

*Readopt with amendment Env-Sw 2100, eff. 2-16-10 (doc.#9645) to read as follows:*

CHAPTER Env-Sw 2100 MANAGEMENT AND CONTROL OF ASBESTOS DISPOSAL SITES NOT OPERATED AFTER JULY 9, 1981

Statutory Authority: RSA 141-E:4, XVIII

PART Env-Sw 2101 PURPOSE AND SCOPE

Env-Sw 2101.01 Purpose.

(a) The purpose of the rules in this chapter is to protect public health, safety, and the environment by establishing requirements for managing asbestos disposal sites not regulated under the state solid waste management act, RSA 149-M, and rules adopted pursuant thereto, namely sites where asbestos exists on or in the ground due to dumping activities that ceased prior to July 10, 1981, including but not limited to the many sites in Nashua and Hudson filled with asbestos manufacturing waste from the Johns-Manville Corporation.

(b) It is intended that the rules in this chapter be used in conjunction with other federal, state, and local requirements for managing and controlling asbestos, including but not limited to:

- (1) New Hampshire administrative rules in Env-A 1800 pertaining to licensing contractors and certifying individuals who disturb asbestos at asbestos disposal sites, as adopted by the department pursuant to RSA 141-E;
- (2) New Hampshire administrative rules in Env-Sw 901 pertaining to the collection, storage and off-site transfer, processing, treatment, and disposal of asbestos waste, as adopted by the department pursuant to RSA 149-M;
- (3) Federal regulations pertaining to occupational safety and health, including regulations established and implemented by:
  - a. The Occupational Safety and Health Administration in 29 CFR 1910 and 29 CFR 1926; and
  - b. The U.S. Environmental Protection Agency (USEPA) in 40 CFR 763;
- (4) Federal regulations pertaining to transportation of asbestos, including regulations established by the U.S. Department of Transportation in 49 CFR 107 and 49 CFR 171-172; and
- (5) Federal regulations pertaining to management of inactive disposal sites for asbestos, including regulations established by the USEPA in 40 CFR 61 or the substitute provisions, if any, approved by the USEPA under 40 CFR 63.93 and identified in 40 CFR 63.99.

Env-Sw 2101.02 Applicability.

(a) The rules in this chapter shall apply to asbestos disposal sites, as defined by RSA 141-E:2, III and Env-Sw 2102.03.

(b) The asbestos disposal sites identified in (a), above, shall include but are not limited to the many sites in Nashua and Hudson filled with asbestos manufacturing waste from the Johns-Manville Corporation.

(c) The rules in this chapter shall not apply to asbestos abatement activities, as defined in RSA 141-E:2, II, that are subject to the NH administrative rules for asbestos management and control, Env-A 1800, including but not limited to the removal, repair, or encapsulation of asbestos containing materials during demolition or renovation of buildings.

Text added to existing rules in ***bold italics***  
Text deleted from existing rules shown ~~struck through~~  
Explanatory comments shown in *{bracketed blue italics}*

PART Env-Sw 2102 DEFINITIONS

Env-Sw 2102.01 “Asbestos” means “asbestos” as defined by RSA 141-E:2, I, ~~namely “amosite, chrysotile, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite.”~~ As used in this chapter, the term includes asbestos contained in any material, product, or by-product ***as reprinted in Appendix B.***

Env-Sw 2102.02 “Asbestos waste” means any asbestos or asbestos-containing material, product, or by-product that is discarded or abandoned.

Env-Sw 2102.03 “Asbestos disposal site (***ADS***)” means “asbestos disposal site” as defined ~~by~~ ***in*** RSA 141-E:2, III, ~~namely “land where asbestos waste exists, either in or on the ground, due to dumping activities which ceased by July 10, 1981. The term includes inactive disposal sites as defined by 40 CFR 61.141. The term does not include any disposal site which is subject to the permitting requirements of RSA 149-M.”~~ ***as reprinted in Appendix B***

***Env-Sw 2102.04 “ADS certificate number and expiration date” means the number and expiration date of the certificate held by a certified ADS worker.***

***Env-Sw 2102.05 “ADS license number and expiration date” means the number of the license issued to a contractor for work at asbestos disposal sites pursuant to RSA 141-E:10, I, and Env-A 1811 and the date of expiration of the license.***

***Env-Sw 2102.06 “Certified ADS worker” means an individual who holds a valid certificate issued by the department pursuant to RSA 141-E:11 and Env-A 1812 that is not a worker-in-training certificate.***

***Env-Sw 2102.07 “Contractor” means “contractor” as defined in RSA 141-E:2, IV, as reprinted in Appendix B.***

Env-Sw 2102.0408 “Cover material” means non-asbestos-containing material overlying asbestos at an asbestos disposal site, ~~including~~ ***The term includes*** but is not limited to ***earth materials such as*** clean soil, ***or crushed*** rock, and other earthen materials, geotextiles and other types of geosynthetics ***such as geotextiles***, concrete, bituminous concrete, and vegetation.

Env-Sw 2102.0509 “Department” means the New Hampshire department of environmental services.

Env-Sw 2102.0610 “Emergency project” means an unforeseen major or minor project that is the result of a sudden or unexpected event and must proceed expeditiously in order to protect public health, safety, or the environment. The term does not include work that is extraneous to abating the immediate threat to public health, safety, or the environment.

*{Env-Sw 2102.07 “Licensed contractor” moved to be Env-Sw 2102.14 “Qualified ADS contractor”}*

Env-Sw 2102.0811 “Major project” means any activity at an asbestos disposal site that involves the excavation, removal, exposure, or other disturbance of more than 160 square feet, which is approximately 15 square meters, or 35 cubic feet, which is approximately one cubic meter, of asbestos or any material mixed with or containing asbestos, where the total disturbance involved in a project is measured cumulatively.

Env-Sw 2102.0912 “Minor project” means any activity at an asbestos disposal site that involves the excavation, removal, exposure, or other disturbance of asbestos, or any material mixed with or containing asbestos that is not a major project. The term does not include a major project divided into smaller segments.

Env-Sw 2102.1013 “Owner” means the owner of record of a parcel of land where there is an asbestos disposal site.

Env-Sw 2102.0714 “~~Licensed~~***Qualified ADS*** contractor” means:

(a) ~~The entity or individual undertaking a minor or major project and~~ ***A contractor who*** holds a valid ***ADS*** license issued pursuant to ***RSA 141-E:10 and Env-A 1811***; or

(b) If the project is ***exempted under RSA 141-E:10, I, and Env-A 1811.03 from being done by a contractor who holds a valid ADS*** license ~~exempt pursuant to Env-A 1811~~, the qualified ~~person~~***individual*** who is in charge of ~~the~~***a*** project ***at an asbestos disposal site***.

