



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

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NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective,

2. COMMITTEE (JLCAR)

CONTINUED MEETING Previously Scheduled for April 5, 2013 Has Been Cancelled

REGULAR MEETING: **Friday, April 19, 2013 9:00 a.m.**
Rooms 305/307, Legislative Office Building

a.	Certified Final Objection Re: GOVERNOR'S COMMISSION ON DISABILITY Rules for the Telecommunications Equipment Assistance Program (FP 2012-189)	4
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JLCAR MEETING DATES AND RELATED FILING DEADLINES APRIL-JUNE, 2013

The JLCAR has voted to hold its regularly scheduled meetings for April through June, 2013 on the third Friday of the month as listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
April 5	April 19	May 3
May 3	May 17	June 7
June 7	June 21	June 28

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2013-25	Env-Wq 304 (currently Env-Ws 901)	Department of Environmental Services Water Quality and Quantity Programs Certification of Wastewater Treatment Plant Operators.	1

**JLCAR MEETING DATES AND RELATED FILING DEADLINES
JULY-DECEMBER, 2013**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2013 on the third Thursdays listed below. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

Notice Number 2013-25 Rule Number Env-Wq 304 (currently Env-Ws 901)

<p>1. Agency Name & Address:</p> <p>NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 485-A:6, XI & XI-b; RSA 486:10, III</u></p> <p>3. Federal Authority: <u>n/a</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: Certification of Wastewater Treatment Plant Operators

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

The existing rules, Env-Ws 901, establish the requirements for wastewater treatment plant operator certification. The rules are scheduled to expire April 23, 2013. **The existing rules will continue in effect as provided in RSA 541-A:14-a, subject to the conditions specified therein.** The Department is proposing to readopt the rules with amendments that will do the following:

- (1) Renumber the rules as Env-Wq 304, edit for grammar and clarity, divide lengthy sections into smaller sections that cover more specific requirements, and identify what requirements are established by statute vs. what requirements are established in the rules;
- (2) Modify the definition of “operating experience” to clarify that some of the required experience can be obtained other than by working at a wastewater treatment plant, and in conjunction with this revise Env-Wq 304.08 (Env-Ws 901.08) to better align the substitutions for operating experience requirements and to change the allowable substitution for on-site experience from 75% to 50%, to ensure more experience has been gained in a wastewater treatment plant;
- (3) Limit the information that must be submitted to apply for a retest after failing a test (Env-Wq 304.14(h));
- (4) Establish in the rules the requirement for an interview with the certification committee (Env-Wq 304.15);
- (5) Add a requirement for Grade I and Grade I-OIT (operator-in-training) operators to earn 1 CEU (10 hours) in the 2-year cycle to renew their licenses (Env-Wq 304.18(a)), and allow all grades to carry-over up to 50% of the required CEUs from one renewal period to the next (Env-Wq 304.18(b));
- (6) Adjust the Point System for the Classification of Wastewater Treatment Plants (Env-Wq 304.25, Table 304.3) to reflect the increasing complexity of technology and treatment plants in New Hampshire; and
- (7) Adjust the Point System for the Evaluation of Effluent Discharge and Laboratory Complexity (Env-Wq 304.25, Table 304.4) by adding test that are now being performed by plant labs.

6. (b) Brief description of the groups affected:

The rules will directly affect any individual who currently is a certified wastewater treatment plant operator, and any individual who wishes to become a certified wastewater treatment plant operator. The rules will indirectly affect owners of wastewater treatment plants.

NN 2013-25 Continued

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statutes Implemented
Env-Wq 304 (also see specific sections below)	RSA 485-A:5-a; RSA 485-A:7-a; RSA 485-A:7-b; RSA 485-A:7-c; RSA 485-A:7-d; RSA 486:9
Env-Wq 304.07 – Env-Wq 304.09	RSA 486:9
Env-Wq 304.10 – Env-Wq 304.13	RSA 485-A:7-a, I & II
Env-Wq 304.14	RSA 485-A:7-a, III; RSA 485-A:7-b
Env-Wq 304.16	RSA 485-A:7-c, I
Env-Wq 304.17 – Env-Wq 304.20	RSA 485-A:7-c, II
Env-Wq 304.21	RSA 485-A:7-c, III
Env-Wq 304.22	RSA 485-A:7-d

