# RULEMAKING NOTICE FORM

<table>
<thead>
<tr>
<th>Notice Number</th>
<th>Rule Number</th>
<th>Env-Hw 300-700, 1100, 1200, various sections</th>
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<tbody>
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1. Agency Name & Address:

Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095

2. RSA Authority:

<table>
<thead>
<tr>
<th>RSA 147-A:3, I-XI, XIII, XXV, XXVI, XXVIII; RSA 147-B:7, I</th>
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</thead>
</table>

3. Federal Authority:

|---------------------------------------------------|

4. Type of Action:

<table>
<thead>
<tr>
<th>Adoption</th>
<th>Repeal</th>
<th>Readoption</th>
<th>Readoption w/amendment</th>
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6. (a) Summary of what the rule says and of any proposed amendments:

The Resource Conservation and Recovery Act (RCRA) Subtitle C establishes federal requirements for the management of hazardous waste (HW) and provides for federal authorization of state programs that are at least as stringent as the federal program. Once authorized, the state program is enforceable in lieu of the federal program. The Department has been authorized by the EPA to implement the RCRA Subtitle C program in New Hampshire.

The existing rules implement RSA 147-A by establishing requirements governing the generation, storage, treatment, transportation, and disposal of HW. The Department is required to adopt or incorporate federal HW regulations on an ongoing basis to maintain authorization to administer RCRA in New Hampshire.

Amendments to definitions in Env-Hw 100 are proposed in a companion rulemaking. The addition of a new chapter, Env-Hw 1300, for the management of HW pharmaceuticals is also being proposed in a companion rulemaking.

The existing rules in Chapters Env-Hw 300 through 700, 1100, and 1200 set forth requirements as follows:

- Env-Hw 300 sets forth the procedures and requirements for application, issuance and modification of HW management facility permits;
- Env-Hw 400 sets forth standards for identifying and listing HW;
- Env-Hw 500 sets forth requirements for HW generators, including storage, manifest, delivery, recordkeeping, and emergency action requirements;
- Env-Hw 600 sets forth requirements for HW transporters, including manifest, delivery, recordkeeping, emergency action, and registration requirements;
- Env-Hw 700 sets forth requirements for owners and operators of HW facilities and HW transfer facilities, including requirements applicable to receipt of shipments, rejected shipments, recordkeeping/reporting, and emergency action requirements;
- Env-Hw 1100 sets forth requirements that may be used in lieu of Env-Hw 300 through Env-Hw 700 for management of certain widely generated “universal wastes”, including batteries,
pesticides, mercury-containing devices, lamps, cathode ray tubes, and antifreeze; and

- Env-Hw 1200 incorporates by reference federal requirements and restrictions applicable to land disposal of HW, pursuant to 40 CFR 268, with some clarifications to conform with state-specific terminology, cross-references, and other requirements in subtitle Env-Hw.

The proposed rules are being readopted with amendments in order to:

- Make conforming changes for the management of HW pharmaceuticals, including:
  - Incorporating the federal permit exemption for reverse distributors of HW pharmaceuticals operating under Env-Hw 1300;
  - Updating requirements for empty containers that previously held HW pharmaceuticals;
  - Determining the applicability of HW generator requirements to healthcare facilities and reverse distributors managing HW pharmaceuticals;
  - Revising the notification requirements for healthcare facilities and reverse distributors managing HW pharmaceuticals;
  - Specifying delivery requirements for Small Quantity Generator (SQG) healthcare facilities shipping HW pharmaceuticals;
  - Providing an exemption for SQG healthcare facilities from HW transporter requirements for self-transport of HW pharmaceuticals; and
  - Excluding HW pharmaceuticals from the definition of universal waste;

- Update requirements for the management of universal waste mercury-containing devices;

- Remove strontium sulfide from the list of New Hampshire-listed acutely hazardous wastes;

- Remove references to the HW Facility Siting Board due to the repeal of RSA 147-A:4-a by Chapter 37:4 of the Laws of 2020;

- Clarify existing requirements, including correcting cross-references; and

- Improve alignment with federal requirements.

In addition, the Department is proposing to adopt rules to add aerosol cans to the list of universal wastes.

