ENVIRONMENTAL
Fact Sheet

NEW HAMPSHIRE DEPARTMENT OF Environmental Services

29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

SSB-14 2025

Transfers of Waterfront Properties with Individual Sewage Disposal Systems in the Protected Shoreland



As of September 1, 2024, the law regarding the transfer of developed properties served by an individual sewage disposal system (ISDS) has changed. Previously, sellers of these properties were required to have a permitted ISDS designer prepare a waterfront site assessment. Now buyers of these properties are required to have the system evaluated by a permitted septic system evaluator. In certain situations, a permitted ISDS designer may also be required to determine if the effluent disposal area (EDA) is not providing proper treatment because it is too close to the seasonal high-water table. If an evaluator determines that the ISDS is showing signs of failure or if the designer determines that the EDA is in failure, buyers are required to replace the ISDS within 180 days of the property transfer.

Why did the requirements change?

The purpose of the waterfront site assessment was to inform buyers what the lot-loading capacity of the lot was and inform them of the approval status of the existing ISDS, but it did not give an in-depth assessment of the functionality of the existing system. The ISDS evaluation gives property buyers a better understanding of the current state of the existing ISDS, and failing systems are required to be replaced. A failed ISDS poses health risks to people and wildlife, pollutes ground and surface waters, and accelerates the growth of algal blooms and cyanobacteria.

Where can I read the law?

The language of RSA 485-A:39 can be found on the New Hampshire General Court website.

When did the new law go into effect?

The new law went into effect on September 1, 2024. Waterfront site assessments were required before that date. NHDES administrative rule updates are underway and will be adopted at a future date.

How do I determine what I need to do?

To determine what is required, ask the following questions about the property:

Is the property located within the protected shoreland, with a seasonal or year-round structure **AND** an ISDS located within 250 feet of the waterbody's reference line?

- If **NO**, nothing is required.
- If **YES**, the buyer is required to have a septic system evaluation performed by a licensed septic system evaluator.

Additionally, does the existing system have an NHDES-issued approval to operate dated on or after September 1, 1989?

- If **YES**, there are no additional requirements.
  If **NO**, in addition to the evaluation, a permitted ISDS designer must determine the bottom of the EDA relative to the seasonal high-water table.

What is the protected shoreland?

The "Consolidated List of Waterbodies" subject to the Shoreland Protection Act includes all lands within 250 feet of the reference line of the following types of waterbodies:

- All lakes and ponds greater than 10 acres in size.
- All fourth-order and greater streams and rivers
- All designated rivers, including sections less than fourth-order.
- All waters subject to the ebb and flow of the tide.

How do I determine if a property is within the protected shoreland?

Use the Consolidated List of Waterbodies subject to the Shoreland Protection Act. You can also get an approximate idea of whether the property is within the limit of the Shoreland Protection Act by using the NHDES Land Resources Management Permit Planning Tool with the layer control "Shoreland Jurisdiction" under "Base Layers" turned on.

Do I need an evaluation if the ISDS is located more than 250 feet from the reference line?

An evaluation is only required if any part of the ISDS is within 250 feet of the reference. If **all** of the ISDS is outside of this region, nothing needs to be done.

When does a septic system evaluator need to be involved?

For properties located within 250 feet of the protected shoreland where there is a seasonal or year-round structure and any portion of the ISDS is within 250 feet of the reference line, the buyer is required to have a septic system evaluation performed by a licensed septic system evaluator. In these situations, an evaluation is **always** required, even if a designer is also required.

What does the septic system evaluator do?

The septic system evaluator will assess the existing ISDS utilizing board-approved standards.

How can I find a septic system evaluator?

Septic system evaluators are licensed through the New Hampshire Office of Professional Licensure and Certification (OPLC). A list of evaluators can be found on the New Hampshire Online Licensing webpage by selecting "Septic System Evaluators" under "Profession."

Is a septic evaluation the same as a septic inspection?

The term “inspection” and “evaluation” tend to be used interchangeably. The law is being met if the process is done by a Septic System Evaluator licensed by the State of New Hampshire utilizing board-approved standards.

A new ISDS was just installed on the property. Does it need to be evaluated?

Regardless of the age of the ISDS, an evaluation is required if the property is to be transferred between a buyer and seller.

When does an ISDS designer need to be involved?

In addition to the evaluation, a buyer is also required to hire a state-permitted ISDS designer if the ISDS on the property to be transferred does not have state approval or was approved before September 1, 1989.

What does the ISDS designer need to do?

The designer will need to determine the depth to the seasonal high water by excavating a test pit to the side of the existing EDA. They will also need to excavate into the EDA to determine its bed bottom. To avoid issues with the function of the system, every effort should be taken to minimize the disturbance to the EDA and its receiving layer. Using this information, and any other information obtained during the assessment, the designer will determine if the system meets the criteria for failure as defined in RSA 485-A, 2, IV. Depending on site conditions, the excavation may require a combination of machinery and hand tools.

How can I find an ISDS designer?

Permitted ISDS designers can be searched by going to OneStop and selecting “Designer and Installer Query.” Under “License Type,” select “Designer” and refine the search by town.

Is there a situation where an evaluation is not required?

Buyers do not need to get an evaluation if they will be replacing the ISDS within 180 days of the transfer of property. Buyers planning to do this must notify NHDES and the local health officer.

