

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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REVISION NOTE:

This chapter was formerly designated Env-Wm 3900. Document #7647, effective 2-16-02, adopted Env-Wm 3900 containing rules governing asbestos disposal sites where dumping activities ceased by July 10, 1981 pursuant to RSA 141-E:2, III. Chapter Env-Wm 3900 was subsequently redesignated editorially with a new subtitle and number as Env-Sw 2100 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

Prior to the Document #7647, the rules governing sites where dumping activities had ceased by July 10, 1981 had been contained within Env-Wm 2601 as filed under Document #5172, effective 7-1-91, and Document #6535 (interim rule), effective 7-1-97. The former rules within Env-Wm 2601 that governed such asbestos disposal sites expired as interim rules on 10-29-97.

Env-Wm 2601 as filed under Document #6619-B, effective 10-29-97, did not apply to sites where disposal ceased by July 10, 1981. Env-Wm 2601 was subsequently readopted with amendments and renumbered and redesignated as Env-Sw 901 in Chapter Env-Sw 900 by Document #8459, effective 10-28-05. See RN at chapter heading for Env-Sw 900.

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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 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 company then known as the Johns-Manville Corporation.

(b) It is intended that 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.

Source. #7647, eff 2-16-02 (See Revision Note (RN) at p. ii) (formerly Env-Wm 3901.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2101.02 Applicability.

(a) 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 not be limited to the many sites in Nashua and Hudson filled prior to July 10, 1981 with asbestos manufacturing waste from the company then known as the Johns-Manville Corporation.

(c) 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

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not limited to the removal, repair, or encapsulation of asbestos containing materials during demolition or renovation of buildings.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3901.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

PART Env-Sw 2102 DEFINITIONS

Env-Sw 2102.01 “Asbestos” means “asbestos” as defined by RSA 141-E:2, I, as reprinted in Appendix C.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.03 “Asbestos disposal site (ADS)” means “asbestos disposal site” as defined in RSA 141-E:2, III, as reprinted in Appendix C.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.03); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.04 “ADS worker identification information” means the certificate number and expiration date of the certificate issued to a certified ADS worker under RSA 141-E:11, and whether the worker is designated as an experienced worker or a worker-in-training as provided in Env-A 1812.08(b).

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.04); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.05); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.06 “Certified ADS worker” means an individual who holds a valid ADS worker certificate issued by the department pursuant to RSA 141-E:11 and Env-A 1812. The term includes individuals certified as experienced workers and workers-in-training pursuant to Env-A 1812.08(b).

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.06); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.07 “Certificate-exempt work” means asbestos disposal site work that can be performed, pursuant to Env-A 1812.03, by an individual who is not a certified ADS worker.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.07); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.08 “Certificate- required work” means asbestos disposal site work that is not certificate-exempt work.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.08); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2102.09 “Contractor” means “contractor” as defined in RSA 141-E:2, IV, as reprinted in Appendix C.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.09); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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Env-Sw 2102.10 “Cover material” means non-asbestos-containing material overlying asbestos at an asbestos disposal site. The term includes but is not limited to earth materials such as clean soil or crushed rock, geosynthetics such as geotextiles, concrete, bituminous concrete, and vegetation.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.10); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18 (formerly Env-Sw 2102.04)

Env-Sw 2102.11 “Department” means the New Hampshire department of environmental services.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.11); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18 (formerly Env-Sw 2102.05)

Env-Sw 2102.12 “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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.12); ss by #9645, eff 2-16-10 (from Env-Sw 2102.13); ss by #12605, eff 9-1-18 (formerly Env-Sw 2102.06)

Env-Sw 2102.13 “Licensed ADS contractor” means a contractor who holds a valid ADS contractor license pursuant to RSA 141-E:10 and Env-A 1811.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3902.13); ss by #9645, eff 2-16-10 (from Env-Sw 2102.14); ss by #12605, eff 9-1-18 (formerly Env-Sw 2102.07)

Env-Sw 2102.14 “License-exempt work” means asbestos disposal site work that can be performed, pursuant to Env-A 1811.03, by an individual or entity that is not a licensed ADS contractor.

Source. #12605, eff 9-1-18

Env-Sw 2102.15 “License-required work” means work that is not license-exempt work.

