

Readopt Env-Sw 1601, effective 7-1-14 (Document #10600), cited and to read as follows:

CHAPTER Env-Sw 1600 SOLID WASTE FACILITY OPERATOR TRAINING AND CERTIFICATION

Statutory Authority: RSA 149-M:7

PART Env-Sw 1601 PURPOSE

Env-Sw 1601.01 Purpose. The purpose of the rules in this chapter is to implement a solid waste facility operator training and certification program, pursuant to RSA 149-M:6, XIII and RSA 149-M:9, VI, to:

- (a) Ensure that solid waste facility operators are aware of potential adverse environmental impacts of solid waste facility operations and the requirements that apply to such operations;
- (b) Increase the likelihood that solid waste facilities are operated in accordance with applicable requirements; and
- (c) Reduce the likelihood of accidents or other threats to the health and safety of individuals who work at a facility, volunteer at a facility, or use a facility.

Readopt with amendment Env-Sw 1602 through Env-Sw 1604, effective 7-1-14 (Document #10600), to read as follows:

PART Env-Sw 1602 APPLICABILITY AND EXEMPTIONS

Env-Sw 1602.01 Applicability. Subject to Env-Sw 1602.02, this chapter shall apply to any individual who:

- (a) Directly operates a solid waste facility;
- ~~(b)~~ Directly supervises any individual described in (a) or (b) above. *manages a solid waste facility; or*
- ~~(c)~~ Directly handles or otherwise manages solid waste at a solid waste facility. ~~or~~

{existing paragraphs (c) and (b) re-lettered as paragraphs (b) and (c) respectively}

Env-Sw 1602.02 Exemptions. Pursuant to RSA 149-M:7, V, the following individuals shall be exempt from this chapter:

- (a) Individuals who are employed by a solid waste facility under the work release program established in RSA 651:19 and Cor ~~307~~ *411*, or who volunteer at a solid waste facility pursuant to RSA 651:68, provided the facility owner provides training and safety equipment for each task to be performed that are adequate to ensure that the purpose of these rules, as stated in Env-Sw 1601.01, is met;
- (b) Individuals who volunteer at a solid waste facility, provided:
 - (1) The volunteers engage only in activities that are essentially non-hazardous, such as providing information to facility users and ~~sorting recyclable materials~~ *directing facility users to proper solid waste receptacles*;
 - (2) The volunteers work under the supervision of a certified operator; *and*
 - (3) The facility owner provides training and safety equipment for each task to be performed that is adequate to ensure that the purpose of these rules, as stated in Env-Sw 1601.01, is met.
- (c) *Individuals whose only responsibility is to pick up litter at a facility; and*

(d) Individuals who are employed by or who volunteer at an exempt facility as defined in Env-Sw 1603.04.

PART Env-Sw 1603 DEFINITIONS

Env-Sw 1603.01 “Assistant operator” means the status of an individual who has completed basic training and is maintaining ~~his or her~~ ***their*** certification, but who has not passed the operator examination described in Env-Sw 1605.07.

Env-Sw 1603.02 “Basic training” means training and education presented by the department that imparts information and instruction relevant to waste management and solid waste facility operations to individuals who wish to become certified operators.

Env-Sw 1603.03 “Continuing professional development” means professional or technical instruction that imparts information and instruction relevant to waste management and solid waste facility operations to individuals who have already attended basic training.

Env-Sw 1603.04 “Exempt facility” means:

- (a) A permit-exempt facility;
- (b) A permit-by-notification facility having an active life of 90 days or less;
- (c) An emergency permit facility; ***or***
- (d) A research and development permit facility; ~~or~~
- ~~(e) A general permit facility as specified in Env-Sw 1900.~~

Env-Sw 1603.05 “Principal operator” means the status of an individual who has completed basic training, has passed the examination described in Env-Sw 1605.07, and who is maintaining ~~his or her~~ ***their*** certification.

Env-Sw 1603.06 “Processed applicant” means the status of an individual whose initial application for certification has been approved by the department pursuant to Env-Sw 1605.06(c)(3), but who has not completed basic training.

PART Env-Sw 1604 OPERATOR CERTIFICATION

Env-Sw 1604.01 Certification Required.

(a) All individuals identified in Env-Sw 1602.01 who are not covered by an exemption in Env-Sw 1602.02 shall:

- (1) Be certified by the department pursuant to this chapter; or
- (2) Obtain processed applicant status in accordance with Env-Sw 1606.01.

