

Notice Number 2023-273

Rule Number Env-Dw 503 and
Env-Dw 504

<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: <u>RSA 485:2, V and RSA 485:41, II</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
---	---

5. Short Title: **Public Water System General Operational Requirements and Maintenance Requirements**

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 Department of Environmental Services (Department) is proposing to readopt with amendment Env-Dw 503 and Env-Dw 504 that establish the operation and maintenance requirements for new and existing community and non-community, non-transient public water systems (PWSs) and privately owned redistribution systems (PORSs), to ensure compliance with drinking water standards and to protect public health as required by RSA 485:41, I. The amendments that will update the general operations and maintenance responsibilities for PWSs and PORSs and revise and restructure the rules for clarity. The existing rules are scheduled to expire on December 3, 2023. The existing rules are subject to extension for the duration of this readoption proceeding pursuant to RSA 541-A:14-a, I.

The Department is proposing to readopt the rules with the following amendments:

- **Env-Dw 503.09(f): Adds additional requirements that trigger the need to update the operations and maintenance manual;**
- **Env-Dw 503.11(a)(4) and Env-Dw 503.12(c)(4): Add an inspection requirement for water storage facilities with no treatment;**
- **Env-Dw 503.16(b): Adds a requirement that an owner of a PWS must take such actions(s) as the owner deems necessary to reduce nonessential demand when a drought is declared in the region of the PWS;**
- **Env-Dw 503.18: In addition to other forms of notice currently required, the rules require a PWS to also post a notice of a planned outage on its website if it has one;**
- **Env-Dw 503.19(c)(3): Adds a 30-day time limit for the system owner to provide a copy of the recorded or written notice of impairment or disruption of the PWS to the department;**
- **Env-Dw 503.23(e): Adds a requirement that the PWS must also notify the local health officer in writing prior to terminating a customer's service;**

- **Env-Dw 503.24 (renumbered from 503.21):** Adds certain emergency situations that are required to be addressed in an emergency plan and a description of the essential functions that the CWS will continue to provide during an emergency;
- **Env-Dw 504.03(a)(7):** Adds a requirement that a PWS must have a maintenance schedule for water meters and instrumentation;
- **Env-Dw 504.05(a)(3)** Specifies that a waiver, if granted, can relieve the PWS from the flushing requirements for the distribution system;
- **Env-Dw 504.07(b) -** Adds a requirement that the owner of the PWS must select, size, install, and maintain water meters in accordance with certain specifications; and
- **Env-Dw 504.09(b) -** Revises the exemption from internal inspections for tanks 20,000 gallons or less in capacity, so that these smaller tanks will now need to be inspected internally every 5 years if they are 20 years or more in age.

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

The rules will affect any owner or operator of public water systems and privately owned redistribution systems.

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(s) Implemented
Env-Dw 503	RSA 485:1; RSA 485:10; RSA 485:11; RSA 485:43
Env-Dw 504	RSA 485:1; RSA 485:11; RSA 485:43

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

Name:	Holly Green	Title:	Rules Coordinator
Mailing Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-3114
		Fax#:	(603) 271-5171
		E-mail:	holly.h.green@des.nh.gov

The rules also can be viewed in PDF at the Public Comment Opportunities section of the NHDES website at <https://www.des.nh.gov/public-comment-opportunities> and selecting "Rulemaking"

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: **4:00 PM on Wednesday, January 17, 2024**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, January 9, 2024 at 10:00 AM**
Physical Location: **Conference Room (2nd floor), NH Department of Safety, 33 Hazen Drive, Concord, NH**
Electronic Access (if applicable): **N/A**

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

FIS # 23:273, dated 11/15/2023

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

When compared to the existing rules, the proposed rules will increase expenditures for political subdivisions.

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

There is no federal mandate for the proposed rules. However, the rules are part of the federal “guidelines” the Department must meet to maintain full funding from the federal government of the State’s Drinking Water State Revolving Fund capitalization grant (currently approximately \$8,000,000 per annum). Failure to readopt these rules could result in EPA withholding 20% of these funds, or approximately \$1,600,000.

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

The proposed rules require internal inspections for water storage tanks with a capacity of less than 20,000 gallons at least once every five (5) years. However, the Department offers inspection grants to political subdivisions to cover this cost. In addition, there will be a cost public water systems to provide water to customers while the tank is being inspected and cleaned. If the grant does not cover the inspection cost, and the local legislative body has not approved funding, administrative rules (Env-Dw 102.01) provide for an exemption. The Department notes that, most public water systems already inspect their tanks or have systems without a storage tank.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

Political subdivisions that own/operate water systems with storage tanks with a capacity of 20,000 gallons or less will incur the costs as noted in #3. There are no direct costs to state citizens.

C. To independently owned businesses:

None.

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

The rules modify the existing requirements that apply to public water systems and privately owned redistribution systems and many political subdivisions own public water systems. Municipal PWSs are eligible for grants that would fund a portion of new storage tank inspection requirements. However,

to the extent that the grant would not fully fund an additional expenditure and the local legislative body of the subdivision has not approved funding to comply with the rules, the political subdivision would be exempt from the requirements pursuant to Env-Dw 102.01. 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 additional local expenditures, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.