

SB 445 - AS INTRODUCED

2026 SESSION

26-2011

08/06

SENATE BILL **445**

AN ACT relative to adjudicative proceedings where there is a council or board with jurisdiction.

SPONSORS: Sen. Pearl, Dist 17; Sen. Gannon, Dist 23; Sen. McGough, Dist 11; Rep. Slottje, Hills. 13; Rep. Thibault, Merr. 25

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill changes the process for appeals where there is a council or board with jurisdiction.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT relative to adjudicative proceedings where there is a council or board with jurisdiction.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Criteria for Denial; Suspension or Revocation; Modification. Amend RSA 125-C:13, II and III
2 to read as follows:

3 II. The commissioner may suspend or revoke any permit or authorization issued hereunder
4 if~~[, following a hearing,]~~ the commissioner determines:

5 (a) That the permit holder or registrant has committed a violation of this chapter or any
6 rule, order, or permit conditions in force and applicable to it; or

7 (b) That emissions from the device or non-Title V source to which the permit applies,
8 alone or in conjunction with other sources of the same pollutants, presents an immediate danger to
9 the public health.

10 III. The commissioner may order modification of any source of air pollution holding a valid
11 permit issued under this chapter in the event that the commissioner determines~~[, following a
12 hearing]:~~

13 (a) That the device or non-Title V source to which the permit applies fails to meet
14 existing emission limits established by state or federal rule or regulation;

15 (b) That the device or non-Title V source is resulting or is reasonably likely to result in a
16 violation of an air quality standard in force.

17 2 Enforcement. Amend RSA 125-C:15, I-b to read as follows:

18 I-b. The commissioner of the department of environmental services~~[, after notice and
19 hearing pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$4,000 for each
20 offense upon any person who violates any provision of this chapter, any rule adopted pursuant to
21 this chapter, or any permit, compliance schedule, stop use order, or order of abatement, issued
22 pursuant to this chapter; or upon any person who makes or certifies a material false statement
23 relative to any document or information which is required to be submitted to the department
24 pursuant to this chapter or any rule adopted pursuant to this chapter. ~~[Rehearings and appeals
25 from a decision of the commissioner under this paragraph shall be in accordance with RSA 541.]~~
26 Any administrative fine imposed under this paragraph shall not preclude the imposition of further
27 penalties under this chapter. The proceeds of administrative fines imposed pursuant to this
28 paragraph shall be deposited in the general fund.

29 (a) *Appeals from a decision of the commissioner under this paragraph shall be*
30 *in accordance with RSA 21-O:11, IV* ~~[Notice and hearing prior to the imposition of an~~

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1 ~~administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the~~
2 ~~commissioner pursuant to RSA 541-A:16].~~

3 (b) The commissioner shall determine fines based on the following:

4 (1) For a minor deviation from a requirement causing minor potential for harm, the
5 fine shall be not less than \$100 and not more than \$2,000.

6 (2) For a minor deviation from a requirement causing moderate potential for harm,
7 the fine shall be not less than \$601 and not more than \$2,500.

8 (3) For a minor deviation from a requirement causing major potential for harm, the
9 fine shall be not less than \$851 and not more than \$3,000.

10 (4) For a moderate deviation from a requirement causing minor potential for harm,
11 the fine shall be not less than \$601 and not more than \$2,500.

12 (5) For a moderate deviation from a requirement causing moderate potential for
13 harm, the fine shall be not less than \$851 and not more than \$3,000.

14 (6) For a moderate deviation from a requirement causing major potential for harm,
15 the fine shall be not less than \$1,251 and not more than \$3,500.

16 (7) For a major deviation from a requirement causing minor potential for harm, the
17 fine shall be not less than \$851 and not more than \$3,000.

18 (8) For a major deviation from a requirement causing moderate potential for harm,
19 the fine shall be not less than \$1,251 and not more than \$3,500.

20 (9) For a major deviation from a requirement causing major potential for harm, the
21 fine shall be not less than \$1,501 and not more than \$4,000.

22 (c) The commissioner may assess an additional fine for repeat violations.

23 (d) Each day of violation shall constitute a separate offense.

24 3 Administrative Fines. Amend RSA 125-D:4 to read as follows:

25 125-D:4 Administrative Fines.

26 The commissioner of the department of environmental services~~[, after notice and hearing~~
27 ~~pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$4,000 for each offense
28 upon any person who violates any provision of this chapter, any rule adopted pursuant to this
29 chapter, or any permit or order issued pursuant to this chapter; or upon any person who makes or
30 certifies a material false statement relative to any document or information which is required to be
31 submitted to the department pursuant to this chapter or any rule adopted pursuant to this chapter.
32 ~~[Rehearings and appeals from a decision of the commissioner under this section shall be in~~
33 ~~accordance with RSA 541.]~~ Any administrative fine imposed under this section shall not preclude
34 the imposition of further penalties under this chapter. The proceeds of administrative fines imposed
35 pursuant to this section shall be deposited in the general fund.

36 I. *Appeals from a decision of the commissioner under this paragraph shall be in*
37 *accordance with RSA 21-O:11, IV* ~~[Notice and hearing prior to the imposition of an administrative~~

1 ~~fine shall be in accordance with RSA 541-A and procedural rules adopted by the commissioner~~
2 ~~pursuant to RSA 541-A:16].~~

3 II. The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b) and (d).

4 III. The commissioner may assess an additional fine for repeat violations.

5 4 Administrative Fines. Amend RSA 125-I:3-a to read as follows:

6 125-I:3-a Administrative Fines.