(b) Any individual required to obtain initial certification shall submit an application for certification no more than 30 days after commencing work at the solid waste facility, whether as a paid employee or a volunteer.

~~(c) As of the 2014 effective date of this chapter, individuals who hold interim operator certification under the previous rules shall be deemed processed applicants.~~

Env-Sw 1604.02 Certification Designations.

(a) There shall be 2 operator certification designations pursuant to this chapter, as follows:

- (1) Assistant operator certification, which shall be granted to a processed applicant as provided in Env-Sw 1607.01; and

(2) Principal operator certification, which shall be granted to a processed applicant or an assistant operator who passes the examination, as provided in Env-Sw 1608.01.

(b) Each assistant operator and principal operator shall also be assigned a step designation as provided in Env-Sw 1609 or Env-Sw 1611, as applicable.

Readopt with amendment Env-Sw 1605.01, effective 7-1-14 (Document #10600), cited and to read as follows:

PART Env-Sw 1605 INITIAL CERTIFICATION

Env-Sw 1605.01 Applicability. This part shall apply to each individual who:

- (a) Is applying for assistant operator or principal operator certification for the first time;
- (b) Currently has assistant operator status, but wishes to attain principal operator status; or
- (c) Was previously certified, but:
 - (1) Failed to renew ~~his or her~~ *their* certification in accordance with Env-Sw 1611; or
 - (2) Had ~~his or her~~ *their* certification revoked pursuant to Env-Sw 1612.

Readopt Env-Sw 1605.02, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1605.02 Application Required. Any individual who is required to be certified pursuant to Env-Sw 1602.01 shall file an application that includes:

- (a) A completed, signed application form as specified in Env-Sw 1605.03; and
- (b) The fee described in Env-Sw 1605.04.

Readopt with amendment Env-Sw 1605.03 and Env-Sw 1605.04, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1605.03 Content and Format of Application.

- (a) The applicant shall provide the following information on a form obtained from the department:
 - (1) The applicant's name, residential mailing address, personal email address, and daytime telephone number;
 - (2) Whether the applicant has held any previous certification under this chapter, and if so, each certificate number;
 - (3) Whether the applicant currently is working at a facility, whether on a paid or unpaid basis, and if so:
 - a. The name, mailing address, and telephone number and, if available, the email address, of each such facility;
 - b. The name and title of the applicant's supervisor or facility manager; and
 - c. The applicant's current title or position, including a brief description of the duties required by the position;
- (b) The applicant shall sign and date the application form.
- (c) The applicant's signature shall constitute certification that:

- (1) The information provided in the application is true, complete, and not misleading to the applicant's knowledge and belief; and
- (2) The applicant understands that ~~he or she is~~ *they are*:
 - a. Subject to the penalties of law for false swearing if the information submitted is not true, complete, and not misleading; and
 - b. Required to comply with all applicable requirements of RSA 149-M and the solid waste rules.
- (d) Subject to (e), below, the applicant's signature also shall constitute certification that the applicant:
 - (1) Has not owned or been in responsible charge of any hazardous or solid waste facility that has been the subject of an administrative or judicial enforcement action for a violation of environmental statutes or rules in any part of the 5-year period prior to the date of application; and
 - (2) Has not been the subject of any administrative or judicial enforcement action for a violation of environmental statutes or rules, whether individually or as a business entity of any kind, in any part of the 5-year period prior to the date of application.
- (e) If the applicant cannot certify to one or both of the statements in (d), above, the applicant shall provide a brief explanation of each enforcement action, including but not limited to the following for each action:
 - (1) Whether the enforcement action was directed to a facility at which the applicant worked or to the applicant directly, whether individually or as a business entity of any kind;
 - (2) A description of each alleged violation; and
 - (3) An explanation as to why these circumstances will not impede the applicant's ability and willingness to comply with applicable requirements at a facility.

Env-Sw 1605.04 Application Fee - Initial Certification.

- (a) With the completed, signed application form, the applicant shall submit the fee required by RSA 149-M:6, XIII, as reprinted in Appendix B, ~~which as of the 2014 effective date of this chapter~~ is \$50.
- (b) The fee, if paid by check or money order, shall be made payable to "Treasurer, State of New Hampshire".

Readopt Env-Sw 1605.05, effective 7-1-14 (Document #10600), cited and to read as follows:

Env-Sw 1605.05 Application Processing: Completeness Review.