Source. #12605, eff 9-1-18

Env-Sw 2102.16 “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.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.08)

Env-Sw 2102.17 “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.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.09)

Env-Sw 2102.18 “Owner” means the owner of record of a parcel of land where there is an asbestos disposal site.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.10)

Env-Sw 2102.19 “Qualified ADS contractor” means:

- (a) A licensed ADS contractor; or

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(b) For the performance of license-exempt work that is not undertaken by a licensed ADS contractor, the qualified individual who is in charge of a project at an asbestos disposal site.

Source. #12605, eff 9-1-18

Env-Sw 2102.20 “Qualified 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 to prevent the release of asbestos fibers to the environment and human asbestos exposure;
- (c) Understands the requirements established in this chapter and the information provided in the document titled “Guidance for Managing Asbestos Disposal Sites”, published by the department in May, 2000;
- (d) For license-required work, personally holds a valid ADS contractor license unless doing the work for and under the authority of a licensed ADS contractor pursuant to the exemption in Env-A 1811.03(a);
- (e) For certificate-required work or when otherwise required by this chapter, is a certified ADS worker; and
- (f) Holds such other licenses, certificates, registrations or other authorizations as are required by applicable federal, state, or local law for the performance of the work or the delivery of services that necessitates the qualifications, for example a license to practice professional engineering, a license to practice land surveying, or a license to install septic systems.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.11)

Env-Sw 2102.21 “Public authority” means a state or federal agency or a political subdivision.

Source. #12605, eff 9-1-18

Env-Sw 2102.22 “Utility/transportation project” means:

- (a) A minor or major project undertaken by a utility company or public authority or pursuant to a contract with 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:
 - (1) Sanitary sewerage, water, or drainage systems, and related appurtenances;
 - (2) Steam lines and related appurtenances;
 - (3) Natural gas pipelines and related appurtenances; and
 - (4) 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.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.12)

Env-Sw 2102.23 “Valid ADS contractor license” means an asbestos disposal contractor license issued pursuant to RSA 141-E:10 and Env-A 1811 that has not expired or been suspended or revoked.

Source. #12605, eff 9-1-18

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Env-Sw 2102.24 “Valid ADS worker certificate” means an asbestos disposal worker certificate issued pursuant to RSA 141-E:11 and Env-A 1812 that has not expired or been suspended or revoked.

Source. #12605, eff 9-1-18

Env-Sw 2102.25 “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.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2102.13)

PART Env-Sw 2103 WAIVERS

Env-Sw 2103.01 Applicability. This part shall apply in lieu of Env-Sw 202 to any person seeking a waiver to a requirement in this chapter.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3903.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 or to a single non-utility/transportation project involving multiple lots that are asbestos disposal sites, then the owner(s) of the lot(s) shall request the waiver.

(b) If the waiver is intended to apply to a utility/transportation project, the utility or public authority responsible for the project shall request the waiver.

(c) For all other waiver requests, including any waiver 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3903.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2103.03 Waiver Requests.

(a) Any person who is or will be responsible for undertaking work at an asbestos disposal site who seeks a waiver to a requirement in this chapter shall submit a waiver request to the department, in writing, as specified in (b) through (e), below, in lieu of the filing requirements in Env-Sw 303.

(b) Prior to or upon submitting the request to the department, the requestor shall provide a copy of the request to:

(1) The local health officer; and

(2) Each affected owner, if the waiver request is being submitted by a utility or public authority pursuant to Env-Sw 2103.02(b) and is specific to an identified asbestos disposal site or project.

(c) Each waiver request shall include the following:

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

(2) Identification of each specific rule the requestor is seeking to have waived; and

(3) For each specific rule identified in (2), above, the following:

a. 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;