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Mary Jane Meier Title: Civil Engineer V
 Address: NH Dept. of Environmental Services Phone #: (603) 271-5553
 29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-4128
 Concord, NH 03302-0095 E-mail: MaryJane.Meier@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, April 25, 2013, 4:00 p.m.**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, April 18, 2013, 9:00 a.m. to Noon**

Place: **Franklin Training Center, 528 River Street, Franklin, NH**

NN 2013-25 Continued

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13:020, dated 03/08/13:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may increase revenues to state special funds by an indeterminable amount, and may have an indeterminable impact on state citizens.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The proposed rules increase continuing education requirements for Grade I and Grade I-OIT operators. To the extent the proposed rules impact attendance at Department training courses, revenues to the state wastewater plant operator certification fund will be affected. The Department estimates the number of grades I and I-OIT operators attending Department training courses will range between 46 and 177 attendees, thereby increasing revenues to the fund by between \$3,380 and \$14,160 annually. The proposed rules also increase the amount of continuing education units that can be carried forward for other class operators. The Department is unable to determine how this may impact course attendance.

B. To State citizens and political subdivisions:

To the extent that a citizen is a certified waste water treatment plant operator, there may be an indeterminable impact on costs associated with recertification. The proposed rules increase the continuing education requirements for Grade I and Grade I-OIT operators, thereby increasing their costs associated with maintaining their certifications. The proposed rules also increase the amount of continuing education units allowed to be carried forward for use in subsequent recertification for all other operators thereby providing the potential for reduced costs though the minimization of continuing education units that would be paid for but not applicable to recertification. The exact fiscal impact cannot be determined at this time. There is no fiscal impact on political subdivisions.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The rules apply to individual citizens who are or who wish to become certified wastewater treatment plant operators. While many political subdivisions own wastewater treatment plants, the rules do not require wastewater treatment plant owners to pay for the continuing education of their certified operators. The rules thus do not mandate or assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.

Certified Final Objection No. 149 of the
Joint Legislative Committee on Administrative Rules

At its meeting on February 15, 2013, the Joint Legislative Committee on Administrative Rules (Committee) voted, pursuant to RSA 541-A:13, IV, to enter a preliminary objection to Final Proposal 2012-189 containing Gcd 300 of the Governor's Commission on Disability (Commission) relative to the telecommunications equipment assistance program. The Committee's preliminary objection was based on the grounds as outlined in the Committee staff's annotations to Final Proposal 2012-189, which indicated that the requirements of the TEAP application form do not match the requirements contained in Gcd 303.04.

At its meeting on March 15, 2013, the Committee voted, pursuant to RSA 541-A:13, V(f), to enter a final objection to Final Proposal 2012-189. The final objection has been filed with the Director of the Office of Legislative Services for publication in the *New Hampshire Rulemaking Register*. The effect of a final objection is stated in RSA 541-A:13, VI:

After a final objection by the committee to a provision of a rule is filed with the director under subparagraph V(f), the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

The following summarizes the basis for the Committee's final objection:

Gcd 403.04

The Committee objected that Gcd 403.04, pursuant to Committee Rule 403.01(d), was contrary to the public interest by not being drafted in clear and understandable language to the extent that the requirements of Gcd 403.04 differ from the requirements of the corresponding form.

Gcd 403.04 specifies the information to be provided by applicants on an application form for participation in the Telecommunications Equipment Assistance Program (TEAP). The Committee noted that there were numerous and significant differences between the form document and the rule. For example, the form requires that the applicant provide his or her Social Security number, it requires information concerning a pacemaker, and it requires the name of the applicant's phone provider. None of these requirements appear in the rules. Also, Gcd 303.04(d)(6) requires the applicant, by checking a "yes" or "no" box, to indicate whether he or she meets the income eligibility for full assistance. There appears to be no check box for this on the form. Instead, there is a full page of requirements regarding eligibility based on income.

The Committee determined that an applicant reading both Gcd 403.04 and the form would not know what requirements must be met. Therefore, the Committee objected that Gcd 403.04 was contrary to the public interest by being unclear.