

CHAPTER Env-Sw 1300 PUBLIC GRANTS FOR LANDFILL AND INCINERATOR CLOSURE

Statutory Authority: RSA 149-M:7, RSA 149-M:9, RSA 149-M:41-50

REVISION NOTE:

Document #8459, effective 10-28-05, readopted with amendments, renumbered, and redesignated former Chapter Env-Wm 3000 as Env-Sw 1300, pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. The source notes for each section of Env-Sw 1300 identify the former subtitle Env-Wm and number for the respective rule prior to Document #8459.

PART Env-Sw 1301 PURPOSE AND APPLICABILITY

Env-Sw 1301.01 Purpose. The purpose of the rules in this chapter is to:

(a) Implement RSA 149-M:41-50, which authorizes state grants to municipalities to encourage and assist them in closing unlined solid waste landfills and certain municipal incinerators; and

(b) Supplement RSA 149-M:41-50.

Source. #6095, eff 9-26-95; ss by #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3001.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1301.02 Applicability. The rules in this chapter shall apply to:

(a) Unlined municipal solid waste landfills, owned by New Hampshire municipalities and closed after July 1, 1984; and

(b) Municipal incinerators identified in RSA 149-M:42, IV.

Source. #6095, eff 9-26-95; ss by #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3001.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1302 COSTS ELIGIBLE FOR REIMBURSEMENT

Env-Sw 1302.01 Purpose. The rules in this part specify the criteria by which the department determines whether costs incurred by a municipality to close a facility identified in Env-Sw 1301.02 are costs eligible for a 20 % reimbursement through issuance of a grant.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3002.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1302.02 Eligible Costs.

(a) A cost of facility closure shall be eligible for a 20% reimbursement through issuance of a grant, provided that:

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(1) The cost meets the provisions of RSA 149-M:42, III, including, but not limited to, the following costs:

- (a) Hydrogeological investigations undertaken for pre-closure and closure;
- (b) Engineering investigations undertaken for pre-closure and closure;
- (c) Closure construction;
- (c) Construction design for pre-closure and closure; and
- (d) Construction supervision during closure;

(2) The municipality has paid the cost using funds raised by the municipality through taxation or loans approved by the voting members of the municipality; and

(3) The costs are not covered by other funds such as identified in Env-Sw 1303.02(h) or Env-Sw 1304.02(h).

(b) The following costs shall not be eligible for a 20% reimbursement through issuance of a grant:

- (1) Land acquisition, except for land necessary to the physical elements of closure;
- (2) Finance or interest charges because of delinquent payments;
- (3) Legal costs;
- (4) Fiscal costs, such as employee benefits and social security;
- (5) Administrative costs such as day-to-day business operations, including, but not limited to, travel, meals, and lodging;
- (6) Costs related to preparation of the grant application; and
- (7) Costs for repairs of failed, damaged, or inadequate landfill elements or systems.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3002.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1303 APPLICATIONS FOR LANDFILL CLOSURE GRANTS

Env-Sw 1303.01 Applicability. The rules in this part shall apply to a municipality that has completed, or is in the process of completing, closure of a landfill identified in Env-Sw 1301.02(a) and is seeking to be reimbursed for related eligible costs as specified by Env-Sw 1302.02.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3003.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1303.02 Grant Applications. A municipality seeking to be reimbursed for landfill closure costs shall complete and submit an "Application for Grant Reimbursement for Closure of an Unlined Municipal Landfill", NHDES-S-05-015, April 2023, available at: <https://onlineforms.nh.gov/?formtag=nhdes-s-05-015>, that includes the following information and specified attachments:

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- (a) Name, mailing address, and telephone number of the grant applicant;
- (b) Name and location of the landfill for which the grant award is being requested;
- (c) Landfill permit number, issued pursuant to RSA 149-M;
- (d) Groundwater release detection or groundwater management permit number, issued pursuant to RSA 485-C;
- (e) A photocopy of the warrant article, corporate resolution, or other legally binding document authorizing the municipality to undertake the closure project;
- (f) Closure project information, including:
 - (1) Name of engineering consultant;
 - (2) Name of construction contractor;
 - (3) Bid advertisement date;
 - (4) Contract award date; and
 - (5) Construction start date;
- (g) A schedule of the closure costs for which 20% reimbursement is being requested, with related supporting documentation necessary to substantiate that the costs are eligible costs as specified in Env-Sw 1302.02, including:
 - (1) Copies of all related authorized contracts, change orders, and amendments thereto;
 - (2) Copies of all related invoices; and
 - (3) Proof of payment;
- (h) Eligible cost financing information, including:
 - (1) Total eligible costs paid in cash;
 - (2) Total eligible costs paid through financing;
 - (3) Copies of the related institution-generated amortization schedules; and
 - (4) Monies received from third party sources and used to close the landfill, other than benevolent gifts received from third party sources having no liability for closure costs, including but not limited to funds from the following sources:
 - a. U.S. Farmers Home Administration or successor agency;
 - b. U.S. Rural Development Administration;
 - c. U.S. Department of Housing and Urban Development;
 - d. Community development block grants;
 - e. Potentially responsible party groups formed to collectively participate in the closure of the landfill; and
 - f. Insurance policy proceeds;