Env-Sw 2102.415 “~~Qualified person~~***individual***” means an individual who:

(a) Is capable of identifying asbestos, asbestos waste at asbestos disposal sites, and asbestos hazards;

(b) Is capable of selecting the appropriate control strategies for the release of asbestos fibers to the environment and human asbestos exposure;

(c) Has read and understands the information provided in the document titled “Guidance for Managing Asbestos Disposal Sites”, published by the department in May, 2000; ***and***

(d) ***Personally holds a valid ADS license or is a certified ADS worker.***

~~(d) Has all credentials and holds all licenses, certificates, registrations or other authorizations needed pursuant to federal, state, and local requirements for the performance of the work or delivery of the service that necessitates the qualifications, including but not limited to a valid certificate issued pursuant to Env-A 1812, when required; and~~

~~(e) Performs work at an asbestos disposal site under the authority of an entity or individual holding a valid license issued pursuant to Env-A 1811, unless the work being performed is license exempt pursuant to Env-A 1811.~~

Env-Sw 2102.4216 “~~Utility~~***transportation*** project” means:

(a) ~~A~~ ***a*** minor or major project by a utility company or public authority to install, repair, replace, or decommission a private or public utility system, or portion thereof, at locations where the responsible utility company or public authority holds such rights of access, and includes the installation, repair, replacement, and decommissioning of the following:

(a1) Sanitary sewerage, water, or drainage systems, and related appurtenances;

(b2) Steam lines and related appurtenances;

(c3) Natural gas pipelines and related appurtenances; and

(d4) Above-ground or underground electric, telephone, telecommunication cables or other conduits, and related appurtenances;;

(b) ***A minor or major project undertaken by a public authority or pursuant to a contract with a public authority to construct, reconstruct, or repair all or a portion of a public way such as a street, road, or highway; or***

(c) ***A minor or major project undertaken to repair, restore, or remove railroad tracks.***

Env-Sw 2102.4317 “Visible emission” means any emission that is visually detectable without the aid of instruments, coming from asbestos waste. The term does not include condensed, uncombined water vapor.

## PART Env-Sw 2103 WAIVERS

Env-Sw 2103.01 Applicability. ~~(a) Except as specified by (b) and (c), below, the rules in this part shall apply to any person seeking a waiver to a requirement in this chapter.~~

*{(b) and (c) moved and renumbered as Env-Sw 2103.05(c) and (d), respectively}*

***Env-Sw 2103.02 Who May Request a Waiver.***

***(a) If the waiver is intended to apply to an asbestos disposal site on a single lot, then:***

***(1) The owner(s) of the lot shall request the waiver; and***

***(2) If the identity of the contractor or individual who will be undertaking the work or service is known at the time the waiver is requested, the waiver request shall also be signed by:***

***a. The licensed ADS contractor, if a licensed ADS contractor is required under RSA 141-E:10, I; or***

***b. The certified ADS worker, if a licensed ADS contractor is not required under RSA 141-E:10, I.***

***(b) If the waiver is intended to apply without regard to a specific asbestos disposal site, the person responsible for the work or service to which the waiver would apply shall file the request.***

***Env-Sw 2103.0203 Waiver Applications Requests.***

***(a) Any person seeking a waiver to a requirement in this chapter shall submit an application for a waiver request to the department, in writing, as specified in (bc), below, and concurrently.***

***(b) The requestor shall provide a copy of the application request to the local health officer at the same time the request is submitted to the department.***

***(bc) Each application for waiver request shall include the following information:***

***(1) The name, mailing address, email address, and daytime telephone number with area code of the applicant-requestor;***

***(2) Identification of the specific rule(s) the applicant-requestor is seeking to have waived;***

***(3) Identification of the asbestos disposal site(s) to which the waiver is intended to apply, if granted, or a statement that the requested waiver is intended to apply without regard to a specific site;***

***(4) Description of the specific project(s) to which the waiver is intended to apply, if granted, or a statement that the requested waiver is intended to apply without regard to a specific project;***

***(5) The period of time during which the applicant-requestor wishes the waiver to be effective;***

***(6) If the waiver is intended to apply to a specific asbestos disposal site, a statement indicating whether the applicant-requestor wants the waiver, if granted, to include provisions for automatic transfer automatically to subsequent owners;***

***(7) A full explanation of why the waiver is necessary-being requested, including an explanation of:***

***a. The hardship that would be caused by having to economic and operational consequences of complying with the rule as written; and***

***b. The potential adverse impacts to public health, safety, or the environment of complying with the rule as written and of performing the work with the waiver;***

***(8) A full explanation, with supporting data, of the alternative(s), if any, that the applicant-requestor proposes to use in lieu of complying with the rule as written;***

***(9) A full explanation of how each of the alternatives proposed pursuant to (8), above, is consistent with the purpose and intent of RSA 141-E and the rules in this chapter, and is otherwise adequate to protect public health, safety and the environment; and***

(10) If the applicant is seeking a waiver of any rule needing USEPA approval, ~~as described in Env-Sw 2103.01(e),~~ a copy of the approval issued by the USEPA.

(c) Each application for waiver shall be dated and signed ~~by the applicant under penalties of RSA 641:3~~ ***as specified in Env-Sw 2103.04.***

~~(d) If the application for waiver is site specific and the applicant is not the owner, the application shall also include a statement, dated and signed by the owner under penalties of RSA 641:3, certifying that the owner is aware that application is being made and agrees to the information contained therein.~~

***Env-Sw 2103.04 Signatures and Certifications.***

(a) ***Each waiver request shall be dated and signed by the requestor, as follows:***

(1) ***If the requestor is an individual or sole proprietorship, the requestor shall sign and date the request; and***

(2) ***If the requestor is other than an individual or sole proprietorship, the individual who has been authorized by the requestor to sign the request on behalf of the requestor shall sign and date the request.***

(b) ***If the requestor is the owner of the asbestos disposal site and the qualified ADS contractor is known at the time of the request, the request for waiver also shall be signed and dated by the qualified ADS contractor, as follows:***

(1) ***If the qualified ADS contractor is an individual or sole proprietorship, the individual shall sign and date the request and, if applicable, provide his or her ADS contractor license number and expiration date or ADS certificate number and expiration date; or***

(2) ***If the qualified ADS contractor is other than an individual or sole proprietorship, the individual who has been authorized by the qualified ADS contractor to sign the application on behalf of the entity shall sign and date the request and, if applicable, provide the entity's ADS contractor license number and expiration date.***

(c) ***A signature provided pursuant to (a) or (b), above, shall constitute certification that:***

(1) ***The information being submitted is true, complete, and not misleading to the best of the signer's knowledge and belief;***

(2) ***The signer understands that:***

a. ***The submission of false, incomplete, or misleading information is grounds for:***

1. ***Denying the request; or***

2. ***Revoking any waiver that is granted based on the information; and***

b. ***The signer is subject to the penalties specified in New Hampshire law, currently RSA 641, for falsification in official matters; and***

(3) ***The requestor will comply with any conditions included in the waiver pursuant to Env-Sw 2103.06(a).***

~~Env-Sw 2103.0305~~ ***Review and Decision; Criteria.***

(a) ~~Applications for waiver~~ ***The department shall be reviewed by the department each waiver request within the time frames specified in accordance with RSA 541-A:29.***

(b) ***Subject to (c) through (e), below,*** ~~the~~ department shall grant ~~the requested~~ a waiver if:

(1) ~~The proposed alternative~~ ***Granting a waiver:***

- a. Is ~~in keeping~~ ***consistent*** with the purpose and intent of RSA 141-E and the rules in this chapter;
- b. Will protect the public health, safety, and environment to the same or greater extent than the rule being waived;
- c. Does not violate RSA 141-E or any other state or federal requirement for management and control of asbestos, including but not limited to the requirements identified in Env-Sw 2101.01(b); and
- d. Is enforceable; and

(2) At least one of the following conditions is satisfied:

- a. Strict compliance with the rule ***as written*** will result in an adverse effect on the public health, safety, or the environment; or
- b. Strict compliance with the rule will provide no benefit to the public and will cause a ~~hardship to the applicant~~ ***the requestor to experience economic or operational difficulties.***

*{(c)-(f) have been moved and renumbered as Env-Sw 2103.06(b)-(e), respectively}*

~~2103.01(bc)~~ The rules in this part ***department*** shall not apply to obtaining ***grant*** a waiver to any rule in this chapter that ~~incorporates~~ ***reflects*** a statutory requirement, including but not limited to:

- (1) Env-Sw 2104.02 and Env-Sw 2105.05(a), prohibiting the release of asbestos fibers to the environment; and
- (2) Env-Sw 2104.08(a), specifying disclosure requirements.

