

Change Chapter Env-Sw 1200 heading to read as follows:

CHAPTER Env-Sw 1200 PERMIT-BY-NOTIFICATION SOLID WASTE FACILITY REQUIREMENTS

Statutory Authority: RSA 149-M:7

Readopt with amendment Env-Sw 1200, effective 7-1-2014 (Doc #10595) cited and to read as follows:

PART Env-Sw 1201 PURPOSE AND APPLICABILITY

Env-Sw 1201.01 Purpose. The purpose of the rules in this chapter is to:

- (a) Prescribe the requirements and limitations for siting, designing, constructing, operating, and closing a facility under the provisions of a permit-by-notification issued pursuant to Env-Sw 311; and
- (b) Ensure, through the prescribed requirements and limitations, that permit-by-notification facilities shall be sited, designed, operated, and closed in a manner that does not endanger the public health or adversely affect the environment and which minimizes the potential for accidents that could lead to personal injury or property damage.

Env-Sw 1201.02 Applicability. The rules in this chapter shall apply to all permit-by-notification facilities.

Readopt Env-Sw 1202.01 through Env-Sw 1202.04, effective 7-1-2014 (Doc #10595), cited to read as follows:

PART Env-Sw 1202 GENERAL REQUIREMENTS

Env-Sw 1202.01 Universal Requirements. All permit-by-notification facilities shall comply with the following:

- (a) The universal facility requirements in Env-Sw 1000;
- (b) The waste specific requirements in Env-Sw 900 as applicable to the type of waste managed by the facility; and
- (c) The requirements of this chapter.

Env-Sw 1202.02 Requirements for Operating Longer than 90 days.

(a) A permit-by-notification facility having an active life longer than 90 days shall comply with the requirements in Env-Sw 1100, with the following exceptions:

- (1) There shall be no requirement to submit final design plans and specifications for construction approval;
- (2) There shall be no requirement to submit an operating plan, provided that:
 - a. A written operating plan which meets the requirements of Env-Sw 1105.11 is prepared prior to operating the facility;
 - b. The operating plan is available for use by the certified operator(s) and for inspection by the department pursuant to Env-Sw 2000;

- c. The permittee submits in the permit application a signed statement which attests to the existence of the plan, and certifies that the plan meets the requirements of Env-Sw 1105.11; and
 - d. The facility operates in compliance with the solid waste rules and the permit; and
- (3) There shall be no requirement to submit a closure plan, provided that:
- a. A written closure plan that meets the requirements of Env-Sw 1106.04 is prepared prior to operating the facility;
 - b. The closure plan is available for use by the certified operator(s) and for inspection by the department pursuant to Env-Sw 2000;
 - c. The permittee submits in the permit application a signed statement which attests to the existence of the plan, and certifies that the plan meets the requirements of Env-Sw 1106.04; and
 - d. The facility closes in compliance with the solid waste rules and the permit.
- (b) A non-landfill permit-by-notification facility having an active life longer than 90 days shall comply with the following:
- (1) Env-Sw 403 through Env-Sw 406, if the facility is a collection, storage, and transfer facility identified in Env-Sw 407;
 - (2) Env-Sw 503 through Env-Sw 506, if the facility is a processing or treatment facility identified in Env-Sw 507 or a composting facility identified in Env-Sw 607 or an incinerator identified in Env-Sw 707;
 - (3) Env-Sw 603 through Env-Sw 606, if the facility is a composting facility identified in Env-Sw 607; and
 - (4) Env-Sw 703 through Env-Sw 706, if the facility is an incinerator identified in Env-Sw 707.
- (c) A permit-by-notification landfill shall not be permitted to have an active life longer than 90 days unless:
- (1) The facility is located on publicly owned land;
 - (2) The permittee is a government agency or unit or a political subdivision of the state; and
 - (3) Vehicular access to the facility is physically restricted at all times when a certified operator is not present.

Env-Sw 1202.03 Consecutive Permits Prohibited. Consecutively dated permits-by-notification shall not be issued to a facility as a means to avoid obtaining a standard permit pursuant to the solid waste rules or as a means to avoid any requirement specified in Env-Sw 1202.02.

Env-Sw 1202.04 Obligation to Obtain Other Approvals. The existence of a permit-by-notification shall not affect a person's obligation to obtain all requisite federal, state, or local permits, licenses, or approvals, or to comply with all other applicable federal, state, district, or local permits, ordinances, laws, or approvals or conditions pertaining to the permit-by-notification activities.

