

SB 445 - AS AMENDED BY THE SENATE

03/26/2026 1126s

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 struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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~~

SB 445 - AS AMENDED BY THE SENATE

- Page 2 -

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~~

SB 445 - AS AMENDED BY THE SENATE

- Page 3 -

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~~

SB 445 - AS AMENDED BY THE SENATE

- Page 4 -

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[:

SB 445 - AS AMENDED BY THE SENATE

- Page 5 -

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[:

SB 445 - AS AMENDED BY THE SENATE
- Page 6 -

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

SB 445 - AS AMENDED BY THE SENATE
- Page 7 -

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~~

SB 445 - AS AMENDED BY THE SENATE

- Page 9 -

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 RSA 485:58, I is repealed and reenacted to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

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

13 21 Enforcement and Penalties; Water Division. Amend RSA 485:58, V to read as follows:

14 V. The commissioner of environmental services~~[, after notice and hearing pursuant to RSA~~
15 ~~541-A,~~] may impose an administrative fine not to exceed \$4,000 for each offense upon any person
16 who violates any provision of this chapter including any rule adopted under the provisions of this
17 chapter or any order or permit issued under this chapter. Each day of violation shall constitute a
18 separate offense. ~~[Rehearings and appeals]~~ **Appeals** from a decision of the commissioner under this
19 paragraph shall be in accordance with ~~[RSA 541]~~ **RSA 21-O:7, IV**. Any administrative fine imposed
20 under this section shall not preclude the imposition of further penalties under this chapter. The
21 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
22 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[:

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

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

26 22 Application; Special Fund; Water Division. Amend RSA 485-A:7-a, I to read as follows:

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

30 23 Issuance of Certificates; Water Division. Amend RSA 485-A:7-c to read as follows:

31 485-A:7-c Issuance of Certificates.

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

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

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

11 24 Penalties and Other Relief; Failure to Provide Facility; Water Division. Amend RSA 485-
 12 A:22, V to read as follows:

13 V. The commissioner of environmental services~~[, after notice and hearing pursuant to RSA~~
 14 ~~541-A,]~~ may impose an administrative fine not to exceed \$2,000 for each offense upon any person
 15 who violates any provision of this subdivision or, RSA 485-A:4-6, any rule adopted under this
 16 subdivision or RSA 485-A:4-6, or any permit issued under the authority of this subdivision or RSA
 17 485-A:4-6. ~~[Rehearings and appeals]~~ *Appeals* from a decision of the commissioner under this
 18 paragraph shall be in accordance with ~~[RSA 541]~~ *RSA 21-O:7, IV*. Any administrative fine imposed
 19 under this section shall not preclude the imposition of further penalties under this chapter. The
 20 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
 21 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[;

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

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

26 25 Penalty; Administrative Fines; Water Division. Amend RSA 485-A:28, II to read as follows:

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

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

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

SB 445 - AS AMENDED BY THE SENATE

- Page 11 -

1 26 Permit Eligibility; Exemption; Water Division. Amend RSA 485-A:35, I(a) to read as
2 follows:

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

18 27 System Installer Permit; Water Division. Amend RSA 485-A:36, I(a) to read as follows:

19 I.(a) No individual shall engage in the business of installing subsurface sewage or waste
20 disposal systems under this subdivision without first obtaining an installer's permit from the
21 department. The permit holder shall be responsible for installing the subsurface sewage or waste
22 disposal system in strict accordance with the approved plan. The department shall issue an
23 installer's permit to any individual who submits an application provided by the department, pays a
24 fee of \$80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read
25 approved waste disposal plans. The department shall require an oral or written examination or both
26 to determine who may qualify for an installer's permit. Permits shall be issued from January 1 and
27 shall expire December 31 of every other year. Permits shall be renewable upon proper application,
28 payment of a biennial permit fee of \$80, and documentation of compliance with the continuing
29 education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not
30 renewed for just cause, including, but not limited to, the installation of waste disposal systems in
31 violation of this subdivision or the refusal by a permit holder to correct defective work. The
32 department shall not suspend, revoke or refuse to renew a permit except for just cause~~[until the~~
33 ~~permit holder has had an opportunity to be heard by the department]~~. An appeal from such decision
34 to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be
35 deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

