

CHAPTER Env-Hw 200 PROCEDURAL RULES

Statutory Authority: RSA 147-A:3; RSA 541-A:16, I(b) & (c)

PART Env-Hw 201 APPLICABILITY AND PURPOSE

Env-Hw 201.01 Purpose. The purpose of this chapter is to establish the procedural requirements for waivers and claims of confidentiality specific to the hazardous waste rules.

Env-Hw 201.02 Applicability. This chapter shall apply to all procedures undertaken pursuant to RSA 147-A and the hazardous waste rules.

PART Env-Hw 202 WAIVERS

Env-Hw 202.01 Applicability.

(a) Any person who is or would be directly and adversely affected by the strict application of a hazardous waste rule and who wishes to obtain a waiver shall do so in accordance with this part.

(b) A waiver may be requested from any of the following requirements that is more stringent than the corresponding federal requirement:

- (1) Small quantity generator requirements of Env-Hw 500;
- (2) Used oil requirements of Env-Hw 807;
- (3) Classification as a regulated waste for certain recycled materials as defined by 40 CFR 260.30;
- (4) Classification as a boiler as defined in Env-Hw 103;
- (5) Siting requirements of Env-Hw 304.09; and
- (6) Any requirement in the hazardous waste rules that is more stringent than any requirement imposed by EPA in 40 CFR 260 through 280.

Env-Hw 202.02 Waiver Requests. The person requesting a waiver shall provide the following information in writing to the department:

- (a) An identification of the facility or activity to which the request relates;
- (b) An identification of the specific section of the rules from which a waiver is sought;
- (c) A full explanation of why a waiver is being requested, including a description of the operational and economic consequences of complying with the rule as written;
- (d) A full explanation of any alternate procedure, method, or other activity that is proposed to be substituted for the procedure, method, or other activity required by the rule from which a waiver is being sought, if any;
- (e) Results of all tests, studies, or other data generated to determine the need for a waiver;
- (f) A full explanation of how the requirement for which the waiver is requested is more stringent than the corresponding federal requirement;
- (g) A full explanation of why the person believes that having the waiver granted will meet the criteria specified in Env-Hw 202.04;
- (h) For a temporary waiver, the duration of the waiver requested and the proposed time frame and manner in which full compliance will be achieved; and
- (i) For any waiver from the siting requirements specified in Env-Hw 304.09, information demonstrating that the engineering safeguards of the facility are designed to ensure normal operation, prevention of public

health threatening accidents, and mitigation of hazardous waste discharges to the environment, which may include studies demonstrating that the site has characteristics or features making it unlikely that the facility will pose environmental and public health risks.

Env-Hw 202.03 Timing of Request; Review Process.

(a) A request for waiver from the siting requirements of Env-Hw 304.09 shall be made at the time of application submittal under Env-Hw 304.14. The department shall address the applicant's waiver request within the site evaluation required by Env-Hw 304.14(b), which is subject to public review under Env-Hw 304.21.

(b) Other requests for waivers that relate to a permit application shall be submitted to the department with the application or as soon thereafter as the need is identified. The department shall consider the request as part of the application.

(c) Any request that is not covered by (a) or (b), above, shall be submitted to the department as soon as the need for the waiver is known.

(d) Upon receipt of a request for a waiver, the department shall review the submitted information. If the request does not contain all information required by Env-Hw 202.02, the department shall notify the applicant of what information is needed to complete the request.

(e) If a complete request does not provide sufficient information to allow the department to independently conclude that the criteria in Env-Hw 202.04 will be met, the department shall so inform the person who filed the waiver request and offer the person an opportunity to supply additional information. If the person does not supply additional information that is sufficient to allow the department to conclude the applicable criteria are met, the department shall deny the waiver request.

Env-Hw 202.04 Waiver Criteria.

(a) The department shall grant a waiver if it determines that:

- (1) The requested waiver would not result in conditions that are likely to threaten public health or cause degradation of the environment;
- (2) The economic, technological, and safety benefits of granting a waiver are greater than the benefits of not granting a waiver;
- (3) The requested waiver would not result in less stringent requirements than the federal requirements;
- (4) With respect to classification of recycled materials as a regulated waste as specified in 40 CFR 260.30, the criteria set forth in 40 CFR 260.31 are also satisfied; and
- (5) With respect to waivers to be classified as a boiler, the criteria set forth in 40 CFR 260.32 are also satisfied.

(b) A waiver shall be granted only if the information submitted by the applicant allows the department to independently conclude that the criteria specified in (a), above, are met.

Env-Hw 202.05 Waiver Issuance or Denial.

(a) The department shall notify the person requesting the waiver in writing of the department's determination.

(b) If the waiver request is part of a permit application, the granted waiver shall be incorporated into the permit if the permit application is approved.

(c) With respect to waiver requests from classification as a regulated waste under 40 CFR 260.30, and waiver requests to be classified as a boiler, the department shall follow the review and notification procedures set forth in 40 CFR 260.33(b).

(d) If the waiver request is denied, the notice sent pursuant to (a), above, shall include the reason(s) for the denial and information on how to appeal the decision.

