

RULEMAKING NOTICE

Notice Number _____	Rule Number _____	Env-Sw 2100
<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: _____</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p>	<p>RSA 141-E:4, XVIII</p> <p>40 CFR 61; 40 CFR 63</p> <p>X</p>

5. Short Title: **Inactive Asbestos Disposal Sites**

6. (a) Summary of what the rule says and of any proposed amendments:

RSA 141-E:1, V, directs the Department to implement the stated policy of protecting public health by controlling the exposure of the public to asbestos by regulating asbestos abatement and asbestos disposal site activities. RSA 141-E:3, XIII *et seq.* outline the requisite components of regulating asbestos disposal sites that are not regulated under RSA 149-M and the Solid Waste Rules because the dumping activities ceased prior to July 10, 1981. (Most of the sites are in Nashua and Hudson, where asbestos manufacturing waste from a local factory was used as “clean” fill throughout the two communities.) The rules are intended to be used in conjunction with other federal and state requirements for managing and controlling asbestos, which are identified in the rules.

The rules that have been adopted as directed, currently Env-Sw 2100, are scheduled to expire on Feb. 16, 2018 and so are proposed to be readopted so that public health can continue to be protected under this program. **The existing rules will continue in effect pursuant to RSA 541-A:14-a, I, subject to the conditions stated therein.** As part of the readoption, revisions are proposed to (1) move statutory definitions to an appendix, clarify existing definitions, and add definitions as needed to clarify the rules [2102]; (2) clarify the waiver process [2103]; (3) clarify how these rules interact with other applicable requirements [2104.03(g)]; (4) clarify the roles of owners, contractors, and individuals; (5) explicitly require the holder of a generic work plan approval to review the plan periodically to make sure the plan continues to be relevant and in compliance with applicable requirements [new 2106.07]; and (6) clarify existing rules by updating cross-references, better explaining the signature/certification requirements for clearance reports [2105.15(c)-(d)], and correcting grammar and punctuation.

6. (b) Brief description of the groups affected:

The rules affect owners of property on which inactive asbestos waste disposal sites are located, as well as anyone who might disturb such sites.

6. (c) Specific section(s) of state statute or federal statute or regulation the rule is intended to implement:

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

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Pamela Hoyt-Denison	Title: Administrator, Waste Programs
Address: Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #: (603) 271-2945 Fax#: (603) 271-2456 E-mail: Pamela.Hoyt-Denison@des.nh.gov

RULEMAKING NOTICE - Page 2

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, April 13, 2018**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Wednesday, March 28, 2018 at 6:30 PM**

Place: **Nashua City Hall Auditorium, 229 Main Street, Nashua, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 18:021, dated 02/12/18:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

RSA 141-E:21 prohibits any person from causing or allowing asbestos fibers to be released to the environment from an asbestos disposal site. The rules identify how to ensure compliance with the statutory requirement in the most cost-effective way. Any costs associated with these rules are thus attributable to the statute.

While the section requiring periodic review and updating of generic work plans may appear to establish a new requirement, applicable statutes and rules already require all work to comply with requirements in place at the time the work is done. Thus, anyone holding an approved generic work plan already is legally obligated to ensure the plan meets current requirements before using it. The added language simply consolidates and emphasizes the requirement.

Because there are no costs attributable to the rules, the rules do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision and so do not violate Part I, Art. 28-a of the N.H. Constitution.