

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### CHAPTER Env-Hw 300 PERMITS

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

#### REVISION NOTE:

Document #9362, effective 1-28-09, readopted with amendments and renumbered the permit rules on hazardous waste management, formerly in Part Env-Wm 301 and Part Env-Wm 351 through Part Env-Wm 353 (Part Env-Wm 352 reserved), under a new subtitle as Env-Hw 300. 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. Document #9362 replaces all prior filings for hazardous waste rules formerly in Chapter Env-Wm 300.

The prior filings for the former rules in Env-Wm 300 on hazardous waste included the following documents:

#5053, eff 1-24-91  
#5886, eff 8-26-94  
#6619-B, eff 10-29-97  
#7207-B, eff 2-26-00  
#7333, eff 8-1-00  
#7578, eff 10-13-01  
#8462-A, eff 10-28-05  
#9215, INTERIM, eff 8-1-08

#### PART Env-Hw 301 PURPOSE AND APPLICABILITY

Env-Hw 301.01 Purpose. The purpose of this chapter is to establish a hazardous waste management facility permit system pursuant to RSA 147-A.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 301.02 Applicability. This chapter shall apply to any person who holds a permit for or who is required to obtain a permit for a hazardous waste management facility.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

#### PART Env-Hw 302 DEFINITIONS

Env-Hw 302.01 “Application” means the department's standard form or the EPA standard national form for applying for a permit, the information provided on and with the form, and the fee associated with the application, as applicable.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 302.02 “Draft permit” means a document prepared pursuant to Env-Hw 304.19 that reflects the department’s intent to issue, modify, revoke and reissue, or reissue a permit.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Hw 302.03 “Emergency permit” means a permit that is issued to allow the treatment, storage, or disposal of hazardous waste when necessary to abate or avoid an imminent and substantial endangerment to human health or the environment.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 302.04 “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 302.05 “Limited permit” means a permit issued to allow the operation of an elementary neutralization unit or wastewater treatment unit.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 302.06 “National Pollutant Discharge Elimination System (NPDES)” means the national permit program for imposing and enforcing pretreatment requirements pursuant to §§307, 318, 402 and 405 of the Clean Water Act, as amended, 33 U.S.C. §§1251 et seq.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### PART Env-Hw 303 PERMIT REQUIREMENTS; EXEMPTIONS

#### Env-Hw 303.01 Requirement to Obtain a Permit.

(a) No person shall construct, modify or operate a facility without first obtaining a permit from the department or without qualifying for and maintaining interim status.

(b) An operator of an existing facility that files an interim status application with the department and otherwise qualifies for interim status in accordance with Env-Hw 304.02 may operate without a standard permit or transfer facility permit until the department makes a final determination on its standard permit or transfer facility permit application. An interim status facility shall comply with all requirements established by Env-Hw 304.02 in order to maintain interim status and shall submit an application for a standard permit or transfer facility permit in a timely fashion as required by Env-Hw 304.10(b).

(c) Unless exempted by Env-Hw 303.02, the operator of a new facility shall obtain a standard permit in accordance with all requirements of Env-Hw 304 before construction or operation of the facility begins.

(d) The operator of a facility, including a generator, who operates an elementary neutralization unit or wastewater treatment unit including an evaporation unit, shall obtain a limited permit for that unit in accordance with Env-Hw 304.04.

(e) The operator of a facility shall have a duly issued permit from the department throughout the facility’s active life, including closure and post-closure care, as applicable. Denial of a permit pursuant to this chapter for the active life of a facility shall not affect the requirement to prepare and implement a closure and post-closure plan.

(f) The operator of a facility holding one or more permits issued by other New Hampshire or federal programs shall also obtain a permit pursuant to this chapter unless specifically exempted by the hazardous waste rules.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(g) When a facility is owned by one person but is operated by another person, then:

- (1) The operator shall obtain the permit; and
- (2) The owner shall also sign the permit application.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 303.02 Exemptions.

(a) The operator of a transfer facility shall be exempt from the prohibitions of Env-Hw 304.09(d) and (e)(6).

(b) A generator managing hazardous waste in accordance with Env-Hw 500 shall be exempt from facility permit requirements.

(c) The operator of a facility that meets the requirements of Env-Hw 701.02(a)(6), (a)(8), and (a)(9) shall be exempt from facility permit requirements.

(d) A farmer who disposes of hazardous waste pesticides from the farmer's own use in accordance with Env-Hw 501.02(a) shall be exempt from facility permit requirements.

(e) A generator who has obtained a storage permit only for hazardous waste generated on site shall be exempt from any siting requirements of Env-Hw 304.09 that are more stringent than federal requirements, provided that all hazardous waste is stored in an enclosed area.

(f) An applicant for a transfer facility permit who provides technical documentation to demonstrate the facility meets the following conditions shall be exempt from Env-Hw 304.11(a)(8):

- (1) The facility is operated so that all waste handling occurs in an enclosed building with an impervious floor designed in accordance with the criteria specified in 40 CFR Part 264, Subpart I and Subpart J;
- (2) No hazardous waste containers, tanks, and transport vehicles are located or stored at any time outside of the transfer facility building; and
- (3) The location of the transfer facility does not contravene the siting requirements of Env-Hw 304.09.

(g) A full quantity generator who receives small quantity generator waste in accordance with Env-Hw 501.02(c)(1) shall be exempt from facility permitting requirements.

(h) A government entity that sponsors a household hazardous waste collection project that receives hazardous waste from small quantity generators shall be exempt from facility permitting requirements, provided that the hazardous waste is:

- (1) Manifested in accordance with Env-Hw 510;
- (2) Received only during a one-day household hazardous waste collection event; and
- (3) Given directly by the small quantity generator to a New Hampshire registered hazardous waste transporter during a one-day collection event.

(i) Env-Hw 304 shall not apply to universal waste handlers and universal waste transporters handling universal waste, provided the waste is managed in accordance with Env-Hw 1100.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(j) A government entity that receives household hazardous waste from another government entity shall be exempt from facility permitting requirements provided it ships the household hazardous waste off site within 90 days after receipt.

(k) Subject to (l), below, and for the duration of the emergency response only, a person shall not be required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

- (1) An unplanned discharge of a hazardous waste;
- (2) An imminent and substantial threat of a discharge of hazardous waste;
- (3) A discharge of a material that, when discharged, becomes a hazardous waste; or
- (4) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosives or munitions emergency response specialist.

(l) In the case of (k), above:

- (1) A person who continues or initiates hazardous waste treatment or containment activities after the emergency response is over shall be subject to all applicable permitting requirements for those activities; and
- (2) In the case of emergency responses involving military munitions, the requirements of 40 CFR 270.1(c)(3)(iii) shall apply.

(m) The owner and operator of a totally enclosed treatment facility as defined in Env-Hw 104 shall be exempt from the facility permit requirements of Env-Hw 304.

