

# NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

## CHAPTER Env-Hw 200 PROCEDURAL RULES

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

### REVISION NOTE:

Document #9361-A, effective 1-28-09, readopted with amendments and renumbered as Part Env-Hw 201 through Part Env-Sw 203 the rules in former Part Env-Wm 211 through Part Env-Wm 213 that had contained procedural rules on hazardous waste management in the areas of applicability and purpose, waivers, and claims of confidentiality.

Document #9361-B, effective 1-28-09, readopted with amendments and renumbered as Part Env-Hw 204 through Part Env-Hw 206 the rules in former Part Env-Wm 214 through Part Env-Wm 216, and that had contained procedural rules on hazardous waste management in the area of non-adjudicative hearings, adjudicative hearings, and rulemaking petitions.

Document # 9361-A and Document # 9361-B replace all prior filings for procedural rules on hazardous waste formerly in Chapter Env-Wm 200. The redesignation from subtitle Env-Wm to Env-Hw 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 hazardous waste management include the following documents:

#5053, eff 1-24-91  
#5886, eff 8-26-94  
#6384-B, eff 11-26-96  
#7207-B, eff 2-26-00  
#7333, eff 8-1-00  
#7577, eff 10-13-01  
#8461-A, eff 10-28-05  
#9215, INTERIM, eff 8-1-08

### PART Env-Hw 201 APPLICABILITY AND PURPOSE

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

### PART Env-Hw 202 WAIVERS

Env-Hw 202.01 Applicability.

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

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

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

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

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

Env-Hw 202.03 Timing of Request; Review Process.

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

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

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

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

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

### Env-Hw 202.04 Waiver Criteria.

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

(1) The requested waiver would not result in conditions that are likely to threaten public health or cause degradation of the environment;

(2) The economic, technological, and safety benefits of granting a waiver are greater than the benefits of not granting a waiver;

(3) The requested waiver would not result in less stringent requirements than the federal requirements;

(4) With respect to classification of recycled materials as a regulated waste as specified in 40 CFR 260.30, the criteria set forth in 40 CFR 260.31 are also satisfied; and

(5) With respect to waivers to be classified as a boiler, the criteria set forth in 40 CFR 260.32 are also satisfied.

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

### Env-Hw 202.05 Waiver Issuance or Denial.

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

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

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

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

### Env-Hw 202.06 Compliance with Waiver Conditions.

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

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

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

## PART Env-Hw 203 CLAIMS OF CONFIDENTIALITY

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17

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

- (a) Any non-confidential information specified in Env-C 208.06;
- (b) The name and address of any applicant for a permit;
- (c) Information contained on hazardous waste manifests or electronic manifests, as specified in 40 CFR 260.2(c); and
- (d) Information contained on hazardous waste export and import documents, as specified in 40 CFR 260.2(d).

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09; ss by #12344-A, eff 8-14-17; ss by #12921, eff 11-23-19

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### PART Env-Hw 204 NON-ADJUDICATIVE HEARINGS

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09; ss by #12344-A, eff 8-14-17

### PART Env-Hw 205 ADJUDICATIVE HEARINGS

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09; ss by #12344-A, eff 8-14-17

### PART Env-Hw 206 RULEMAKING PETITIONS

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

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09; ss by #12344-A, eff 8-14-17

### PART Env-Hw 207 CERTIFICATIONS

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

Source. #12344-B, eff 8-14-17

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

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

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

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

Source. #12344-B, eff 8-14-17

#### Env-Hw 207.03 Methods of Certification.

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

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

[Source.](#) #12344-B, eff 8-14-17

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

- (a) Denying the application or other request supported by the certification;
- (b) Revoking or suspending any permit or other department approval that was granted based on such certification;
- (c) If the certifier is a professional engineer, referring the matter to the office of professional licensure and certification established by RSA 310-A:1; and
- (d) Seeking to impose the penalties specified in New Hampshire for falsification in official matters, currently RSA 641.

[Source.](#) #12344-B, eff 8-14-17

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**APPENDIX A: STATE STATUTES, FEDERAL REGULATIONS IMPLEMENTED**

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

**APPENDIX B: INCORPORATION BY REFERENCE INFORMATION  
[NONE IN THIS CHAPTER]**

**APPENDIX C: STATE STATUTORY DEFINITIONS**

**RSA 147-A:2**

III. “Disposal” means the discharge, deposit, incineration, injection, dumping, spilling, leaking or placing of any waste into or onto any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or be discharged into any waters, including groundwaters.

IV. “Facility” means a location at which hazardous waste is subjected to treatment, storage or disposal and may include a facility where hazardous waste has been generated.

VI. “Generator” means any person who owns or operates a facility where hazardous waste is generated.

VII. “Hazardous waste” means a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes:

(a) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or

(2) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.

(b) Or which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to, those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended, or household pharmaceutical wastes collected pursuant to RSA 318-E.

VIII. “Hazardous waste management” means the systematic control of the generation, collection, sorting, storage, processing, treatment, recovery and disposal of hazardous waste.

X. “Manifest” means the form used for identifying the origin, quantity, composition, routing and destination of hazardous waste.

XI. “Operator” means any person who, either directly or indirectly, operates or otherwise controls or directs activities at a facility.

XI-a. “Owner” means any person who, either directly or indirectly owns a facility. The term “owner” does not include a person who, without participation in the management or actual operation of a facility, holds indicia

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of ownership primarily to protect a mortgage on real property on which a facility is located or a security interest in personal property located at the facility.

XII. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body.

XII-a. "Spent material" means any material that has been used and, as a result of contamination, can no longer serve the purpose for which it was produced without processing.