6. (b) Brief description of the groups affected:

The rules affect any individual or entity that generates, stores, treats, recycles, transports, or disposes of hazardous waste.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<table>
<thead>
<tr>
<th>Rule Section(s)</th>
<th>State Statute Implemented</th>
<th>Federal Statute/Regulation Implemented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Env-Hw 304.16; 304.17; 304.22</td>
<td>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</td>
<td>40 CFR 124; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270</td>
</tr>
<tr>
<td>Env-Hw 401.03; 402.03; 402.04; 403.05</td>
<td>RSA 147-A:3, I, II, IV, VI</td>
<td>40 CFR 261</td>
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<tr>
<td>Env-Hw 501.01; 501.02</td>
<td>RSA 147-A:3, IV, VI; RSA 147-A:5, III, IV</td>
<td>40 CFR 261.9; 40 CFR 262.10; 40 CFR 262.70</td>
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<tr>
<td>Env-Hw 503.03</td>
<td>RSA 147-A:3, IV, VI</td>
<td>40 CFR 262.13</td>
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<tr>
<td>Env-Hw 504.01; 504.02</td>
<td>RSA 147-A:3, VI, XXVIII; RSA 147-A:5, III, IV; RSA 147-A:6-a</td>
<td>40 CFR 262.10; 40 CFR 262.17; 40 CFR 262.18</td>
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| Env-Hw 505.01 | RSA 147-A:3, VI | 40 CFR 262.18 |
| Env-Hw 507.01; 507.03 | RSA 147-A:3, III, IV, XIII | 40 CFR 262.16; 40 CFR 262.17; 40 CFR 262 Subpart C |
| Env-Hw 509.02 | RSA 147-A:3, III, IV, VI, XIII, XXVI; RSA 147-A:5, III | 40 CFR 262 |
| Env-Hw 511.01; 511.02 | RSA 147-A:3, III-VI | 40 CFR 261.17; 40 CFR 262.18; 40 CFR 262 Subpart B |
| Env-Hw 601.02 | RSA 147-A:3, XXV; RSA 147-A:6 | 40 CFR 263.10 |
| Env-Hw 701.01; 701.02 | RSA 147-A:3, III, IV, XXV | 40 CFR 264; 40 CFR 265 |
| Env-Hw 705.01 | RSA 147-A:3, V, VI; RSA 147-B:8 | 40 CFR 264 Subpart E; 40 CFR 265 Subpart E |
| Env-Hw 1101.03 | RSA 147-A:3, IV | 40 CFR 273 |
| Env-Hw 1102.03; 1102.06; 1102.07 | RSA 147-A:3, IV, VI, VII | 40 CFR 273 |
| Env-Hw 1106.05 | RSA 147-A:3, IV, VI, VII | 40 CFR 273 |
| Env-Hw 1107.02; 1107.04 | RSA 147-A:3, IV, VI, VII | 40 CFR 273 |
| Env-Hw 1108.01 | RSA 147-A:3, I, II | 40 CFR 273 |
| Env-Hw 1109.03 | RSA 147-A:3, IV | 40 CFR 273 |
| Env-Hw 1110.01 | RSA 147-A:3, IV, XIII | 40 CFR 273 |
| Env-Hw 1111.03 | RSA 147-A:3, IV | 40 CFR 273 |
| Env-Hw 1113.03 | RSA 147-A:3, IV | 40 CFR 273 |
| Env-Hw 1115.01; 1115.02; 1115.03; 1115.04 | RSA 147-A:3, IV | 40 CFR 273 |
| Env-Hw 1201.02; 1201.03; 1202.01; 1202.02 | RSA 147-A:3, IV, VI | 40 CFR 268 |

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

- **Name:** Wendy Bonner
- **Department of Environmental Services**
- **Title:** Regulatory Manager
- **Address:** 29 Hazen Drive
  P.O. Box 95
  Concord, NH 03302-0095
- **Phone #:** (603) 271-2937
- **Fax#:** (603) 271-2456
- **E-mail:** Wendy.S.Bonner@des.nh.gov

The rules also can be viewed in PDF in the Public Comment Opportunities section of the NHDES website at [https://www.des.nh.gov/public-comment-opportunities](https://www.des.nh.gov/public-comment-opportunities) and selecting “Rulemaking”

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, April 15, 2022**

- [ ] Fax
- [x] E-mail
- [ ] Other format (specify):
9. Public hearing scheduled for:

Date and Time:  Friday, April 8, 2022, at 11:00 a.m.
Room 208C, DES Offices, 29 Hazen Drive, Concord NH
Place:  
NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver’s license). If you plan to attend the public hearing in person, please bring photo identification with you.

