

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: RSA 146-A:11-c; RSA 147-A:3; RSA 147-F:18; RSA 485:3; RSA 485-C:4; RSA 485-H:13</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u> X </u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Contaminated Site Management**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The existing rules in Chapter Env-Or 600 of the Department of Environmental Services (Department) implement various provisions of RSA 146-A, RSA 146-C, RSA 147-A, RSA 147-F, RSA 485, and RSA 485-C by governing the investigation, management, and remediation of sites contaminated by the discharge of regulated contaminants, including oil and hazardous chemicals. The existing rules specify requirements for obtaining Groundwater Management Permits as required by RSA 485-C, restricting future property use pursuant to RSA 147-F:15, notifying the Department and undertaking emergency and initial response actions in response to a discharge of a regulated contaminant, and determining fees for expedited reviews of environmental site assessment reports pursuant to RSA 485:3-b, I.

The Department is proposing to revise Env-Or 600 as required by Chapter 326, Laws of 2022, effective July 8, 2022, codified as RSA 485-H:13. The statute required the Commissioner to initiate rulemaking by November 1, 2023.

A summary of the proposed changes to Chapter Env-Or 600 is below:

- a) **Readopt with amendment Env-Or 601 on the purpose and applicability of Env-Or 600 to clarify within the purpose of Env-Or 600 that nothing in Env-Or 600 shall prohibit or limit the Department’s ability to cost recover, and nothing in this Chapter shall eliminate or limit statutory rights of third parties;**
- b) **Adopt within Env-Or 601 that the purpose of the rules is to establish definitions and provisions specific to per- and polyfluoroalkyl substances (PFAS) pursuant to RSA 485-H:13;**
- c) **Readopt amended definitions in Env-Or 602 for “background” and “responsible party,” and adopt new definitions in Env-Or 602 for “best management practices,” “fully fluorinated carbon atom,” “perfluoroalkyl substance,” “PFAS,” “PFAS precursor,” “polyfluoroalkyl substance,” “de minimis,” “liable,” and “cause and contribute” that apply throughout Env-Or 600, and renumber definitions within Env-Or 602;**
- d) **Readopt with amendment Env-Or 606.19 to clarify that the Soil Remediation Standards (SRS) shall not apply to soil contamination that has been demonstrated to**

be attributed to natural or anthropogenic ambient background conditions when the site did not cause or contribute to anthropogenic background levels;

- e) Adopt Env-Or 614.04 pertaining to disposal of site investigation waste at a landfill under certain conditions;
- f) Adopt Env-Or 603.04 and readopt with amendment Env-Or 607.06 to insert requirements for providing safe alternative water to impacted well owners when contamination exceeding an Ambient Groundwater Quality Standard (AGQS) is found in a water supply well;
- g) Amend Table 600-2 in Env-Or 606.19 to include SRS concentrations for perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and perfluorooctanoic acid (PFOA) pursuant to RSA 485-H:13;
- h) Adopt a provision in Env-Or 614 that requires sampling and analysis for additional PFAS analytes;
- i) Insert a provision in Env-Or 607.06 that allows the use of a well with AGQS violations for outdoor water use unless the Department determines such use may be detrimental to human health or the environment;
- j) Insert amendments in Env-Or 604.02, 604.05, 604.07, and 604.08, and adopt Env-Or 604.09, to revise, clarify, and expand the notification requirements pursuant to Env-Or 604 to identify those circumstances in which a responsible party or other person is required to notify the Department; and
- k) Adopt PFAS specific provisions in Env-Or 614 requiring: 1) submission of Safety Data Sheets for products used at a facility; and 2) a responsible party to maintain a site investigation website if requested by the Department.

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

Those affected by the proposed revisions include parties responsible for the investigation and remediation of a site regulated under the rules and parties that may have been impacted by a release of regulated contaminants associated with a site regulated under the rules.