- (a) Upon receiving an application, the department shall review the application to determine whether it is complete, meaning that it provides all of the information required by Env-Sw 1605.03(a), is signed as required by Env-Sw 1605.03(b) through (e), and includes the fee as required by Env-Sw 1605.04.
- (b) If the application is not complete, the department shall notify the applicant in writing of:
 - (1) What is needed to complete the application; and
 - (2) The deadline for submitting the information, which shall not be less than 10 days nor more than 30 days from the date of notification.

(c) If an applicant fails to complete the application prior to the deadline specified pursuant to (b)(2), above, then:

- (1) The application shall be denied; and
- (2) The applicant shall reapply with a new initial application and the required fee if the applicant still wishes to become certified.

Readopt with amendment Env-Sw 1605.06, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1605.06 Application Processing: Substantive Review, Scheduling Basic Training.

(a) After reviewing the application, the department shall deny the application if:

- (1) The applicant did not certify to one or both of the statements in Env-Sw 1605.03(d) and the explanation provided, if any, is insufficient to demonstrate that the applicant is able and willing to comply with all requirements applicable to a facility at which the applicant works;
- (2) The department has other information, whether from public records or a source the department considers to be reliable, that the applicant might not be able or willing to comply with all requirements applicable to a facility at which the applicant works and, after meeting with the applicant, the department concludes that the applicant is unlikely to be able or willing to comply with all requirements applicable to a facility at which the applicant works; or
- (3) The department determines that any reason for initiating an action to suspend, revoke, or refuse to renew an existing certification as stated in Env-Sw 1612.06 exists.

(b) If the application is denied, the department shall inform the applicant in writing of the reason(s) for the denial and of the process for appealing the decision should the applicant wish to appeal.

(c) If the department is satisfied that the applicant has demonstrated that he or she is able and willing to comply with all requirements applicable to any facility at which the applicant might work and that no reason for initiating an action to suspend, revoke, or refuse to renew an existing certification as stated in Env-Sw 1612.06 appears to exist, the department shall:

- (1) Accept the application;
- (2) Schedule the applicant to attend the next available basic training;
- (3) Assign the applicant the status of processed applicant; and
- (4) Notify the applicant in writing of ~~his or her~~ ***their*** status and of the scheduled basic training date.

Readopt Env-Sw 1605.07, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1605.07 Certification Examination.

(a) The department shall administer a written examination at the end of each basic training session.

(b) The written examination shall test the applicant's knowledge of the substance of basic training, including but not limited to:

- (1) New Hampshire and federal statutes;
- (2) Department rules;
- (3) Identification of solid waste;

- (4) Procedures and best management practices for managing solid waste;
 - (5) Hazardous waste awareness;
 - (6) Procedures for managing household hazardous waste, used oil, and universal wastes; and
 - (7) Department permitting, inspection, and enforcement procedures.
- (c) Examinations shall be graded on a pass/fail basis, with the passing score being 70% correct.
- (d) Individuals shall complete the examination independently of assistance in order to obtain a passing score.

Readopt with amendment Env-Sw 1605.08, effective 7-1-14 (Document #10600), as amended effective 11-18-16 (Document #12045), to read as follows:

Env-Sw 1605.08 Failure to Complete Basic Training or Pass Examination.

- (a) An individual who fails to attend, or attends but fails to complete, a basic training session may request to attend a future basic training session by submitting a written request to the department ***within 15 business days after the scheduled session***, that explains the reason(s) for such failure to attend or complete the session.
- (b) The department shall:
- (1) Only grant one extension per processed applicant.***
 - ~~(2)~~ Grant the request and schedule the individual for a future training session if the department determines that the failure was due to reasons beyond the control of the individual; or
 - ~~(3)~~ If the criterion for granting the request is not met, deny the request and ~~inform the individual that he or she must file a new application if certification is still denied~~ ***notify the applicant of the denial in writing and provide the reasons for the denial.***
 - (4) The department shall set a deadline, not to exceed 10 business days, for the applicant to provide the necessary information in writing, to address the reasons for denial.***
- (c) ***If an individual fails to meet the requirements in (b)(4) above, the department shall deny the request and inform the individual that they must file a new application and submit a new \$50 fee if certification is still desired.***
- (~~e~~) An individual who has filed a request pursuant to (a), above, shall:
- (1) Retain processed applicant status until ~~he or she~~ ***they*** attends and completes the scheduled basic training session, if the request is granted; or
 - (2) Lose processed applicant status if the request is denied.
- (~~e~~) An individual who completes the basic training session but fails the certification examination shall ~~have~~ ***be assigned*** assistant operator status.
- (~~e~~) If an individual who fails the examination still wishes to become a principal operator, the individual may retake the examination without additional training within 8 weeks of the original test at a time convenient to both the applicant and the department.
- (~~g~~) If an individual who takes a second examination as provided in (~~e~~), above, fails the second examination but wishes to pursue principal operator certification, the individual shall:

- (1) File a newly prepared and signed application form as specified in Env-Sw 1605.02(a); and
- (2) Re-take basic training and another examination.