(i) If closure construction is complete, certification of completion by a qualified professional engineer and acceptance of the closure project by the municipality pursuant to Env-Sw 1104.07(f);

(j) If closure construction is not complete, the estimated future eligible closure costs and related financing obligations; and

(k) A notarized statement, signed and dated by a duly authorized representative for the applicant, affirming that:

(1) The applicant meets the requirements specified in RSA 149-M:46, including the following:

a. The landfill was closed or shall be closed in accordance with the approved plans and specifications;

b. Post-closure monitoring and maintenance of the landfill shall be performed in accordance with the facility permit; and

c. Failure to close or monitor the landfill in accordance with the approved plans and specifications, and the facility permit shall result in the loss of payments of the annual grant installment; and

(2) The material and information submitted is true, correct, and complete to the best of the applicant's knowledge and belief.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3003.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1304 APPLICATIONS FOR INCINERATOR CLOSURE GRANTS

Env-Sw 1304.01 Applicability. The rules in this part shall apply to a municipality that has completed, or is in the process of completing, closure of an incinerator identified in Env-Sw 1301.02(b) and is seeking to be reimbursed for related eligible costs as specified by Env-Sw 1302.02.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3004.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1304.02 Grant Applications. A municipality seeking to be reimbursed for incinerator closure costs shall complete and submit an "Application for Grant Reimbursement for the Closure of a Municipal Incinerator", NHDES-S-05-014, April 2023, available at: <https://onlineforms.nh.gov?formtag=nhdes-s-05-014>, that includes the following information and specified attachments:

(a) Name, mailing address, and telephone number of the grant applicant;

(b) Name and location of the incinerator for which the grant award is being requested;

(c) Incinerator permit number, issued pursuant to RSA 149-M;

(d) Groundwater release detection or groundwater management permit number if applicable, issued pursuant to RSA 485-C;

(e) A photocopy of the warrant article, corporate resolution, or other legally binding document authorizing the municipality to undertake the closure project;

(f) Closure project information, including:

- (1) Name of engineering consultant;
- (2) Name of construction contractor;
- (3) Bid advertisement date;
- (4) Contract award date;
- (5) Construction start date; and
- (6) Construction completion date;

(g) A schedule of the closure costs for which 20% reimbursement is being requested, with related supporting documentation to substantiate that the costs are eligible costs as specified in Env-Sw 1302.02, including:

- (1) Copies of all related authorized contracts, change orders, and amendments thereto;
- (2) Copies of all related invoices; and
- (3) Proof of payment;

(h) Eligible cost financing information, including:

- (1) Total eligible costs paid in cash;
- (2) Total eligible costs paid through financing;
- (3) Copies of the related institution-generated amortization schedules; and
- (4) Monies received from third party sources and used to close the incinerator, other than benevolent gifts received from third party sources having no liability for closure costs, including but not limited to funds from the following sources:
 - a. U.S. Farmers Home Administration or successor agency;
 - b. U.S. Rural Development Administration;
 - c. U.S. Department of Housing and Urban Development;
 - d. Community development block grant;
 - e. Potentially responsible party groups formed to collectively participate in the closure of the incinerator; and
 - f. Insurance policy proceeds;

(i) Certification of completion by a qualified professional engineer and acceptance of the closure project by the municipality pursuant to Env-Sw 1104.07(f);

(j) If closure construction is not complete, the estimated future eligible closure costs and related financing obligations;

(k) A notarized statement, signed and dated by a duly authorized representative for the applicant, affirming that:

- (1) The applicant meets the requirements specified in RSA 149-M:46, including the following:
 - a. The incinerator was closed or shall be closed in accordance with the approved plans and specifications;
 - b. Post-closure monitoring and maintenance of the incinerator shall be performed in accordance with the facility permit; and
 - c. Failure to close or monitor the incinerator in accordance with the approved plans and specifications, and the facility permit shall result in the loss of payments of the annual grant installment; and
- (2) The material and information submitted is true, correct, and complete to the best of the applicant's knowledge and belief.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3004.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1305 APPLICATION FILING AND PROCESSING

Env-Sw 1305.01 Purpose. The rules in this part specify requirements for filing and processing a grant application.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3005.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1305.02 Application Filing. The grant reimbursement application forms specified in Env-Sw 1303.02 and Env-Sw 1304.02 shall be submitted by the applicant to the department, in writing.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3005.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1305.03 Application Processing. The department shall process an application in accordance with RSA 541-A:29.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3005.03); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1305.04 Application Decision.