~~2103.01(ed)~~ The rules in this part ***Subject to (e), below, the department*** shall not apply to obtaining ***grant*** a waiver when both (1) and (2), below, are true, ~~unless the applicant first obtains approval from the USEPA for the same waiver and provides a copy of the approval as specified in Env-Sw 2103.02(b)(10):~~

- (1) The request is to waive a rule that the USEPA has approved pursuant to 40 CFR 63.93 and identified in 40 CFR 63.99 as a substitute for a rule promulgated under §112 of the federal Clean Air Act; and
- (2) The waiver is intended to apply to an asbestos disposal site that was operated by sources covered under 40 CFR 61.142, 40 CFR 61.144, and 40 CFR 61.147, including but not limited to the sites in Nashua and Hudson formerly operated by the Johns-Manville Corporation.

***(e) The department shall grant a waiver to the requirements identified in (d), above, only if the requestor first obtains approval from the USEPA for the same waiver and provides a copy of the waiver approval from the USEPA as specified in Env-Sw 2103.02(b)(10).***

***Env-Sw 2103.06 Decision; Conditions.***

***(a) The department shall include such conditions as are needed to ensure compliance with Env-Sw 2103.05(b) in any waiver granted.***

~~2103.03(eb)~~ The department shall notify the following ~~parties~~ in writing of the decision to either grant or deny ~~the requested~~ a waiver:

- (1) The ~~applicant~~ ***requestor***;

- (2) The ~~owner~~***qualified ADS contractor***, if ~~different than the applicant and~~ the waiver is site-specific ***and the qualified ADS contractor is known***;
- (3) The local health officer; and
- (4) The USEPA, if the waiver is for a rule that cannot be waived without having first obtained USEPA approval, as specified in Env-Sw 2103.04~~(e)~~***05(e)***.

~~2103.03(d)~~ ***If the department denies the waiver, the notice provided pursuant to (b), above, A notice of denial shall:***

- ~~(1)~~ ***Clearly state clearly the reason(s) for denial; and***
- ~~(2)~~ ***Inform the requestor of the procedures by which the decision can be appealed.***

~~2103.03(ed)~~ Waivers, when issued, shall include:

- (1) The name of the person(s) to whom the waiver is issued;
- (2) Identification of the rule(s) being waived;
- ~~(3)~~ ***Identification of the site to which the waiver applies, if the waiver is site specific;***
- ~~(34)~~ ***The terms and conditions under which the waiver is granted, including provisions for transfer if the waiver is site specific and is intended to run with the property;***
- ~~(45)~~ The effective date and expiration date; and
- ~~(56)~~ The signature of the department's commissioner or designee.

~~(f-e)~~ In no case shall the waiver of any requirement in this chapter be construed as:

- (1) An authorization of any activity that occurred prior to the effective date of the waiver;
- (2) An authorization of any activity that does not comply with ***RSA 141-E and*** the requirements of this chapter ~~or RSA 141-E~~ ***that have not been waived***;
- ~~(3)~~ ***Elimination of A waiver of*** any obligation to comply with all other applicable federal, state, and local requirements for asbestos management and control, including, but not limited to the requirements identified in Env-Sw 2101.01(b);
- ~~(4)~~ ***Elimination of A waiver of*** any obligation to obtain all requisite local, state, and federal permits or approvals; or
- (5) A waiver of any cause of action for violations predating the waiver.

## PART Env-Sw 2104 GENERAL ***SITE MANAGEMENT*** REQUIREMENTS

Env-Sw 2104.01 Applicability. The rules in this part shall apply to managing and controlling asbestos disposal sites.

Env-Sw 2104.02 Release Prohibited.

- (a) As ~~required by~~ ***stated in*** RSA 141-E:21, "no person shall cause or allow asbestos fibers to be released to the environment from an asbestos disposal site."<sup>2</sup>
- (b) A release to the environment, as specified in (a), above, shall include but not be limited to:
  - (1) A visible emission;

- (2) An uncontained airborne concentration of asbestos fibers that exceeds the ambient concentration;
- (3) An off-site discharge of storm water, surface water, or waste water that has been in contact with asbestos, unless the water is filtered and discharged in accordance with Env-Sw 2105.14(c);
- (4) The off-site removal of asbestos, unless the asbestos is collected, stored, transferred, and disposed in accordance with Env-Sw 901; and
- (5) The off-site removal of individuals, equipment, supplies, clothing, or any other materials or items that have been in contact with asbestos, unless first decontaminated in accordance with Env-Sw 2105.14 or collected, stored, transferred, and disposed in accordance with Env-Sw 901.

Env-Sw 2104.03 Cover Requirements.

(a) All asbestos at an asbestos disposal site shall be buried under a capping system that is designed using sound engineering practices ~~and~~ **to** meet the criteria specified in (b) through (e), below.

(b) The capping system shall ***be designed and maintained to*** prevent the asbestos from becoming exposed under the following site-specific conditions and events:

- (1) The 100-year, 24-hour storm;
- (2) The 100-year flood;
- (3) Seasonal frost action;
- (4) Erosion due to wind, water, and other factors; and
- (5) Site land use and activities.

(c) The capping system shall ~~be comprised of~~ ***have*** cover materials placed in layers, as follows:

- (1) Surface cover materials shall be of such type as will eliminate or control erosion, including but not limited to one or more of the following:
  - a. Riprap, densely packed;
  - b. Bituminous concrete, free of cracks or openings;
  - c. Portland cement concrete, free of cracks or openings; and
  - d. Vegetation that, if up-rooted, will not expose the ***underlying*** asbestos layer;
- (2) The cover material immediately below the surface cover materials shall be of sufficient character and thickness to support and enhance the long-term effectiveness of the surface cover materials; and
- (3) Earthen cover material ~~immediately in contact with~~ ***below the layer described in (2), above, and above*** the asbestos deposit shall be a free-draining sandy gravel material.

(d) The total ***combined*** depth of the cover materials shall be ~~6 inches or more as~~ ***the depth*** required ***based on sound engineering judgement*** to ~~satisfy~~ ***meet*** the performance standards ~~provided~~ ***established*** in (b), above, ***but in no case shall the combined depth of cover materials be less than 6 inches.***

(e) ~~Geotextiles~~ ***Geosynthetics*** shall be incorporated in the capping system when necessary to:

- (1) Inhibit asbestos from becoming exposed to the ground surface as a result of frost action;
- (2) Prevent different layers of cover materials from inter-mixing; or



- (3) Create a barrier to warn against digging into the underlying asbestos.
- (f) Typical capping system specifications are provided in appendix I for residential sites that:
  - (1) Are located in Nashua or Hudson, New Hampshire, or another area of the state having the same average depth of ground frost;
  - (2) Have a level or gently sloping ground surface;
  - (3) Do not border on any surface water; and
  - (4) Are not situated within the 100-year flood hazard zone.
- (g) Nothing stated in (a) through (f), above, shall be construed to ~~mean there is no obligation to also~~ ***waive compliance*** with other local, state, and federal building codes, construction standards, and other requirements that apply to establishing the capping system and undertaking the type of land uses and activities the capping system is designed to support pursuant to (b)(5), above. ***To the extent another applicable code conflicts with these rules, the requirement(s) that are more protective of public health, safety, and welfare shall apply.***

Env-Sw 2104.04 Activity and Use Restrictions.