(n) A reverse distributor who accumulates potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in accordance with Env-Hw 1300 shall be exempt from facility permit requirements.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17; ss by #13406, eff 7-23-22

### PART Env-Hw 304 PERMITTING HAZARDOUS WASTE FACILITIES

Env-Hw 304.01 Standard Permits. The department shall issue standard permits for treatment, storage and disposal facilities pursuant to RSA 147-A and all applicable sections of Env-Hw 304.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.02 Qualifying for Interim Status.

(a) To be granted and to maintain interim status authorization to operate, an existing facility shall:

- (1) Notify the department in accordance with Env-Hw 702.01;
- (2) Obtain an EPA identification number;
- (3) Submit interim status part A application information in accordance with 40 CFR 270.13 no later than the earliest of the following:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. Six months after the publication date of regulations that first require the facility to comply with Env-Hw 700; or
- b. Thirty days after the facility first becomes subject to the standards set forth in Env-Hw 700.

(4) Comply with the transfer of ownership and relinquishment of property requirements of Env-Hw 304.28;

(5) Comply with the emergency/remedial action requirements of Env-Hw 706;

(6) Submit a completed standard permit or transfer facility permit application in accordance with Env-Hw 304.10; and

(7) Implement all changes at the facility during interim status, including changes in facility operation, design, ownership, or operational control, only in accordance with 40 CFR 270.72.

(b) If the department has reason to believe upon examination of an interim status part A permit application that the application fails to meet the requirements of 40 CFR 270.13, the department shall notify the owner and the operator of the facility in writing of the apparent deficiency. Such notice shall specify the grounds for the department's belief that the application is deficient. The owner or operator of the facility shall, within 30 days from receipt, respond to such a notification and explain or cure the alleged deficiency in the permit application.

(c) An existing facility that previously has been denied a facility permit or where authority to operate the facility previously had been terminated shall not qualify for interim status.

(d) During the interim status period the facility shall not:

- (1) Treat, store, or dispose of hazardous waste not specified in the permit application;
- (2) Employ processes not specified in the permit application; or
- (3) Exceed the design capacities specified in the permit application.

(e) During the interim status period, the facility shall comply with the interim status standards set forth in Env-Hw 700.

(f) All facility operators shall comply with the following requirements for updating interim status part A applications:

- (1) Updated interim status part A applications shall be filed with the department or the EPA as required by 40 CFR 270.10(g)(1);
- (2) Interim status shall only attach to activities expressly covered by the interim status part A application; and
- (3) An operator who does not file an updated interim status part A application for new or expanded activities as allowed by 40 CFR 270.72 shall not receive interim status for those activities.

(g) Interim status shall terminate upon:

- (1) The final administrative disposition of the standard or transfer facility permit application;
- (2) Failure to furnish a completed permit application on time;

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Failure to furnish information required by Env-Hw 304.11 in a timely fashion; or
- (4) Failure to comply with the conditions of this part.

(h) For any land disposal facility that was in existence on the effective date of statutory amendments or amendments to the hazardous waste rules that cause the facility to be subject to the requirement to have a hazardous waste permit, interim status shall terminate 12 months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

- (1) Submits, in accordance with Env-Hw 304.10, an application for a standard permit for such facility no later than 12 months after the date on which the facility first becomes subject to such permit requirement; and
- (2) Certifies, as specified in Env-Hw 207, that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.03 Permits-by-Rule. An owner or operator shall be deemed to have a permit-by-rule if the facility meets the conditions specified in 40 CFR 270.60(a) and (c).

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.04 Limited Permits.

(a) This section shall apply to owners and operators of elementary neutralization units and wastewater treatment units provided that, in the case of elementary neutralization units that are transport vehicles or vessels or containers otherwise used to transport the waste after neutralization, neutralization occurs in these units while they remain stationary and before transport of the neutralized waste begins.

(b) This section shall not apply to the owner or operator of an elementary neutralization unit or wastewater treatment unit who is a small quantity generator as described in Env-Hw 503.01.

(c) A limited permit shall be granted only if the applicant meets the conditions specified in (d) through (i), below.

(d) The owner or operator shall not treat or store a hazardous waste in an elementary neutralization unit or a wastewater treatment unit without having received an EPA identification number in accordance with Env-Hw 504.

(e) The operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock into or onto the elementary neutralization unit or wastewater treatment unit, unless:

- (1) Physical contact with the waste contained in the unit will not injure unknowing or unauthorized persons or livestock that may enter the unit; and
- (2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock into or onto the unit will not cause a violation of the requirements of this section.

(f) The operator shall inspect the elementary neutralization unit or wastewater treatment unit in accordance with 40 CFR 265.15, except that the minimum inspection frequencies cited in 40 CFR 265.15(b)(4) shall not apply.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (g) The operator of an elementary neutralization unit or wastewater treatment unit shall ensure that:
- (1) The unit is constructed of sturdy, leak-proof material;
  - (2) The unit is designed, constructed, and operated so as to prevent hazardous wastes from being spilled or leaked into or onto any land or water during the operating life of the unit; and
  - (3) The treatment process conducted in the unit does not:
    - a. Generate extreme heat or pressure, fire, explosion, or violent reaction;
    - b. Produce uncontrolled toxic mists, fumes, or gases in sufficient quantities to threaten human health;
    - c. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;
    - d. Damage the structural integrity of the tank or equipment containing the waste;
    - e. Otherwise threaten human health or the environment; or
    - f. Include placement of hazardous wastes or treatment reagents if they could cause the unit or any of its equipment to rupture, leak, abnormally corrode, or otherwise fail before the end of its intended life.
- (h) At closure, the operator of an elementary neutralization unit or wastewater treatment unit shall remove all hazardous waste and hazardous waste residues from the unit.
- (i) Within 15 days after any spill or leakage of hazardous waste from an elementary neutralization unit or wastewater treatment unit, the operator of the unit shall submit a written report to the department that contains the following information:
- (1) Name, address, and telephone number of the owner or operator;
  - (2) Name, address, and telephone number of the facility;
  - (3) Date, time, and nature of the incident;
  - (4) Name and quantity of materials involved;
  - (5) The extent of injuries, if any;
  - (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
  - (7) Estimated quantity and disposition of spilled or leaked material recovered after the incident.
- (j) A limited permit shall be granted only for an elementary neutralization unit or wastewater treatment unit that:
- (1) Meets the applicable definition for such a unit in Env-Hw 103 or Env-Hw 104;
  - (2) Is subject to and in compliance with a National Pollution Discharge Elimination System (NPDES) Permit if the unit discharges directly into surface waters;
  - (3) Meets the best engineering judgment for such units;