7 The commissioner of the department of environmental services~~[, after notice and hearing~~
8 ~~pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$4,000 for each offense
9 upon any person who violates any provision of this chapter, any rule adopted pursuant to this
10 chapter, or any permit or order issued pursuant to this chapter; or upon any person who makes or
11 certifies a material false statement relative to any document or information which is required to be
12 submitted to the department pursuant to this chapter or any rule adopted pursuant to this chapter.
13 ~~[Rehearings and appeals from a decision of the commissioner under this section shall be in~~
14 ~~accordance with RSA 541-]~~ Any administrative fine imposed under this section shall not preclude
15 the imposition of further penalties under this chapter. The proceeds of administrative fines imposed
16 pursuant to this section shall be deposited in the general fund.

17 I. ***Appeals from a decision of the commissioner under this section shall be in***
18 ***accordance with RSA 21-O:11, IV*** ~~[Notice and hearing prior to the imposition of an administrative~~
19 ~~fine shall be in accordance with RSA 541-A and procedural rules adopted by the commissioner~~
20 ~~pursuant to RSA 541-A:16].~~

21 II. The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b) and (d).

22 III. The commissioner may assess an additional fine for repeat violations.

23 5 Enforcement. Amend RSA 125-J:8, I-a to read as follows:

24 I-a. The commissioner of the department of environmental services~~[, after notice and~~
25 ~~hearing pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each
26 offense upon any person who violates any provision of this chapter, any rule adopted pursuant to
27 this chapter, or any permit, compliance schedule, stop use order, or order of abatement issued
28 pursuant to this chapter; or upon any person who makes or certifies a material false statement
29 relative to any document or information which is required to be submitted to the department
30 pursuant to this chapter or any rule adopted pursuant to this chapter. ~~[Rehearings and appeals~~
31 ~~from a decision of the commissioner under this paragraph shall be in accordance with RSA 541-]~~
32 Any administrative fine imposed under this paragraph shall not preclude the imposition of further
33 penalties under this chapter. The proceeds of administrative fines imposed pursuant to this
34 paragraph shall be deposited in the general fund.

35 (a) ***Appeals from a decision of the commissioner under this paragraph shall be***
36 ***in accordance with RSA 21-O:11, IV*** ~~[Notice and hearing prior to the imposition of an~~

1 ~~administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the~~
2 ~~commissioner pursuant to RSA 541-A:16].~~

3 (b) The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b).

4 (c) The commissioner may assess an additional fine for repeat violations.

5 6 Administrative Fines; Asbestos Management Control. Amend RSA 141-E:16 to read as
6 follows:

7 141-E:16 Administrative Fines.

8 I.(a) The commissioner~~[, after notice and hearing pursuant to RSA 541-A,]~~ may impose an
9 administrative fine not to exceed \$4,000 for each offense upon any person who violates any provision
10 of RSA 141-E:3 or any rule adopted by the commissioner under this chapter; or upon any person who
11 makes or certifies a material false statement relative to any document or information which is
12 required to be submitted to the department pursuant to this chapter or any rule adopted pursuant to
13 this chapter. ~~[Rehearings and appeals from a decision of the commissioner under this paragraph~~
14 ~~shall be in accordance with RSA 541.]~~ Any administrative fine imposed under this paragraph shall
15 not preclude the imposition of further penalties under this chapter. The proceeds of administrative
16 fines levied pursuant to this section shall be deposited in the fund established by RSA 141-E:12, II.

17 (b) ***Appeals from a decision of the commissioner under this paragraph shall be***
18 ***in accordance with RSA 21-O:11, IV*** ~~[Notice and hearing prior to the imposition of an~~
19 ~~administrative fine shall be in accordance with RSA 541-A and procedural rules adopted by the~~
20 ~~commissioner pursuant to RSA 541-A:16].~~

21 (c) The commissioner shall determine fines in accordance with RSA 125-C:15, I-b(b) and
22 (d).

23 (d) The commissioner may assess an additional fine for repeat violations.

24 II. Whenever a person licensed pursuant to RSA 141-E:10 or certified pursuant to RSA 141-
25 E:11 fails to pay an administrative fine as required by this section, the commissioner~~[, after notice~~
26 ~~and hearing pursuant to rules adopted under RSA 541-A,]~~ may deny, suspend, or revoke the license
27 or certificate or may issue an appropriate order.

28 7 Administrative Fines; Waste Management Division. Amend RSA 146-A:15, I to read as
29 follows:

30 I. The commissioner of the department of environmental services~~[, after notice and hearing~~
31 ~~pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$4,000 for each offense
32 upon any person who violates any provision of this chapter including any rule adopted under the
33 provisions of this chapter or any order or permit issued under this chapter. Each day of the violation
34 shall constitute a separate offense. ~~[Rehearings and appeals]~~ ***Appeals*** from a decision of the
35 commissioner under this paragraph shall be in accordance with ~~[RSA 541]~~ ***RSA 21-O:9, V***. Any
36 administrative fine imposed under this section shall not preclude the imposition of further penalties
37 under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to[:

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1 ~~(a) A]~~ **a** schedule of administrative fines which may be imposed under this section for
2 violations as provided in paragraph I.

3 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

4 8 Underground Storage Facility Permit Required. Amend RSA 146-C:4, I to read as follows:

5 I. No person shall own or operate an underground storage facility in this state without a
6 permit issued by the department. The permit to operate may be revoked ~~[in accordance with RSA~~
7 ~~541-A:30]~~ for just cause, including, but not limited to, the operation or ownership of an underground
8 storage facility in violation of the department's rules. The revocation shall not take effect until the
9 owner or operator has had an opportunity to be heard by the council, provided such request is made
10 within 20 days of the issuance of the department's decision to revoke the permit. Appeal of a
11 decision revoking a permit to operate shall be governed by RSA 21-O:14. Any appeal brought
12 pursuant to RSA 541 shall not stay a decision by the waste management council which affirms the
13 department's revocation of a permit.

