Subject to (b), below, these rules shall apply only to persons who use, store, or otherwise handle any regulated substances in regulated containers. 

(b) Pursuant to RSA 485-C:11, I, these rules shall not apply to:

- (1) Potential contamination sources listed in RSA 485-C:7, II(j); or
- (2) Those regulated substances defined as pesticides under RSA 430:28, XXVI.

(c) These rules also shall not apply to:

- (1) Aboveground and underground storage tanks regulated under Env-Wm 1401, Env-Wm 1402, or successor rules in subtitle Env-Or; or
- (2) On-premise-use facilities as defined in RSA 146-E:2, III.

(d) Potential contamination sources shall be subject to inspections by the department in any area. 

Source. (See Revision Note at part heading for Env-Wq 401)
#8786, eff 1-5-07

Env-Wq 401.03 Definitions.

(a) “Department” means the New Hampshire department of environmental services.

(b) “Floor drain” means an opening in a floor that is not specifically included in an authorized discharge under one or more of the following regulatory mechanisms:

- (1) A NH groundwater discharge permit;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) A registration required by Env-Ws 1500 or successor rules in subtitle Env-Wq;
- (3) A national pollutant discharge elimination system permit; or
- (4) A local authorization to discharge to the local wastewater treatment facility.

(c) “Impervious surface” means a surface through which regulated contaminants cannot pass when spilled. The term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces that could react with or dissolve when in contact with the substances stored on them.

(d) “Owner” means the owner of the facility or site on which the potential contamination source is located and, if different, the person who is responsible for the day-to-day management of the facility or site.

(e) “Person” means “person” as defined in RSA 485-C:2, XI, namely “any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.”

(f) “Potential contamination source” means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.

(g) “Regulated container” means any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons, other than a fuel tank attached to a motor vehicle for the sole purpose of supplying fuel to that motor vehicle for that vehicle’s normal operation.

(h) “Regulated substance” means any of the following, with the exclusion of ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, and potassium permanganate:

- (1) Oil as defined in RSA 146-A:2, III;
- (2) Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and
- (3) Any substance listed in 40 CFR 302, 7-1-05 edition.

(i) “Secondary containment” means a structure, such as a berm or dike with an impervious surface, that is adequate to hold any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

(j) “Storage area” means a place where a regulated container is kept for a period of 10 or more consecutive days.

(k) “Work sink” means a sink necessary for the performance of activities that require use of a regulated substance that is not specifically included in an authorized discharge under one or more of the following regulatory mechanisms:

- (1) A NH groundwater discharge permit;
- (2) A registration required by Env-Ws 1500 or successor rules in subtitle Env-Wq;
- (3) A national pollution discharge elimination system permit; or

- (4) A local authorization to discharge to the local wastewater treatment facility.

Source. (See Revision Note at part heading for Env-Wq 401)
#8786, eff 1-5-07

Env-Wq 401.04 Storage of Regulated Substances.

(a) The owner shall store all hazardous wastes in compliance with applicable federal requirements and state requirements as specified in RSA 147-A and Env-Wm 100-1100 or successor rules in subtitle Env-Hw.

(b) The owner shall store all regulated containers on an impervious surface. The owner shall inspect the impervious surface to ensure no cracks or holes exist prior to storage of any regulated containers and annually thereafter during continued use of the storage area.

(c) The owner shall secure all storage areas against unauthorized entry by personal surveillance, physically-restricted access, or a combination of personal surveillance and physically-restricted access.

(d) The owner shall inspect all storage areas weekly for signs of spills or leakage from regulated containers. The aisle space between regulated containers that cannot be moved by hand shall be of ample size to allow an inspector to determine the condition of individual regulated containers.

(e) Each regulated container shall be clearly and visibly labeled with the chemical and trade name of the material stored within.

(f) Each regulated container shall remain closed and sealed at all times except to add or remove regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed when the spigots, valves, or pumps are closed or in the "off" position, provided that drip pans are placed and maintained under the spigots, valves, or pumps.

(g) Spill control and containment equipment, including, as a minimum, absorbents to pick up spills and leaks, shall be located in the immediate area where regulated substances are transferred, used, or stored.

(h) Regulated containers in outdoor storage areas shall:

(1) Have secondary containment;

(2) Be kept covered at all times unless the regulated containers are in the process of being transferred to another location;

(3) Have a covering to keep the regulated container and the secondary containment structure free of rain, snow, or ice; and

(4) Not be stored within any of the following set-backs:

a. For surface waters, 50 feet;

b. For private wells, 75 feet;

c. The protective radius of any public water supply well; or

d. For storm drains, 50 feet.

Source. (See Revision Note at part heading for Env-Wq 401)
#8786, eff 1-5-07

Env-Wq 401.05 Transferring Regulated Substances. Regulated substances shall be transferred from or to regulated containers only under the following conditions:

- (a) Funnels and drip pans shall be used; and
- (b) Fueling or transferring shall be done only over an impervious surface.

Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

Env-Wq 401.06 Floor Drains. Interior floor drains shall discharge only to a holding tank registered in accordance with Env-Ws 1500 or successor rules in subtitle Env-Wq.

Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

Env-Wq 401.07 Work Sinks. Work sinks shall discharge only to a holding tank registered in accordance with Env-Ws 1500 or successor rules in subtitle Env-Wq.

Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

Env-Wq 401.08 Holding Tanks. Holding tanks that receive discharges from floor drains or work sinks shall be registered and maintained in accordance with Env-Ws 1500 or successor rules in subtitle Env-Wq.

Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

Env-Wq 401.09 Release Response Information.

(a) The owner shall post release response information in accordance with (b), below, at every storage area.

(b) Release response information shall contain the information necessary to contact emergency response personnel, including the following:

- (1) The name of the individual designated by the owner to be contacted if a spill occurs;
- (2) The method by which the designated individual can be contacted when there is a release, such as by phone, or in-person at the main office;
- (3) The procedure for spill containment; and
- (4) Emergency phone numbers including 911 and, depending on local protocol:
 - a. State police;
 - b. Local police and fire department;
 - c. Local hospital;
 - d. Department of environmental services;
 - e. Poison control center; and
 - f. Office of emergency management.

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Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

Env-Wq 401.10 Waivers.

(a) The rules contained in this part 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, persons subject to these rules may request a waiver of specific rules in this part in accordance with this section.

(b) The person requesting the waiver(s) shall submit the following information in writing to the department:

(1) A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;

(2) A reference to the specific section of the rules from which a waiver is being sought;

(3) A full explanation of why a waiver is necessary;

(4) Whether the waiver is needed for a limited or indefinite period of time;

(5) A full explanation with supporting data of the alternative(s), if any, proposed to be implemented or used in lieu of the section's requirements; and

(6) A full explanation of how the proposed alternative(s), if any, would be consistent with the intent of RSA 485-C and would adequately protect human health and the environment.

(c) The department shall grant a waiver if it determines that the intent of RSA 485-C will be met and human health and the environment will be protected. In granting the waiver, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be protective of human health and the environment.

(d) No waiver shall be granted to any requirement specified in statute unless the statute expressly allows such requirement to be waived.

(e) The department shall issue a written response to a request for a waiver within 90 days of receipt of the request. If the department denies the request, the reasons(s) for the denial shall be clearly stated in the written response.

Source. (See Revision Note at part heading for Env-Wq 401) #8786, eff 1-5-07

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-Wq 401 (see also specific section listed below)	RSA 485-C:1; RSA 485-C:4, VII; RSA 485-C:11
Env-Wq 401.10	RSA 541-A:22, IV