- (a) No person shall excavate, remove, expose, or otherwise disturb any asbestos at an asbestos disposal site, unless the work is conducted in accordance with the work practices and engineering controls in Env-Sw 2105.
- (b) No person shall alter the capping system or the type of cover materials at an asbestos disposal site in a manner that causes the capping system to be less effective in meeting the performance criteria specified in Env-Sw 2104.03(b).
- (c) Owners shall:
  - (1) ~~R~~***restrict*** the use of a site to only those uses and activities that the capping system is designed ***and maintained*** to sustain without loss of integrity, as required by Env-Sw 2104.03(b)(5); ***and***
  - (2) ***Not allow any person to excavate, remove, expose, or otherwise disturb asbestos at their property except in compliance with this chapter.***

Env-Sw 2104.05 Access Control. The owner shall control access to the ~~site~~***property*** as necessary to comply with Env-Sw 2104.04.

Env-Sw 2104.06 Site Monitoring and Reporting.

- (a) The owner shall monitor the asbestos disposal site to assure that all asbestos waste remains covered in accordance with the requirements of this chapter.
- (b) The owner shall promptly report to the local health officer and the department any situation involving either uncovered asbestos waste or a release to the environment as identified in Env-Sw 2104.02(b), or both.
- (c) The owner shall promptly report to the local health officer and the department any conditions developing at the site that have the potential to result in either uncovered asbestos waste or a release to the environment as identified in Env-Sw 2104.02(b), or both.

Env-Sw 2104.07 Site Maintenance. Owners shall provide site maintenance as needed to keep the site covered in compliance with Env-Sw 2104.03 and ~~to otherwise~~ prevent a release to the environment as identified in Env-Sw 2104.02(b).

Env-Sw 2104.08 Disclosure and Record Keeping.

(a) Owners shall comply with the disclosure requirements specified in RSA 141-E:23, including requirements for:

- (1) Recording notice in the chain of title for the property;
- (2) Providing notice to tenants, contractors, and other site users;
- (3) Providing notice to potential buyers; and
- (4) Providing notice to the department following a transfer of title.

(b) Owners shall register sites in accordance with Env-Sw 309 and provide to the department, in writing, other information needed to maintain the registry of sites required by RSA 141-E:3, XVII.

(c) Owners shall keep records or have access to records required to comply with the seller to buyer disclosure requirements in RSA 141-E:23, I(d), including:

- (1) A site plan showing the asbestos disposal area and the cover materials;
- (2) Site monitoring and maintenance records pursuant to Env-Sw 2104.06 and Env-Sw 2104.07;
- (3) Site inspection reports, including reports prepared for inspections conducted pursuant to RSA 141-E:24; and
- (4) Project summary information for all major and minor projects undertaken at the site, including, as applicable:
  - a. A copy of project commencement notices pursuant to Env-Sw 2105.07;
  - b. Weekly project reports pursuant to Env-Sw 2105.17(a); ~~and~~
  - c. Project completion reports pursuant to Env-Sw 2105.17(b); ***and***
  - d. ***Site clearance determinations and information obtained pursuant to Env-Sw 2105.15.***

#### PART Env-Sw 2105 WORK PRACTICES AND ENGINEERING CONTROLS

Env-Sw 2105.01 Purpose. The purpose of the rules in this part is to establish work practices and engineering controls for excavating, removing, exposing, or otherwise disturbing asbestos at an asbestos disposal site in a manner that is protective of public health, safety and the environment.

Env-Sw 2105.02 Applicability. The requirements in this part shall apply to all minor and major projects, ***including projects for which RSA 141-E:10, I, and Env-A 1811.03 do not require the contractor to hold an asbestos disposal site license, unless otherwise specifically noted in this part.***

Env-Sw 2105.03 ~~Qualified Persons~~ ***Individuals*** Required.

(a) No ~~person~~ ***individual*** shall excavate, remove, expose, or otherwise disturb asbestos at an asbestos disposal site unless the ~~person~~ ***individual*** is:

- (1) A ~~a~~ qualified ~~person~~ ***individual***;
- (2) ***An individual holding a worker-in-training certificate under Env-A 1812; or***

(3) ***Exempt from the requirement to hold a license under RSA 141-E:10, I and from the requirement to hold a certification under RSA 141-E:11, I.***

(b) ***No individual shall supervise any individual who is excavating, removing, exposing, or otherwise disturbing asbestos at an asbestos disposal site unless the individual is a qualified individual.***

(c) ***The work plans required by Env-Sw 2106 shall be prepared and signed by a qualified individual.***

(d) ***The clearance determinations required by Env-Sw 2105.15 shall be performed and signed by a qualified individual.***

Env-Sw 2105.04 Types of Projects.

(a) For the purposes of the rules in this chapter, work involving the disturbance of asbestos at asbestos disposal sites shall be classified as either a:

- (1) Major project, as defined by Env-Sw 2102.~~0811~~; or
- (2) Minor project, as defined by Env-Sw 2102.~~0912~~.

(b) For the purposes of the rules in this chapter, major and minor projects shall be further classified as either:

- (1) Emergency projects, as defined by Env-Sw 2102.~~0610~~; or
- (2) Non-emergency projects.

(c) Any of the project types specified in (a) and (b), above, shall also be further classified as either:

- (1) Utility/***transportation*** projects, as defined by Env-Sw 2102.~~4316~~; or
- (2) Non-utility/***transportation*** projects.

Env-Sw 2105.05 General ***Project Requirements; Work Plans.***

(a) The excavation, removal, exposure, or other disturbance of asbestos at an asbestos disposal site shall be conducted in a manner that:

- (1) Is protective of public health, safety, and the environment; and
- (2) Does not cause a release of asbestos fibers to the environment, including any release identified in Env-Sw 2104.02.

(b) The excavation, removal, exposure, or other disturbance of asbestos at an asbestos disposal site shall be carried out in conformance with ~~other~~***all applicable*** federal, state, and local requirements pertaining to the management and control of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable.

(c) Major non-emergency projects shall proceed in accordance with ~~the provisions of a~~ ***project-specific or generic*** work plan ***prepared and*** approved pursuant to Env-Sw 2106, unless ~~exempt~~***no work plan is required*** pursuant to Env-Sw 2106.02(d).

(d) At project sites that are subject to the work plan requirement cited in (c), above, the qualified ~~person in charge of the work~~***individual*** shall maintain a copy of the work plan at the work site ***for the duration of the project***, for reference by workers and for inspection by the department and the local health officer.

~~(e) During any minor or major project, the licensed contractor shall comply with the requirements of Env A 1811.08 and this part.~~

Env-Sw 2105.06 Factors to Consider. The following site-specific factors shall be considered when determining the appropriate engineering controls, work practices, and equipment needed to comply with the rules in this part ***and when preparing work plans in accordance with Env-Sw 2106:***

- (a) Pathways by which asbestos fibers could be released from the site to the environment, including but not limited to releases to air and surface water, and releases off-site by contaminated persons or equipment leaving the site;
- (b) Number and proximity of human receptors;
- (c) Prevailing wind direction;
- (d) Weather and seasonal conditions, including but not limited to frozen ground and flooding;
- (e) Project duration;
- (f) Quantity and area of asbestos being disturbed;
- (g) Nature of the asbestos being disturbed, including:
  - (1) Whether it is friable or non-friable; and
  - (2) If non-friable, whether it has the potential to become friable when disturbed;
- (h) Vertical and lateral limits of the asbestos disposal site;
- (i) Depth and type of cover materials;
- (j) Existing site features, including but not limited to:
  - (1) Surface topography;
  - (2) Property lines, rights-of-way, and easements;
  - (3) Surface waters and wetlands;
  - (4) Roadways, driveways and parking areas;
  - (5) Buildings and other structures;
  - (6) Above-ground and below-ground utilities; and
  - (7) Above-ground and below-ground storage tanks;
- (k) Slope stability;
- (l) Load bearing capacity of the site;
- (m) Visibility and illumination;
- (n) Site accessibility;
- (o) Site history information; and
- (p) Site assessment and characterization information, and degree of confidence that the information is both complete and accurate.