14 9 Administrative Fines; Underground Storage Facilities. Amend RSA 146-C:10-a to read as
15 follows:

16 146-C:10-a Administrative Fines.

17 The commissioner of the department of environmental services~~[, after notice and hearing~~
18 ~~pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each offense
19 upon any person who violates any provision of this chapter including any rule adopted under the
20 provisions of this chapter. ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner
21 under this section shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:9, V**. Any administrative fine
22 imposed under this section shall not preclude the imposition of further penalties under this chapter.
23 The proceeds of administrative fines levied pursuant to this section shall be deposited by the
24 commissioner in the oil pollution control fund established under RSA 146-A. The commissioner shall
25 adopt rules, under RSA 541-A, relative to[:

26 ~~I. A]~~ **a** schedule of administrative fines which may be imposed under this section for
27 violations of this chapter as provided above ~~[; and~~

28 ~~H. Procedures for notice and hearing prior to the imposition of an administrative fine].~~

29 10 Administrative Fines; Hazardous Waste Management. Amend RSA 147-A:17-a, I to read as
30 follows:

31 I. The commissioner of the department of environmental services~~[, after notice and hearing~~
32 ~~pursuant to RSA 541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each offense
33 upon any person who violates any provision of this chapter including any rule adopted under the
34 provisions of this chapter. ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner
35 under this paragraph shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:9, V**. Any administrative
36 fine imposed under this section shall not preclude the imposition of further penalties under this
37 chapter. The commissioner shall adopt rules, under RSA 541-A, relative to[:

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1 ~~(a) A]~~ a schedule of administrative fines which may be imposed under this paragraph for
2 violations of this chapter as provided above.

3 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

4 11 Approval, Suspension, or Revocation. Amend the introductory paragraph of RSA 149-M:12,
5 II to read as follows:

6 II. The department may suspend or revoke any permit issued under this chapter if~~;~~
7 ~~following an opportunity for hearing,]~~ it determines that:

8 12 Administrative Fines; Solid Waste Management. Amend RSA 149-M:16 to read as follows:
9 149-M:16 Administrative Fines.

10 The commissioner~~;~~ ~~after notice and hearing pursuant to RSA 541-A,]~~ may impose an
11 administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision
12 of this chapter, including any rule adopted under the provisions of this chapter. ~~[Rehearings and~~
13 ~~appeals]~~ **Appeals** from a decision of the commissioner under this section shall be in accordance with
14 ~~[RSA 541]~~ **RSA 21-O:9, V**. Any administrative fine imposed under this section shall not preclude
15 the imposition of further penalties under this chapter. The commissioner shall adopt rules, under
16 RSA 541-A, relative to~~;~~

17 ~~I. A]~~ a schedule of administrative fines which may be imposed under this section for
18 violations of this chapter as provided above.

19 ~~[II. Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

20 13 Enforcement; Solid Waste Management. Amend RSA 149-M:38, VI to read as follows:

21 VI. The commissioner~~;~~ ~~after notice and hearing pursuant to RSA 541-A,]~~ may impose an
22 administrative fine not to exceed \$2,000 for each violation upon any person who violates any
23 provision of this subdivision, any rule adopted under this subdivision, any condition in any
24 exemption granted under this subdivision, or any order issued pursuant to this subdivision or who
25 makes or certifies a material false statement relative to any certificate of compliance required by
26 this subdivision. ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner under this
27 paragraph shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:9, V**. Any administrative fine imposed
28 under this paragraph shall not preclude the imposition of other penalties under this chapter.

29 14 Revocation or Suspension of Certificate; Water Division. Amend RSA 332-E:9, I to read as
30 follows:

31 I. If the department receives information which indicates that good cause exists to suspend
32 or revoke the certificate of an individual operator, the department shall ~~[proceed to]~~ suspend or
33 revoke the certificate in accordance ~~[with RSA 541-A:30]~~.

34 15 Penalties; Water Division. Amend RSA 482:89, V to read as follows:

35 V. The commissioner~~;~~ ~~after notice and hearing pursuant to RSA 541-A,]~~ may impose upon
36 any person who violates any provision of this chapter, as specified in paragraph I, an administrative
37 fine not to exceed \$2,000 for each violation in addition to other remedies and penalties provided

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1 under this chapter. ~~[The department shall commence a proceeding under this paragraph against~~
2 ~~any person who does not respond within 45 days of receipt of a written order, directive, or any notice~~
3 ~~of needed maintenance, repair, or reconstruction issued by the department. Rehearings and~~
4 ~~appeals]~~ **Appeals** under this paragraph shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:7, IV**. The
5 commissioner shall adopt rules, under RSA 541-A, relative to:

6 (a) A schedule of administrative fines which may be imposed under this paragraph for
7 violation of this chapter as specified in paragraph I; and

8 (b) Procedures for notice and hearing prior to the imposition of an administrative fine.

9 16 Refusal; Revocation; Suspension; Disciplinary Action; Water Division. Amend RSA 482-B:8
10 to read as follows:

11 482-B:8 Refusal; Revocation; Suspension~~[- Disciplinary Action]~~.

12 ~~[F.]~~ A license may be refused, or a license duly issued may be suspended or revoked, or the
13 renewal of such license refused by the board on the board's own investigation and motion or upon
14 motion or written complaint of an interested party if the board has good and sufficient reason to
15 believe or finds that the applicant for or the holder of such a license has:

16 ~~[(a)]~~ **I.** Made a material misstatement in the application for a license or any application for
17 renewal of such license.

18 ~~[(b)]~~ **II.** Obtained the license through willful fraud or misrepresentation.

19 ~~[(c)]~~ **III.** Demonstrated incompetency to act as a water well contractor or pump installer as
20 determined by the water well board.