Readopt with amendment Env-Sw 1202.05, effective 11-18-16 (Document #12045), to read as follows:

Env-Sw 1202.05 Permittee and Operator Qualifications.

- (a) The permittee, facility owner, and property owner shall be the same person.
- (b) The permittee shall be in charge of operating the facility, maintaining responsibility for the facility, and all related operations.
- (c) The permittee shall provide compliance certification pursuant to Env-Sw 303.14.
- (d) If the facility has an active life longer than 90 days, each operator shall be certified pursuant to Env-Sw 1600 unless otherwise specified in these rules for a specific type of facility.

Readopt Env-Sw 1202.06, effective 7-1-14 (Document #10595), to read as follows:

Env-Sw 1202.06 Permit Transfer Limitations and Requirements.

- (a) A permit-by-notification shall be non-transferable, except as provided in (d) below.
- (b) In the event a permit-by-notification facility will be sold or otherwise conveyed to a second party, the second party shall apply pursuant to Env-Sw 311 to obtain a new permit-by-notification for the facility if the second party intends to continue operating the facility.
- (c) If the second party does not obtain a new permit-by-notification to continue operating the facility, the permittee of record shall close the facility in accordance with the solid waste rules and the permit prior to conveying the facility to the second party.
- (d) In the case of a closed permit-by-notification landfill, the following shall apply:
 - (1) The applicable permit-by-notification shall be automatically transferred to the new property owner upon conveyance of the property to a new owner;
 - (2) Prior to conveyance, the permittee of record shall disclose the existence of the closed facility to the potential new owner and inform the potential new owner of all permit obligations related thereto; and
 - (3) Failure to provide such disclosure shall not alleviate a new owner, as permittee, from meeting any regulatory obligation relating to the facility.

Readopt with amendment Env-Sw 1203 through Env-Sw 1205, effective 7-1-14 (Document #10595), to read as follows:

PART Env-Sw 1203 SITING REQUIREMENTS

Env-Sw 1203.01 Location Restrictions, New Permit-by-Notification Facilities. The following restrictions shall apply to siting all new permit-by-notification facilities:

- (a) The facility shall not be sited on property that is subject to any on-going enforcement action by the department, unless the facility is approved by the department as part of the enforcement action and a copy of the approval is submitted with the application for the related permit-by-notification;
- (b) The facility shall not be sited within 50 feet of any property line;
- (c) The facility shall not be sited in a 100-year flood plain;
- (d) The facility shall be sited in conformance with Env-Sw 1003;
- (e) If the facility has an active life longer than 90 days, it shall be sited in conformance with Env-Sw 1102; and

(f) The facility shall not be sited in a location that would violate the provisions of any groundwater management permit pursuant to Env-Or 607.

Env-Sw 1203.02 Additional Location Restrictions for Landfills.

- (a) A permit-by-notification landfill shall not be sited less than 75 feet to surface water or wetlands.
- (b) A permit-by-notification landfill shall be located to provide at least 4 feet of vertical separation between the base of the disposal area and the seasonal high groundwater table.
- (c) A permit-by-notification landfill shall be located to provide at least 4 feet of vertical separation between the base of the disposal area and bedrock.
- (d) A permit-by-notification landfill shall not be sited less than 50 feet from the footprint of any landfill which is not yet capped.
- (e) A permit-by-notification landfill having an active life longer than 90 days shall be sited on publicly owned land only.

PART Env-Sw 1204 OPERATING REQUIREMENTS

Env-Sw 1204.01 General Operating Requirements. A permit-by-notification facility shall comply with the universal operating requirements in Env-Sw 1005 and the requirements of this part.

Env-Sw 1204.02 Authorized Waste. A permit-by-notification facility shall receive only those wastes specifically authorized in Env-Sw 407, Env-Sw 507, Env-Sw 607, or Env-Sw 707, as applicable to the type of facility being permitted.