XIII. "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes.

XIV. "Trade secret" means any confidential formula, pattern, device or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. A trade secret is known to the employer and those employees to whom it is necessary to confide it.

XV. "Transport" means the movement of hazardous wastes from the point of generation to any intermediate points and, finally, to the point of ultimate storage or disposal.

XVI. "Transporter" means any person who transports hazardous waste.

XVII. "Treatment" means any process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize the waste or to render the waste not hazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

XVIII. "Waste" means any matter consisting of: garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other spent, discarded or abandoned material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include domestic sewage, irrigation return waters, wastewater discharges in compliance with applicable state or federal permits, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

### **RSA 147-B:2**

III. "Facility" means any site, area or location where hazardous waste or hazardous materials are or have been treated, stored, generated, disposed of, or otherwise come to be located.

## **APPENDIX D: FEDERAL DEFINITIONS AND REGULATIONS**

### **40 CFR 260.4**

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

- (1) Complete the facility portion of the applicable manifest;
- (2) Sign and date the facility certification;
- (3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and
- (4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

### **40 CFR 260.5**

(a) For purposes of this section, "state-only regulated waste" means:

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- (1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or
  - (2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.
- (b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:
- (1) Comply with the provisions of §§ 264.71 (use of the manifest) and 264.72 (manifest discrepancies) of this chapter; and
  - (2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

### **40 CFR 260.10**

*Act* or *RCRA* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 *et seq.*

*Administrator* means the Administrator of the Environmental Protection Agency, or his designee.

*Aquifer* means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

*Authorized representative* means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

*Battery* means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

*Boiler* means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery sections(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

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(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32.

*Certification* means a statement of professional opinion based upon knowledge and belief.

*Confined aquifer* means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

*Container* means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

*Containment building* means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter.

*Contingency plan* means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

*Dike* means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

*Drip pad* is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

*Electronic manifest* (or e-Manifest) means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

*Electronic Manifest System* (or e-Manifest System) means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

*Explosives or munitions emergency* means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

*Explosives or munitions emergency response* means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

*Explosives or munitions emergency response specialist* means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

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*Free liquids* means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

*Ground water* means water below the land surface in a zone of saturation.

*Incompatible waste* means a hazardous waste which is unsuitable for:

(1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See appendix V of parts 264 and 265 of this chapter for examples.)

*Injection well* means a well into which fluids are injected. (See also “underground injection”.)

*Inner liner* means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

*International shipment* means the transportation of hazardous waste into or out of the jurisdiction of the United States.

*Lamp*, also referred to as “universal waste lamp”, is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

*Land treatment facility* means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

*Leachate* means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

*Liner* means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

*Military munitions* means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE’s nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

*Mining overburden returned to the mine site* means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

*On-site* means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but

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connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

*Pesticide* means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (1) Is a new animal drug under FFDCA section 201(w), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

*Pile* means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

*Point source* means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

*Recognized trader* means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

*Representative sample* means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

*Run-off* means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

*Run-on* means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

*Sludge* means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Surface impoundment* or *impoundment* means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

*Tank* means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

*Tank system* means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

*Totally enclosed treatment facility* means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

*Transport vehicle* means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

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*Transportation* means the movement of hazardous waste by air, rail, highway, or water.

*Treatability Study* means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A “treatability study” is not a means to commercially treat or dispose of hazardous waste.

*United States* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Universal Waste Transporter* means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

*Vessel* includes every description of watercraft, used or capable of being used as a means of transportation on the water.

*Wipe* means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

### **40 CFR 261.1(c)(3)**

A “by-product” is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public’s use and is ordinarily used in the form it is produced by the process.

### **40 CFR 261.1(c)(6)**

“Scrap metal” is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

### **40 CFR 261.1(c)(9)**

“Excluded scrap metal” is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

### **40 CFR 261.1(c)(10)**

“Processed scrap metal” is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(14)).

### **40 CFR 261.1(c)(11)**

“Home scrap metal” is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

### **40 CFR 261.1(c)(12)**

“Prompt scrap metal” is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

### **40 CFR 261.4(a)(1)(ii)**

“Domestic Sewage” means untreated sanitary wastes that pass through a sewer system.

**40 CFR 262.81**

*EPA Acknowledgment of Consent (AOC)* means the letter EPA sends to the exporter documenting the specific terms of the country of import’s consent and the country(ies) of transit’s consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

*Exporter*, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with § 262.83(d) or the manifest for a shipment of hazardous waste in accordance with subpart B of this part, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

*Importer* means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

**40 CFR 268.2(c), 7-1-16 edition**

*Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

**40 CFR 270.2**

*Site* means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

**40 CFR 273.2(c)(2)**

An unused battery becomes a waste on the date the handler decides to discard it.

**40 CFR 273.3(c)(1)**

A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

- (i) The generator of the recalled pesticide agrees to participate in the recall; and
- (ii) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).

**40 CFR 273.3(c)(2)**

An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

**40 CFR 273.4(c)(2)**

Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

**40 CFR 273.5(c)(2)**

An unused lamp becomes a waste on the date the handler decides to discard it.

**40 CFR 273.33(c)(2)**

A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

- (i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;
- (ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

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(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

### APPENDIX E: EMERGENCY TELEPHONE NUMBERS

<b>Organization</b>	<b>Telephone Number</b>	<b>Days/Hours</b>
DES Emergency Response Team	(603) 271-3899	Monday through Friday; 8 a.m. to 4 p.m.
N.H. State Police Headquarters Communications Unit	(603) 223-4381	Every day; 24 hours per day