Env-Sw 2105.07 Project Notice Requirements.

- (a) Except as provided ~~by~~ ***in (b) and (d)***, below, the ~~licensed contractor~~ ***owner*** shall notify the following ~~parties~~ ***persons in writing*** about the commencement of work:

- (1) The local health officer;
- (2) The department's division of air resources; and
- (3) For major projects only, the department's division of waste management.

***(b) In the case of a utility/transportation project, the responsible utility company or public authority shall notify the following persons in writing about the commencement of work:***

- (1) The local health officer;***
- (2) The owners of properties that will be disturbed by the project or, where the project will occur on land owned by the public utility or public authority, owners of properties abutting such property;***
- (3) The department's division of air resources; and***
- (4) For major projects only, the department's division of waste management.***

~~(dc) Notwithstanding the above requirements, n~~No notice shall be required for projects identified in Env-A 1812.03 that can be performed by ~~qualified persons~~***individuals who are not licensed under RSA 141-E:10 or certified under Env-A 1812 RSA 141-E:11.***

~~(bd)~~ Notice pursuant to this section shall be provided according to the following schedule:

- (1) If the project is an emergency project, verbal notice shall be provided as soon as practicable under the circumstances and written confirmation shall be provided within 48 hours of commencing the project;
- (2) If the project is a minor non-emergency project, notice shall be provided ***prior to doing the work or, in the case of an unexpected disturbance,*** as soon as practicable after the person doing the work knows or should have known the work involves asbestos and, if such notice is given verbally, written confirmation shall be provided within 48 hours following project commencement; and
- (3) If the project is a major non-emergency project, notice shall be provided as specified in the work plan approved pursuant to Env-Sw 2106.

~~(ee)~~ Notice provided pursuant to this section shall include the following information:

- (1) Project location;
- (2) ~~The n~~Name, mailing address, ***email address,*** and daytime telephone number ***including area code*** of:
  - a. The owner, if the owner is initiating and undertaking the project; or***
  - b. The entity, ~~or~~ individual, utility, or public authority responsible for initiating and undertaking the project;***
- (3) ***If the work that involves the disturbance of asbestos is required to be done by a contractor who is licensed under RSA 141-E:10, I, and Env-A 1811, the following:***
  - a. The contractor's n*Name, mailing address, daytime telephone number ***including area code, email address,*** and ~~current Env-A 1811~~ ***ADS license number and expiration date of the licensed contractor who will be implementing the plan or;*** ***and*****
  - b. The name, mailing address, daytime telephone number including area code, and ADS license or certification number and expiration date of the qualified individual who will be in charge of the work for the qualified ADS contractor;***

(4) ~~If the work does that involves the disturbance of asbestos is not required to be done by a licensed contractor that is licensed under RSA 141-E:10, I, and Env-A 1811 because it will be performed by the owner at his/her single family owner occupied property in accordance with due to an the license exemption provisions in Env-A 1812.03(b)1811.03, the following:~~

a. ~~A~~ statement to that effect ***a licensed ADS contractor is not required; and***

~~(4)~~***b. The name, mailing address, daytime telephone number including area code, and email address and the current Env A 1812 certificate number of the qualified person individual who will be in charge of the work, and the qualified individual's ADS certificate number and expiration date;***

(5) Project schedule, including the starting and completion dates;

(6) Reason for disturbing the asbestos and a general description of the project; ~~and~~

(7) If the project is subject to the work plan requirements in Env-Sw 2106, the date the work plan was approved by the department- ***and whether it is a project-specific or generic work plan; and***

***(8) If the project will be conducted under a generic work plan approval, a statement signed by the qualified ADS contractor identified pursuant to (3) or (4), above, as applicable, that the work plan is up to date with the requirements of RSA 141-E and this chapter and is relevant to the planned work.***

*{(d) has been moved to be (c), above}*

(e) Notice transmitted via e-mail or fax shall constitute a form of ~~written~~-notice ***in writing***.

Env-Sw 2105.08 Site Preparation. Prior to commencing a minor or major project, ~~the licensed contractor~~ ***a qualified individual*** shall prepare the site so that the work can be executed in accordance with the ***approved*** work plan, if applicable, and all other requirements of this chapter.

Env-Sw 2105.09 Site Work Zones.

(a) To reduce the potential for asbestos fibers to be released to the environment by persons and equipment leaving a major or minor project site, site work zones shall be established and delineated to:

(1) Separate clean operations from contaminated operations; and

(2) Control the flow of personnel and equipment between such operations.

(b) The site work zones required to comply with (a), above, shall be established and maintained in accordance with the provisions for site control provided in ~~Section~~ ***Chapter*** 9 of the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115, ***available at no cost at <https://www.cdc.gov/niosh/docs/85-115/pdfs/85-115-a.pdf>***.

Env-Sw 2105.10 Access Control and Site Security.

(a) ~~During a major or minor project,~~ Access control and site security shall be provided as necessary to:

(1) Prevent unauthorized persons and unprotected persons from being exposed to site hazards;

(2) Reduce the potential for vandalism or unlawful dumping of other wastes at the project site;

(3) Reduce the potential for neighborhood pets and other animals to enter the project site and traverse contaminated areas; and

(4) Avoid interference with safe working procedures.

(b) Access control and site security shall include displaying a warning sign in such manner and location that a person can easily read the legend, including the following information:

- (1) Asbestos work in progress; and
- (2) Authorized persons only.

(c) Site security and access control pursuant to (a) and (b), above, shall be provided during both working and non-working hours.

Env-Sw 2105.11 Excavation or Other Disturbance.

(a) The area of excavation, removal, exposure, or other disturbance of asbestos waste at an asbestos disposal site shall be confined to the smallest area practicable.

(b) Wet methods, or wetting agents, shall be used to prevent the airborne release of asbestos fibers during a major or minor project.

(c) All asbestos being removed from a site shall be managed in accordance with Env-Sw 901.

(d) The excavation, removal, exposure, or other disturbance of asbestos waste at an asbestos disposal site shall not result in increasing the size of the disposal area.

(e) Upon completion of the excavation, removal, exposure, or other disturbance activity, cover materials shall be placed in conformance with Env-Sw 2104.

Env-Sw 2105.12 Personal Protective Equipment. No individual shall enter a contaminated work area unless the individual uses personal protective equipment in conformance with the personal protective equipment requirements for asbestos workers established by the Occupational Safety and Health Administration in 29 CFR 1910 and 29 CFR 1926.

Env-Sw 2105.13 Air Monitoring. Air monitoring shall be provided in accordance with 29 CFR 1910, 29 CFR 1926; 40 CFR 763, and the approved work plan, as applicable.

Env-Sw 2105.14 Decontamination of Personnel and Equipment.

(a) All personnel, equipment, supplies, and materials situated within a contaminated work zone established pursuant to Env-Sw 2105.09 shall be decontaminated prior to being removed to a clean zone established pursuant to Env-Sw 2105.09.

(b) Decontamination shall be achieved by removing all asbestos contamination from the personnel, equipment, supplies, and materials in accordance with the decontamination methods and procedures set forth in ~~Section~~ **Chapter** 10 of the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115, **available at no cost at** <https://www.cdc.gov/niosh/docs/85-115/pdfs/85-115-a.pdf>.

(c) Waste water from decontamination procedures shall be either:

- (1) Discharged to the ground at the project site within a portion of the open excavation area that is already asbestos contaminated and in such a manner as not to become surface run-off; or
- (2) Discharged off-site in accordance with applicable local, state, and federal waste water discharge requirements, after being filtered through progressively smaller filters ending with a filter with openings no larger than 5 microns.