21 ~~[(d)]~~ **IV.** Been guilty of willful failure to comply with the provisions of this chapter or rules
22 adopted under RSA 482-B:4.

23 ~~[(e)]~~ **V.** Refused to file reports as required under RSA 482-B:10.

24 ~~[(f)]~~ **VI.** Been found guilty, by the board or by a court of competent jurisdiction of any fraud,
25 deceit, gross negligence, incompetence, or misconduct in the industry, operations, or business of
26 water well construction or pump installations.

27 ~~[H.]~~ The department may undertake one or more of the following disciplinary actions upon
28 the department's own investigation and motion or upon written complaint and motion of an
29 interested party if the department has good and sufficient reason to believe or finds that the
30 applicant for or the holder of such a license has violated the provisions of RSA 482-B and the rules of
31 the board:

32 (a) ~~Written reprimand.~~

33 (b) ~~Administrative order.~~

34 (c) ~~Administrative fine.~~

35 (d) ~~Requiring the licensee to participate in a program of continuing education in the area~~
36 ~~or areas in which the licensee has been found deficient.]~~

37 17 Hearing; Water Division. Amend RSA 482-B:9 to read as follows:

1 482-B:9 Hearing.

2 I. Before taking any action under RSA 482-B:8, the board [~~or department~~] shall give notice
3 of its intention to do so by certified mail to the person against whom the proposed action is to be
4 taken. Upon receipt of such notice, the person affected may within 30 days request a hearing. If a
5 hearing is requested, the board [~~or department~~] shall not act until such hearing is completed.

6 II. Hearings held by the board shall be held in the county in which the person affected has
7 his or her place of business or in the office of the board, whichever the board may decide. At least 10
8 days prior to the date of hearing, the board shall send written notice of the time and place of such
9 hearing to the applicant for, or holder of, such license by certified mail to the last known address of
10 such person. The testimony presented and the proceedings of such hearing shall be recorded and
11 preserved as the records of the board. The board shall as soon after the hearing as possible, and not
12 later than 90 days after the date of such hearing, make its findings and determination on the license
13 and shall send a copy of its decision to each interested party by certified mail return receipt
14 requested or by personal service. Revocation or suspension of a license shall be effective upon
15 receipt of such board decision.

16 III. Appeal from a decision of the board may be made in accordance with RSA 541.

17 [~~IV. Hearings held by the department shall be held in accordance with the rules of practice
18 and procedure of the department.~~]

19 18 Enforcement and Penalties; Water Division. Amend RSA 482-B:16, II to read as follows:

20 II. The commissioner [~~after notice and hearing pursuant to RSA 541-A,~~] may impose an
21 administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision
22 of this chapter, any rule adopted under this chapter, or any license or approval issued under this
23 chapter, or who makes or certifies a material false statement relative to any document required by
24 this chapter. The person may appeal the decision to the board within 30 days of the date of the
25 decision. Following an appeal hearing, the board may uphold or overturn the decision or impose a
26 lesser or greater fine. Rehearings and appeals from a decision of the board under this paragraph
27 shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not
28 preclude the imposition of further penalties under this chapter. The commissioner shall adopt rules
29 subject to the approval of the water well board, under RSA 541-A, relative to[:

30 (a) ~~A~~ a schedule of administrative fines which may be imposed under this paragraph[;

31 and

32 (b) ~~Procedures for notice and hearing prior to the imposition of an administrative fine~~].

33 19 Establishment of Protected Instream Flows; Water Division. Amend RSA 483:9-c, X to read
34 as follows:

35 X. Any party who is aggrieved by a determination establishing such protected instream
36 flows may [~~petition the commissioner for a hearing to review~~] **appeal** such determination **pursuant**
37 **to RSA 21-O:7, IV** within 30 days of the date the determination is issued. [~~The filing of such~~

1 ~~petition shall stay the implementation of the determination until a final decision has been rendered~~
2 ~~on the petition or an appeal taken pursuant to RSA 541.]~~

3 20 Variances and Exemptions; Water Division. Amend RSA 485:42 to read as follows:

4 485:42 Variances and Exemptions.

5 I. The department may~~[, after notice and opportunity for hearing,]~~ grant one or more
6 variances from an applicable state drinking water regulation to a public water system if the variance
7 will not result in an unreasonable risk to the public health, and if:

8 (a) Because of the characteristics of the raw water sources reasonably available to the
9 system, the system cannot meet the maximum contaminant levels of such drinking water regulation
10 despite application of the best available technology, treatment techniques or other means. The
11 department's finding of the best available technology treatment, treatment technique or other means
12 may vary depending upon the number of persons served by the system or for other physical
13 conditions related to engineering feasibility and cost of compliance with maximum contaminant
14 levels as considered appropriate by the department; or

15 (b) Where a specified treatment technique for a contaminant is required by the state
16 drinking water regulations, the system demonstrates to the department's satisfaction that such
17 treatment technique is not required to protect the public health because of the nature of the raw
18 water source. Variances may be conditioned on monitoring, testing, analyzing or other requirements
19 to ensure the protection of the public health, and variances granted under subparagraph (a) shall
20 include a compliance schedule under which the public water system will meet each contaminant
21 level for which a variance is granted as expeditiously as is feasible.