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Has been assigned an EPA identification number, unless the unit is totally enclosed with no hazardous waste sludges produced;
  - (5) Is in compliance with the manifesting requirements of Env-Hw 510; and
  - (6) Is in compliance with the recordkeeping and reporting requirements of Env-Hw 512, for a generator, or Env-Hw 705, for an owner or operator of a hazardous waste facility.
- (k) A limited permit shall be granted for a wastewater evaporation unit only if the applicant demonstrates that:
- (1) The facility uses an evaporation-type unit that removes wastewaters by an evaporation/heat process;
  - (2) The unit is permitted for air emission discharges or demonstrates on documents that air emission discharges from the evaporation unit do not significantly impact ambient air quality; and
  - (3) The facility complies with the requirements of (d) through (i), above.
- (l) The operator of each unit subject to this section shall complete and submit:
- (1) A limited permit application on a “Hazardous Waste Limited Permit Application” form obtained from the department that includes the following information:
    - a. Company name;
    - b. EPA identification number;
    - c. Street and mailing addresses, if different;
    - d. Main telephone number;
    - e. Contact person, title, telephone number, and, if available, email address;
    - f. Names and telephone numbers of the company owner and operator, if different;
    - g. Type and description of business operations;
    - h. Permit information;
    - i. A list of the types and quantities of wastes to be treated;
    - j. A detailed description of the processes that generate the wastes;
    - k. Process design drawings, plans, or flow diagrams;
    - l. A detailed description of how the wastes are treated;
    - m. Engineering design plans or manufacturer technical specifications for the treatment unit(s);
    - n. A copy of the inspection schedule for the treatment unit(s);
    - o. Analytical results, from analyses conducted no more than 12 months prior to submittal of the application, for a representative sample of:
      - 1. Wastewater, before and after treatment; and
      - 2. Treatment sludge, if applicable;



## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- p. Treatment sludge generation and disposal information;
- q. Wastewater recycling information;
- r. A copy of the related, current wastewater discharge permit;
- s. A copy of any related, current air resources division permits or documentation to demonstrate that the air emissions do not significantly impact air quality; and
- t. The signature of the operator certifying, as specified in Env-Hw 207, the application and that the operator understands that the State of New Hampshire incurs no liability and makes no guarantees with respect to the facility's treatment systems, its wastewater or air emission discharges, or the compliance of such discharges with state or federal regulations; and

(2) The application fee specified in Env-Hw 304.07(d) or Env-Hw 304.07(e)(7), as applicable.

(m) A limited permit shall expire 5 years from the date of issuance.

(n) The permittee shall apply for a permit renewal by submitting an application as specified in (l), above, to the department before the limited permit expires.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17; and by #12922, eff 11-23-19

### Env-Hw 304.05 Special Permits.

(a) Emergency permits shall be issued in accordance with 40 CFR 270.61.

(b) Hazardous waste incinerator permits shall be issued in accordance with 40 CFR 270.62.

(c) Permits for land treatment demonstrations using field test or laboratory analyses shall be issued in accordance with 40 CFR 270.63.

(d) Research, development and demonstration permits shall be issued in accordance with 40 CFR 270.65.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.06 Effect of a Permit.

(a) After a permit is issued, the permittee shall comply with the express terms and conditions of the permit and all of the following, provided that in the case of a conflict, the requirement that is more protective of human health, safety, and the environment shall apply:

- (1) New Hampshire and federal statutes;
- (2) Rules adopted by the department;
- (3) 40 CFR Part 268, restricting the placement of wastes in or on the land;
- (4) 40 CFR 264 leak detection system requirements, as described in 40 CFR 270.4(a)(1)(iii); and
- (5) 40 CFR 265 Subpart AA, BB, or CC, limiting air emissions.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) A permit shall not convey any:

- (1) Property rights of any sort; or
- (2) Exclusive privileges.

(c) A permit shall not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or rules.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17; ss by #12922, eff 11-23-19

### Env-Hw 304.07 Fees.

(a) As authorized by RSA 147-A:4, II, the applicant shall remit a non-refundable fee with each permit application.

(b) The fee for a standard permit application shall be:

- (1) \$7,500 for a disposal facility;
- (2) \$7,500 for a treatment facility;
- (3) \$7,500 for a storage facility;
- (4) \$4,500 for a generator storage facility that stores 1,000 kg or more for longer than 90 days; and
- (5) \$2,000 for a generator storage facility that stores between 100 kg and 1,000 kg for longer than 90 days.

(c) The fee for a transfer facility permit application shall be \$4,500.

(d) The fee for a limited permit application shall be \$750.

(e) The fee for a permit renewal or modification application shall be:

- (1) \$4,000 for standard permit for a disposal facility;
- (2) \$4,000 for standard permit for a treatment facility;
- (3) \$4,000 for standard permit for a storage facility;
- (4) \$2,500 for a standard permit for a generator storage facility that stores 1,000 kg or more for longer than 90 days;
- (5) \$1,000 for a standard permit for a generator storage facility that stores between 100 kg and 1,000 kg for longer than 90 days;
- (6) \$3,000 for a transfer facility permit; and
- (7) \$400 for a limited permit.

(f) Fees paid by check or money order shall be made payable to "Treasurer, State of New Hampshire".

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### Env-Hw 304.08 Siting Requirements for Existing Facilities.

- (a) An existing facility may remain located in a 100-year floodplain only if:
  - (1) The facility is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood; or
  - (2) The operator ensures that all waste can be removed safely to a location where the wastes will not be vulnerable to flood waters before flood waters can reach the facility.
- (b) Floodplain determinations shall be made in accordance with 40 CFR 270.14(b)(11)(iii).
- (c) No person shall place any hazardous waste in a salt dome formation, salt bed formation, underground mine, or cave.
- (d) No portion of a facility where treatment, storage, or disposal of hazardous waste is conducted shall be located within 61 meters or 200 feet of a fault that has had displacement in Holocene time.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.09 Siting Requirements for New Facilities.