Readopt Env-Sw 1606 through Env-Sw 1608, effective 7-1-14 (Document #10600), to read as follows:

PART Env-Sw 1606 PROCESSED APPLICANTS

Env-Sw 1606.01 Processed Applicant Status: How Assigned. Processed applicant status shall be assigned to applicants as specified in Env-Sw 1605.06(c)(3).

Env-Sw 1606.02 Processed Applicant Status: When Effective. Processed applicant status shall be effective from the date a complete application is filed with the department to the earliest date the applicant:

- (a) Obtains principal operator status pursuant to Env-Sw 1608.01;
- (b) Obtains assistant operator status pursuant to Env-Sw 1607.01; or
- (c) Fails to attend and complete basic training as scheduled.

Env-Sw 1606.03 Supervision of Processed Applicants.

(a) Subject to (b), below, processed applicants who work at a solid waste facility, whether for pay or as a volunteer, shall be supervised by a principal operator while working at the facility.

(b) Any processed applicant who is a sole proprietor of, or the sole employee for, a facility that operates or will operate under a permit-by-notification may work at the facility without the supervision of a principal operator.

PART Env-Sw 1607 ASSISTANT OPERATORS

Env-Sw 1607.01 Assistant Operator Certification: How Assigned. Assistant operator certification shall be assigned to each processed applicant who completes basic training, but:

- (a) Does not take the operator certification examination; or
- (b) Fails the operator examination.

Env-Sw 1607.02 Assistant Operator Certification: When Effective; Renewal.

(a) Initial assistant operator certification shall be effective for one year from the date of completion of basic training.

(b) Assistant operator certification shall be renewed annually in accordance with Env-Sw 1611.

Env-Sw 1607.03 Supervision of Certified Assistant Operators Required.

(a) Subject to (b), below, any assistant operator who works at a solid waste facility, whether for pay or as a volunteer, shall be supervised by a principal operator while working at the facility.

(b) Any certified assistant operator who is a sole proprietor of, or the sole employee for, a facility that operates or will operate under a permit-by-notification may work at the facility without the supervision of a principal operator for up to one year, provided the operator continues in good faith to attempt to pass the exam.

Env-Sw 1607.04 Change from Assistant Operator to Principal Operator. An assistant operator whose assistant operator certification is current who wishes to become a principal operator shall apply for a change in certification by filing a new initial application as specified in Env-Sw 1605.02(a).

Readopt with amendment Env-Sw 1609, effective 11-18-16 (Document #12045), to read as follows:

PART Env-Sw 1608 PRINCIPAL OPERATORS

Env-Sw 1608.01 Principal Operator Certification: How Assigned. Principal operator certification shall be assigned to each processed applicant and assistant operator who:

- (a) Completes basic training; and
- (b) Passes an examination as described in Env-Sw 1605.07.

Env-Sw 1608.02 Principal Operator Certification: When Effective; Renewal.

- (a) Initial principal operator certification shall be effective for one year from the date of passing the examination.
- (b) Principal operator certification shall be renewed annually in accordance with Env-Sw 1611.

PART Env-Sw 1609 OPERATOR STEPS

Env-Sw 1609.01 Operator Steps Assigned Upon Original Certification.

~~(a) Individuals who originally obtain assistant operator status or principal operator status after the 2014 effective date of this chapter, namely July 1, 2014, shall obtain step designations based on the number of total continuing professional development hours accumulated over the course of the individual's certification, as described in Env-Sw 1609.02.~~

~~(b) Individuals who were originally certified under rules in effect prior to July 1, 2014 shall initially be assigned a step as provided in Env-Sw 1609.02, and thereafter obtain step designations based on the number of total continuing professional development hours subsequently accumulated, as described in Env-Sw 1609.02.~~

Env-Sw 1609.02 Operator Step Designations.