Env-Hw 202.06 Compliance with Waiver Conditions.

(a) If a waiver is granted, the department shall include such conditions as are necessary to ensure that the criteria specified in Env-Hw 202.04 will be met for the duration of the waiver.

(b) Any petitioner granted a waiver or temporary waiver shall comply with the conditions set forth in the waiver or temporary waiver and with all applicable sections of the hazardous waste rules.

(c) Failure to comply with the conditions of a waiver or temporary waiver shall constitute grounds for modification as specified in Env-Hw 304.26, or suspension or revocation as specified in Env-Hw 304.27, as well as enforcement actions as set forth in RSA 147-A.

PART Env-Hw 203 CLAIMS OF CONFIDENTIALITY

Env-Hw 203.01 Purpose. The purpose of this part is to provide a mechanism by which persons submitting information to the department can protect trade secrets.

Env-Hw 203.02 Procedure for Asserting Claim. Any person submitting information to the department that the person reasonably and in good faith believes constitutes a trade secret as defined in Env-Hw 104 or confidential business information as defined in Env-C 208.03 shall assert a claim of confidentiality with respect to the submitted information in accordance with Env-C 208.04.

Env-Hw 203.03 Exceptions. No claim of confidentiality shall be made with respect to the following:

- (a) Any non-confidential information specified in Env-C 208.06;
- (b) The name and address of any applicant for a permit; and
- (c) Copies of hazardous waste manifests.

PART Env-Hw 204 NON-ADJUDICATIVE HEARINGS

Env-Hw 204.01 Non-Adjudicative Hearings. Non-adjudicative hearings shall be conducted in accordance with the applicable provisions of Env-C 200.

PART Env-Hw 205 ADJUDICATIVE HEARINGS

Env-Hw 205.01 Adjudicative Hearings. Adjudicative hearings shall be conducted in accordance with the applicable provisions of Env-C 200.

PART Env-Hw 206 RULEMAKING PETITIONS

Env-Hw 206.01 Rulemaking Petitions. Any person may petition the commissioner to amend or repeal any provision in the hazardous waste rules in accordance with Env-C 207 and 40 CFR 260.20.

PART Env-Hw 207 CERTIFICATIONS

Env-Hw 207.01 Purpose. The purpose of this rule is to impose a requirement that all submissions to the department pursuant to rules with the subtitle Env-Hw be truthful, complete, and not misleading to the best of the signer's knowledge and belief. This requirement is in addition to any other specific certifications

contained in other rules in this subtitle, and it further imposes a requirement that those specific certifications also be true, complete, and not misleading to the best of the signer’s knowledge.

Env-Hw 207.02 Certification Oath or Affirmation. Whenever any individual submits information to the department and that applicant is required to provide a certification regarding the contents of that submission, that certification shall represent the signer’s oath or affirmation that:

(a) To the best of the signer’s knowledge and belief, the contents of the submission are true, complete, and not misleading;

(b) He or she understands that a violation of any certification within this subtitle will subject that individual to the penalties found in Env-Hw 207.04; and

(c) Any additional, specific certification required in rules in this subtitle are made both on their own terms and that they are, to the best of the signer’s knowledge and belief, true, complete, and not misleading.

Env-Hw 207.03 Methods of Certification.

(a) When making a certification as part of completing a department form, the signer shall sign and date the form beneath a certification statement describing the requirements of Env-Hw 207.02 and any other relevant certifications.

(b) When making a certification as part of a written application, letter, or any other submission to the department other than a form described in (a) above, the signer shall certify the contents of the application by signing and dating under a statement containing a citation to Env-Hw 207.02 and any law or rule containing any additional certifications.

Env-Hw 207.04 Penalties. If the department finds the contents of a submission certified, as required in rules in this subtitle, were untrue, incomplete, or misleading, or if any other certification imposed by rules in this subtitle is violated, that submission shall constitute grounds for:

(a) Denying the application or other request supported by the certification;

(b) Revoking or suspending any permit or other department approval that was granted based on such certification;

(c) If the certifier is a professional engineer, referring the matter to the office of professional licensure and certification established by RSA 310-A:1; and

(d) Seeking to impose the penalties specified in New Hampshire for falsification in official matters, currently RSA 641.

APPENDIX A: STATE STATUTES, FEDERAL REGULATIONS IMPLEMENTED

Rule Section(s)	State Statute(s) Implemented	Federal Regulation(s) Implemented
Env-Hw 201	RSA 147-A:3; RSA 541-A:16,I(b)	
Env-Hw 202	RSA 147-A:3, I, III and IV; RSA 541-A:22, IV	40 CFR 260 Subpart C
Env-Hw 203	RSA 147-A:3, I, III and IV; RSA 541-A:16, I	40 CFR 260.2
Env-Hw 204 & 205	RSA 147-A:3, I, III and IV; RSA 541-A:16, I	40 CFR 260 Subpart C
Env-Hw 206	RSA 541-A:16, I(c)	40 CFR 260 Subpart C
Env-Hw 207	RSA 147-A:3,VI; RSA 541-A:16, I	