36 28 Reconsideration and Appeal Procedure; Water Division. Amend the introductory paragraph
37 of RSA 485-A:40 to read as follows:

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

5 29 Reconsideration and Appeal Procedure; Water Division. Amend RSA 485-A:40, IV to read as
6 follows:

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

10 30 Penalties; Water Division. Amend RSA 485-A:43, V to read as follows:

11 V. The commissioner of environmental services [~~after notice and hearing pursuant to RSA~~
12 ~~541-A,~~] may impose an administrative fine not to exceed \$2,000 for each offense upon any person
13 who violates any provision of this subdivision including any rule adopted under the provisions of this
14 chapter. [~~Rehearings and appeals~~] *Appeals* from a decision of the commissioner under this
15 paragraph shall be in accordance with [~~RSA 541~~] *RSA 21-O:7, IV*. Any administrative fine imposed
16 under this section shall not preclude the imposition of further penalties under this subdivision. The
17 proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the
18 department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to[:

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

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

22 31 Enforcement and Penalties; Water Division. Amend RSA 485-A:54, 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, any rule adopted under this subdivision, or any
26 permit or contract entered into under the authority of this subdivision. [~~Rehearings and appeals~~]
27 *Appeals* from a decision of the commissioner under this paragraph shall be in accordance with [~~RSA~~
28 ~~541~~] *RSA 21-O:7, IV*. Any administrative fine imposed under this section shall not preclude the
29 imposition of further penalties under this subdivision. The proceeds of administrative fines levied
30 pursuant to this paragraph shall be deposited by the department in the replacement fund
31 established pursuant to RSA 485-A:51. The commissioner shall adopt rules, under RSA 541-A,
32 relative to[:

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

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

36 32 Definitions; Director; Division; Water Division. Amend RSA 485-C:2, VI-VII to read as
37 follows:

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

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

5 33 Administrative Fines; Water Division. Amend RSA 485-C:18 to read as follows:

6 485-C:18 Administrative Fines.

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

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

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

19 34 Administrative Fines; Water Division. Amend RSA 486-A:14, I to read as follows:

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

26 35 Penalty; Administrative Fines; Water Division. Amend RSA 487:7, II to read as follows:

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

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

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

2 36 Administrative Fines; Water Division. Amend RSA 488:8, I-II to read as follows:

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

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

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

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

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

11 37 Administration and Enforcement; Water Division. Amend RSA 489-C:5, III to read as
12 follows:

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

16 38 Definitions; Division; Wetlands Council. Amend RSA 482-A:2, II to read as follows:

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

18 39 Excavating and Dredging Permit; Certain Exemptions; Wetlands Council. Amend RSA 482-
19 A:3, XIX to read as follows:

20 XIX. The department shall issue a culvert maintainer certificate to any individual who
21 submits an application provided by the department, and has satisfactorily completed the program in
22 accordance with paragraphs XVII and XVIII. Initial certificates shall be valid through December 31
23 of the year following the year of issue. Renewal certificates shall be valid from January 1 through
24 December 31 of every other year. Permits shall be renewable upon proper application, and
25 documentation of compliance with the continuing education requirement of paragraph XVIII. The
26 installer's permit may be suspended, revoked, or not renewed for just cause, including, but not
27 limited to, the installation of culverts in violation of this chapter or the refusal by a permit holder to
28 correct defective work. The department shall not suspend, revoke, or refuse to renew a permit
29 except for just cause ~~[until the permit holder has had an opportunity to be heard by the department]~~.
30 An appeal from such decision to revoke, suspend, or not renew a permit may be taken pursuant to
31 RSA 21-O:14.

32 40 Excavating and Dredging Permit; Certain Exemptions; Wetlands Council. Amend RSA 482-
33 A:3, XX(c) to read as follows:

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

1 41 Administrative Fine; Wetlands Council. Amend RSA 482-A:13 to read as follows:
2 482-A:13 Administrative Fine.

