

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Sw 200 SOLID WASTE PROGRAM: PROCEDURES

Statutory Authority: RSA 149-M:7

REVISION NOTE:

Document #8461-B, effective 10-28-05, adopted Part Env-Sw 201, readopted with amendments and renumbered as Part Env-Sw 202 through Part Env-Sw 203 the rules in former Part Env-Wm 202 through Part Env-Wm 203 that had contained procedural rules on solid waste management in the areas of applicability, waivers, confidentiality, and non-adjudicative public hearings.

Document #8461-C, effective 10-28-05, readopted with amendments and renumbered as Part Env-Sw 204 and Part Env-Sw 205 the former Part Env-Wm 204 and Part Env-Wm 205 that had contained procedural rules on solid waste management in the areas, respectively, of non-adjudicative public hearings and adjudicative hearings.

Document #8461-B and Document #8461-C replace all prior filings for procedural rules on solid waste formerly in Chapter Env-Wm 200. The redesignation from subtitle Env-Wm to Env-Sw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for the former procedural rules in Env-Wm 200 on solid waste include the following documents:

- #5172, eff 7-1-91
- #6535, INTERIM, eff 7-1-97
- #6619-B, eff 10-29-97
- #7225, eff 3-31-00

PART Env-Sw 201 PURPOSE AND APPLICABILITY

Env-Sw 201.01 Purpose. The purpose of the rules in this chapter is to supplement the provisions of RSA 541-A and Env-C 200 relative to procedures applicable to proceedings under RSA 149-M and the solid waste rules.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 201.02 Applicability. The rules in this chapter shall apply to all procedures undertaken pursuant to RSA 149-M and the solid waste rules.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

PART Env-Sw 202 WAIVER OF SOLID WASTE RULES

Env-Sw 202.01 Purpose. The solid waste rules are intended to apply to a variety of conditions and uses. It is recognized that strict compliance with all solid waste rules may cause hardship or not fit every conceivable situation. The department therefore establishes these procedures and criteria to accommodate those situations where strict adherence would not be in the best interest of the public.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 202.02 Procedures.

- (a) Any person who is or would be directly and adversely affected by the strict application of a solid waste rule may apply for a waiver thereof.
- (b) Each application for a waiver shall be filed in writing as specified in Env-Sw 303.
- (c) Each application for a waiver shall include the information specified in Env-Sw 202.03.
- (d) All waiver applications which are submitted as part of an application for a permit or permit modification shall be submitted with such permit or permit modification application, or as soon thereafter as the need for the waiver is identified by the applicant or the department.
- (e) Applications for waiver shall be processed in accordance with Env-Sw 304.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 202.03 Application Content and Format.

- (a) The applicant for waiver shall provide the following information in the application, compiled in the order listed below:
 - (1) Identification of the applicant, including name, mailing address and telephone number;
 - (2) Identification of the facility or activity to which the request relates;
 - (3) Identification of the specific section(s) of the solid waste rules from which a waiver is sought;
 - (4) A full explanation of why a waiver is being requested, including an explanation of the hardship that would be caused by compliance with the rule;
 - (5) A full explanation of the alternate procedure, method, or other activity that is sought to be substituted for the procedure, method or other activity that is required by the rule from which a waiver is being sought, including written documentation and data to support the alternative;
 - (6) The limit of duration requested for the waiver, if any;
 - (7) A full explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Sw 202.04; and
 - (8) Proof of providing notices of filing as required by (b) and (c), below.

(b) If the requested waiver relates to a specific facility, the applicant shall notify the abutters, host municipality, host solid waste district and other affected entities, if any, as specified in Env-Sw 303.

(c) If the request is for a waiver to a set-back to a residence or property line, the applicant shall provide a notice of filing to the affected property owner as specified in Env-Sw 303.

(d) If the application for waiver is being submitted as part of an application for a permit or permit modification, the notice of filing may be combined with any required notice of filing for the permit application, as specified by Env-Sw 303.