(a) Step designations shall be assigned to principal operators and assistant operators as specified in table 1609-1, below:

Table 1609-1: Steps Based on Hours of Continuing Professional Development Completed

Step	Hours of Continuing Professional Development Completed
1	2.5 total
2	12.5 total
3	25 total
4	37.5 total

(b) The designation of senior operator shall apply to each principal operator who completes 50 total hours of continuing professional development.

Env-Sw 1609.03 Changes in Steps.

(a) To obtain a step increase, a principal operator or assistant operator shall submit proof of continuing professional development with the application for renewal as specified in Env-Sw 1611.

(b) A change in an individual's step designation shall be effective upon renewal of the individual's certification.

Env-Sw 1609.04 Retention and Loss of Steps When Certification Has Expired. An operator whose certification has expired per RSA 149-M:6, XIII shall retain the same step designation as the expired certificate if the operator:

- (a) Obtains processed applicant status within one year of the expiration of the operator's previous certificate; and
- (b) Completes the process of obtaining a new certificate in accordance with these rules.

Readopt with amendment Env-Sw 1610, effective 7-1-14 (Document #10600), to read as follows:

PART Env-Sw 1610 CERTIFICATES; CERTIFIED OPERATOR RESPONSIBILITIES

Env-Sw 1610.01 Issuance of Certificates. The department shall issue:

- (a) An assistant operator certificate to each individual who takes basic training but does not take or does not pass the examination;
- (b) A principal operator certificate to each individual who takes basic training and passes the examination; and
- (c) A renewal certificate to each operator who renews ~~his or her~~ ***their*** certification in accordance with Env-Sw 1611.

Env-Sw 1610.02 Certificate Content. Each certificate issued pursuant to Env-Sw 1610.01 shall contain:

- (a) A unique certificate number;
- (b) The name of the certificate holder;
- (c) The expiration date of the certificate;
- (d) The operator's status as a principal operator or assistant operator; and
- (e) The operator's step designation.

Env-Sw 1610.03 Certificates Non-Transferable. No certificate issued pursuant to this chapter shall be transferable to any other person.

Env-Sw 1610.04 Obligations of Certified Operators. Any individual certified as an assistant operator or principal operator under this chapter shall:

- (a) Use reasonable care and judgment in the performance of ~~his/her~~ ***their*** duties; and
- (b) Conduct all actions relating to the collection, storage, transfer, treatment, or disposal of solid waste in such a way as to safeguard public health and the proper operation and maintenance of a facility.

Readopt with amendment Env-Sw 1611.01 and Env-Sw 1611.02, effective 7-1-14 (Document #10600), cited and to read as follows:

PART Env-Sw 1611 RENEWAL OF CERTIFICATES

Env-Sw 1611.01 Requirements for Certification Renewal. A principal operator or assistant operator who is certified under this chapter who wishes to retain ~~his or her~~ ***their*** certification shall:

- (a) Obtain continuing professional development hours as specified in Env-Sw 1611.02; and
- (b) Submit a completed, signed application form as specified in Env-Sw 1611.03 with the fee as specified in Env-Sw 1611.04, no more than 90 days before the expiration date of the applicant's current certification and within 90 days after the expiration date.

Env-Sw 1611.02 Continuing Professional Development Required.

(a) Each principal operator or assistant operator who is certified under this chapter shall participate in 2.5 hours or more of continuing professional development per year.

(b) Continuing professional development hours shall be completed between the date of certification of the prior certificate and the date of filing for certification renewal.

(c) An operator may repeat one or more training courses, but repeated courses shall ~~not~~ ***only*** qualify as continuing professional development hours for purposes of step designations or certification renewal ***when there is a 5-year period between completion dates for the repeated class.***

(d) An operator may use in-house training or training provided by a third-party trainer to satisfy the requirement in (a), above, provided the operator:

(1) Retains a copy of the training materials with the name of the instructor ***or training institution*** and proof of attendance for not less than 3 years from the date of the training; and

(2) Provides a copy of the proof of attendance with the renewal application.

Readopt with amendment Env-Sw 1611.03 and Env-Sw 1611.04, effective 7-1-14 (Document #10600), as amended effective 11-18-16 (Document #12045), to read as follows:

Env-Sw 1611.03 Renewal Application Requirements.