(d) Filters used pursuant to (c), above, shall be handled and disposed as asbestos waste in accordance with Env-Sw 901.

(e) Care shall be taken during the decontamination process to avoid cross contamination of equipment, personnel, or materials.

Env-Sw 2105.15 Clearance Determination.

(a) Following completion of any major or minor project, and before allowing normal use of the site to resume, the ~~licensed contractor~~ ***qualified individual*** shall make a site clearance determination in accordance with (b), below.

(b) A site clearance determination shall not be made unless the ~~licensed contractor~~ ***qualified individual*** determines that all of the following statements are true:

- (1) All excavated, removed, exposed, or other disturbed asbestos either:
  - a. Has been removed from the site in accordance with Env-Sw 901; or
  - b. Is covered in accordance with Env-Sw 2104.03;
- (2) No asbestos-contaminated equipment, materials, clothing, or other supplies remain at the site; and
- (3) It is safe to resume use of the site in a manner consistent with Env-Sw 2104.04.

(c) The ~~licensed contractor~~ ***individual who made the site clearance determination*** shall ~~give~~ ***provide*** the owner a written copy of the clearance determination, signed ~~under the~~ ***and certified as provided in (e), below, to the following persons:***

***(1) For non-utility/transportation projects, the owner for use as required by Env-Sw 2104.08(a)(4); or***

***(2) For utility/transportation projects, the utility company or public authority, as applicable, to be placed in the project record maintained by the utility company or public authority and made accessible to owners when requested to satisfy the disclosure requirements of Env-Sw 2104.08(c).***

(d) ***The signature provided pursuant to (c), above, shall:***

***(1) Constitute certification that:***

- a. The individual holds an ADS contractor license or is a certified ADS worker; and***
- b. The information provided in the clearance report is true, complete, and not misleading to the best of the signer's knowledge and belief; and***

***(2) Subject the signer to penalties ~~of~~ for falsification in official matters, currently in RSA 641:3.***

Env-Sw 2105.16 Project Recordkeeping and Reporting.

(a) Activities involving the excavation or other disturbance of asbestos at an asbestos disposal site shall be documented and records thereof shall be maintained by the owner as specified in Env-Sw 2104.08(c).

(b) Waste shipment records shall be maintained in accordance with 40 CFR 61 and 49 CFR 171-172, as applicable.

(c) Within 60 days after completion of a project that changes either the lateral limits of the disposal area, the depth of the disposal area, or the type or thickness of cover materials, the ~~licensed contractor~~ ***owner***



***or, in the case of a utility/transportation project, the utility company or public authority,*** shall submit to the department as-built drawings that:

- (1) Show the new configuration of the disposal area, including its boundaries and cover materials; and
- (2) Bear the stamp of a professional engineer licensed in New Hampshire, when required pursuant to RSA 310-A:18, with certification either that the altered capping system complies with Env-Sw 2104.03 or that the capping system requirements in Env-Sw 2104.03 no longer apply to the site because all asbestos has been removed from the site.

Env-Sw 2105.17 Additional Reporting Requirements for Major Projects.

(a) During a major project taking longer than 2 weeks to complete, the ~~licensed-qualified ADS~~ contractor ***and owner or, in the case of a utility/transportation project, the qualified ADS contractor and the utility company or public authority,*** shall submit the following to the department and the local health officer:

- (1) Weekly progress reports; and
- (2) Notice of any schedule adjustments for the balance of the project.

(b) Within 60 days after a major project is completed, the ~~licensed-qualified ADS~~ contractor ***and owner or, in the case of a utility/transportation project, the qualified ADS contractor and the utility company or public authority,*** shall ***sign and*** submit a project completion report to the department and the local health officer, ~~including:~~

(c) ***The signature provided pursuant to (b), above, shall:***

(1) ***Constitute certification that:***

- a. The signer has been duly authorized to sign the project completion report; and***
- b. The information provided in the report is true, complete, and not misleading to the best of the signer's knowledge and belief; and***

(2) ***Subject the signer to penalties for falsification in official matters, currently in RSA 641.***

(d) ***The report required by (b), above, shall include:***

(1) The name, mailing address, ***email address,*** and ***daytime*** telephone number ***including area code*** of:

- a. The owner or in the case of a utility/transportation project, the utility or public authority; and the licensed***
- b. The qualified ADS contractor, and if the contractor is licensed under RSA 141-E:10, the relevant ADS contractor license number and expiration date; and***
- c. The qualified individual who was in charge of the work, and the individual's ADS certificate number and expiration date;***

- (2) The location of the project site;
- (3) The date the project commenced and the date it was completed;
- (4) A brief narrative description of the work undertaken, including ~~an~~ ***a description and*** explanation of any deviation from the applicable work plan and any unexpected events;

- (5) For any asbestos removed from the site, a copy of the waste shipment records pursuant to 40 CFR 61 and 49 CFR 171 - 172, as applicable;
- (6) A brief narrative description of site conditions following completion;
- (7) As-built drawings of the completed work, ~~including asbestos disposal site details~~ ***that conform to Env-Sw 2105.16(c)***;
- (8) ~~A summary of the~~ Air monitoring results ***obtained*** pursuant to Env-Sw 2105.13;
- (9) A copy of the site clearance determination pursuant to Env-Sw 2105.15;
- (10) A statement, signed by the ~~licensed contractor~~ ***qualified individual***, certifying that:
  - a. The information submitted in the report is correct and complete;
  - b. The required work was completed in conformance with the approved work plan, except as noted pursuant to (b)(4), above, and the requirements of this chapter; and
  - c. In order to facilitate compliance with RSA 141-E:23, I(d), either:
    1. The owner has been provided a copy of the project completion report ***and has access to the air monitoring laboratory results and related data that is the basis of the summary provided per (8), above***; or
    2. In the case of a utility/***transportation*** project, the owner has been notified that a copy of the project completion report ***and the air monitoring laboratory results and related data that is the basis of the summary provided per (8), above***, is available from the utility company or ***public*** authority, by request ***as needed to comply with Env-Sw 2104.08(c)***.

## PART Env-Sw 2106 WORK PLANS FOR MAJOR NON-EMERGENCY PROJECTS

Env-Sw 2106.01 Applicability. The rules in this part shall ~~establish provisions for~~ ***apply to*** work plans for major non-emergency projects.

### Env-Sw 2106.02 ~~General Requirements~~ ***Work Plans Required***.

- (a) Except as provided in (d), below, no person shall undertake a major non-emergency project except in accordance with a written work plan prepared and approved in accordance with this part.
- (b) Work plans shall be:
  - (1) Prepared in writing by a qualified ***individual*** ~~person who is certified pursuant to Env A 1812;~~ ***and***
  - (2) Stamped by a registered professional engineer in New Hampshire when required ~~pursuant to~~ ***by*** RSA 310-A;
  - (3) Submitted to the department for approval ~~pursuant to Env Sw 2106.05~~ ***by the applicants identified in (e), below***; and
  - (4) Concurrently submitted to the local health officer.
- (c) Work plans shall provide sufficient detail to allow qualified ~~persons~~ ***individuals*** to implement the plan and complete the proposed work tasks in compliance with the work practices and engineering controls specified in Env-Sw 2105, all other requirements in this chapter, and RSA 141-E without further explanation or guidance.