22 II. The department may~~[, after notice and opportunity for hearing,]~~ grant one or more
23 exemptions from an applicable maximum contaminant level or treatment technique in the state
24 drinking water rules to a public water system if:

25 (a) The exemption will not result in an unreasonable risk to the public health;

26 (b) The public water system is unable to comply with the rule due to compelling factors,
27 which may include economic factors; and

28 (c) The public water system was in operation on the earliest effective date, under
29 present or prior law, of the contaminant level or treatment technique requirement. Each exemption
30 shall be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection
31 of the public health, and shall include a compliance schedule under which the public water system
32 will meet each contaminant level or treatment technique for which an exemption is granted as
33 expeditiously as is feasible, but not later than 12 months after the date of issuance of the exemption.
34 The department may extend the final date for compliance provided in any schedule required under
35 this section for a period not to exceed 3 years after the date of the issuance of the exemption if the
36 public water system establishes that:

1 (1) The system cannot meet the standard without capital improvements which
2 cannot be completed within the period of such exemption;

3 (2) In the case of a system which needs financial assistance for the necessary
4 improvements, the system has entered into an agreement to obtain such financial assistance; or

5 (3) The system has entered into an enforceable agreement to become part of a
6 regional public water system; and the system is taking all practicable steps to meet the standards.
7 If a system serves fewer than 500 service connections and needs financial assistance for necessary
8 improvements, an exemption granted under subparagraph (c)(1) or (c)(2) of this subparagraph may
9 be renewed for one or more additional 2-year periods, if the system establishes that it is taking all
10 practicable steps to meet the requirements of any compliance schedule established under this
11 section.

12 ***III. Appeals from a decision of the department under this paragraph shall be in***
13 ***accordance with RSA 21-O:7, IV.***

14 21 Enforcement and Penalties; Water Division. RSA 485:58, I is repealed and reenacted to read
15 as follows:

16 I. The department may issue an administrative order to any person who violates any
17 provision of this chapter, any rule adopted under this chapter, or any license or approval issued
18 under this chapter or who makes or certifies a material false statement relative to any document
19 required by this chapter. The department may order the person to cease and desist from the
20 violation and may require such corrective measures as are necessary to correct the violation.
21 Appeals from a decision of the department shall be in accordance with RSA 21-O. The superior court
22 shall place any action filed by the department to enforce an order under this section at the top of its
23 calendar of cases and shall provide an expeditious hearing on such order.

24 22 Enforcement and Penalties; Water Division. Amend RSA 485:58, V to read as follows:

25 V. The commissioner of environmental services~~[, after notice and hearing pursuant to RSA~~
26 ~~541-A,]~~ may impose an administrative fine not to exceed \$4,000 for each offense upon any person
27 who violates any provision of this chapter including any rule adopted under the provisions of this
28 chapter or any order or permit issued under this chapter. Each day of violation shall constitute a
29 separate offense. ~~[Rehearings and appeals]~~ ***Appeals*** from a decision of the commissioner under this
30 paragraph shall be in accordance with ~~[RSA 541]~~ ***RSA 21-O:7, IV***. Any administrative fine imposed
31 under this section shall not preclude the imposition of further penalties under this chapter. The
32 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
33 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[:

34 (a) ~~A]~~ a schedule of administrative fines which may be imposed under this paragraph for
35 violations of this chapter as provided above.

36 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

37 23 Application; Special Fund; Water Division. Amend RSA 485-A:7-a, I to read as follows:

1 I. Any operator of a wastewater treatment plant seeking certification or to increase his level
2 of certification shall file an application with the [~~certification committee~~] **department** at least 6
3 weeks prior to the next examination date on a form provided by the department.

4 24 Issuance of Certificates; Water Division. Amend RSA 485-A:7-c to read as follows:

5 485-A:7-c Issuance of Certificates.

6 I. Upon satisfactory completion by an applicant of the established requirements, the
7 department shall issue to the applicant a suitable certificate designating the applicant's competency.
8 The certificate shall indicate the level of operation for which the operator is qualified. The certificate
9 shall remain in effect [~~for~~] **until December 31 or June 30, but not more than** 2 years from the
10 date of issuance.

11 II. Certificates shall be renewed biennially **and shall expire on the date printed on the**
12 **certificate**. All renewal applications shall be accompanied by a \$100 renewal fee, which shall be
13 deposited pursuant to RSA 485-A:7-a, II.

14 III. Certificates may be issued, upon payment of the \$100 fee, without examination, for a
15 comparable classification to any person actively seeking employment in New Hampshire who holds a
16 certificate issued by the appropriate certification agency of any federal, state, interstate, territorial,
17 or other jurisdiction if, in the judgment of the [~~certification committee~~] **department**, the certification
18 requirements of the jurisdiction granting such certification do not conflict with the department's
19 rules and are not less stringent than rules adopted under this subdivision. The fee shall be
20 deposited pursuant to RSA 485-A:7-a, II.

21 25 Penalties and Other Relief; Failure to Provide Facility; Water Division. Amend RSA 485-
22 A:22, V to read as follows:

23 V. The commissioner of environmental services[~~, after notice and hearing pursuant to RSA~~
24 ~~541-A,~~] may impose an administrative fine not to exceed \$2,000 for each offense upon any person
25 who violates any provision of this subdivision or, RSA 485-A:4-6, any rule adopted under this
26 subdivision or RSA 485-A:4-6, or any permit issued under the authority of this subdivision or RSA
27 485-A:4-6. [~~Rehearings and appeals~~] **Appeals** from a decision of the commissioner under this
28 paragraph shall be in accordance with [~~RSA 541~~] **RSA 21-O:7, IV**. Any administrative fine imposed
29 under this section shall not preclude the imposition of further penalties under this chapter. The
30 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
31 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[~~:~~

32 (a) ~~A~~] **a** schedule of administrative fines which may be imposed under this paragraph for
33 violations of this chapter, rules adopted under this chapter, and permits issued under this chapter,
34 as provided above.

