



# State of New Hampshire

## Department of Safety

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

ROBERT L. QUINN  
COMMISSIONER OF SAFETY

## DECISION & ORDER

In the Matter of:

### Sand Hill Reservoir Wilton, New Hampshire

Attorney Christopher Casco, Administrator, Bureau of Hearings, conducted a public hearing as designee for Commissioner Robert L. Quinn, Commissioner of Safety in the above-entitled matter.

#### **HISTORY:**

The Department of Safety received a petition requesting a prohibition on the use of petroleum engine watercraft on Sand Hill Reservoir in Wilton, New Hampshire. The petition was submitted by Mr. Nick Germain on behalf of residents, with the point person being Jennifer Beck, Chair of the Wilton Economic Development Team, Commissioner of the Wilton Conservation Commissioner, and Board Member, NHACC. Ms. Beck is referenced hereafter as Petitioner, in accordance with RSA 270:12. The petition presented the reasons for the request. The petitioner satisfied all of the procedural prerequisites for the hearing. The reasons articulated are to protect the safety of children and families using the public beach, preserving the rural character of the reservoir, and protecting the water quality and wildlife.

Pursuant to RSA 270:12 and the New Hampshire Code of Administrative Rules Saf-C 409, a public hearing was conducted on Wednesday, June 28, 2023 at 10:00 a.m. at the Wilton Town Hall Courtroom, 42 Main Street, Wilton, New Hampshire.

**OPENING REMARKS:**

Everyone present was informed:

- ➡ The public hearing was recorded;
- ➡ The recording would be preserved for seventy-five (75) days and an explanation of the procedure by which to receive a copy of the recording;
- ➡ The opportunity to sign the appropriate "sign-up sheet" to present comment on the petition;
- ➡ They could review the legal notice from the newspaper, along with the original petition and any other documents;
- ➡ How and where to submit written comment that must be received within seven (7) days from the hearing date by the Department of Safety;
- ➡ That proper abutter notification had been made by certified mail;
- ➡ The petition and hearing notice were posted on the Department of Safety web site at least 2 weeks before the public hearing beginning on or about June 12, 2023;
- ➡ Legal notice was sent to the town of Wilton; and
- ➡ Legal notice was posted in the N.H. Union Leader on June 15, 2023.

**STATISTICS:**

Three (3) people spoke in favor of the petition. No one appeared against the petition. One person did not sign in but spoke in general support of the proposed petition.

After the hearing, the department received no public comment. The hearing was closed to public comment at the conclusion of the business day on Wednesday, July 5, 2023.

**EXHIBITS:**

The petition and a map of Sand Hill Reservoir.

**WRITTEN PUBLIC COMMENT:**

None submitted.

**OFFICIAL NOTICE:**

Official notice is taken of the Petition submitted by the petitioner as it references the requested prohibition of petroleum watercraft along with the thirty (30) signers, all residents or property owners.

**SYNOPSIS OF TESTIMONY:**

Thomas Schultz spoke in favor of the petition. He said that this is an historic reservoir. He is the past chair of the Wilton Water Commission. The public works abandoned this body of water as a reservoir. It has not been used for gasoline powered boating. There is no reason to use it for boating.

Jennifer Beck, Petitioner, next spoke in support of the petition. She authored the petition. It is inappropriate for gas engine boats, for example, water ski boats or pontoon boats. It is located in a quiet residential neighborhood.

Jeffrey Stone spoke in favor of the petition. This is a very small, shallow body of water. The shoreline consists of green space. Gas powered boats present the potential for fuel spills. Exhaust is incompatible for this pond because it cannot tolerate pollution. The current use is for recreation, including swimming. It is not large enough for gasoline powered boats. Small, operator powered boats are more appropriate.

JoAnna Eckstrom spoke in general favor of the petition. She posed two questions, which, given the nature of the hearing, are rhetorical questions: How would a ban impact the use of gas powered rescue boats and whether a ban would prohibit gas powered ATV's or snowmobiles from operating on the frozen reservoir?

**DISCUSSION:**

In gathering findings of fact, the following legal authority is given consideration and is provided for reference.

**270:1 Declaration of Policy**

- I. In the interest of public safety and the protection of property, it shall be the duty of the commissioner of safety, in all cases not provided for by the United States inspection laws and in all cases in which inspections are not regularly made thereunder, to provide for the inspection on any public waters of the state of all commercial and private boats and the machinery, appliances, and equipment thereof, such inspections to be performed by said commissioner of safety or his duly authorized representative. Said commissioner of safety shall also supervise the safety of navigation and the establishment of aids to navigation, and all lights and buoys maintained at public expense on the inland waters of the state shall be under the jurisdiction of said commissioner of safety. Said commissioner of safety shall make such alterations and improvements in existing lights and buoys as may be desirable, place additional lights and buoys where required to promote the safety of navigation, remove obstructions tending to impede navigation, and maintain all lights and buoys under its jurisdiction.
- II. In the interest of maintaining the residential, recreational and scenic values which New Hampshire public waters provide to residents of the state and to the promotion of our tourist industry, and in light of the fact that competing uses for the enjoyment of these waters, if not regulated for the benefit of all users, may diminish the value to be derived from them, it is hereby declared that the public waters of New Hampshire shall be maintained and regulated in such way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances. Such provisions shall take into consideration the following: the variety of special uses appropriate to our lakes, public safety, protection of environment and water quality, and the continued nurture of New Hampshire's threatened and endangered species.