(d) No work plan shall be required for a major non-emergency project if, pursuant to ~~the provisions of~~ ***RSA 141-E:11, I, and*** Env-A 1812, the work can be performed by ~~persons~~ ***an individual who is not licensed pursuant to RSA 141-E:10 or*** certified pursuant to ~~Env-A 1812~~ ***RSA 141-E:11.***

(e) ***The applicant for work plan approval shall be as follows:***

(1) ***For a project-specific work plan for a non-utility/transportation project, the owner and the qualified ADS contractor, if known at the time the plan is prepared for submittal;***

(2) ***For a project-specific work plan for a utility/transportation project, the applicable utility company or public authority and the qualified ADS contractor, if known at the time the plan is prepared for submittal; or***

(3) ***For a generic work plan, the owner, qualified ADS contractor, utility company, public authority, or other entity or individual who will be authorized to use the work plan if it is approved.***

Env-Sw 2106.03 Types of Work Plans.

(a) There shall be 2 basic types of work plans, as follows:

(1) Project-specific work plans, developed for the performance of work involving a discrete project at a discrete time and place; and

(2) Generic work plans, developed for the performance of recurrent types of work that will be undertaken at indeterminate times and places, including but not limited to utility/***transportation*** projects.

(b) A project-specific work plan shall be used to establish the work procedures to be used by persons disturbing asbestos at a specific asbestos disposal site during a project that is planned in advance of the work actually taking place.

(c) A generic work plan shall be used to establish the work procedures to be used by persons disturbing asbestos during projects that are routinely undertaken by the responsible party at various locations and at various times not specifically known at the time the plan is prepared.

Env-Sw 2106.04 Project-Specific Work Plans; ***Content.*** A project-specific work plan for major non-emergency projects shall include:

(a) Name, mailing address, ***email address***, daytime telephone number ***including area code***, and credentials of the qualified ~~person~~ ***individual*** who prepared the plan, ***including the individual's ADS license or certificate number and expiration date, as applicable;***

(b) Project location ***and name, mailing address, email address, and daytime telephone number including area code of each owner;***

(c) Name, mailing address, ***email address***, and daytime telephone number ***including area code*** of the entity or individual responsible for initiating and undertaking the project, ***if not the owner(s);***

(d) Project schedule, including the anticipated starting date and completion date;

(e) ***Subject to (f), below, and if known at the time the work plan is submitted,*** the name, mailing address, ***email address***, daytime telephone number ***including area code***, and ~~current~~ ***ADS*** license number ***and expiration date or ADS certificate number and expiration date*** of the ~~licensed contractor~~ ***qualified individual*** who will be implementing the plan; ~~or,~~

(f) ***If the work does individual who will be doing the work is not required to have a licensed contractor because it will be performed by the owner at his/her single-family owner occupied property in***

Text added to existing rules in ***bold italics***  
Text deleted from existing rules shown ~~struck through~~  
Explanatory comments shown in *{bracketed blue italics}*

~~accordance with the license exemption provisions in~~ ***under the exemption in RSA 141-E:10, I(b)-(d) and Env-A 1812.03(b)-1811.03***, a statement to that effect;

~~(f-g)~~ If known, the name, mailing address, ***email address***, telephone number ***including area code***, and ~~current Env-A 1812-ADS license or~~ certificate number ***and expiration date*** of the qualified ~~person~~ ***individual*** who will be ~~in charge of supervising~~ the work;

~~(g-h)~~ A description of the work to be undertaken, including:

- (1) The reason for undertaking the work;
- (2) Quantity of asbestos to be disturbed;
- (3) Type and general description of asbestos to be disturbed;
- (4) Sequence of tasks, ***starting with site preparation pursuant to Env-Sw 2105.08 and ending with the site clearance determination required by Env-Sw 2105.15***;
- (5) A description of the procedures and equipment to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the asbestos waste, including the methods and procedures by which the work practices and engineering controls in Env-Sw 2105 will be met; and
- (6) The location of any temporary storage site and the final disposal site for asbestos excavated or otherwise removed from the site;

~~(h-j)~~ A scaled plan of the site showing the existing site features and the proposed work area; ~~and~~

~~(i-k)~~ A scaled plan and related specifications showing the proposed conditions of the site following completion of the work, including information that demonstrates the proposed post-project conditions comply with the cover requirements in Env-Sw 2104.03;

~~(j-l)~~ ~~Provisions~~ ***The schedule*** for providing project commencement notice pursuant to Env-Sw 2105.07;

~~(k-m)~~ A list and status of all other local, state, or federal permits and other approvals required to implement the plan;

~~(l-n)~~ A statement, signed by the qualified ~~person~~ ***individual*** who prepared the plan, certifying that the plan meets all applicable local, state, and federal requirements for management of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable, and the rules in this chapter; ***and***

~~(m-o)~~ A signed statement by the ~~owner~~ ***applicant***, certifying acceptance of the proposed work plan; ~~and~~

~~(n)~~ ~~If the entity or individual named pursuant to (e), above, is not the owner, a signed statement by that entity or individual certifying acceptance of the proposed work plan.~~

Env-Sw 2106.05 Generic Work Plans; Content. A generic work plan for major non-emergency projects shall include:

(a) Name, mailing address, ***email address***, daytime telephone number ***including area code***, and credentials of the qualified ~~person~~ ***individual*** who prepared the plan, ***including the applicable ADS license or certificate number and expiration date***;

(b) Name, mailing address, ***email address***, and daytime telephone number ***including area code*** of the ***owner, qualified ADS contractor, utility company, public authority, or other*** entity or individual ***who will be authorized to use the work plan, if it is approved***;

(c) If known ***and different than (b) above***, the name, mailing address, ***email address***, daytime telephone number ***including area code***, and ~~current Env-A 1811-ADS~~ license number ***and expiration date*** of

the licensed ***qualified ADS*** contractor who will be implementing the plan ~~or, if the work does not require a licensed contractor because it will be performed by the owner at his/her single family owner occupied property in accordance with the license exemption provisions in Env A 1812.03(b), a statement to that effect;~~

(d) If known ***and different than (b) above***, the name, mailing address, ***email address, daytime telephone number including area code***, and ~~current Env A 1812-~~***ADS license or certificate number and expiration date*** of the qualified ~~person-~~***individual*** who will be in charge of the work ***conducted under the plan***;

(e) A description of the work to be undertaken, including:

(1) The type and scope of work that the plan is designed to address, ***for example trenching for underground utility installation and repair, digging holes to install fencing or utility poles, excavating to construct foundations, retaining walls, or curbing, or placing capping materials over exposed asbestos***;

(2) ~~The s~~***Sequence of tasks, starting with site preparation pursuant to Env-Sw 2105.08 and ending with the site clearance determination required by Env-Sw 2105.15***;

(3) A description of the procedures and equipment to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the asbestos waste, including the methods and procedures by which the work practices and engineering controls in Env-Sw 2105 will be met; and

(4) The location of any temporary storage site and the final disposal site for asbestos excavated or otherwise removed from the site;

(f) A description of how the site will be left following completion of the work, including related drawings of the replacement cover materials in conformance with Env-Sw 2104.03;

(g) Provisions for providing project commencement notice pursuant to Env-Sw 2105.07;

(h) If the entity or individual named pursuant to (b), above, is not the owner, a statement indicating how the project records will be made available to the owner to facilitate compliance with RSA 141-E:23, I(d)- ***and Env-Sw 2104.08(c)***;

(i) A list and status of all other local, state, or federal permits and other approvals required to implement the plan, ***to the extent known***;

(j) A statement, signed by the qualified ~~person-~~***individual*** who prepared the plan, certifying that the plan meets all applicable local, state, and federal requirements for management of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable, and these rules; ***and***

(k) A statement, signed by the ~~owner, or in the case of a utility project, the utility,~~ ***applicant*** certifying acceptance of the proposed work plan; ~~and.~~

~~(l) If the entity or individual named pursuant to (b), above, is not the owner, a signed statement by that entity or individual certifying acceptance of the proposed work plan.~~

Env-Sw 2106.06 Work Plan ***Submittal, Review, and Approval***.

