CHAPTER 239
SB 60 - FINAL VERSION

03/16/2023 0880s
8Jun2023... 1635h
06/29/2023 2252EBA

2023 SESSION

23-0963
08/04

SENATE BILL *60*

AN ACT relative to water quality.

SPONSORS: Sen. Gray, Dist 6; Sen. Watters, Dist 4; Sen. Avard, Dist 12; Rep. Renzullo, Hills. 13

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill makes changes to the timeline for certifications by the department of environmental services of activities that may result in a discharge into surface water bodies.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 239
SB 60 - FINAL VERSION

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to water quality.

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

239:1 Enforcement of Classification. Amend RSA 485-A:12, III to read as follows:

III. No activity, including construction and operation of facilities, that requires certification under section 401 of the Clean Water Act and that may result in a discharge, as that term is applied under section 401 of the Clean Water Act, to surface waters of the state may commence unless the department certifies that any such discharge complies with the state surface water quality standards applicable to the classification for the receiving surface water body. The department shall provide its response to a request for certification to the federal agency or authority responsible for issuing the license, permit, or registration that requires the certification under section 401 of the Clean Water Act. ***Unless certification is waived by the department, the*** certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed discharge complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

239:2 New Paragraph; Enforcement of Classification; Request for Certification. Amend RSA 485-A:12 by inserting after paragraph III the following new paragraph:

III-a. In processing a request for certification under paragraph III:

(a) Within 50 days of receipt of the request for certification, the department shall either notify the person who submitted the request that the request is complete or request any additional information required to complete its evaluation of the request. Any request for additional information shall specify that the person requesting certification submit such information as soon as practicable and shall notify the person that if all of the requested information is not received within 120 days of the request, the department shall deny the request. Upon written request of the applicant prior to the end of such 120-day period, the department shall grant a 30-day extension. Upon written request of the applicant prior to the end of such 30-day period, the department shall grant a subsequent 30-day extension.

(b) Within a reasonable time after receipt of the request, or of the response to a timely request for additional information made by the department pursuant to subparagraph (a), the department shall, in accordance with rules adopted under RSA 485-A:6, VI-a, provide a reasonable opportunity for public comment, not to exceed 30 days, on proposals to grant, waive, or deny a request for certification and may hold a public hearing on such proposals.

(c) Notwithstanding subparagraphs (a) and (b), within the period of time specified under section 401 of the Clean Water Act, the department shall:

(1) Provide its response to grant the request for certification;

(2) Provide its response to waive the request for certification; or

(3) Provide its response to deny the request for certification and issue written findings in support of the denial.

(d) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law.

(e) If the department fails to act on a request for certification within the applicable time frame established in subparagraphs (a), (b) or (c), the certification shall be considered waived and the person who made the request may ask the department to provide written notice acknowledging that certification was waived by default.

239:3 Enforcement of Classification. Amend RSA 485-A:12, IV to read as follows:

IV. No activity that involves surface water withdrawal [~~or diversion of surface water~~] that ***exceeds 20,000 gallons per day averaged over a 7-day period or more than 600,000 gallons over a 30-day period and*** requires registration under RSA 488:3, that does not otherwise require the certification required under paragraph III, and ***which did not exceed such withdrawal rates before*** [~~was not in active operation as of~~] the effective date of this paragraph, may commence unless the department certifies that the surface water withdrawal [~~or diversion of surface water~~] complies with state surface water quality standards applicable to the classification for the surface water body. The certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

239:4 New Paragraph; Enforcement of Classification. Amend RSA 485-A:12 by inserting after paragraph IV the following new paragraph:

V. In processing an application for permits under RSA 485-A:12, IV:

(a) Within 50 days of receipt of the request for certification, the department shall either notify the person who submitted the request for certification that the request is complete or request any additional information required to complete its evaluation of the request. Any request for additional information shall specify that the person requesting certification submit such information as soon as practicable and shall notify the person that if all of the requested information is not received within 120 days of the request, the department shall deny the request. Upon written request of the applicant prior to the end of such 120-day period, the department shall grant a 30-day extension. Upon written request of the applicant prior to the end of such 30-day period, the department shall grant a subsequent 30-day extension.

(b) Within a reasonable time after receipt of the request, or of the response to a timely request for additional information made by the department pursuant to subparagraph (a), the department shall, in accordance with rules adopted under RSA 485-A:6, VI-a, provide a reasonable opportunity for public comment, not to exceed 30 days, on proposals to grant, waive, or deny a request for certification and may hold a public hearing on such proposals.

(c) Within 90 days after receipt of a request for certification, or of the response to a timely request for additional information made by the department pursuant to subparagraph (a), the department shall:

(1) Approve the request in whole or in part and issue a certification; or

(2) Deny the request and issue written findings in support of the denial; or

(3) Extend the time for rendering a decision on the request for good cause and with the written agreement of the person who made the request for certification.

(d) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law.

(e) If the department fails to act on a request for certification within the applicable time frame established in subparagraphs (a), (b) or (c), the certification shall be considered waived and the person who made the request may ask the department to provide written notice acknowledging that certification was waived by default.

239:5 Rulemaking; Water Withdrawals. Amend RSA 485-A:6, VI-a to read as follows:

VI-a. Procedures and criteria for requesting, reviewing, and [~~granting~~] ***acting on requests for certification*** [~~certifications~~] under RSA 485-A:12, III and IV***, including public notice and public hearing requirements of the department's proposed action on certification requests***.

239:6 Rules for Water Conservation. Amend RSA 485:61, II to read as follows:

II. The water conservation rules in paragraph I of this section shall apply to all new permit applicants and applications for water withdrawals subject to the provisions of RSA 485:3, RSA 485:48, RSA 485-C:21***, RSA 485-A:12, IV,*** and section 401 of the Clean Water Act.

239:7 Standards for Classification of Surface Waters of the State. Amend RSA 485-A:8, II to read as follows:

II. Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 126 Escherichia coli per 100 milliliters, or greater than 406 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no disposal of sewage or waste into said waters except those which have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given above, nor shall such disposal of sewage or waste be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters. The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. The commissioner shall adopt rules, under RSA 541-A, relative to dissolved oxygen water quality standards in a manner consistent with Environmental Protection Agency guidance on dissolved oxygen water criteria published pursuant to section 304(a) of the Clean Water Act, and other relevant scientific information. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be

considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies. Where it is demonstrated to the satisfaction of the department that the class B criteria cannot reasonably be met in certain surface waters at all times as a result of combined sewer overflow events, temporary partial use areas shall be established by rules adopted under RSA 485-A:6, XI-c, which meet, as a minimum, the standards specified in paragraph III. [~~The commissioner shall not calculate nutrient discharge limits for aquatic life and human health criteria based on 7Q10 flow or such other flow criteria more restrictive than 7Q10.~~]

239:8 Effective Date. This act shall take effect upon its passage.

Approved: August 08, 2023
Effective Date: August 08, 2023