**RSA 270:12. Operating Restrictions.**

- I. The commissioner of safety shall, after receiving a petition signed by 25 or more residents or property owners of each affected town or towns in which a lake, pond or river is located and after notice and hearing, at which it appears that the public interest requires, adopt rules governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75 through 270:132. Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August, and September following the date of the petition.

- II. Notwithstanding the provisions of RSA 270:12, I, any hearings regarding the closing or restricting of any body of water to seaplanes shall be addressed to and heard by the commissioner of safety or his designee. Prior to issuing a decision, the commissioner shall consult with the director of aeronautics, rail, and transit, department of transportation.
- III. Persons petitioning the commissioner requesting a change of use or restriction of the use of any public waters shall notify, by certified mail, all abutters with deeded waterfront property or deeded water access rights of the proposed change or restriction and the department shall post the petition on its official website at least 2 weeks prior to a public hearing scheduled by the department.
- IV. In this section, "abutter" means any person who owns property immediately adjacent and contiguous to the area on which the change of use or restriction of use will take place. If the change of use or restriction of use is located in an area which by its configuration would cause the change or restriction to affect noncontiguous properties, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than 1/4 mile from the limits of the proposed change or restriction.

**Saf-C 409.04 Criteria for Review.**

(a) The commissioner shall, after the hearing, adopt rules of the type authorized by RSA 270:12 if it appears that, consistent with RSA 270:1, II, the rule shall provide for the safe and mutual enjoyment of a variety of uses, taking into consideration the factors in (b) below.

(b) In determining whether to adopt such rules the commissioner shall consider the following:

- (1) The size of the body of water or portion thereof for which action is being considered;
- (2) The effect that adopting or not adopting the rule(s) would have upon:
  - a. Public safety;
  - b. The maintenance of residential, recreational and scenic values;
  - c. The variety of uses of the body of water or portion thereof;
  - d. The environment and water quality; and
  - e. Threatened and endangered species;

(3) The number of people affected, either directly or indirectly, by adopting or not adopting the rule(s); and

(4) The availability and practicality of enforcement of the rule(s).

The Commissioner of the Department of Safety, pursuant to RSA 270:12, RSA 541-A, and New Hampshire Code of Administrative Rules 409 (*et seq.*) defines and regulates the use of gas motorboats on bodies of water of 35 acres or less by allowing a ban where warranted.

The number of people in attendance at the hearing and the numbers of persons recorded for or against the proposed petition are given weight in determining findings, however, greater significance is given to the specific laws that govern the use of motorboats and the variety of uses by the public of Sand Hill Reservoir. The Commissioner of Safety balances the petition and governing law with the variety of uses of the pond. Within RSA 270:1 the language for deliberation speaks to competing uses for the enjoyment of the waters; regulating that use for the benefit of all users, keeping in mind what may diminish the value to be derived from them. In addition, the public waters of New Hampshire shall be maintained and regulated in such a way as to provide for the safe and mutual enjoyment of a variety of uses, both from the shore and from water-borne conveyances.

The law places the responsibility on the Commissioner of Safety to consider: the variety of special uses appropriate to our lakes, public safety, protection of the environment and water quality, and the continued nurture of New Hampshire's threatened and endangered species. The exhibits and public comment at the hearing provided the fact-finder specific information in reference to the relevant criteria, and the public comment presented a variety of viewpoints, all of which were considered in reaching a decision.

The Petitioner provided several reasons under the law for the ban, with the primary focus being on the safety of children and families using the reservoir. In fact, because no boat launch is available, it is difficult, if not impossible, to launch a motorboat, and the only boats that use the pond are very small vessels that are hand-carried to be launched. As a result, there was no specific evidence introduced to support a safety or pollution problem caused by gas boats. The pond is no longer used as a reservoir, is in a residential neighborhood, and there is no evidence of a current problem with motorboat use presenting any threat to public safety or the environment since it is rarely, if ever, used by people with motorboats. Consequently, any threat to the safety of swimmers or users of non-motorized small

watercraft is minimal, so there is very little current threat to safety, or the environment, which suggests that a ban unnecessary.

Likewise, since motorboats are not currently used in the Sand Hill Reservoir, the threat to the environment that may be presented by heavy motorboat use is not present. Therefore, imposing a ban will not enhance the environment, water quality, or act to further protect threatened and endangered species. To justify a permanent motorboat ban, a significant threat to safety and the environment must presently exist. Otherwise, regulation is unnecessary since there is insufficient evidence of a problem which the ban will remedy.