3 The commissioner[~~-, after notice and hearing in accordance with the procedures set forth in RSA~~
4 ~~541-A,~~] is empowered to impose an administrative fine of up to \$5,000 for each violation, irrespective
5 of the duration of violation, upon any person who violates any provision of this chapter. This fine is
6 appealable under [~~RSA 541~~] **RSA 21-O:5-a, V**. Any administrative fine imposed under this section
7 will not preclude the imposition of further penalties under this chapter. The proceeds of
8 administrative fines levied pursuant to this section shall be placed in the nonlapsing fund authorized
9 in RSA 482-A:14, III.

10 42 Penalties; Wetlands Council. Amend RSA 483-B:18, III(b) to read as follows:

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

16 43 Attorney General; Deputy Associates; Assistants. Amend RSA 21-M:3, VIII(a) to read as
17 follows:

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

22 44 Administrative Appeals. Amend RSA 21-O:14, I to read as follows:

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

24 (1) The department's final action on an application or other request for a license as
25 defined in RSA 541-A:1, VIII, whether the action to accept, grant in whole or in part with or without
26 conditions, or deny the application or request and whether the action is taken by the commissioner
27 or by the department official who has statutory authority to take such final action or to whom the
28 commissioner has properly delegated the authority to take such final action.

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

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

34 (1) The issuance of an administrative order issued under specific statutory authority
35 for such an order, whether described as an order, an administrative order, a cease and desist order, a
36 notice of violation and order of abatement, or other similar name, which specifies the facts and law
37 that support the department's determination that one or more violations are occurring or have

1 occurred and orders the recipient to cease on-going violations and to take such remediation actions
2 as are necessary to come into compliance with applicable requirements.

3 (2) ~~[The revocation of or the refusal to renew a license as defined in RSA 541-A:1,~~
4 ~~VIII based on the permit holder's non-compliance with the statute, rules, or terms and conditions of~~
5 ~~the license or on other good or just cause as defined in rules adopted relative to the license.]~~
6 ***Imposition of an administrative fine, pursuant to specific statutory authority for such an***
7 ***administrative fine and any applicable administrative rules or schedules, by way of a***
8 ***notice of administrative fine or fines which specifies the facts and law that support the***
9 ***commissioner's determination that one or more violations are occurring or have occurred***
10 ***which should be penalized with an appropriate administrative fine.***

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

16 45 New Paragraph; Agency Action Against Licensees. Amend RSA 541-A:30 by inserting after
17 paragraph III the following new paragraph:

18 IV. An agency shall be exempt from the requirements in this chapter to provide for an
19 adjudicative proceeding prior to making a final decision, if such final decision is subject to appeal to
20 a council or board with jurisdiction over such agency, or divisions thereof, that provides for notice
21 and an opportunity to be heard. Unless based on risk to an immediate risk to human health or the
22 environment, the agency decision under this paragraph shall not become effective for 30 days
23 following the date of the decision or, if an appeal is filed to a council or board within jurisdiction,
24 until the council or board issues a decision.

25 46 Emissions Reduction Trading Programs; Certification of Emissions Reduction Credits.
26 Amend the introductory paragraph of RSA 125-J:4, VII to read as follows:

27 VII. The commissioner may suspend, modify, or revoke any emissions reduction credits
28 certificate issued under this chapter, or any portion thereof, upon a finding~~[-following a hearing]:~~

29 47 New Paragraph; Department of Environmental Services; Administrative Appeals. Amend
30 RSA 21-O:14 by inserting after paragraph IV the following new paragraph:

31 V. A fine imposed by the department shall not become effective for 30 days following the
32 date of the decision, or if an appeal is filed to a council, until the council issues a decision.

33 48 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.

SB 445 - AS AMENDED BY THE SENATE

- Page 17 -

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 X. RSA 125-O:7, III(a), relative to notice and hearing requirements prior to the imposition of
14 certain administrative fines.

15 49 Effective Date. This act shall take effect 60 days after its passage.