(a) ***The applicant for work plan approval shall be as specified in Env-Sw 2106.02(e).***

(b) ***The applicant shall submit one paper copy and one electronic copy of the proposed work plan to the department with a signed cover letter that:***

(1) ***Clearly identifies the applicant's name, mailing address, email address, and daytime telephone number including area code; and***

***(2) Certifies that a copy of the application is being submitted concurrently to the local health officer.***

(ac) The department shall review a proposed work plan in accordance with RSA 541-A:29.

(bd) If the department determines that the work plan does not satisfy the work practices and engineering controls in Env-Sw 2105, ***the work plan clarity and specificity requirements in Env-Sw 2106.02(b)***, other requirements in this chapter, or RSA 141-E, the department shall so notify the applicant and provide an opportunity for the applicant to correct the deficiencies.

(ce) If no deficiencies are noted, the department shall approve the work plan and so notify the applicant in writing.

(df) The department shall provide a copy of the work plan approval to the local health officer.

(eg) Work plan approval shall not be construed in any way as:

(1) An authorization of any activity that occurred prior to the effective date of the approval;

(2) An authorization of any activity that does not comply with the requirements of ***RSA 141-E*** or this chapter ~~or RSA 141-E~~ ***that have not been waived pursuant to Env-Sw 2103;***

(3) An authorization of any activity that is not in compliance with other applicable federal, state, or local requirements, including the requirements identified in Env-Sw 2101.01(b);

(4) A waiver of any cause of action for violations predating approval; or

(5) ~~Elimination~~ ***A waiver*** of any obligation to obtain all requisite local, state, and federal permits or approvals for the proposed activities.

~~(fh) In no case shall~~ ***Approval of a work plan approval shall not*** be construed to mean there is no obligation to comply ***so as to allow non-compliance*** with all ***any*** other applicable federal, state, and local requirements for asbestos management and control, including, but not limited to the requirements identified in Env-Sw 2101.01(b).

***Env-Sw 2106.07 Obligation to Update Generic Work Plans.***

(a) ***The individual or entity who obtains approval of a generic work plan shall review the work plan as specified in (b), below, to determine whether the work plan remains relevant and in compliance with then-current requirements.***

(b) ***The review required by (a), above, shall be done:***

(1) ***Every 2 years, if the work plan is used at least once each calendar year; or***

(2) ***Prior to using the work plan, if the work plan is used less than once each calendar year.***

(c) ***If the plan is determined to be current and relevant, the individual or entity who holds approval of the plan shall so notify the department in writing.***

(d) ***If a generic work plan is no longer relevant or out of compliance with then-current requirements, or both, the individual or entity who obtained approval of the plan shall submit a revised plan to the department that contains all information required by Env-Sw 2106.05.***

(e) ***The department shall review and make a decision to approve or not approve the revised work plan as specified in Env-Sw 2106.06.***

Env-Sw 2107.01 Procedure.

(a) Revocation or suspension of any approval issued pursuant to this chapter shall proceed in accordance with RSA 541-A:30 ***and the provisions of Env-C 200 that apply to adjudicative proceedings.***

(b) The department shall revoke an approval if ~~there is~~:

- (1) Good cause ~~pursuant to~~ ***as described in*** Env-Sw 2107.02 ***exists***; and
- (2) There are no circumstances under which the holder of the approval can correct or eliminate the underlying problem.

(c) The department shall suspend an approval if ~~there is~~:

- (1) Good cause ~~pursuant to~~ ***as described in*** Env-Sw 2107.02 ***exists***; and
- (2) Given time to do so, the holder of the approval can correct or eliminate the underlying problem.

Env-Sw 2107.02 Good Cause. The following shall constitute good cause to suspend or revoke an approval issued pursuant to this chapter:

- (a) The approval was issued based on false, ***incomplete***, or misleading information ***and the approval would not have been issued if true, complete, and not misleading information had been provided;***
- (b) The terms and conditions of the approval are not ***being*** met; or
- (c) The approved activity, once implemented, fails to meet the criteria for having issued the approval.

**APPENDIX A: STATE STATUTES IMPLEMENTED**

<b>Rule Sections</b>	<b>Statute(s) Being Implemented</b>
Env-Sw 2100 (see also specific part listed below)	RSA 141-E:21-24
Env-Sw 2103	RSA 541-A:22, IV

**APPENDIX B: STATUTORY DEFINITIONS**

**RSA 141-E:2**

I. "Asbestos" means amosite, chrysotile, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite.

III. "Asbestos disposal site" means land where asbestos waste exists, either in or on the ground, due to dumping activities which ceased by July 10, 1981. The term includes inactive disposal sites as defined by 40 CFR 61.141. The term does not include any disposal site which is subject to the permitting requirements of RSA 149-M.

IV. "Contractor" means any partnership, firm, association, corporation, or sole proprietorship which engages in asbestos abatement activities and/or activities involving the disturbance of asbestos at asbestos disposal sites.

**APPENDIX C: STATUTORY PROVISIONS**

**RSA 141-E:10 Licensure. –**

I. Any contractor, employer, or individual which engages in asbestos abatement activities or activities involving the disturbance of asbestos at asbestos disposal sites shall first obtain a license from the department, except for:

- (a) Individuals exempt pursuant to paragraph II below;
- (b) Individuals exempt by rules adopted by the commissioner in accordance with RSA 141-E:4, XII;
- (c) Owners of single family owner occupied properties who personally perform asbestos abatement within the confines of their private properties; and
- (d) Individuals who obtain a waiver from the licensing requirements of this section.

II. Individuals certified pursuant to RSA 141-E:11 shall not be required to obtain a license for the performance of asbestos abatement or disturbance of asbestos at asbestos disposal sites when carried out under the authority of a contractor or employer holding a valid license issued by the department pursuant to this section.

III. A license to engage in asbestos abatement, disturbance of asbestos at any asbestos disposal site, or both, shall be issued in writing by the department and shall be valid for a period of 12 months from the date of issuance, shall be dated when issued, shall contain an expiration date, and shall be signed by the commissioner or designee. The license shall also include the name and address of the applicant.

IV. The license or a certified copy thereof shall be available at the worksite for inspection by representatives of the department or an authorized representative of the local government.

V. The department may grant a license to an applicant if the applicant is licensed by another state whose standards for licensure are substantially equivalent to the provisions of this section and the rules adopted by the department.

**Source.** 2000, 275:1. 2005, 249:13, 14, eff. Sept. 12, 2005.

#### **RSA 141-E:11 Certification of Employees; Reciprocity. –**

I. Employees and other individuals who engage in asbestos abatement, school asbestos abatement planning, or disturbance of asbestos at any asbestos disposal site shall first obtain a certificate of training from the department, except for:

- (a) Individuals exempt pursuant to rules adopted by the commissioner in accordance with RSA 141-E:4, XII;
- (b) Owners of single family owner occupied properties who personally perform asbestos abatement within the confines of their private properties; and
- (c) Individuals who obtain a waiver from the certification requirements of this section.

II. The certificate shall be in writing, be valid for a period of 12 months from the date of issuance, be dated when issued, contain an expiration date, and be signed by the commissioner or designee. It shall also include the name and address of the employee to whom it is issued.

III. The certificate or a certified copy thereof shall be readily available at the worksite for inspection by the representatives of the department or an authorized representative of the local government.

IV. The department may grant certification if the employee is certified by another state whose certification is substantially equivalent to the provisions of this section and the rules adopted by the commissioner.

**Source.** 2000, 275:1. 2005, 249:15, 16, eff. Sept. 12, 2005.