- (a) No new facility shall be issued a permit unless the applicant demonstrates that the active portion of the facility shall be sited in compliance with Env-Hw 702.09.
- (b) Landfills, land treatment facilities, piles, and surface impoundments shall not be located within the 500-year floodplain.
- (c) Transfer, treatment, storage, and disposal facilities shall not be located within the 100-year floodplain.
- (d) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters or 200 feet of a fault that has had displacement in Holocene time.
- (e) Unless a facility is granted a waiver pursuant to Env-Hw 202 or is exempt pursuant to Env-Hw 303.02, the department shall not issue a permit to a new facility whose active portion is to be sited:
  - (1) Within 1,000 feet of a residence as defined in Env-Hw 104 that exists at the time an applicant submits a permit application. For the purposes of this subparagraph, a residence shall be deemed to exist as soon as actual construction of the residence has begun;
  - (2) Within 1,000 feet for transfer facilities or within 3,000 feet for treatment, storage, or disposal facilities of a school, hospital, or home for the elderly that exists at the time an applicant submits a permit application, if such an institution:
    - a. Is a publicly owned institution and the municipality or other governing body has reached the level of planning whereby it has already committed specified funds toward the purchase or lease of a specific site for the project or toward construction of the project; or
    - b. Is privately owned and the owner has already begun construction on the project;
  - (3) Within 200 feet for transfer, treatment, or storage facilities or within 500 feet for incinerators, landfills, land treatment facilities, piles, or surface impoundments of an adjacent property line;
  - (4) Within an area that has hydrologic characteristics such that an accidental discharge of hazardous waste from the active portion could take less than one year to migrate through the ground to:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. The property line of the parcel on which the facility is proposed to be built;
  - b. A down-gradient discharge of groundwater to a surface water described in (9), (10), or (12), below; or
  - c. An aquifer described in (6), below;
- (5) For landfills, land treatment facilities, piles, and surface impoundments, within an area not underlain by an aquiclude as defined in Env-Hw 103 unless an artificial barrier is installed that has a hydraulic conductivity for water of  $1 \times 10^{-7}$  cm per second or less and that has sufficient thickness to function as an aquiclude;
- (6) Within an area underlain by an aquifer occurring in non-bedrock formations capable of having a safe yield greater than 200,000 gallons per day;
- (7) Within the following distance of the intake of a surface water that is a source, or the zone of contribution for a well that is a source, for a public water system as defined in RSA 485:1-a as of the time the applicant submits a permit application:
- a. For landfills, land treatment facilities, piles, or surface impoundments, 5,000 feet;
  - b. For treatment, storage or other disposal facilities, 3,000 feet; or
  - c. For transfer facilities, 1,000 feet;
- (8) Within the watershed of a river designated as a Class A water pursuant to RSA 485-A:9 as of the time the applicant submits a permit application;
- (9) Within 250 feet for transfer facilities or within 500 feet for treatment, storage, or disposal facilities of the edge of a river or stream having a drainage area of one square mile or more;
- (10) Within 250 feet for transfer facilities or within 1,000 feet for treatment, storage, or disposal facilities of a pond, lake, or reservoir whose surface area exceeds 10 acres;
- (11) Within 1,500 feet for landfills, land treatment facilities, piles or surface impoundments, within 750 feet for treatment, storage and other disposal facilities, or within 250 feet for transfer facilities, of the edge of a river or stream whose normal width is 100 feet or more;
- (12) Within 250 feet for transfer facilities or within 1,000 feet for treatment, storage, or disposal facilities of a wetland as regulated by RSA 482-A whose surface area exceeds 25 acres;
- (13) Within the corridor of a river designated as a natural river pursuant to RSA 483; or
- (14) Within any salt dome formation, salt bed formation, underground mine or cave.
- (f) Determination of safe yield pursuant to (e)(6), above, shall be made in accordance with accepted hydrogeological practices.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; amd by #10205, eff 10-19-12; ss by #12345, eff 8-14-17

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### Env-Hw 304.10 Permit Application Process.

(a) Before beginning construction or operation of a new facility, including a presently operating non-hazardous waste facility that proposes to treat, store, or dispose of hazardous waste on-site, the operator shall:

- (1) Submit a standard permit or transfer facility permit application signed in accordance with (d), below, that contains the information required in Env-Hw 304.11 and, as applicable, Env-Hw 304.18; and
- (2) Obtain a standard permit or transfer facility permit from the department.

(b) The operator of an existing facility shall submit a complete standard permit or transfer facility permit application, signed in accordance with (d), below, to the department no later than 12 months from the date that the department receives the interim status part A application from the facility, unless subject to an earlier deadline as provided in Env-Hw 304.02(h).

(c) Existing facilities that do not qualify for interim status shall submit a standard permit or transfer facility permit application to the department immediately upon becoming subject to the standards in Env-Hw 700.

(d) Signatory requirements shall be as set forth in 40 CFR 270.11.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.11 Required Standard Permit and Transfer Facility Permit Application Information.

(a) The applicant for a standard permit or a transfer facility permit shall submit the following information:

- (1) The Part A application information required by 40 CFR 270.13, and the Part B application information required by 40 CFR 270.14(b) through (d);
- (2) The name of a contact person for the site;
- (3) For new land disposal facilities, the floodplain information required by 40 CFR 270.14(b)(11), including whether the facility is proposed to be located within a 500-year floodplain;
- (4) Facility design plans and specifications, prepared and stamped approved by a New Hampshire registered professional engineer, including a scale drawing of the facility, showing the location of all past, present, and future treatment, storage, and disposal areas in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor;
- (5) Construction schedule for any new construction or planned modifications to existing structures;
- (6) If the applicant is leasing the property upon which the facility is located, a certification, as specified in Env-Hw 207, from the owner of the property verifying that such a lease exists and specifying the duration of that lease;
- (7) The results of a criminal records check and a performance history of the applicant and of its officers and directors relative to the operation, financial security, and ownership of all facilities owned or operated by the applicant, submitted in accordance with RSA 147-A:4, II-c, II-d and IV-a;
- (8) Unless exempt pursuant to Env-Hw 303.02(e) or (f), a hydrogeological analysis that includes the following:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. Information required by 40 CFR 264.97;
- b. An accumulation and evaluation of published or existing hydrogeological information;
- c. An accumulation and evaluation of geological structural controls at the site to determine the site's relationship to intermediate and regional flow systems;
- d. An assessment of the geophysical characteristics of the underlying materials so that the hydrogeological characteristics of the site can be evaluated;
- e. A determination of the configuration of the groundwater table, including groundwater gradients of the unconfined and, where appropriate, confined aquifers;
- f. The saturated thickness of the aquifers and the hydraulic interconnection between them;
- g. Field data to represent high and low water table conditions;
- h. The location of groundwater monitoring wells that are designed and will be located so as to yield the following data from which site impacts can be determined:
  1. Test pits;
  2. Well logs;
  3. Boring logs; and
  4. Well construction specifications;
- i. An evaluation of pump tests to determine hydraulic conductivity, migration rates, and aquifer transmissivities and storativities;
- j. A determination of background water quality, and a submittal of the sampling and analysis methods used for such determination; and
- k. A written confirmation from the department whether a groundwater permit is required;

(9) If applicable, the information specified in 40 CFR 270.10(j), 40 CFR 270.15, 40 CFR 270.16, 40 CFR 270.17, 40 CFR 270.18, 40 CFR 270.19, 40 CFR 270.20, 40 CFR 270.21, 40 CFR 270.23, and 40 CFR 270.26; and

(10) Any additional information necessary to demonstrate that human health, safety and the environment will be protected.

(b) As used in (a)(8)i., above, "transmissivity" means the rate at which water of a prevailing density and viscosity is transmitted through a unit width of aquifer or confining bed under a unit hydraulic gradient.

(c) As used in (a)(8)i., above, "storativity" means the volume of water taken into or released from storage per unit change in head per unit area.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; amd by #10205, eff 10-19-12; ss by #12345, eff 8-14-17

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### Env-Hw 304.12 Application Recordkeeping Requirements.