(a) Any operator seeking certification renewal shall submit the following information on a form obtained from the department:

(1) The operator's name, residential mailing address, email address, and daytime telephone number;

(2) The certificate number and date of issuance of:

a. The operator's current certificate, if the renewal application is submitted within 90 days of the certificate's expiration date; or

b. The operator's most recent certificate, for any operator whose certification has expired as specified in Env-Sw 1611.08;

(3) If the operator currently works at one or more facilities, whether for pay or as a volunteer, the following information for each such facility:

a. Name, mailing address, email address, and daytime telephone number of the facility;

b. Name and title of the operator's supervisor or facility manager; and

c. The operator's current title or position, with a brief description of the duties required of the position; and

(4) Proof that the operator has attended 2.5 hours or more of continuing professional development since the certification date of the operator's current certification.

(b) The operator shall sign and date the application form.

(c) The operator's signature shall constitute certification that:

(1) The information provided by the operator on the certification renewal form is true, complete, and not misleading to the operator's knowledge and belief; and

- (2) The operator understands that ~~he or she is~~ *they are*:
 - a. Subject to the penalties of law for false swearing if the information submitted is not true, complete, and not misleading; and
 - b. Required to comply with all applicable requirements of RSA 149-M and the solid waste rules.
- (d) Subject to (e), below, the operator's signature also shall constitute certification that the operator:
 - (1) Has not owned or been in responsible charge of any hazardous waste or solid waste facility which has been the subject of an administrative or judicial enforcement action for a violation of environmental statutes or rules in any part of the 12-month period prior to the date of application; and
 - (2) Has not been the subject of any administrative or judicial enforcement action for a violation of environmental statutes or rules, whether individually or as a business entity of any kind, in any part of the 12-month period prior to the date of application.
- (e) If the operator cannot certify to one or both of the statements in (d), above, the operator shall provide a brief explanation of each enforcement action, including but not limited to the following for each action:
 - (1) Whether the enforcement action was directed to a facility at which the operator worked or to the operator directly, whether individually or as a business entity of any kind;
 - (2) A description of each alleged violation; and
 - (3) An explanation as to why these circumstances do not impede the operator's ability or willingness to comply with applicable requirements at a facility.

Env-Sw 1611.04 Renewal Application Fee.

- (a) The renewal application fee shall be as provided in RSA 149-M:6, XIII, as reprinted in Appendix B, ~~which as of the 2016 effective date of the amendment to this section is:~~
 - (1) \$50.00 if the renewal application is received prior to the expiration of the operator's current certification; or
 - (2) \$75.00 if the renewal application is received within 90 days after the expiration date of the operator's current certification.
- (b) Renewal fees, if paid by check or money order, shall be made payable to "Treasurer, State of New Hampshire."

Readopt with amendment Env-Sw 1611.05, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1611.05 Processing Renewal Applications.

- (a) Any application for certification renewal received by the department more than 90 days prior to the certificate's expiration date shall be returned to the operator for re-submittal during the appropriate time frame.
- (b) The department shall review each application for certification renewal that is received within the time period specified in Env-Sw 1611.01(b).
- (c) The department shall approve the application and issue a renewal certification if:

- (1) The application for renewal contains all of the information required by Env-Sw 1611.03(a), is signed as required by Env-Sw 1611.03(b) - (e), and includes the appropriate fee as determined under Env-Sw 1611.04;
 - (2) The applicant has complied with the continuing professional development required by Env-Sw 1611.02; and
 - (3) The department has no grounds for denying the renewal as specified in Env-Sw 1612.
- (d) Renewal certificates shall contain the information specified in Env-Sw 1610.02.
- (e) If the conditions specified in (c), above, are not met, the department shall deny the renewal application and notify the applicant of the denial in writing, *and provide the reasons for the denial.*
- (f) The department shall set a deadline, not to exceed 15 business days, for the applicant to provide the necessary information to address the reasons for denial.*
- (g) If the conditions in (f), above, are not met by the end of the 90-day period provided in RSA 149-M:6, XIII, the department shall:*
- ~~(f) The notice issued pursuant to (e), above, shall~~
- (1) *Deny the renewal application in writing and* ~~§~~ state the reason(s) for the denial; and
 - (2) Identify the applicable provisions for appeal.

Readopt Env-Sw 1611.06, effective 7-1-14 (Document #10600), to read as follows:

Env-Sw 1611.06 Renewal Certification Expiration; Adjustment of Expiration Date.

- (a) The expiration date for a renewed certification shall be one year from the expiration date of the certification being renewed, regardless of the date it is actually issued.
- (b) At the time of filing an application for renewal, an operator whose certification has not expired or been suspended or revoked may request a change in the expiration date of the renewal certificate by submitting a written request with the renewal application that includes an explanation of why the operator wishes to change the date.
- (c) The department shall adjust the expiration date in response to a request that complies with (b), above, if:
 - (1) The date requested for renewal is no more than one year from the current renewal date; and
 - (2) The operator has not been or will not be working at a facility, whether for pay or as a volunteer, for 6 months or more due to illness, injury, family requirements, military deployment, or other such reason.