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- b. 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;
- c. The period of time during which the requestor wishes the waiver to be effective;
- d. If the waiver is intended to apply to a specific asbestos disposal site, a statement indicating whether the requestor wants the waiver, if granted, to transfer automatically to subsequent owners;
- e. A full explanation of why the waiver is being requested, including an explanation of:
 - 1. The economic and operational consequences of complying with the rule as written; and
 - 2. The potential adverse impacts to public health, safety, or the environment of complying with the rule as written, including, for a waiver that is specific to a particular site or project, the impact(s) of having to perform the work, implement the project, or maintain the site in accordance with these rules as written without the waiver;
- f. A full explanation, with supporting data, of the alternative(s) the requestor proposes to use in lieu of complying with the rule as written and an explanation of the potential adverse impacts to public health, safety, or the environment of implementing the alternative(s) as compared to having to having to comply with the rules as written;
- g. A full explanation of how each of the alternatives proposed pursuant to f., above, is consistent with the purpose and intent of RSA 141-E, this chapter, the alternative control method(s) approved by USEPA if applicable pursuant to Env-Sw 2103.05(e), and is otherwise adequate to protect public health, safety, and the environment; and
- h. If the requestor is seeking a waiver for which USEPA approval as specified in Env-Sw 2103.05(e) is required, a copy of the approval issued by the USEPA.

(d) Each request for waiver shall be dated and signed as specified in Env-Sw 2103.04.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3903.03); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2103.04 Signatures and Certifications.

(a) Each waiver request shall be dated and signed by the requestor(s) identified pursuant to Env-Sw 2103.02(a), 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) For a waiver request relating to license-exempt or certificate-exempt work to be performed on residential property by the property owner(s), the waiver request shall be signed by each owner of record of the property, provided that if one owner has legal authority to bind one or more other owners, the owner having the authority may sign for such owners and submit a certified copy of the document conferring the authority, such as a power of attorney or guardianship order, with the waiver request.

(c) A signature provided pursuant to (a) or (b), above, shall constitute certification that copies of the request have been provided as required by Env-Sw 2103.03(b).

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(d) If the waiver request applies to doing certificate-required work 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 provide his or her ADS contractor identification information or, if the waiver request applies to doing license-exempt work that is certificate-required work, the individual's ADS worker identification information; 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 identification information.

(e) A signature provided pursuant to (a), (b), or (d), 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. Suspending or 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).

Source. #12605, eff 9-1-18

Env-Sw 2103.05 Review; Criteria.

(a) The department shall review each waiver request within the time frames specified in RSA 541-A:29.

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

(1) Granting a waiver:

a. Is consistent with the purpose and intent of RSA 141-E and 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 the requestor to experience economic or operational difficulties.

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(c) The department shall not grant a waiver to any rule in this chapter that 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.

(d) Subject to (e), below, the department shall not grant a waiver when both (1) and (2), below, are true:

- (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 entity then known as the Johns-Manville Corporation.

(e) The department shall grant a waiver of a rule that meets the criteria of (d), above, only if the requestor:

- (1) First obtains an approval from the USEPA pursuant to 40 CFR 61.151(c) for the alternative control method to be used in lieu of complying with the rule;
- (2) Provides a copy of the approval from the USEPA with the waiver request as specified in Env-Sw 2103.03(c)(3)h; and
- (3) Meets all other criteria for granting a waiver specified in (b), above.

Source. #12605, eff 9-1-18 (formerly Env-Sw 2103.03)

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.

(b) The department shall notify the following in writing of the decision to either grant or deny a waiver:

- (1) The requestor;
- (2) The qualified ADS contractor, if the waiver is site-specific or project-specific and the qualified ADS contractor is known;
- (3) The local health officer and any owner(s) the requestor was required to notify pursuant to Env-Sw 2103.03(b); and
- (4) The USEPA, if the waiver is for a rule that cannot be waived without having first obtained USEPA approval of the alternative control method, as specified in Env-Sw 2103.05(d) and (e).

(c) If the department denies the waiver, the notice provided pursuant to (b), above, shall:

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

(d) Waivers, when issued, shall include:

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- (1) The name of the person(s) to whom the waiver is issued;
 - (2) Identification of the rule(s) being waived;
 - (3) For a waiver that is specific to a site, project, activity, person, or work plan, or any combination thereof, identification of the specific site, project, activity, person, or work plan, or any combination thereof, to which the waiver applies;
 - (4) If the waiver is not specific to a particular site, project, activity, person, or work plan, or some combination thereof, a statement to that effect;
 - (5) The terms and conditions under which the waiver is granted, including provisions for:
 - a. Transfer if the waiver is site specific and is intended to run with the property;
 - b. Ensuring compliance with any alternative to be used in lieu of complying with the rule as written; and
 - c. Ensuring the criteria for the granting of the waiver in Env-Sw 2103.05 are met;
 - (6) The effective date and expiration date; and
 - (7) The signature of the department's commissioner or designee.
- (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 that have not been waived;
 - (3) 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) 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.