35 [~~(b) Procedures for notice and hearing prior to the imposition of an administrative fine.~~]

36 26 Penalty; Administrative Fines; Water Division. Amend RSA 485-A:28, II to read as follows:

1 II. The commissioner~~[, after notice and hearing,]~~ may impose an administrative fine not to
 2 exceed \$2,000 for each offense upon any person who violates any provision of this subdivision, any
 3 rule adopted under this subdivision, or any license or approval issued under this subdivision.
 4 ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner under this paragraph shall
 5 be in accordance with ~~[RSA 541]~~ **RSA 21-O:7, IV**. Any administrative fine imposed under this
 6 section shall not preclude the imposition of further penalties under this chapter. The proceeds of
 7 administrative fines levied pursuant to this paragraph shall be deposited in the general fund. The
 8 commissioner shall adopt rules, under RSA 541-A, relative to[~~;~~

9 ~~(a) A]~~ a schedule of administrative fines which may be imposed under this paragraph[~~;~~
 10 ~~and~~

11 ~~(b) Procedures for notice and hearing prior to the imposition of an administrative fine].~~

12 27 Permit Eligibility; Exemption; Water Division. Amend RSA 485-E:35, I(a) to read as follows:

13 I.(a) All applications, plans, and specifications submitted in accordance with this chapter for
 14 subsurface sewage or waste disposal systems shall be prepared and signed by the individual who is
 15 directly responsible for them and who has a permit issued by the department to perform the work.
 16 The department shall issue a permit to any individual who applies to the department, pays a fee of
 17 \$80, and demonstrates a sound working knowledge of the procedures and practices required in the
 18 site evaluation, design, and operation of subsurface sewage or waste disposal systems. The
 19 department shall require an oral or written examination or both to determine who may qualify for a
 20 permit. Permits shall be issued from January 1 and shall expire December 31 of every other year,
 21 subject to the grace periods specified in subparagraphs (c) and (d). Permits shall be renewable upon
 22 proper application, payment of a biennial permit fee of \$80, and documentation of compliance with
 23 the continuing education requirement of subparagraph (b). A permit issued to any individual may
 24 be suspended, revoked or not renewed only for just cause~~[and after the permit holder has had a full~~
 25 ~~opportunity to be heard by the department]~~. An appeal from a decision to revoke, suspend, or not
 26 renew a permit may be taken pursuant to ~~[RSA 541]~~ **RSA 21-O:7, IV**. All fees shall be deposited in
 27 the subsurface systems fund established in RSA 485-A:30, I-b.

28 28 System Installer Permit; Water Division. Amend RSA 485-A:36, I(a) to read as follows:

29 I.(a) No individual shall engage in the business of installing subsurface sewage or waste
 30 disposal systems under this subdivision without first obtaining an installer's permit from the
 31 department. The permit holder shall be responsible for installing the subsurface sewage or waste
 32 disposal system in strict accordance with the approved plan. The department shall issue an
 33 installer's permit to any individual who submits an application provided by the department, pays a
 34 fee of \$80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read
 35 approved waste disposal plans. The department shall require an oral or written examination or both
 36 to determine who may qualify for an installer's permit. Permits shall be issued from January 1 and
 37 shall expire December 31 of every other year. Permits shall be renewable upon proper application,

1 payment of a biennial permit fee of \$80, and documentation of compliance with the continuing
2 education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not
3 renewed for just cause, including, but not limited to, the installation of waste disposal systems in
4 violation of this subdivision or the refusal by a permit holder to correct defective work. The
5 department shall not suspend, revoke or refuse to renew a permit except for just cause~~[until the~~
6 ~~permit holder has had an opportunity to be heard by the department]~~. An appeal from such decision
7 to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be
8 deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

9 29 Reconsideration and Appeal Procedure; Water Division. Amend the introductory paragraph
10 of RSA 485-A:40 to read as follows:

11 If any person submitting plans and specifications to the department for its approval is aggrieved
12 or dissatisfied with its decision, he *or she* ~~[may file a motion for reconsideration and]~~ shall, *in*
13 *addition to any rights to appeal a department decision under RSA 21-O:14*, have a right of
14 appeal from the decision of the department in the following manner:

15 30 Reconsideration and Appeal Procedure; Water Division. Amend RSA 485-A:40, IV to read as
16 follows:

17 IV. Within 30 days ~~[after the application for reconsideration is denied, or if the application is~~
18 ~~granted, then within 30 days after the decision on such reconsideration]~~ *of the decision*, the
19 applicant may appeal by petition to the superior court.

20 31 Penalties; Water Division. Amend RSA 485-A:43, V to read as follows:

21 V. The commissioner of environmental services~~[after notice and hearing pursuant to RSA~~
22 ~~541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each offense upon any person
23 who violates any provision of this subdivision including any rule adopted under the provisions of this
24 chapter. ~~[Rehearings and appeals]~~ *Appeals* from a decision of the commissioner under this
25 paragraph shall be in accordance with ~~[RSA 541]~~ *RSA 21-O:7, IV*. Any administrative fine imposed
26 under this section shall not preclude the imposition of further penalties under this subdivision. The
27 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
28 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[:

29 (a) A] a schedule of administrative fines which may be imposed under this paragraph for
30 violations of this subdivision as provided above.

31 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

32 32 Enforcement and Penalties; Water Division. Amend RSA 485-A:54, V to read as follows:

33 V. The commissioner of environmental services~~[after notice and hearing pursuant to RSA~~
34 ~~541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each offense upon any person
35 who violates any provision of this subdivision, any rule adopted under this subdivision, or any
36 permit or contract entered into under the authority of this subdivision. ~~[Rehearings and appeals]~~
37 *Appeals* from a decision of the commissioner under this paragraph shall be in accordance with [RSA

1 ~~541]~~ ***RSA 21-O:7, IV.*** Any administrative fine imposed under this section shall not preclude the
2 imposition of further penalties under this subdivision. The proceeds of administrative fines levied
3 pursuant to this paragraph shall be deposited by the department in the replacement fund
4 established pursuant to RSA 485-A:51. The commissioner shall adopt rules, under RSA 541-A,
5 relative to[:

6 ~~(a) A]~~ ***a*** schedule of administrative fines which may be imposed under this paragraph for
7 violations of this chapter as provided above.