(a) Each applicant shall keep records of all data used to complete the permit application and any information required to be submitted with the application for not less than 3 years from the date the applicant submitted the application.

(b) The retention period for all records required by this part shall be extended automatically while any enforcement action regarding the facility is pending.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.13)

Env-Hw 304.13 Pre-Submittal Conference. Upon the applicant's request, the department shall afford the applicant an opportunity to meet with the department before submitting an application in order to review the department's permit application requirements, including, if applicable, the siting requirements of Env-Hw 304.09.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.14)

### Env-Hw 304.14 Submission of Application.

(a) The applicant shall submit:

(1) The original and 3 copies of the application and all supporting materials required by Env-Hw 304.10;

(2) A cover letter signed by the applicant certifying, as specified in Env-Hw 207, that the submitted application meets all necessary application requirements sufficient to render it technically adequate to undergo an engineering review; and

(3) The fee required by Env-Hw 304.07.

(b) An applicant who wishes to apply for a waiver to any provision of Env-Hw 304.09(e) shall do so pursuant to Env-Hw 202 at the time the application is submitted. The department shall address the applicant's waiver request within its site evaluation.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.15)

### Env-Hw 304.15 Determination of Completeness.

(a) Upon receipt of a permit application, the department shall determine whether the application is complete by carefully evaluating all technical information submitted by the applicant to ensure that the submitted information is adequate, accurate, and technically sufficient to meet the submittal requirements of the hazardous waste rules.

(b) The application shall not be deemed complete unless it clearly demonstrates that the proposed facility is capable of being operated safely and that the operation of the facility will not pose an unreasonable risk or threat to human health or the environment.

(c) If the application is deemed to be incomplete, the department shall suspend its review of the application and send a letter to the applicant that states the reason for incompleteness.



## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) The applicant shall resubmit the application only if all deficiencies noted by the department in the letter of incompleteness are addressed.

(e) If the department determines that a standard permit application is complete, the department shall review the application in accordance with Env-Hw 304.17 through Env-Hw 304.23. If the department determines that a transfer facility permit application is complete, the department shall review the application in accordance with Env-Hw 304.21 through Env-Hw 304.23.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; amd by #10205, eff 10-19-12; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.16)

### Env-Hw 304.16 Notification Upon Receipt of Completed Applications.

(a) Upon determining that a standard permit application is complete according to the criteria set forth in Env-Hw 304.15, the department shall:

- (1) Send a letter to the applicant informing the applicant that the application is considered to be complete and will undergo the review process specified in Env-Hw 304.17;
- (2) Send written notification to the local governing body of the receipt of the completed application so that a municipal review committee can be appointed in accordance with RSA 147-C:2; and
- (3) Within 15 days of determining that an application is complete, notify the general public as specified in Env-Hw 304.21 that the completed application is available for review.

(b) If the department determines that a transfer facility permit application is complete, a notification of the department's completeness determination shall be sent to:

- (1) The applicant;
- (2) The local governing body for the town in which the facility is proposed to be located; and
- (3) The general public in accordance with Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.17); ss by #13406, eff 7-23-22

### Env-Hw 304.17 Evaluation of Complete Standard Permit Application.

(a) After the application is deemed complete in accordance with Env-Hw 304.15, the commissioner or designee shall assign a staff engineer to conduct a complete technical review of the application, including a determination as to whether the proposed facility could be sited or operated, or a proposed activity could be conducted, such that human health, safety, and the environment will be protected.

(b) The engineer assigned pursuant to (a), above, shall evaluate all information submitted with the application, all facility requirements, and all information submitted during the public comment period and public hearings conducted in accordance with Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.18); ss by #13406, eff 7-23-22



## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Hw 304.18 Result of Evaluation of Complete Application for New Treatment, Storage or Disposal Facilities. For any application for a new treatment, storage, or disposal facility, if the department determines that the permit application does not contain sufficient information to determine whether the proposed facility could be sited or operated, or the proposed activity could be conducted, such that human health, safety, and the environment will be protected, the applicant shall, upon request by the department, submit the following information:

(a) A health assessment that evaluates the hazardous nature of the wastes that will be handled at the facility and their potential impact on public health resulting from the operation of the facility, including the following:

(1) Data on the hazardous wastes regarding:

- a. Known or suspected health effects associated with the wastes being handled, including information on acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, teratogenicity and reproductive effects;
- b. Environmental persistence in soil, air, and water;
- c. Bioaccumulation potential;
- d. Emission or discharge rates of the hazardous wastes or by-products from the facility;
- e. Potential pathways of human exposure or environmental receptors to the hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures; and
- f. Existing regulatory or suggested exposure limits for the hazardous wastes or their by-products; and

(2) Identification and discussion of the applicant's health and safety procedures and control measures intended to minimize the public health and safety risks associated with the facility's operation and location based on the health assessment;

(b) An ecological analysis of the potential adverse effects to the local biotic habitat due to accidental discharge of hazardous waste that describes the environment of the area of the facility and includes a biologist's report that lists the wildlife species known to live in or migrate through the environmental area and evaluates the potential adverse biological effects of such a discharge upon said species;

(c) An air impact analysis that includes the following:

- (1) An identification of all pollutants and their emission rates from all emission points at the facility including mobile, fugitive, and stack emissions;
- (2) The seasonal emission variation;
- (3) Process and control technology information;
- (4) The ambient background concentrations for all pollutants;
- (5) Modeled ground-level concentrations for all pollutants using EPA guidelines; and
- (6) The impact on soils, vegetation, visibility, climate, meteorology, and terrain;

(d) A transportation impact and safety analysis that assesses the potential public health and environmental risks associated with transporting hazardous waste to the facility, with a focus upon those primary and alternate routes most likely to be used by transporters traveling to the facility from their point of exit off the nearest divided, limited-access highway, and frontage roadways providing immediate, direct access to the facility, that includes the following:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Identification of all routes and frontage roads by federal, state and/or local name within each of the major transportation corridors, and a map or maps that clearly depict each of these routes;
- (2) A description of each major transportation corridor and each frontage roadway in each route identified pursuant to (1), above, that includes all relevant information pertaining to the safe transportation of the types of hazardous wastes to be transported to and from the facility, including but not limited to type, width, and condition of the routes in question;
- (3) A description of the type, size, and configuration of vehicles expected to be transporting hazardous waste to the facility;
- (4) Identification of all road segments existing in each route identified pursuant to (1), above, that are structurally, functionally, or topologically deficient based on the latest American Association of State Highway and Transportation Officials (AASHTO) standards, New Hampshire department of transportation adjusted sufficiency ratings, and sound engineering judgment;
- (5) A discussion of all known or planned highway improvements that could affect each route identified pursuant to (1), above;
- (6) A general traffic study for each route identified pursuant to (1), above, including data pertaining to average daily traffic volumes and peak hour traffic volumes, as well as all appropriate capacity analyses, and to the proposed facility's impact upon the generation of new traffic and new traffic patterns;
- (7) Identification and engineering analysis of all accidents that have occurred within the previous 5 years along each route identified pursuant to (1), above, with particular emphasis placed upon those accidents that could have posed public health or environmental risks had they involved a vehicle transporting hazardous waste;
- (8) Identification of and an emergency response analysis for each location along each route identified pursuant to (1), above, where there is reasonable potential for the occurrence of future accidents and where there is reasonable potential for the occurrence of public health and environmental risks should such accidents involve a vehicle transporting hazardous waste; and
- (9) An analysis of improvements that might be incorporated along each route identified pursuant to (1), above, to reduce the risks associated with the transportation of hazardous wastes along said roads, such as the correction of topological or structural deficiencies or the upgrading of traffic control devices and signing.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17 (formerly Env-Hw 304.12)

