Adopt Env-Wr 800, to read as follows:

PART Env-Wr 800 ADMINISTRATIVE FINE SCHEDULE

Statutory Authority: RSA 482:89, V(a)

Env-Wr 801.01 Purpose. The purpose of Env-Wr 800 is to establish a schedule of fines which may be imposed under the authority of RSA 482:89, V for violations of RSA 482, as defined by RSA 482:89, I.

Env-Wr 801.02 Definitions. For any term used in this part that is defined in RSA 482, Env-Wr 100 - 700, or Env-Wr 900, the definition stated therein shall apply to these rules.

Env-Wr 801.03 Fine Amounts for Major Violations. The fine amount for all knowing violations of RSA 482; as defined by RSA 482:89, I, shall be $2,000 for each violation, including but not limited to:

(a) Submitting false or misleading information relating to a material fact made in connection with any activity regulated or prohibited by RSA 482;

(b) Failing to comply with any requirement set out in an administrative order issued under the authority of RSA 482:11, or any other written order or directive, subpoena, or emergency directive of the department issued under the authority of RSA 482:4;

(c) Failing to comply with any permit issued under the authority of RSA 482; and

(d) Failing to comply with any rule adopted to implement RSA 482.

Env-Wr 801.04 Fine Amounts for Moderate Violations. The fine amount for the following violations shall be $1,000 per violation:

(a) For recklessly or negligently submitting false or misleading information relating to a material fact made in connection with any activity regulated or prohibited by RSA 482;

(b) For recklessly or negligently commencing construction or reconstruction of a dam or increasing the height of any existing dam without a permit in violation of RSA 482:7, RSA 482:9, or RSA 482:29;

(c) For recklessly or negligently failing to maintain a dam so that it does not become a dam in disrepair in violation of RSA 482:11-a; and

(d) For recklessly or negligently failing to comply with any rule adopted to implement RSA 482.

Env-Wr 801.05. Fine Amounts for Minor Violations. The fine amount for the following violations shall be as noted for each violation:

(a) For failing to submit any fee required by RSA 482:9, II, the fine shall be twice the applicable fee, to a maximum of $2,000 per violation;

(b) For failing to submit annual registration fees required by RSA 482:8-a following a second notice pursuant to Env-Wr 303.01(c), the fine shall be twice the applicable fee, to a maximum of $2,000 per violation; and

(c) For failing to timely review, and update or confirm the Operation, Maintenance, and Response form as necessary, in violation of Env-Wr 303.04(b), the fine shall be $500 per violation.

Env-Wr 801.06 Fines Amounts for Violations with No Previously Scheduled Fine.

(a) For the purposes of this section, the following definitions shall apply:

(1) “Major deviation from requirement” means the violator deviated from a requirement of a statute or rule to such an extent that there is substantial non-compliance;

(2) “Moderate deviation from requirement” means the violator significantly deviated from a requirement of a statute or rule but some requirements were implemented as intended, such that approximately half the requirements were met;

(3) "Minor deviation from requirement" means the violator deviated partially from a requirement of a statute or rule such that most of the requirement was met;

(4) "Major potential for harm" means a substantial likelihood of causing harm to human health or the environment;

(5) "Moderate potential for harm" means a moderate likelihood of causing harm to human health or the environment; and

(6) "Minor potential for harm" means a small likelihood of causing harm to human health or the environment.

(b) For violating RSA 482, as defined by RSA 482:89, I, in a manner not identified in Env-Wr 800, the fine for each violation shall be calculated pursuant to Table 801-1, below, based on the extent of deviation from the requirement and the potential for harm.

Table 801-1: Matrix for Calculated Fines – Maximum Fine $2,000

	Minor Deviation from Requirement	**Moderate Deviation from Requirement**	**Major Deviation from Requirement**
Minor Potential for Harm	range: $100 to $500 default: $250	range: $500 to $1,000 default: $750	range: $1,000 to $1,500 default: $1,250
Moderate Potential for Harm	range: $500 to $1,000 default: $750	range: $1,000 to $1,500 default: $1,250	range: $1,500 to $2,000 default: $1,750
Major Potential for Harm	range: $1,000 to $1,500 default: $1,250	range: $1,500 to $2,000 default: $1,750	$2,000

Env-Wr 801.07 Administrative Fine Appeals. Any person who receives a notice of administrative fines from the department pursuant to RSA 482:89, V and Env-Wr 800 may appeal to the water council in accordance with RSA 482:89, V and RSA 21-O:7, IV.

Appendix A

Rule Section(s)	**State Statute(s) Implemented**
Env-Wr 800	RSA 482:89, V

Appendix B: Statutory Provision

RSA 482:89 Penalties.

I. The following shall constitute a violation of this chapter, with each day of noncompliance constituting a separate violation:

(a) Failure to comply with any provision of this chapter, any rule adopted to implement this chapter, or any permit issued pursuant to this chapter;

(b) Failure to comply with a written order or directive issued by the department under this chapter;

(c) Failure to answer a subpoena issued under this chapter or to allow the department to examine books, records, documents, correspondence, and accounts relative to dams or to testify before the department as required by this chapter;

(d) Misrepresentation by any person of a material fact made in connection with any activity regulated or prohibited by this chapter; and

(e) Failure to comply with an emergency directive of the department under RSA 482:4.