Source. #12605, eff 9-1-18

PART Env-Sw 2104 GENERAL SITE MANAGEMENT REQUIREMENTS

Env-Sw 2104.01 Applicability. This part shall apply to managing and controlling asbestos disposal sites.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2104.02 Release Prohibited.

- (a) As 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.
- (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;

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- (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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2104.03 Capping System Requirements.

(a) All asbestos at an asbestos disposal site shall be buried under a capping system that is designed 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 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 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 the depth required to meet the performance standards established in (b), above, but in no case shall the combined depth of cover materials be less than 6 inches.

(e) 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

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(3) Create a barrier to warn against digging into the underlying asbestos.

(f) In addition to the cover materials described above, the capping system shall include such structures and features as are needed to fully contain and cover the waste as required by (b), above, such as retaining walls or curbing used to contain the waste and support the cover materials, drainage swales used to intercept and direct storm water away and off from the capping system, and other structures necessary to support the integrity and performance of the capping system.

(g) Nothing stated in (a) through (f), above, shall be construed to 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 the environment shall apply, provided that all necessary approvals are obtained as specified in this chapter.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.03); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 at an asbestos disposal site, including the cover materials and supporting features required by Env-Sw 2104.03(f), 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) 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.04); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.05); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2104.06 Site Monitoring and Reporting.

(a) The owner shall monitor the asbestos disposal site to assure that:

(1) All asbestos waste remains covered in accordance with the requirements of this chapter; and

(2) The capping system maintains its integrity relative to meeting the design performance standards in Env-Sw 2104.03(b).

(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.

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(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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.06); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 prevent a release to the environment as identified in Env-Sw 2104.02(b).

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.07); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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);
 - 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3904.08); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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PART Env-Sw 2105 WORK PRACTICES AND ENGINEERING CONTROLS

Env-Sw 2105.01 Purpose. The purpose of this part is to establish work practices and engineering controls for excavating, removing, exposing, or otherwise disturbing asbestos at an asbestos disposal site to ensure the work is done and sites are managed in a manner that prevents a release as described in Env-Sw 2104.02(b) and otherwise is protective of public health, safety, and the environment.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.02 Applicability. The requirements in this part shall apply to all minor and major projects.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.03 Qualified Individuals Required.

(a) No individual shall excavate, remove, expose, or otherwise disturb asbestos at an asbestos disposal site unless the individual is a qualified individual.

(b) A qualified individual who is certified as a worker-in-training shall perform all certificate-required work under the direct supervision of a qualified individual who holds a valid ADS worker certificate issued with the experienced worker designation.

(c) Any individual who supervises the work of one or more individuals performing certificate-required work shall be a qualified individual who holds a valid ADS worker certificate issued with the experienced worker designation, even when the supervisor is not personally and actively engaged in the actual task of disturbing the asbestos waste.

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

(e) The clearance determinations required by Env-Sw 2105.15 shall be performed and signed by a qualified individual who holds a valid ADS worker certificate issued with the experienced worker designation.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.03); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.04 Types of Projects.

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

- (1) Major project, as defined in Env-Sw 2102; or
- (2) Minor project, as defined in Env-Sw 2102.

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

- (1) An emergency project, as defined in Env-Sw 2102; or
- (2) A non-emergency project.

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

- (1) A utility/transportation project, as defined in Env-Sw 2102; or
- (2) A non-utility/transportation project.

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- (d) Any of the projects types specified in (a) through (c), above, also shall be further classified as:
- (1) License-exempt work, as defined in Env-Sw 2102, or license-required work as defined in Env-Sw 2102; and
 - (2) Certificate-exempt work, as defined in Env-Sw 2102, or certificate-required work as defined in Env-Sw 2102.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.04); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.05 General Project Requirements; When Work Plans Required.

(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 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 involving certificate-required work shall proceed in accordance with a project-specific or generic work plan prepared and approved pursuant to Env-Sw 2106.

(d) For any project that is subject to the work plan requirement cited in (c), above, the qualified individual shall maintain a copy of the approved 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 on request.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.05); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 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;

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- (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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.06); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.07 Project Notice Requirements.