### Env-Hw 304.19 Preparation of Draft Permit and Fact Sheet.

(a) If the department determines that the application demonstrates that the proposed facility could be sited and operated, or the proposed activity could be conducted, such that human health, safety, and the environment will be protected, the department shall prepare a draft permit based on the administrative record as defined by 40 CFR 124.9.

(b) The draft permit shall contain the following information:

- (1) All required general and specific conditions;

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) All compliance schedules;
  - (3) All monitoring requirements; and
  - (4) Standards for treatment, storage, and disposal, as applicable, and other permit conditions.
- (c) All draft permits prepared by the department shall be accompanied by a fact sheet that:
- (1) Briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit;
  - (2) Describes the type of facility or transfer facility or activity covered by the draft permit;
  - (3) Identifies the type and quantity of wastes proposed to be treated or being treated, stored, disposed of, emitted, or discharged;
  - (4) Summarizes the basis for the draft permit conditions including applicable regulatory citations;
  - (5) Describes the procedures for making a final decision on the draft permit;
  - (6) Describes the procedures for public comment and hearing, including:
    - a. The beginning and ending date of the public comment period;
    - b. The mailing address and an email address to which comments may be sent;
    - c. The procedures for requesting a hearing and the nature of that hearing; and
    - d. Any other procedures by which the public may participate in the final decision;
  - (7) Lists the name and telephone number of an individual at the department to contact for further information; and
  - (8) Describes the reasons why any requested waivers or alternatives to required standards do or do not appear justified.
- (d) The department shall distribute and publish the fact sheet and the draft permit and make the fact sheet, the draft permit, and the rest of the administrative record available for public comment in accordance with Env-Hw 304.20 and Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.20 Review of Draft Permit by the Applicant.

- (a) The department shall provide a copy of the draft permit to the applicant for review. The applicant shall have 30 days from the date the department mailed the draft permit to the applicant to review the draft permit and submit comments and suggested revisions to the department.
- (b) If the applicant is unable to complete the review and submit comments within 30 days, the applicant may request the department to allow additional time. If the applicant requests additional time, the department and the applicant shall confer to determine a new deadline for submitting comments. This request shall not be subject to Env-Hw 202 relative to waivers.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The department shall review all comments and suggested revisions submitted by the applicant. If the department determines that requested changes meet the requirements of Env-Hw 304 and Env-Hw 700, the department shall incorporate the suggested revisions into the draft permit.

(d) After the applicant's review has been completed and after any revisions have been incorporated into the draft permit, the department shall solicit public comments as specified in Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.21 Public Involvement in the Permitting Process.

(a) The department shall give public notice whenever:

- (1) A complete permit application has been received;
- (2) A draft permit has been prepared;
- (3) A notice of intent to terminate has been issued pursuant to Env-Hw 304.27;
- (4) A public hearing has been scheduled; or
- (5) An appeal has been filed with the waste management council.

(b) Public notice that a completed application or a notice of intent to terminate is available for public review shall allow for not less than 30 days after the date of the notice to submit public comment or request a public hearing, or both.

(c) Public notice that a draft permit has been prepared shall allow for not less than 45 days after the date of the notice to submit public comment or request a public hearing, or both.

(d) The department shall provide public notice by:

- (1) Publishing a notice in a newspaper of daily statewide circulation, in a local newspaper, on the department's website, and by broadcast over local radio stations;
- (2) Mailing a copy of the notice and, if available, a copy of the fact sheet and the draft permit to:
  - a. The applicant;
  - b. Each New Hampshire agency that implements any program(s) that could be affected by or is required to issue permits for the proposed facility, including but not limited to cultural and historic resources and coastal zone management;
  - c. Federal agencies having jurisdiction over fish and wildlife resources that could be affected by the proposed facility;
  - d. Each affected Indian tribe, if any;
  - e. Each unit of local government having jurisdiction over the area where the facility is to be located; and
  - f. Persons on a mailing list compiled from:
    1. Persons who have requested in writing to be on the list;

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

2. Responses to a solicitation of persons on area lists of participants in past permit proceedings in the area; and
3. Responses to notifications to the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals; and

(3) Any other method calculated to give actual notice of the action in question to persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(e) During the comment period, any person may submit comments, request a non-adjudicative public hearing, or both, as follows:

- (1) All comments and requests shall be in writing and identify the person submitting the comments or request by name and affiliation; and
- (2) A request for a public hearing shall include a short statement regarding the need for a hearing.

(f) If a public hearing is to be held, the department shall give public notice of the hearing not less than 30 days before the hearing as specified in (d), above.

(g) All public notices issued pursuant to this section shall include the following information:

- (1) The name and address of the department;
- (2) The name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
- (3) A brief description of the business conducted at the facility or transfer facility or activity described in the permit application or draft permit;
- (4) The locations where and times during which the permit application and other applicable documents are available for review;
- (5) A statement that all information submitted by the applicant is available as part of the administrative record;
- (6) The name, address, and telephone number of an individual at the department from whom interested persons may obtain further information, including a copy of the fact sheet, draft permit, and the application;
- (7) A brief description of the public comment procedures, including:
  - a. A statement of how a hearing can be requested or, if a hearing has already been scheduled, the date, time, and place of the hearing; and
  - b. Other procedures by which the public may participate in the final permit decision;
- (8) The date(s) of previous public notices relating to the topic, if any;
- (9) A brief description of the nature of the hearing, if applicable; and
- (10) Any additional information considered necessary or proper.

(h) If a final permit is issued, the department shall:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(1) Prepare a summary of the comments and the department's responses to the comments, which shall:

- a. Identify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for that change; and
- b. Describe and respond to comments on the fact sheet and on the draft permit that were raised during the comment period or during the hearing; and

(2) Make the summary available to the public.

(i) Public hearings shall be as follows:

(1) A public hearing shall be mandatory for disposal facilities, or if the department receives written notice of opposition to a draft permit and a request for a hearing within 45 days after public notice is issued pursuant to (d), above;

(2) In all other cases, a public hearing shall be held if such a hearing will clarify one or more issues involved in the permit decision;

(3) All public hearings shall be conducted according to the procedures applicable to non-adjudicative proceedings specified in Env-C 200; and

(4) Whenever possible, all public hearings shall be held at a location near the proposed or existing facility.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.22 Permit Issuance.