Moreover, the applicable administrative rule, Saf-C 409.04, establishes criteria for review, which requires that a petition address an existing problem to be remedied that meets a preponderance standard to allow the Department of Safety to issue a permanent gas motorboat ban. While it is commendable that the Petitioner is attempting to be proactive to prevent problems that may be caused in the future if gas motorboaters begin to regularly use the reservoir, such is speculative and does not support a ban at this time.

Consequently, because any rule banning gas engines needs as its legal basis that it will provide for the "...safe and mutual enjoyment of a variety of uses..." (Saf-C 409.04), based on all of the evidence presented, there is insufficient justification to grant the petition, due to the lack of an existing problem to be addressed.

After carefully considering all of the evidence, exhibits, testimony and all public comment presented, Findings of Fact are issued.

**FINDINGS OF FACT:**

1. That pursuant to RSA 270:12 and Administrative Rule Saf-C 409.01, twenty-five (25) or more residents or property owners petitioned Robert L. Quinn, Commissioner of the Department of Safety to conduct a public hearing to regulate motorboat usage by a ban on Petroleum powered watercraft on Sand Hill Reservoir in Wilton, New Hampshire.
2. That official notice for the hearing was published in a newspaper of statewide circulation, The Union Leader, Manchester, NH on or about June 15, 2023.
3. The petition and notice of hearing were posted on the Department of Safety web site pursuant to RSA 270:12-III

for more than 2 weeks before the hearing date starting on or about June 12, 2023.

4. The Petitioner notified all abutters by certified mail and provided the return receipts before the hearing pursuant to RSA 270:12-III and RSA 270:12-IV and in compliance with the statutory requirement.
5. That a public hearing was held at 10:00 AM on Wednesday, June 28, 2023 for public comment regarding the issue and was conducted pursuant to RSA 270:12, and Saf-C 409 at the Wilton Town Hall Court Room, 42 Main Street in Wilton, NH.
6. That the petition seeks to adopt a rule prohibiting petroleum powered watercraft on Sand Hill Reservoir.
7. The approximate size of Sand Hill Reservoir is 22 acres.
8. The petition focused on possible safety and pollution problems as the primary rationale for the ban on petroleum engine watercraft.
9. The petitioner stated that although there is not currently a significant safety or pollution problem on Sand Hill Reservoir, the petition is a preventative measure to ensure that there won't be such problems in the future.
10. The effect which adopting or not adopting the petition would have upon the public safety is considered, but not adopting the petition would have minimal impact on public safety due to the lack of documented safety problems on the reservoir. In fact, the evidence suggests that motorboat use of any kind rarely occurs. There is no public boat launch.
11. No testimony was received referencing the maintenance of residential values on the shoreline. There is no public boat launch which prevents large boats from being put into the water, and generally, the only boats put into the water are small vessels that may be hand-carried, and that have no engine, or a very small electric engine.
12. Testimony was received referencing the variety of uses of the waters within Sand Hill Reservoir. General testimony was presented on water quality, the environment, and



threatened and endangered species, although there was no specific evidence of any current negative impact on any of these areas. Moreover, the petition cited to the reservoir being a small body of water suitable for swimming, not motorboating. In addition, if motorboats were used, they could introduce milfoil and other invasive species into this body of water. The reservoir flows into the Souhegan River, which has 28 protected and endangered species, and is part of the New Hampshire Rivers Management Program. Finally, it is surrounded by town forest, agricultural fields, and a children's summer theater playhouse.

13. The public's use of the water within Sand Hill Reservoir for all boaters, swimmers, and other water users lawfully enjoying this public body of water will not benefit from establishing a ban on all vessels using gasoline powered motors in accordance with RSA 270:12, I due to the lack of any existing problems to be remedied. Consequently, a rule is unnecessary at this time. Should problems occur in the future, a petition may be refiled.

I recommend that the following Conclusion of Law and Disposition be approved based upon the Findings of Fact listed within this report.

Respectfully,



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Christopher Casco, Administrator  
Bureau of Hearings

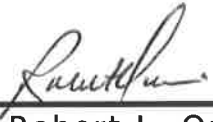
**CONCLUSION OF LAW:**

The evidence fails to demonstrate that the petition is in the public interest fulfilling the purpose of law. There is insufficient attestation that the petitioners have met a burden of proof by a preponderance of the evidence showing cause that a "ban on the use of petroleum engine

watercraft" be adopted pursuant to RSA 270:12 and Administrative Rule Saf-C409.

**DISPOSITION:**

**It is hereby ordered** that the petition is respectfully **DENIED**.

  
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Robert L. Quinn  
Commissioner of Safety

**RSA 541:3 Motion for Rehearing.**

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

I certify that a copy of the order has been forwarded to the below named via first-class mail or electronic mailing (as applicable).

  
\_\_\_\_\_  
Christopher Casco, Administrator

**Date of distribution:**

8/7/23

A copy of this order was sent by email to the following:

Ms. Jennifer Scott Beck,  
Petitioner Designee

Mr. Nick Germain  
Administrator Wilton, New  
Hampshire

Major Matthew Shapiro, Acting  
Director  
NH State Police/Division of  
Safety Services Marine Patrol

CC: File