Env-Sw 1204.03 Prohibited Waste. A permit-by-notification facility shall not receive the following types of solid waste:

- (a) Asbestos waste, unless the facility is an asbestos waste holding facility permitted under the provisions of Env-Sw 407.06;
- (b) Explosive waste;
- (c) Contained gaseous waste, unless collected for recycling;
- (d) Liquid waste unless collected for recycling;
- (e) Infectious waste, except for household infectious waste as defined in Env-Sw 103 and infectious waste treatment facilities explicitly authorized by Env-Sw 507;
- (f) Animal carcasses;
- (g) Contaminated soils and other absorbent media; and
- (h) Out-of-state waste, unless the waste is received for recycling, not incineration or disposal.

Env-Sw 1204.04 Capacity Limits.

(a) The capacity of a permit-by-notification facility shall be limited to that which is specified in Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707, as applicable to the type of facility being permitted.

(b) To assure compliance with RSA 149-M:11, IV(a), no permit-by-notification facility shall receive greater than 30 tons of waste per day as averaged:

(1) Over a one year period for facilities operating more than one year; and

(2) Over the life of the facility, if operating less than one year.

Env-Sw 1204.05 Landfill Operating Requirements. The following requirements shall apply to operating all permit-by-notification landfills:

(a) At all times during facility operations, the permittee shall maintain cover materials at the site in a quantity sufficient to comply with all daily and final cover requirements specified by the solid waste rules, except publicly owned facilities with an active life longer than 90 days may maintain the cover materials at other locations readily accessible to the site and permittee;

(b) Only soil shall be used as cover material;

(c) Waste shall be placed, compacted, and covered in a manner as to eliminate voids, limit settlement, and otherwise limit the potential for sink-holes or surface openings to develop; and

(d) Waste shall be placed only within the vertical and lateral limits of the facility as identified on a plan submitted in the permit application pursuant to Env-Sw 311 and approved by the department by permit issuance.

PART Env-Sw 1205 CLOSURE REQUIREMENTS

Env-Sw 1205.01 Non-landfill Closure Requirements.

(a) A permit-by-notification non-landfill shall close in conformance with Env-Sw 1006.

(b) All waste shall be removed to an authorized facility.

(c) Closure shall be completed within 30 days following the date of last waste receipt or before the expiration date of the permit, whichever is earlier.

Env-Sw 1205.02 Landfill Closure Requirements.

(a) A permit-by-notification landfill shall close in conformance with Env-Sw 1006.

(b) At least 2 feet of compacted soil shall be placed as final cover over all landfilled waste.

(c) If a greater depth than identified in (b), above, was specified in the approval for the facility, the greater depth shall be provided.

(d) Final cover shall be compacted, graded, seeded, and mulched in a manner as to produce and sustain vegetative growth or otherwise stabilized to prevent erosion.

(e) Closure shall be completed within 30 days following the date of last waste receipt or before the expiration date of the permit, whichever is earlier, except as provided by (f) below.

(f) If the date of last waste receipt falls within a time period where seasonal factors prevent closure by the date specified in (e) above, the permittee may delay closure provided that:

(1) Within 10 days following the date of last waste receipt, the permittee provides a written notice to the department specifying:

a. The facility has ceased receiving waste;

b. Closure cannot be completed as required in (e) above due to seasonal factors; and

c. The date by which closure will be completed as required by (4) below;

(2) The permittee shall control access to the facility by gates and bars or other means appropriate to the site to prevent unauthorized entry and dumping during the inactive, pre-closure period;

(3) The permittee shall take such action as necessary to otherwise secure the site against potential harm to the environment, human health, and safety during the inactive, pre-closure period; and

(4) The permittee shall implement closure as soon as practicable under the circumstances.

(g) Following closure, the permittee shall assure that the integrity of the cover materials is maintained, that voids and sink holes do not develop, and that the site is otherwise protective of the environment, public health, and safety.

(h) The permittee shall regularly inspect the facility and, when necessary, implement repairs or take other remedial action as needed to achieve and maintain compliance with the requirements of (g) above.

(i) In the event the disposal area is disturbed for any reason after closure, the permittee shall subsequently restore the area pursuant to (b) through (d) above.

(j) If buried waste is removed from a permit-by-notification landfill, the permittee shall dispose of the removed waste at an authorized facility.

Env-Sw 1205.03 Notification of Closure. Within 30 days of completing all required closure activities at a permit-by-notification facility, the permittee shall certify in writing to the department that closure has been completed as required by the solid waste rules.

APPENDIX

Rule	Statute(s) Being Implemented
Env-Sw 1200	RSA 149-M:6, III; RSA 149-M:7, II, III, V, XIV; RSA 149-M:9