What happens if the ISDS is in failure?

Per RSA 485-A:37, if a permitted ISDS designer or local health officer determine that an ISDS is in failure, the owner must prevent wastewater from flowing into the ground. If the EDA is in failure, the owner must meet the requirements of Env-Wq 1004.20 until the ISDS has been repaired or replaced. For further information, see Env-Wq 1000.

How does the notification process work?

If an evaluator decides that the ISDS is showing signs of failure, they will notify the buyer. The buyer will then sign a document prepared by the evaluator authorizing the evaluator to notify NHDES and the local health officer. If a buyer decides to repair or replace the ISDS within 180 days of the transfer of ownership and not have the system evaluated, the buyer is responsible for notifying NHDES and the local health officer. Notifying NHDES is only required if the ISDS is showing signs of failure, but evaluators should contact the local health officer to determine whether they need to be notified.

How do I notify NHDES?

NHDES is creating a form, but until it is available please send an email to Subsurface Compliance. The email should include the buyers’ contact information (name, mailing address, phone number and email address), the property location (street address, town, tax map and lot number) and the date of property transfer (closing date).

How can I find information about the existing septic system?

For most systems approved after 1986, search the NHDES Subsurface OneStop database by selecting "Subsurface Applications Status Query." Electronic copies of plans are available for most systems approved after 2015. For approvals between 1967 and 1986 and copies of plans before 2015, use the Subsurface Systems File and Archive Records Request form. The town in which the property is located may also have copies of approvals and approved plans.

What does a state ISDS approval consist of?

ISDS approvals issued by NHDES or its predecessor, the New Hampshire Water Supply and Pollution Control Commission, consist of a "Construction Approval" and an "Operational Approval." Both approvals are required for an ISDS to be put into use.

What does the property seller have to do?

The law does not have any requirement for the property seller. Sellers can hire an evaluator to perform an evaluation, but it must have been done within 180 days of the property transfer and the buyer does not have to accept it.

What happens if the system shows signs of failure, but the buyer decides not to purchase the property?

The new law applies only if there is a transfer of property. If, after an evaluation is performed that identifies signs of failure, a prospective buyer decides not to purchase the property, there is no longer a "buyer," and they are not required to sign the authorization for the evaluator to notify NHDES and the local health officer. Evaluators should check local ordinances that may require disclosure to the local health officer. Regardless of the new law, any property owners notified by a permitted ISDS designer or a health officer that an ISDS in failure will need to have the system repaired or replaced per RSA 485-A:37.

There was a structure on the property with an ISDS, but the structure is no longer there. Is an evaluation still required?

RSA 485-A:39 only applies to the transfer of developed waterfront property. If there is no longer a structure on the property, it does not meet the definition of "developed waterfront property" and the law does not apply.

What is required if the ISDS is shared with another structure or property?

For the evaluation, only the portion of the ISDS that services the property to be transferred needs to be evaluated. If a portion of the ISDS is shared, evaluators will need to get permission from all parties that share ownership. If the ISDS shows signs of failure or has failed, the law requires that the buyer replace the ISDS. In situations where part or all an ISDS is shared, the buyer is encouraged to determine the responsibilities of all parties involved before finalizing the property transfer to prevent disagreements or litigation.

Do inherited properties still need to go through this process?

It depends. Only transfers of properties that involve a buyer and a seller are subject to this law. If the property transfer for the inheritance does not involve a buyer and a seller, the property does not need to be evaluated.

If there are multiple ISDS on the lot, do they all need to be evaluated?

Only the ISDS that serves the property to be transferred needs to be evaluated.

Are only the portions of the ISDS within 250 feet of the waterbody evaluated?

If any portion of the ISDS is within 250 feet of the reference line, then the **entire** ISDS must be evaluated.

Does the location of a well, wetland, waterbody or other structure affect the evaluation?

Only the state of the ISDS components is evaluated.

The property was under agreement but did not close before September 1, 2024. Does an evaluation still need to be done?

Even if there was a previous agreement in place before, an evaluation is required if the property transfer happens after September 1, 2024.

Is a cesspool considered an approved ISDS?

No. EDAs must be an approved EDA type permitted by NHDES including stone and pipe, trenches, chambers, drywells, pressure distribution networks, and approved innovative/alternative technologies. Cesspools and methods of disposing of sewage or effluent that are not approved by NHDES should be considered in failure.

Do holding tanks needs to be evaluated?

Yes. A holding tank, like an ISDS, requires approval from NHDES and, therefore, must be treated in the same way as an ISDS under the new law. Holding tanks hold sewage until they are pumped. Tanks can develop leaks over time.

Do composting or incinerating toilets need to be evaluated?

Composting and incinerating toilets are not septic systems and are not subject to the requirements of the new law.

Do gray water systems need to be evaluated?

Gray water is residential wastewater not generated by a urinal or toilet. These are not septic systems and are not subject to the requirements of the new law.

Who is enforcing the law?

NHDES is the enforcement authority for this law at the state level. It is in RSA 485-A and RSA 485-A:39 III, and it directs NHDES to adopt rules relative to its enforcement. Enforcement at the town level is done by the local health officer.

Questions or concerns?

Please contact Subsurface Compliance at ssbcompliance@des.nh.gov or (603) 271-3501

Please visit: www.linktr.ee/waterfronttransfer
for links to the NHDES website and
resources listed in this document.