(a) A grant application shall be approved if the application is complete pursuant to the provisions of Env-Sw 1303 and Env-Sw 1304.

(b) A municipality having an approved grant application shall be eligible to receive a grant.

(c) Grants, not to exceed 20% of the eligible costs associated with an approved application, shall be awarded and disbursed as specified in Env-Sw 1306 and Env-Sw 1307.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3005.04); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1306 GRANT AWARDS

Env-Sw 1306.01 Purpose. The rules in this part specify the criteria by which a grant shall be awarded to a municipality that has an approved grant application as specified in Env-Sw 1303 and Env-Sw 1304.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3006.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1306.02 Grant Priorities. A grant shall be awarded in a manner consistent with the priorities established in RSA 149-M:47 and RSA 149-M:49.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3006.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1306.03 Grant Funding. A grant shall be awarded based on funding pursuant to RSA 149-M:50.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3006.03); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1307 DISBURSEMENT OF GRANT AWARDS

Env-Sw 1307.01 Purpose. The rules in this part specify how the department disburses grant monies to a municipality following the award of a grant.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3007.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1307.02 Financed Eligible Costs. Subject to Env-Sw 1307.04, grant awards for eligible costs that the municipality has paid through financing shall:

- (a) Be paid by the department on a schedule that corresponds to the municipality's payback schedule;
- (b) Include 20% of the principal payment associated with the eligible costs; and
- (c) Include 20% of the debt service payment associated with the eligible costs.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3005.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1307.03 Eligible Costs Paid with Cash. Subject to Env-Sw 1307.04 and Env-Sw 1308.03, grant awards for eligible costs that the municipality has paid with cash shall:

- (a) Be paid by the department as a single payment following grant approval; and
- (b) Not exceed 20% of the eligible costs.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3007.03); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1307.04 Failure to Comply. Failure to comply with RSA 149-M:46 shall result in loss of grant payment.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3007.04); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

PART Env-Sw 1308 ADJUSTMENTS TO GRANT AWARDS

Env-Sw 1308.01 Purpose. The rules in this part specify how the department adjusts the value of a municipality's grant award following the municipality's receipt or expenditure of funds for facility closure not previously identified in the grant application.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3008.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1308.02 Adjustments Due to Receipt of New Third Party Funds.

(a) The department shall adjust future financed grant award payments to reflect the receipt of additional funds by a municipality from third party sources relating to the closure project other than benevolent gifts received from third party sources having no liability for closure costs.

(b) For grant awards previously paid in a lump sum, or financed grant awards for which all amortized grant payments have been made, the municipality shall reimburse the state for the amount of excess grant money received as a result of receiving additional funds from a third party relating to the closure project.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3008.02); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1308.03 Adjustments Due to New Expenditures.

(a) A municipality seeking to be reimbursed for the expenditure of funds for facility closure not previously disclosed in a grant application shall:

- (1) File a supplemental "Application for Grant Reimbursement for Closure of an Unlined Municipal Landfill", NHDES-S-05-015 as specified in Env-Sw 1303, for the additional landfill closure expenditures; or

(2) File a supplemental "Application for Grant Reimbursement for Closure of a Municipal Incinerator", NHDES-S-05-014, as specified in Env-Sw 1304, for the additional incinerator closure expenditures.

(b) The application shall be processed in accordance with Env-Sw 1305.

(c) The department shall adjust future financed grant award payments to reflect the expenditure of additional funds by a municipality for eligible costs relating to the closure project.

(d) The department shall adjust grant awards previously paid in a lump sum, or financed grant awards for which all amortized grant payments have been made, by reimbursing the municipality in a lump sum any shortage of grant award money due.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3008.03); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

Env-Sw 1308.04 Notification of Receipt of Additional Funds.

(a) A municipality which received a grant award paid in a lump sum, or a grant award for which all amortized grant payments have been made, shall notify the department within 30 days following the receipt or expenditure of funds for facility closure not previously disclosed to the department.

(b) A municipality scheduled to receive future financed grant award payments shall disclose to the department within 30 days of a scheduled grant payment, whether the municipality has received or expended additional funds for facility closure not previously disclosed to the department.

Source. #7492, eff 5-18-01; (See Revision Note at chapter heading for Env-Sw 1300); ss by #8459, eff 10-28-05 (formerly Env-Wm 3008.01); ss by #10599, eff 7-1-14; ss by #13622, eff 5-1-23

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

APPENDIX

Rule	State Statute(s) Implemented
Env-Sw 1300	RSA 149-M:6, IX; RSA 149-M:7, XII; RSA 149-M:41-50