- (a) Except as provided in (b) and (c), below, the owner shall notify the following persons, as specified in (d) below, 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.
- (c) No notice shall be required for projects involving certificate-exempt work only.
- (d) Notice required by this section shall be provided according to the following schedule:

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- (1) If the project is an emergency project, notice shall be provided by speaking to the individual being notified in person or by telephone 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 by speaking to the individual being notified in person or by telephone 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 written confirmation shall be provided within 48 hours following project commencement; and
 - (3) If the project is a major non-emergency project that is subject to the work plan requirements in Env-Sw 2106, written notice shall be provided as specified in the work plan approval issued pursuant to Env-Sw 2106.
- (e) Notice transmitted via e-mail or fax shall constitute a form of written notice.
- (f) Notice provided pursuant to this section shall include the following information:
- (1) Project location;
 - (2) The 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, individual, utility, or public authority responsible for initiating and undertaking the project;
 - (3) The qualified ADS contractor's name, mailing address, daytime telephone number including area code, email address, and ADS contractor identification information, if the contractor holds a valid ADS contractor license;
 - (4) The name, mailing address, daytime telephone number including area code, and ADS worker identification information of the qualified individual who will be in charge of the work for the qualified ADS contractor;
 - (5) If the work that involves the disturbance of asbestos is license-exempt work, the following:
 - a. A statement that a licensed ADS contractor is not required, with a citation to the applicable provision in Env-A 1811.03; and
 - b. The name, mailing address, daytime telephone number including area code, and email address of the qualified individual who will be in charge of the work, and the qualified individual's ADS worker identification information;
 - (6) Project schedule, including the starting and completion dates;
 - (7) Reason for disturbing the asbestos and a general description of the project;
 - (8) 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
 - (9) If the project will be conducted under a generic work plan approval, the date it was approved and a statement signed by the qualified ADS contractor identified pursuant to (3) or for license-exempt work, the qualified individual pursuant to (4), above, 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.07); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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Env-Sw 2105.08 Site Preparation. Prior to commencing a minor or major project, 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.08); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 Chapter 9 of the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115, available as noted in Appendix B.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.09); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.10 Access Control and Site Security.

(a) 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.10); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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.

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(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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.11); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.12 Personal Protective Equipment. No individual shall enter or be in 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.12); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.13); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 Chapter 10 of the Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115, available at no cost as noted in Appendix B.

(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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.14); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.15 Clearance Determination.

(a) Following completion of any major or minor project that includes certificate-required work, and before allowing normal use of the site to resume, a qualified individual holding a valid ADS worker certificate issued with the experienced worker designation shall make a site clearance determination in accordance with (b), below.

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(b) A site clearance determination shall not be made unless the 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 qualified individual who made the site clearance determination shall provide a written copy of the clearance determination with a copy of the individual's ADS certificate, signed and certified as provided in (d), below, to the following persons:

- (1) The qualified ADS contractor that implemented the project;
 - (2) For non-utility/transportation projects, the owner for use as required by Env-Sw 2104.08(c)(4); or
 - (3) 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 a valid ADS worker certificate with the experienced worker designation; 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 for falsification in official matters, currently in RSA 641.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.15); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 any aspects of the capping system, including but not limited to the type or thickness of cover materials and structures and features required by Env-Sw 2104.03(f), the 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 and capping system, including the boundaries, the cover materials, and all other capping system design features; and

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(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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.16); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2105.17 Additional Reporting Requirements for Major Projects.

(a) During a major project taking longer than 2 weeks to complete, the 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 in writing to the department and the local health officer no later than the close of business on the second business day following the end of the reporting week:

- (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 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 written project completion report to the department and the local health officer.

(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;
 - b. The qualified ADS contractor, and if the contractor is licensed under RSA 141-E:10, the relevant ADS contractor identification information; and
 - c. The qualified individual who was in charge of the work, and the individual's ADS worker identification information;
- (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 a description and explanation of any deviation from the applicable approved 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 that conform to Env-Sw 2105.16(c);

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- (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; and
 - (10) A statement, signed and dated by the qualified ADS contractor as specified in (e), below, 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 pursuant to (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 pursuant to (8), above, is available from the utility company or public authority, by request as needed to comply with Env-Sw 2104.08(c).
- (e) The person signing the report pursuant to (d)(10), above, shall be as follows:
- (1) If the qualified ADS contractor is an individual or sole proprietorship, that individual shall sign and date the report; and
 - (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 report on behalf of the qualified ADS contractor shall sign and date the report.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3905.17); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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

Env-Sw 2106.01 Applicability. This part shall apply to work plans for major non-emergency projects that include any certificate-required work.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2106.02 Work Plans Required.