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

Rule Section(s)	State Statute Implemented
Env-Or 600 (see below for additional statutes)	RSA 146-A:3-a; RSA 146-C:11; RSA 147-A:9; RSA 147-F:11-13 & 15; RSA 485-C:1, 6, 6-a, & 6-b
Env-Or 601	RSA 146-A:11-c; RSA 146-C:9; RSA 147-A:3; RSA 147-F:18; RSA 485-C:4
Env-Or 602.03, 602.04, 602.05, 602.10, 602.14, 602.20, 602.24, 602.26, 602.27, 602.29, 602.38	RSA 146-A:11-c; RSA 146-C:9; RSA 147-A:3; RSA 147-F:18; RSA 485-C:4
Env-Or 603.04	RSA 485-C:4, III & VIII (c)
Env-Or 604.02	RSA 485-C:4, IX; RSA 485-C:14-b
Env-Or 604.05 - 604.09	RSA 146-A:5; RSA 146-C:11, I-a; RSA 485-C:4, VIII
Env-Or 606.19	RSA 146-A:11-c, V-a; RSA 146-C:9, X; RSA 147-A:3, IV; RSA 485-C:4, VIII; RSA 485-H:13; RSA 147-F:11; RSA 147-F:12; RSA 147-F:13
Env-Or 607.06	RSA 485-C:4, VIII; RSA 485-C:4, X; RSA 485-C:4, XI
Env-Or 614	RSA 485-H:13

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

Name: **Jeffrey M. Marts., P.G.** Title: **Bureau Administrator**
Mailing Address: **Department of Environmental Services** Phone #: **1-603-271-3744**
P.O. Box 95 Fax#: **1-603-271-2456**
Concord, NH 03302-0095 E-mail: Jeffrey.M.Marts@des.nh.gov

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or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4pm on Friday, May 31, 2024**

Fax E-mail Other format (specify): **USPS**

9. Public hearing scheduled for:

Date and Time: **Thursday, May 23, 2024, at 1 pm**

Physical Location: **Room 114 at Dept. of Transportation, 7 Hazen Drive, Concord, NH**

Electronic Access (if applicable): **N/A**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 24:019, dated 2/9/24

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 costs to political subdivisions, citizens and independently owned businesses that are responsible parties for contamination subject to the Env-Or 600 rules. Not applicable to Env-Or 602.04, 602.05, 602.10, 602.14, 602.20, 602.24, 602.26, 602.27, 602.29, 603.04, 604.09, and Env-O 614, which are new rules.

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):

The Department identified the following potential fiscal impacts to parties responsible for contamination.

- Env-Or 607.06 sets forth a provision that allows the use of a well with AGQS violations for outdoor water use unless the department determines such use may be detrimental to human health or the environment. There may be a *de minimis* cost to the responsible party associated with treatment of outdoor water or purchase of additional potable water from a public utility for outdoor use.
- Amendments to Env-Or 604.02 through 604.08 and adoption of Env-Or 604.09 that revise and clarify the notification requirements to identify those circumstances in which a responsible party or other person is required to notify the department. The Department believes the requirement for reporting soil and indoor air impacts due to

releases of regulated contaminants is implicitly consistent with existing rules and that any associated cost increase is *de minimis*.

- Adoption of PFAS specific provisions in Env-Or 614 requires submissions of Safety Data Sheets for products used at a facility and requires a responsible party to maintain a site investigation website, if requested by the Department. The Department expects there will be a *de minimis* cost to responsible parties to compile and submit applicable Safety Data Sheets. While the cost to a responsible party to set up and maintain a website could be thousands of dollars, the department expects to make such a request only in rare cases of significant releases of contaminants that result in vast community impact where the cost of establishing and maintaining the public information repository on the website would be relatively small compared to the overall cost to comply with the emergency response, site investigation, remediation, and other requirements of the rule.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

State citizens and political subdivisions that are “responsible parties” may incur the additional costs described in #3 above.

C. To independently owned businesses:

Independently owned businesses that are “responsible parties” may incur the additional costs described in #3 above.

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

Any costs associated with the proposed rules are primarily attributable to the statute. The proposed rules do not mandate or assign to any local subdivision a program or responsibility that is new, expanded, or modified from what existed before state action which would necessitate additional expenditures by a local subdivision. The proposed rules do not impose a change to an underlying function, duty, or activity performed or to be performed by a local government, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.