(a) Prior to making a decision on an application, the department shall evaluate all duly-submitted information, including the completed application, all public comments received, all hearing testimony, and the draft permit if one was prepared.

(b) The department shall issue the permit in whole or in part or deny the application either in its entirety or only as to the active life of the facility based upon whether the information demonstrates compliance with the requirements of Env-Hw 700, RSA 147-A:4, II-a, RSA 147-A:4, II-d, and any other applicable provisions.

(c) The department shall inform the applicant of its decision no later than 90 days after the final date that the public may submit comments.

(d) A standard permit, transfer facility permit, or limited permit shall, subject to modification, suspension, or revocation by the department, be valid for 5 years unless a shorter term is requested by the applicant based on the anticipated need for the permit.

(e) Any permittee may seek renewal of a permit pursuant to Env-Hw 304.31.

(f) Issuance or denial of a standard permit or transfer facility permit shall terminate any interim status held by the facility.

(g) If an applicant is issued a standard permit or transfer facility permit, the owner or operator may begin construction of the facility in accordance with conditions of the permit.

(h) An owner or operator shall not commence operation of a new facility or any modified portion of an existing facility before:

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Construction has been completed;
- (2) The department has received a letter signed by the owner or operator and a New Hampshire registered professional engineer certifying, as specified in Env-Hw 207, that the facility has been constructed in compliance with the standard permit or transfer facility permit conditions; and
- (3) The department has verified the facility's compliance and has notified the owner or operator in writing that operation of the facility may begin.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17; ss by #13406, eff 7-23-22

### Env-Hw 304.23 Permit Application Denial.

- (a) If a permit application is denied, the following shall apply:

- (1) The department shall send written notice of denial to the applicant by registered mail, return receipt requested;
- (2) The notice of denial shall include a list of specific reasons for denial; and
- (3) The applicant whose permit application has been denied may appeal such denial to the waste management council in accordance with Env-WMC 200.

(b) If a permit application is denied, the owner or operator may reapply to the department after making necessary modifications to the original permit application. The applicant shall submit the appropriate fee, as specified in Env-Hw 304.07(b) through (d), with any such reapplication.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.24 Permit Conditions and Schedules of Compliance.

(a) All facility permits shall contain terms and conditions necessary for the operator to comply with the hazardous waste rules.

(b) Permit conditions shall be in accordance with 40 CFR 270.30, 270.31, and 270.32.

(c) The department shall establish conditions to ensure compliance with all applicable requirements of RSA 147-A and the hazardous waste rules.

(d) Schedules of compliance shall be in accordance with 40 CFR 270.33.

(e) For purposes of this section, "schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with RSA 147-A and the hazardous waste rules.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Hw 304.25 Permit Modification Requested by Permittee. Any permittee who seeks to modify a permit shall proceed as specified in 40 CFR 270.42(a) through (e), (g), and (h) and Appendix I to Section 270.42.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.26 Permit Modification or Revocation and Reissuance Initiated by the Department Including Modification or Revocation and Reissuance Requested by Third Parties.

(a) The department shall initiate a permit modification if cause as listed in 40 CFR 270.41(a) or (b), 7-1-05 edition, is shown.

(b) When a permit is modified pursuant to this section, only the conditions subject to modification shall be reopened when a draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(c) The department shall initiate a permit revocation and reissuance proceeding if the criteria for permit revocation and reissuance established in 40 CFR 270.41(b), 7-1-05 edition, are met.

(d) When a permit is revoked and reissued pursuant to this section, the entire permit shall be subject to revision just as if the permit had expired and the permit reissued for a new term.

(e) The permittee shall comply with all conditions of the existing permit during modification proceedings or permit revocation and reissuance proceedings until a new final permit is issued.

(f) Suitability of the facility location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists that was unknown at the time of permit issuance.

(g) Any interested third party may request modification or revocation and reissuance of a permit. All requests shall be in writing and contain facts or reasons supporting the request.

(h) The department shall follow the procedures set forth below when it initiates a permit modification or revocation and reissuance pursuant to this section:

(1) If necessary to assist the department's decision to modify a permit, the permittee shall submit additional information and an updated application;

(2) In the case of a permit to be revoked and reissued, the permittee shall submit a new application and such additional information as is necessary to assist the department's decision;

(3) The department shall prepare a draft permit incorporating the proposed changes in accordance with Env-Hw 304.20;

(4) The department shall make the draft permit available to the permittee for review and allow for public comment in accordance with Env-Hw 304.21;

(5) At the end of the public comment period, the department shall give the permittee an opportunity for an adjudicative hearing in accordance with the applicable provisions of RSA 541-A and Env-C 200 before modifying or revoking and reissuing the permit;

(6) If a permittee wishes to request an adjudicative hearing, the permittee shall:

a. Submit a written request for a hearing to the department no later than 30 days after the department issues its draft permit; and



## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

b. Include in the request a short and plain statement of the permittee's objections or concerns with regard to the department's proposed action, a summary of the permittee's compliance history and current compliance status, and any other relevant information;

(7) If both a public hearing is requested during the public comment period and an adjudicative hearing is requested by the permittee pursuant to this section, the department shall determine whether to hold a single hearing or two separate hearings; and

(8) If a single hearing is held, it shall be conducted as an adjudicative hearing in accordance with the applicable provisions in Env-C 200, and public notice shall be given in accordance with Env-Hw 304.21.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.27 Termination of Permits.

(a) If the department receives information that indicates good cause, as defined in (b), below, exists to terminate a permit or refuse to renew a permit the department shall proceed in accordance with (d) through (k), below.

(b) The following shall constitute good cause for permit termination or permit nonrenewal:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the permit renewal application or during the permit renewal process to disclose fully all relevant facts, or the permittee's misrepresentation by act or omission of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination, suspension, or nonrenewal;

(4) Noncompliance by the permittee with any applicable standard, requirement, or provision set forth in the hazardous waste rules or RSA 147-A; or

(5) Noncompliance by the permittee with any administrative order, compliance schedule, judicial decree, or consent agreement issued pursuant to the hazardous waste rules or RSA 147-A.

(c) Any person may request the termination or nonrenewal of a permit. All requests shall be in writing and shall contain facts or reasons supporting the request.

(d) If the department decides to terminate or refuse to renew a permit, the department shall issue a notice of intent to terminate to the permittee.

(e) The notice of intent to terminate shall:

(1) Contain the reasons supporting the department's decision to terminate or refuse renewal;

(2) Be based upon the administrative record; and

(3) Include a fact sheet prepared in accordance with Env-Hw 304.19.

(f) The department shall give public notice of the notice of intent to terminate in accordance with Env-Hw 304.21.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(g) At the end of the public comment period specified in Env-Hw 304.21(b), the permittee may request an adjudicative hearing in accordance with the applicable provisions of RSA 541-A and Env-C 200.