You also may attend the hearing via GoToWebinar, which can be accessed through the following link:

https://attendee.gotowebinar.com/register/8580869539956104462

After registering using this link, interested participants will be provided a confirmation email with information about joining the hearing remotely.

You also may join the meeting by phone:
Call in Number: 1 (562) 247-8422
Access Code: 872-463-431
Webinar ID: 853-426-339

If you have any questions or technical issues connecting to the hearing, contact Tara Albert at Tara.M.Albert@des.nh.gov or (603) 271-3713.

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 22:031 , dated: 03/03/2022 :

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):
The proposed rules may decrease costs to certain independently owned businesses as well as potentially decrease revenue by an indeterminable amount to the state Hazardous Waste Cleanup Fund. Not applicable to Env-HW 1115, as these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

Resource Conservation and Recovery Act (RCRA), Subtitle C, establishes federal requirements for the management of hazardous waste and provides for federal authorization of state programs that are at least as stringent as the federal program. Regulation 40 CFR 271 specifies the requirements that must be met by a state’s hazardous waste program (including adoption of requirements promulgated by Environmental Protection Agency (EPA) under the authority of RCRA, the Hazardous and Solid Waste Amendments of 1984, or the Hazardous Waste Electronic Manifest Establishment Act) to receive and maintain final authorization from EPA. Once authorized, the state program is enforceable in lieu of the federal program. The Department has been authorized by EPA to implement the RCRA Subtitle C program in New Hampshire and currently receives approximately $522,000 annually to implement the program. The Department states if rules are not updated and if issues identified during New Hampshire’s RCRA authorization application process are not addressed, EPA may initiate proceedings to revoke the authorization, and the Department will lose the federal funds and the ability to enforce the state program.
3. **Cost and benefits of the proposed rule(s):**

Any costs associated with the conforming changes in Env-Hw 300-700, 1100, and 1200 are attributable to federal requirements in the federal Resource Conservation and Recovery Act (RCRA), Subtitle C and not the rules. The proposed amendments for management of aerosol cans as universal wastes in Env-Hw 1115, the proposed amendments regarding universal waste mercury-containing devices in Env-Hw 1111.03, may result in cost savings that are attributable to the rules. The potential cost savings are indeterminable due the number and variability of factors involved. Any cost savings from the removal of strontium sulfide from the list of New Hampshire-listed acutely hazardous wastes in Env-Hw 402.04(d) is attributable to the rules. Any such savings cannot be determined; however, no strontium sulfide has been shipped by a New Hampshire hazardous waste generator using the NH03 code since 2013.

A. **To State general or State special funds:**

The proposal to allow hazardous waste aerosol cans to be managed as universal wastes will likely reduce revenues to the Hazardous Waste Cleanup Fund by an indeterminate amount. The Department does not have reliable data on the quantity of hazardous waste aerosol cans currently generated in New Hampshire, and it is impossible for the Department to determine how many generators will change their business practices and choose to manage their hazardous waste aerosol cans as universal waste. In addition, management of hazardous waste aerosol cans as universal waste may enable some generators to lower their generator classification. If that occurs, the Certified Hazardous Waste Coordinator Program and the Small Quantity Hazardous Waste Generator Self-Certification Program could see a decrease in participation, and therefore revenue. Due to the number and variability of factors involved, an estimate of the cost-share is indeterminable.

No impact on state general fund.

B. **To State citizens and political subdivisions:**

These rules may decrease costs for a political subdivision, to the extent it generates hazardous waste aerosol cans and chooses to manage them as universal waste. No impact on state citizens.

C. **To independently owned businesses:**

These rules may decrease costs for certain privately owned businesses which are hazardous waste generators. See 3 above.

11. **Statement Relative to Part I, Article 28-a of the N.H. Constitution:**

With regard to the management of HW pharmaceuticals, the proposed rules incorporate requirements that are the same as the federal requirements. Thus, any costs are attributable to the federal requirements. The proposed revisions of the rules for universal wastes may result in savings if political subdivisions choose to manage eligible HW under those provisions. The rules thus do not create, modify, or expand any program in such a way as to require political subdivisions to make any expenditures, and so do not violate Part I, Article 28-a of the N.H. Constitution.