- (a) No person shall undertake a major non-emergency project that includes certificate-required work 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;
 - (2) Stamped by a registered professional engineer in New Hampshire when required by RSA 310-A;
 - (3) Submitted to the department for approval by the applicants identified in (d), below; and
 - (4) Concurrently submitted to the local health officer.

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(c) Work plans shall provide sufficient detail to allow qualified 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) 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.03); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2106.04 Project-Specific Work Plans; Content. A project-specific work plan shall include:

(a) Name, mailing address, email address, daytime telephone number including area code, and credentials of the qualified individual who prepared the plan;

(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) For work plans that include license-required work, the name, mailing address, email address, daytime telephone number including area code, and ADS contractor identification information of the qualified ADS contractor, if known at the time the work plan is submitted;

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- (f) If the work plan includes license-exempt work only and will not be done by a licensed ADS contractor, a statement to that effect;
- (g) If known, the name, mailing address, email address, telephone number including area code, and ADS worker identification information of the qualified individual who will be in charge of the work;
- (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;
- (i) A scaled plan of the site showing the existing site features and the proposed work area;
- (j) 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;
- (k) Provisions for providing project commencement notice pursuant to Env-Sw 2105.07;
- (l) A list and status of all other local, state, or federal permits and other approvals required to implement the plan;
- (m) A statement, signed by the qualified 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 this chapter; and
- (n) A signed statement by the applicant, certifying acceptance of the proposed work plan.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.04); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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 individual who prepared the plan;
- (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) For work plans applicable to license-required work, and if known and different than (b), above, the name, mailing address, email address, daytime telephone number including area code, and ADS contractor identification information of the qualified ADS contractor who will be implementing the plan;

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(d) If known and different than (b) above, the name, mailing address, email address, daytime telephone number including area code, and ADS worker identification information of the qualified 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 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 capping system, including the replacement cover materials and supporting infrastructure 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 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 applicant certifying acceptance of the proposed work plan.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.05); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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(d).

(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.

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

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(d) Subject to (e), below, 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.

(e) If no deficiencies are noted or the deficiencies are correctable by issuing a conditional approval, the department shall approve the work plan with or without conditions as appropriate and so notify the applicant in writing.

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

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

(h) Approval of a work plan shall not be construed so as to allow non-compliance with 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).

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3906.06); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

Env-Sw 2106.07 Obligation to Update Generic Work Plans.

(a) The individual or entity who obtains approval of a generic work plan shall ensure that the work plan remains relevant and in compliance with current requirements.

(b) If a generic work plan is no longer relevant or does not comply with current requirements, or both, the individual or entity who obtained approval of the plan shall discontinue any work being done under the plan and either:

(1) Prior to undertaking any additional work that would be covered by the plan, submit and obtain approval for a plan that meets current requirements and contains all information required by Env-Sw 2106.05; or

(2) Notify the department that no future work will be conducted under the work plan and voluntarily surrender the approval.

Source. #12605, eff 9-1-18

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PART Env-Sw 2107 SUSPENSION AND REVOCATION

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:

- (1) Good cause 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:

- (1) Good cause 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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3907.01); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

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.

Source. #7647, eff 2-16-02 (See RN at p. ii) (formerly Env-Wm 3907.02); ss by #9645, eff 2-16-10; ss by #12605, eff 9-1-18

APPENDIX A: STATE STATUTES, FEDERAL REGULATIONS IMPLEMENTED

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

APPENDIX B: DOCUMENTS INCORPORATED BY REFERENCE

Rule	Title (Date)	Obtain at:
Env-Sw 2105.09(b) Env-Sw 2105.14(b)	Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115, (1985) Chapter 9 Chapter 10	U.S. Department of Labor Occupational Safety & Health Admin. Download at no charge from: https://www.osha.gov/Publications/complinks/OSHG-HazWaste/4agency.html OR https://www.cdc.gov/niosh/docs/85-115/pdfs/85-115.pdf?id=10.26616/NIOSH PUB85115

APPENDIX C: 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.