Repeal Env-Sw 1611.04, effective 7-1-14 (Document #10600), as follows:

~~Env-Sw 1611.07 Renewal of Operator Certifications Issued Under Prior Rules.~~

- ~~—(a) Any operator who was certified prior to the 2014 effective date of this chapter who wishes to renew the certification shall file an application for renewal as specified in Env-Sw 1611.01.~~
- ~~—(b) If the renewal application is for a certification originally obtained by an incinerator operator through the reciprocity provisions in previous rules, the renewed certificate shall be restricted to the operation of~~

Text deleted from existing rules shown ~~struck through~~

~~incinerators, provided that the operator may apply for unrestricted certification by applying for initial certification pursuant to Env-Sw 1605.~~

~~— (c) Subject to (d), below, for any renewal of an operator's certification obtained by examination under previous rules, then regardless of the operator's certification level the renewal certificate shall be for a principal operator with the step based on the operator's prior level of certification, as specified in table 1611-1, below:~~

Table 1611-1: Steps Based on Prior Operator Certification

Prior Certification Level	Step
I	1
II	2
III	3
IV	4

~~— (d) Any level II, III, or IV operator having 20 or more years of certification shall be designated as a senior principal operator.~~

~~— (e) For any renewal of an operator designated as an attendant in training or who received attendant certification under rules in effect prior to the 2014 effective date of this chapter, the renewal certificate shall be for an assistant operator with the step based on how many years the operator has been certified in New Hampshire, as specified in table 1611-2, below:~~

Table 1611-2: Steps Based on Years of Operator Certification

Years Certified	Step
one to 4 total	1
5 to 9 total	2
10 to 14 total	3
15 or more total	4

Readopt and renumber Env-Sw 1611.08, effective 11-18-16 (Document #12045), as Env-Sw 1611.07 to read as follows:

Env-Sw 1611.087 Failure to Renew Certificate.

- (a) If a complete renewal application is not submitted as required by Env-Sw 1611.01(b), then:
- (1) The certification shall be deemed expired as required by RSA 149-M:6, XIII; and
 - (2) The department shall remove the operator's name from the roster of certified operators and remove the expired certification number from use.
- (b) If a previously-certified individual whose certification has expired as specified in (a), above, wishes to once again be certified, then:
- (1) The individual shall apply for certification in accordance with Env-Sw 1605; and
 - (2) The department shall issue a new certification number to the individual if the individual completes the certification process.

PART Env-Sw 1612 REFUSAL TO RENEW; SUSPENSION; REVOCATION

Env-Sw 1612.01 Applicability. This part shall apply to actions by the department to refuse to renew, revoke, or suspend a certification.

Env-Sw 1612.02 Initiation of Action to Suspend, Revoke, or Refuse to Renew Certificate.

(a) After issuing a certificate or receiving a request for renewal of a certificate, if the department receives information which indicates that cause, as defined in Env-Sw 1612.06, exists to suspend, revoke, refuse to renew, or conditionally renew the certificate, the department shall proceed in accordance with the provisions in RSA 541-A and Env-C 200 that apply to adjudicative proceedings.

(b) After initiating a proceeding under (a), above, the department shall determine whether to suspend, revoke, refuse to renew, or conditionally renew the certificate as specified in Env-Sw 1612.03 through Env-Sw 1612.05.

Env-Sw 1612.03 Revocation of Certificate; Refusal to Renew Certificate.

(a) In any proceeding initiated pursuant to Env-Sw 1612.02, the department shall revoke or refuse to renew the certificate, as applicable, if the department determines that:

- (1) The underlying cause for the action cannot be corrected to conform to applicable requirements;
- (2) The operator's conduct caused harm or posed a substantial threat of harm to public health or the environment;
- (3) The operator does not acknowledge the severity of ~~his or her~~ ***their*** conduct, shows no remorse, or otherwise exhibits a disregard for the solid waste operator certification program; or
- (4) The operator is a chronic violator as defined in Env-C 209.

(b) An individual whose operator certification has been revoked or refused renewal pursuant to (a), above, shall not be eligible to submit an application under Env-Sw 1605 to become a certified operator in New Hampshire unless and until the individual has submitted a written request that has been approved by the department as specified in (c) through (f), below.

