Readopt with amendment Env-Hw 101.04, eff. 11-23-19 (doc. #12920), to read as follows:

Env-Hw 101.04 References to Federal Regulations.

(a) Unless otherwise specified, references to federal regulations within this subtitle shall be as follows:

(1) All references to “Title 29 of the Code of Federal Regulations” or “29 CFR” shall be to the edition in effect on July 1, 2019-2021;

(2) All references to “Title 40 of the Code of Federal Regulations” or “40 CFR” shall be to the edition in effect on July 1, 2020;

(3) All references to “Title 49 of the Code of Federal Regulations” or “49 CFR” shall be to the edition in effect on October 1, 2021.

(b) References to other federal statutes and regulations contained in the text of the federal regulations incorporated by reference that are not specifically adopted by reference, including, but not limited to, references to the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act, shall be used to assist in interpreting the federal regulations only, but the authority and power of the analogous or related portions of New Hampshire statutes and rules shall apply in lieu of the cited federal statutes and regulations.

Adopt Env-Hw 103.07, and renumber existing sections accordingly, so that Env-Hw 103.07 reads as follows:

Env-Hw 103.07 “Aerosol can” means “aerosol can” as defined in 40 CFR 260.10, reprinted in Appendix D.

Repeal Env-Hw 103.12, eff. 8-14-17 (doc. #12343), and renumber existing sections accordingly, as follows:

Env-Hw 103.12 “Board” means the hazardous waste facility siting board established pursuant to RSA 147-A:4-a.

Adopt Env-Hw 103.49, and renumber existing sections accordingly, so that Env-Hw 103.49 reads as follows:

Env-Hw 103.49 “Evaluated hazardous waste pharmaceutical” means “evaluated hazardous waste pharmaceutical” as defined in 40 CFR 266.500, reprinted in Appendix D.

Readopt with amendment and renumber Env-Hw 103.56, eff. 8-14-17 (doc. #12343), as Env-Hw 103.57 to read as follows:

Env-Hw 103.56 “Facility” means “facility” as defined in RSA 147-A:2, IV, as reprinted in Appendix C, except that where the hazardous waste rules apply to quarterly activity reports, payments into the hazardous waste cleanup fund, and administration of the fund for the siting program and household hazardous waste cleanup collection projects, “facility” means “facility” as defined in RSA 147-B:2, III, as reprinted in Appendix C.

Adopt Env-Hw 103.67, and renumber existing sections accordingly, so that Env-Hw 103.67 reads as follows:

Env-Hw 103.67 “Hazardous waste pharmaceutical” means “hazardous waste pharmaceutical” as defined in 40 CFR 266.500, reprinted in Appendix D.
Adopt Env-Hw 103.69, and renumber existing sections accordingly, so that Env-Hw 103.69 reads as follows:

Env-Hw 103.69 “Healthcare facility” means “healthcare facility” as defined in 40 CFR 266.500, reprinted in Appendix D.

Readopt with amendments Env-Hw 104.02, eff. 11-23-19 (doc.#12920), to read as follows:

Env-Hw 104.02 “Land disposal” means “land disposal” as defined in 40 CFR 268.2(c), 7-1-16 edition, as reprinted in Appendix D.

Adopt Env-Hw 104.08, and renumber existing sections accordingly, so that Env-Hw 104.08 reads as follows:

Env-Hw 104.08 “Long-term care facility” means “long-term care facility” as defined in 40 CFR 266.500, reprinted in Appendix D.

Readopt with amendment and renumber Env-Hw 104.11, eff. 8-14-17 (doc. #12343), as Env-Hw 104.12 to read as follows:

Env-Hw 104.112 “Mercury-containing device” means any product or component, excluding batteries and lamps, that contains elemental mercury necessary for its operation integral to its function and is housed within an outer casing. The term includes but is not limited to thermostats, intact mercury-containing ampules, thermocouples, thermometers, manometers, barometers, sphygmomanometers, electric switches and relays, gas flow regulators, water meters, and electric meters that contain mercury switches or relays.

Adopt Env-Hw 104.19, and renumber the existing sections accordingly, so that Env-Hw 104.19 reads as follows:

Env-Hw 104.19 “Non-creditable hazardous waste pharmaceutical” means “non-creditable hazardous waste pharmaceutical” as defined in 40 CFR 266.500, reprinted in Appendix D.

Readopt with amendment and renumber Env-Hw 104.18, eff. 11-23-19 (doc. #12920), as Env-Hw 104.20, to read as follows:

Env-Hw 104.1820 “Notification form” means the “RCRA C Site Identification Form” NHDES-S-01-009 dated February 2022 and used to notify the department of hazardous waste, used oil, universal waste management activities, and electronic manifest activities.

Readopt with amendment and renumber Env-Hw 104.28, eff. 8-14-17 (doc. #12343), as Env-Hw 104.30, to read as follows:

Env-Hw 104.2830 “Pharmaceutical,” for purposes of RSA 147-A:2, VII(b) and these rules, means any chemical product, vaccine, or allergenic that does not contain a radioactive component and is intended: (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease or injury in humans or animals; or (b) To affect the structure or function of the body in humans or animals “pharmaceutical” as defined in 40 CFR 266.500, reprinted in Appendix D.
Adopt Env-Hw 104.33, and renumber existing sections accordingly, so that Env-Hw 104.33 reads as follows:

Env-Hw 104.33 “Potentially creditable hazardous waste pharmaceutical” means “potentially creditable hazardous waste pharmaceutical” as defined in 40 CFR 266.500, reprinted in Appendix D.

Adopt Env-Hw 104.43, and renumber the existing sections accordingly, so that Env-Hw 104.43 reads as follows:

Env-Hw 104.43 “Reverse distributor” means “reverse distributor” as defined in 40 CFR 266.500, reprinted in Appendix D.

Readopt with amendment and renumber Env-Hw 104.72, eff. 8-14-17 (doc. #12343), as Env-Hw 104.76, to read as follows:

Env-Hw 104.726 “Universal waste” means any of the following hazardous wastes that may be managed in accordance with Env-Hw 1100 in lieu of Env-Hw 300 through Env-Hw 700:

(a) Batteries;
(b) Pesticides;
(c) Mercury-containing devices;
(d) Lamps;
(e) Cathode ray tubes; and
(f) Antifreeze; and
(g) Aerosol cans.
**APPENDIX A: STATE STATUTES, FEDERAL STATUTES/REGULATIONS IMPLEMENTED**

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*No changes to Appendices B & C*

**APPENDIX D: FEDERAL DEFINITIONS AND REGULATIONS**

*The following provisions are being added to or revised in Appendix D*

**40 CFR 260.10**

*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.

**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-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.

40 CFR 268.2(c) [Updating to 7-1-2020 edition of CFR]

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

40 CFR 273.6(c)(2)

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

40 CFR 273.33(c)(2) [Updating to reflect EPA’s revisions to (iii) and (iv)]

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;

(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.

{No changes to Appendix E}