8 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

9 33 Definitions; Director; Division; Water Division. Amend RSA 485-C:2, VI-VII to read as
10 follows:

11 VI. "Director" means the director of the division of water ~~[supply and pollution control]~~,
12 department of environmental services.

13 VII. "Division" means the division of water ~~[supply and pollution control]~~, department of
14 environmental services.

15 34 Administrative Fines; Water Division. Amend RSA 485-C:18 to read as follows:

16 485-C:18 Administrative Fines.

17 The commissioner~~[, after notice and hearing pursuant to RSA 541 A,]~~ may impose an
18 administrative fine not to exceed \$4,000 for each offense upon any person who violates any provision
19 of this chapter or any rule, permit or order adopted or issued under this chapter. Each day of
20 violation shall constitute a separate offense. ~~[Rehearings and appeals]~~ ***Appeals*** from a decision of
21 the commissioner under this section shall be in accordance with ~~[RSA 541]~~ ***RSA 21-O:7, IV.*** Any
22 administrative fine imposed under this section shall not preclude the imposition of further penalties
23 under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to[:

24 ~~I. A schedule of administrative fines which may be imposed under this section for violation~~
25 ~~of this chapter.~~

26 ~~II. Procedures for notice and hearing prior to the imposition of an administrative fine.]~~ ***a***
27 ***schedule of administrative fines which may be imposed under this section for violation of***
28 ***this chapter.***

29 35 Administrative Fines; Water Division. Amend RSA 486-A:14, I to read as follows:

30 I. The commissioner of the department~~[, after notice and hearing pursuant to RSA 541 A,]~~
31 may impose an administrative fine not to exceed \$500 for each offense upon any person who violates
32 the reporting requirement of RSA 486-A:7, II(e). ~~[Rehearings and appeals]~~ ***Appeals*** from a decision
33 of the commissioner under this paragraph shall be in accordance with ~~[RSA 541]~~ ***21-O:7, IV.*** The
34 commissioner shall adopt rules, under RSA 541-A, relative to procedures for notice and hearing prior
35 to the imposition of an administrative fine.

36 36 Penalty; Administrative Fines; Water Division. Amend RSA 487:7, II to read as follows:

1 II. The commissioner of environmental services~~[, after notice and hearing pursuant to RSA~~
2 ~~541-A,~~] may impose an administrative fine not to exceed \$2,000 for each offense, upon any person
3 who violates any provision of this chapter, any lawful rule of the department adopted under this
4 chapter, or any lawful order issued by the department pursuant to this chapter. ~~[Rehearings and~~
5 ~~appeals]~~ **Appeals** from a decision of the commissioner under this paragraph shall be in accordance
6 with ~~[RSA 541]~~ **RSA 21-O:7, IV**. Any administrative fine imposed under this section shall not
7 preclude the imposition of further penalties under this chapter. The proceeds of administrative fines
8 levied pursuant to this paragraph shall be deposited by the department in the general fund. The
9 commissioner shall adopt rules, under RSA 541-A, relative to~~;~~

10 (a) ~~A]~~ a schedule of administrative fines which may be imposed under this paragraph for
11 violations of this chapter.

12 ~~[(b) Procedures for notice and hearing prior to the imposition of an administrative fine.]~~

13 37 Administrative Fines; Water Division. Amend RSA 488:8, I-II to read as follows:

14 I. The commissioner~~[, after notice and hearing pursuant to RSA 541-A,~~] may impose an
15 administrative fine not to exceed \$4,000 for each offense upon any person who knowingly:

16 (a) Violates any provision of this chapter or any rule or order adopted or issued under it.

17 (b) Makes any material false statement in any document required to be filed or
18 maintained.

19 (c) Renders inaccurate, falsifies, or tampers with any monitoring device or method.

20 II. ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner under this section
21 shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:7, IV**.

22 38 Administration and Enforcement; Water Division. Amend RSA 489-C:5, III to read as
23 follows:

24 III. The commissioner~~[, after notice and hearing pursuant to RSA 541-A,~~] may revoke the
25 certification of any person who violates this chapter. ~~[Rehearings and appeals]~~ **Appeals** relating to
26 revocation shall be governed by ~~[RSA 541]~~ **RSA 21-O:7, IV**.

27 39 Definitions; Division; Wetlands Council. Amend RSA 482-A:2, II to read as follows:

28 II. "Division" means the division of water ~~[resources]~~, department of environmental services.

29 40 Excavating and Dredging Permit; Certain Exemptions; Wetlands Council. Amend RSA 482-
30 A:3, XIX to read as follows:

31 XIX. The department shall issue a culvert maintainer certificate to any individual who
32 submits an application provided by the department, and has satisfactorily completed the program in
33 accordance with paragraphs XVII and XVIII. Initial certificates shall be valid through December 31
34 of the year following the year of issue. Renewal certificates shall be valid from January 1 through
35 December 31 of every other year. Permits shall be renewable upon proper application, and
36 documentation of compliance with the continuing education requirement of paragraph XVIII. The
37 installer's permit may be suspended, revoked, or not renewed for just cause, including, but not

1 limited to, the installation of culverts in violation of this chapter or the refusal by a permit holder to
2 correct defective work. The department shall not suspend, revoke, or refuse to renew a permit
3 except for just cause [~~until the permit holder has had an opportunity to be heard by the department~~].
4 An appeal from such decision to revoke, suspend, or not renew a permit may be taken pursuant to
5 RSA 21-O:14.