(c) No sooner than one year from the date the certification was revoked or refused renewal, the individual seeking to apply for certification shall submit a written request to the department requesting that he or she be allowed to attend a basic training session and take the certification exam.

(d) The request filed pursuant to (c), above, shall demonstrate that the individual:

- (1) Understands the seriousness of the offense(s);
- (2) Has taken responsibility for ~~his or her~~ ***their*** actions; and
- (3) Has taken courses or otherwise engaged in education relating to solid waste management at a rate of 2.5 hours or more for each year since the certificate was revoked or refused renewal.

(e) The department shall approve the request to apply only if the department determines, based on the information provided pursuant to (d), above, that the individual is not likely to repeat the action(s) that caused ~~his or her~~ ***their*** certificate to be revoked or refused renewal.

(f) The department shall notify the individual in writing of its decision. If the department denies the request to apply, the notice shall specify the reason(s) for the denial.

Env-Sw 1612.04 Suspension.

(a) In any proceeding initiated pursuant to Env-Sw 1612.02, the department shall suspend the certificate, subject to (b) and (c), below, if the department determines that:

(1) The underlying cause for the action cannot be corrected to conform to applicable requirements;
and

(2) The operator's conduct does not meet the criteria for revoking the certification specified in Env-Sw 1612.03(a).

(b) If the department determines that the operator would benefit from additional continuing professional development, the department shall include as a condition of the suspension that the operator obtain the additional continuing professional development prior to requesting reinstatement pursuant to (c), below.

(c) If a certificate is suspended pursuant to (a), above, the department shall not reinstate the certificate until:

(1) The underlying cause for the action has been corrected to conform with applicable requirements;

(2) Any conditions established under (b), above, have been met; and

(3) The certificate holder submits a written request to the department requesting that the certificate be reinstated which includes such documentation as is necessary to demonstrate that any conditions established under (b), above, have been met.

Env-Sw 1612.05 Conditional Renewal of Certificate. In any proceeding initiated pursuant to Env-Sw 1612.02 relative to an application to renew a certificate where the criteria for refusing to renew the certificate specified in Env-Sw 1612.03(a) are not met but the department determines that at least one of the underlying causes for the action has been proved, the department shall renew the certificate subject to the following conditions:

(a) The operator shall take such action(s) as may be required to remedy the underlying cause(s) for the action; and

(b) The operator shall take such additional continuing professional development as the department determines is needed to help ensure that the operator will not repeat the conduct that caused the department to consider refusing to renew the certification.

Env-Sw 1612.06 Good Cause for Action. Good cause to suspend, revoke, refuse to renew, or conditionally renew a certification shall include the following:

(a) The individual obtained or assisted another to obtain certification through fraud, deceit, or falsification, such as by:

(1) Submitting false or misleading information in any initial or renewal application;

(2) Cheating or assisting another to cheat on the examination; or

(3) Falsifying attendance at operator training or continuing professional development.

(b) The individual failed to use reasonable care and judgment in the performance of ~~his~~**her** *their* duties;

(c) The individual took action(s) or failed to take action(s) relating to the collection, storage, transfer, treatment, or disposal of solid waste in such a way as to jeopardize public health or compromise the proper operation and maintenance of a facility; and

(d) The individual failed to comply with an order of the department relative to the management of solid waste or the facility.

APPENDIX A: STATUTES IMPLEMENTED

Rule Sections	State Statute(s) Being Implemented
Env-Sw 1601.01 through Env-Sw 1611.06	RSA 149-M:6, XIII; RSA 149-M:7, VI; RSA 149-M:9, VI
Env-Sw 1611.07 (repealed)	RSA 149-M:6,XII
Env-Sw 1611.08 (renumbered as Env-Sw 1611.07) through 1612.06	RSA 149-M:6, XIII; RSA 149-M:9, VI

APPENDIX B: STATUTE CITED

RSA 149-M:6 Responsibilities. – The department shall have the responsibility and authority to:

XIII. Establish and administer a certification program for solid waste operators which shall include training courses, and may include testing. The fee for certification shall not exceed \$50 per attendee, and shall be deposited in the nonlapsing revolving fund established in RSA 21-O:1-a. Certification shall be renewed annually. If the renewal fee is not submitted within 90 days after the certificate's expiration date, the certified individual's name shall be removed from the current status and the certification shall be deemed expired. The department shall charge a late fee of 50 percent of the renewal fee in addition to the renewal fee if the renewal is received after the certificate's expiration date.