(e) Applications for waiver shall be signed by the applicant and the property owner as specified in Env-Sw 303.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 202.04 Criteria.

(a) Subject to (b), below, a request for a waiver shall be granted if:

(1) Exemption from complying with the rule will:

- a. Not result in an adverse effect to the environment or natural resources of the state, public health or to public safety;
- b. Not result in an impact on abutting properties that is more significant than that which would result from complying with the rule; and
- c. Be in keeping with the intent and purpose of the rule being waived; and

(2) One or more of the following conditions is satisfied:

- a. Strict compliance with the rule will result in an adverse effect on the environment, public health and safety;
- b. Strict compliance with the rule will result in a circumvention of the goals and objectives of the state's solid waste management program, as specified in RSA 149-M:1 - 3 and the state solid waste management plan; or
- c. Strict compliance with the rule will provide no benefit to the public and will cause an operational or economic hardship to the applicant.

(b) Economic, technological, practical application and safety issues shall be considered in evaluating a demonstration of the above criteria; however, the application of rules shall not be weighed solely on the basis of cost.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 202.05 Decision on the Application. The department shall make a decision on an application for waiver in accordance with Env-Sw 305.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

PART Env-Sw 203 CLAIMS OF CONFIDENTIALITY

Env-Sw 203.01 Purpose. The purpose of this part is to provide a mechanism by which a person who submits information to the department can protect confidential business information or trade secrets.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 203.02 Procedure. Subject to Env-C 208.05, any person submitting information to the department may make a claim of confidentiality for all confidential business information, or any part thereof, pursuant to the criteria and procedures of Env-C 208.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-B, eff 10-28-05; ss by #10594, eff 7-1-14

PART Env-Sw 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Env-Sw 204.01 Applicability. Non-adjudicative public hearings shall be held in the following cases:

- (a) When proposing to adopt solid waste rules;
- (b) Before initiating eminent domain proceedings, pursuant to RSA 149-M:21, III;
- (c) To receive oral public comment on a permit application pursuant to Env-Sw 304;
- (d) For any matter that is not a contested case for which the department is required by law or by the solid waste rules to hold a hearing; and
- (e) For any matter normally not requiring public participation but deemed by the department to have significant public interest.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-C, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 204.02 Procedure. The procedures for a non-adjudicative public hearing shall be as specified in the provisions of Env-C 200 that are applicable to non-adjudicative hearings and Env-Sw 304.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-C, eff 10-28-05; ss by #10594, eff 7-1-14

PART Env-Sw 205 ADJUDICATIVE HEARINGS

Env-Sw 205.01 Applicability. An adjudicative hearing shall be held by the department in the following cases:

- (a) To give a permittee or other affected party an opportunity to show cause why the department should not proceed with a proposed decision to suspend or revoke any permit under RSA 149-M and the solid waste rules; and
- (b) In any other case that is a contested case as defined by RSA 541-A, provided however that all proceedings relative to applications for permits shall be non-adjudicative proceedings under RSA 541-A:29, II(a) until such time as the department issues a final decision on the application.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-C, eff 10-28-05; ss by #10594, eff 7-1-14

Env-Sw 205.02 Procedure. The procedures for an adjudicative hearing shall be as specified in the provisions of Env-C 200 that are applicable to adjudicative hearings.

Source. (see Revision Note at chapter heading for Env-Sw 200) #8461-C, eff 10-28-05; ss by #10594, eff 7-1-14

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-Sw 201	RSA 149-M:7; RSA 541-A:16, I(b)
Env-Sw 202	RSA 541-A:16, I(b); RSA 541-A:22, IV
Env-Sw 203	RSA 149-M:7; RSA 541-A:16, I(b)
Env-Sw 204	RSA 149-M:7; RSA 541-A:16, I(b)
Env-Sw 205	RSA 149-M:7; RSA 541-A:16, I(b)