(h) If a permittee wishes to request an adjudicative hearing, the permittee shall:

(1) Submit a written request for a hearing to the department no later than 30 days after the department issues its notice of intent to terminate; and

(2) Include in the request, a short and plain statement of the permittee's objections or concerns with regard to the department's proposed action, a summary of the permittee's compliance history and current compliance status, and any other relevant information.

(i) The department shall order the immediate suspension of a permit in whole or in part, if the department finds that public health, safety or welfare requires emergency action.

(j) An order of suspension shall act as a temporary termination or modification of the permit, as specified in the department's order and shall be immediately effective.

(k) The order shall be vacated if the department does not begin an adjudicative proceeding in accordance with the applicable provisions of RSA 541-A and Env-C 200 within 10 business days of the issuance of the suspension order.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.28 Transfer of Permits. Transfer of permits shall be in accordance with 40 CFR 270.40, 7-1-05 edition and RSA 147-A:4, IV-a.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.29 Appeals.

(a) The permittee may appeal to the waste management council in accordance with RSA 147-A:15 within 30 days of the issuance of a final decision of the department to:

(1) Grant or deny a permit application, in whole or in part;

(2) Grant or deny the permittee's request for permit modification;

(3) Modify or revoke and reissue a permit;

(4) Terminate a permit or refuse to renew a permit; or

(5) Suspend a permit.

(b) Any other person aggrieved by a final permitting decision of the department may appeal in accordance with (a), above, if that person has standing as determined pursuant to Env-WMC 200.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

Env-Hw 304.30 Continuation of Expiring Permits.

(a) If a permittee wishes to continue a permitted activity after the expiration date of the permit, the permittee shall apply for and obtain a permit renewal.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) An expiring permit shall remain valid in accordance with 40 CFR 270.51(a)-(d) and RSA 541-A:30 if the permittee has submitted an application for renewal in accordance with Env-Hw 304.31.

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17

### Env-Hw 304.31 Permit Renewal.

(a) The operator of a facility that has a valid permit who wishes to renew the permit shall submit an application for renewal in accordance with Env-Hw 304.10 and Env-Hw 304.11:

- (1) At least 180 days before the permit expires, for a standard permit; or
- (2) Before the permit expires, for a transfer facility permit.

(b) An applicant who wishes to request an extension of time of the application submittal deadline shall submit a request for waiver in accordance with Env-Hw 202.

(c) Except for limited permit renewals, an application for permit renewal shall be treated as a new application for purposes of review, except that denial of the permit renewal shall be in accordance with Env-Hw 304.27. Limited permit renewals shall be in accordance with Env-Hw 304.04(n).

[Source.](#) (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09; ss by #12345, eff 8-14-17; ss by #12922, eff 11-23-19

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

Rule Section(s)	State Statute(s)	Federal Regulation(s)
Env-Hw 301	RSA 147-A:3; RSA 147-A:4	40 CFR 124; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270.60
Env-Hw 302	RSA 147-A:3, VIII, IX, IX-a, XXV; RSA 147-A:4; RSA 541-A:30	40 CFR 124; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270.60
Env-Hw 303	RSA 147-A:3, VIII, IX, IX-a, XI, XXV; RSA 147-A:4; RSA 147-A:4-b; RSA 147-A:5, I	40 CFR 124; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270
Env-Hw 304	RSA 147-A:3, III, IV, VII-XI, XIII, XXV; RSA 147-A:4; RSA 147-A:4-b; RSA 147-A:5; RSA 147-A:15; RSA 147-C:2; RSA 541-A:30	40 CFR 124; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270

### 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.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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 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.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### 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:

- (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.

*Aerosol can* means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

*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.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

*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

(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

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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.

*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.



## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

*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 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.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

*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.

*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.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### **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 266.500**

*Evaluated hazardous waste pharmaceutical* means a prescription hazardous waste pharmaceutical that has been evaluated by a reverse distributor in accordance with § 266.510(a)(3) and will not be sent to another reverse distributor for further evaluation or verification of manufacture credit.

*Hazardous waste pharmaceutical* means a pharmaceutical that is a solid waste, as defined in § 261.2, and exhibits one or more characteristics identified in part 261 subpart C or is listed in part 261 subpart D. A pharmaceutical is not a solid waste, as defined in § 261.2, and therefore not a hazardous waste pharmaceutical, if it is legitimately used/reused (e.g., lawfully donated for its intended purpose) or reclaimed. An over-the-

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

counter pharmaceutical, dietary supplement, or homeopathic drug is not a solid waste, as defined in § 261.2, and therefore not a hazardous waste pharmaceutical, if it has a reasonable expectation of being legitimately used/reused (e.g., lawfully redistributed for its intended purpose) or reclaimed.

*Healthcare facility* means any person that is lawfully authorized to—

(1) Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

(2) Distribute, sell, or dispense pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs, or prescription pharmaceuticals. This definition includes, but is not limited to, wholesale distributors, third-party logistics providers that serve as forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals. This definition does not include pharmaceutical manufacturers, reverse distributors, or reverse logistics centers.

*Long-term care facility* means a licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, hospice facilities, nursing facilities, skilled nursing facilities, and the nursing and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, assisted living facilities, and the independent and assisted living portions of continuing care retirement communities.

*Non-creditable hazardous waste pharmaceutical* means a prescription hazardous waste pharmaceutical that does not have a reasonable expectation to be eligible for manufacturer credit or a nonprescription hazardous waste pharmaceutical that does not have a reasonable expectation to be legitimately used/reused or reclaimed. This includes but is not limited to, investigational drugs, free samples of pharmaceuticals received by healthcare facilities, residues of pharmaceuticals remaining in empty containers, contaminated personal protective equipment, floor sweepings, and clean-up material from the spills of pharmaceuticals.

*Pharmaceutical* means any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by 21 CFR 203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. This definition does not include dental amalgam or sharps.

*Potentially creditable hazardous waste pharmaceutical* means a prescription hazardous waste pharmaceutical that has a reasonable expectation to receive manufacturer credit and is—

(1) In original manufacturer packaging (except pharmaceuticals that were subject to a recall);

(2) Undispensed; and

(3) Unexpired or less than one year past expiration date. The term does not include evaluated hazardous waste pharmaceuticals or nonprescription pharmaceuticals including, but not limited to, over-the-counter drugs, homeopathic drugs, and dietary supplements.

*Reverse distributor* means any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that processes prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

### **40 CFR 268.2(c)**

*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

### **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 273.6(c)(2)**

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

### **40 CFR 273.13(e)(4)(i)**

Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

### **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);
- (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 is subject to all applicable requirements of 40 CFR parts 260 through 272;
- (iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container is subject to all applicable requirements of 40 CFR parts 260 through 272;
- (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;

## NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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

Organization	Telephone Number	Days/Hours
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