6 41 Excavating and Dredging Permit; Certain Exemptions; Wetlands Council. Amend RSA 482-
7 A:3, XX(c) to read as follows:

8 (c) The department may revoke a certificate for good cause after notification to the
9 certificate holder [~~and opportunity for an adjudicative proceeding under RSA 541-A:31 and rules~~
10 ~~adopted by the department~~]. **An appeal from such decision to revoke, suspend, or not renew a**
11 **permit may be taken pursuant to RSA 21-O:5-a, V.**

12 42 Administrative Fine; Wetlands Council. Amend RSA 482-A:13 to read as follows:
13 482-A:13 Administrative Fine.

14 The commissioner[~~, after notice and hearing in accordance with the procedures set forth in RSA~~
15 ~~541-A,~~] is empowered to impose an administrative fine of up to \$5,000 for each violation, irrespective
16 of the duration of violation, upon any person who violates any provision of this chapter. This fine is
17 appealable under [~~RSA 541~~] **RSA 21-O:5-a, V.** Any administrative fine imposed under this section
18 will not preclude the imposition of further penalties under this chapter. The proceeds of
19 administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized
20 in RSA 482-A:14, III.

21 43 Penalties; Wetlands Council. Amend RSA 483-B:18, III(b) to read as follows:

22 (b) The commissioner[~~, after notice and hearing pursuant to RSA 541-A,~~] may impose an
23 administrative fine of up to \$5,000 for each offense upon any person who violates this chapter.
24 [~~Rehearings and appeals~~] **Appeals** relating to such fines shall be governed by [~~RSA 541~~] **RSA 21-**
25 **O:5-a, V.** Imposition of an administrative fine under this section shall not preclude the imposition of
26 further civil penalties under this chapter.

27 44 Attorney General; Deputy Associates; Assistants. Amend RSA 21-M:3, VIII(a) to read as
28 follows:

29 (a) [~~Be an attorney qualified by education~~] **Have a minimum of a juris doctor degree**
30 **from an accredited college or university** and **have** experience in the conduct of administrative
31 adjudicative hearings and the application of law to facts[~~, preferably a retired justice of the superior~~
32 ~~or supreme court~~]; and

33 45 Administrative Appeals. Amend RSA 21-O:14, I to read as follows:

34 I.(a) For purposes of this chapter, "department permitting decision" means:

35 (1) The department's final action on an application or other request for a license as
36 defined in RSA 541-A:1, VIII, whether the action to accept, grant in whole or in part with or without
37 conditions, or deny the application or request and whether the action is taken by the commissioner

1 or by the department official who has statutory authority to take such final action or to whom the
2 commissioner has properly delegated the authority to take such final action.

3 **(2) *The revocation of or the refusal to renew a license as defined in RSA 541-***
4 ***A:1, VIII based on the permit holder's non-compliance with the statute, rules, or terms and***
5 ***conditions of the license or on other good or just cause as defined in rules adopted relative***
6 ***to the license.***

7 (b) For purposes of this section, "department enforcement decision" means:

8 (1) The issuance of an administrative order issued under specific statutory authority
9 for such an order, whether described as an order, an administrative order, a cease and desist order, a
10 notice of violation and order of abatement, or other similar name, which specifies the facts and law
11 that support the department's determination that one or more violations are occurring or have
12 occurred and orders the recipient to cease on-going violations and to take such remediation actions
13 as are necessary to come into compliance with applicable requirements.

14 (2) ~~[The revocation of or the refusal to renew a license as defined in RSA 541-A:1,~~
15 ~~VIII based on the permit holder's non-compliance with the statute, rules, or terms and conditions of~~
16 ~~the license or on other good or just cause as defined in rules adopted relative to the license.]~~

17 ***Imposition of an administrative fine, pursuant to specific statutory authority for such an***
18 ***administrative fine and any applicable administrative rules or schedules, by way of a***
19 ***notice of administrative fine or fines which specifies the facts and law that support the***
20 ***commissioner's determination that one or more violations are occurring or have occurred***
21 ***which should be penalized with an appropriate administrative fine.***

22 (c) "Department decision" means a department permitting decision[.]; a department
23 enforcement decision, ***including the commissioner's decision to impose an administrative***
24 ***fine***; and any other decision made by the department that is expressly appealable to a council under
25 the statute granting authority to the department to make the decision. The term does not include
26 rulemaking or an agency declaratory ruling as provided for in RSA 541-A.

27 46 New Paragraph; Agency Action Against Licensees. Amend RSA 541-A:30 by inserting after
28 paragraph III the following new paragraph:

29 IV. An agency shall be exempt from the requirements in this chapter to provide for an
30 adjudicative proceeding prior to making a final decision, if such final decision is subject to appeal to
31 a council or board with jurisdiction over such agency, or divisions thereof, that provides for notice
32 and an opportunity to be heard.

33 47 Repeal. The following are repealed:

34 I. RSA 141-E:4, XIV, relative to procedures for notice and hearing concerning asbestos
35 management and control.

36 II. RSA 149-M:7, XI, relative to procedures for notice and hearing concerning solid waste
37 management.

1 III. RSA 149-M:37, IV, relative to procedures for notice and hearing concerning solid waste
2 management.

3 IV. RSA 485-A:2, I-b, relative to the definition of certification committee.

4 V. RSA 485-A:40, I, relative to reconsideration of certain departmental decisions relative to
5 sewage disposal systems.

6 VI. RSA 485-A:40, II, relative to certain appeals of certain departmental decisions relative to
7 sewage disposal systems.

8 VII. RSA 485-A:40, III, relative to the granting of motions for reconsideration of certain
9 departmental decisions relative to sewage disposal systems.

10 VIII. RSA 488:9, VI, relative to procedures for notice and hearing prior to the imposition of
11 an administrative fine relative to water management.

12 IX. RSA 21-M:3, VIII-a, relative the appointment of hearing officers.

13 48 Effective Date. This act shall take effect 60 days after its passage.