

Notice Number 2024-56

Rule Number Env-Sw 1100

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: RSA 149-M:7; II, XIV and XVI</p> <p>3. Federal Authority: N/A</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption X</p> <p>Readoption w/amendment X</p>
---	--

5. Short Title: **Additional Solid Waste Facility Requirements**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The Department of Environmental Services (Department) proposes to readopt or readopt with amendment all the rules in Chapter Env-Sw 1100 which specify the requirements for siting, design, operation, and closure of permitted solid waste facilities that have an active life longer than 90 days. The proposed rules will help assure protection of public health, safety, and the environment.

Most of the existing rules in Chapter Env-Sw 1100 are scheduled to expire 7-1-24 but are subject to extension pursuant to RSA 541-A:14-a. The changes from the existing chapter are summarized below:

- **Added “Solid Waste” to chapter heading for clarification purposes.**
- **Env-Sw 1102.02 concerning facilities with co-existing activities: clarified the language regarding notification requirements and added a reference to Env-Sw 1105.07.**
- **Env-Sw 1103.02 concerning equipment installation: clarified that exception requires written statement *bearing signature and seal* of qualified professional engineer.**
- **Env-Sw 1103.03 concerning access control: minor wording change to clarify requirements trigger when *certified* operator is not present.**
- **Env-Sw 1103.04 concerning surrounding properties: removed “where appropriate” and moved language from the end of the paragraph to the middle for context.**
- **Env-Sw 1103.05 concerning the content and format of design plans and specifications: removed the prior approval requirement for alternatives to Env-Sw 1103.05(e) in Env-Sw 1103.05(f); replaced “seasonal restrictions” with “adverse conditions” in Env-Sw 1103.05(g)(1).**
- **Env-Sw 1104.01 concerning prerequisites for construction: made minor changes to wording for clarification.**
- **Env-Sw 1104.02 concerning the notice of intent to construct requirements: replaced rule content with a form in Env-Sw 1104.02(a); and a reference was added to Env-Sw 1104.02(c)(1) regarding the filing requirements in Env-Sw 303, and “duplicate” was removed for clarification purposes.**

- **Env-Sw 1104.03 concerning approval to commence construction: added greater specificity for clarification.**
- **Env-Sw 1104.04 concerning general construction requirements: in Env-Sw 1104.04(d) “adverse” replaces “climatic” and “including extreme weather events” was added for clarification; and added “or gas well” following gas vent in Env-Sw 1104.04(f)(3) for clarification.**
- **Env-Sw 1104.05(c) concerning design changes during construction: added examples of changes which are prohibited during construction, including changes to “depth to bedrock or groundwater,” and “change in capacity or change in the vertical or lateral limits of the facility.”**
- **Env-Sw 1104.06 concerning project and resident engineers: clarified the requirements that all statements and reports shall bear the signature and seal of a qualified engineer.**
- **Env-Sw 1104.07(b)(1) concerning construction reporting and recordkeeping requirements: rule content for facility identification is replaced by a reference to the definition in Env-Sw 103.02.**
- **Env-Sw 1104.08(b) concerning the interaction with department during construction: revised to clarify that construction is not to continue until an issue of concern is resolved.**
- **NEW Env-Sw 1104.09 Temporary Cessation of Construction**
 - **Added to provide a timeframe for written notification to the Department after completing the required closure activities at a non-landfill facility.**
- **Env-Sw 1105.02 concerning the notice of intent to operate: replaced rule content with a form in Env-Sw 1105.02(a); added reference to Env-Sw 303 on basic filing requirements to Env-Sw 1105.02(c)(1) and removed “duplicate” for clarity.**
- **Env-Sw 1105.03 concerning operating approval: added that approval shall expire one year from the date of issuance if operations have not commenced unless notice is provided.**
- **Env-Sw 1105.05(c) concerning signs and posting: clarified that a copy of the documents listed in the rule must be on-site.**
- **Env-Sw 1105.06(a)(4) concerning facility operating records: added that a copy of all permits and permit modifications are required to be compiled and maintained at the facility.**
- **Env-Sw 1105.06(b) concerning transporter certification: moved the rule content from Env-Sw 1005.10.**
- **Env-Sw 1105.07(b) concerning the annual facility reporting requirements: removed the option to report “unchanged from last annual report” in the annual report to ensure that accurate and current information is reported.**
- **Env-Sw 1105.09(b) concerning the receipt and management of waste: added requirement that only wastes generated within the facility’s service area, as specified in the permit, are to be accepted.**
- **Env-Sw 1105.11(c) concerning operating plan content and format requirements: added the page number and location by street address and municipality to Env-Sw 1105.11(c); added**

facility and operator phone numbers in Env-Sw 1105.11(d)(1); added “power outage” as an example of a foreseeable emergency to Env-Sw 1105.11(d)(6); revised wording in Env-Sw 1105.11(d)(8) to clarify which rules require reporting and recordkeeping; and added requirement to provide a site plan showing facility layout at Env-Sw 1105.11(d)(9).

- Env-Sw 1105.12 concerning interactions with host municipalities, solid waste management districts, and the public: revised the section heading for clarity.
- Env-Sw 1105.13 concerning the annual report content for active permitted facilities: rule content replaced with incorporation by reference of a Department form.
- Env-Sw 1105.14 concerning the annual report content for inactive permitted facilities: rule content replaced with incorporation by reference of a Department form.
- Env-Sw 1106.01(b) concerning closure requirements: added timeframes for filing a notice of intent to close.
- Env-Sw 1106.02 concerning a notice of intent to close: added “permanently” to the section heading; rule content replaced with incorporation by reference of a Department form in Env-Sw 1106.02(a).
- NEW Env-Sw 1106.03 Approval to Commence Closure
 - Added to provide approval requirements in response to a notice of intent to close.
- Env-Sw 1106.05 concerning closure plan, content and format requirements: added requirement for page numbers on the closure plan, the date of the last revision, and clarified that the permit number is required if a permit was issued at the time the closure plan is prepared in Env-Sw 1106.05(d); added telephone number, street address, municipality, type of facility and identification of the permittee, property owner, and facility operator to the closure plan requirements to specify the proper identification of all concerned parties to the closure plan requirements in Env-Sw 1106.05(e)(1); Env-Sw 1106.05(e)(6) was revised to clarify the types of activities that are required to be identified under post-closure requirements; Env-Sw 1106.05(e)(8) was revised to add existing permits and approvals anticipated to be in effect at time of closure.
- NEW Env-Sw 1106.06 Notification of Closure
 - Added to provide a timeframe for written notification to the department after completing the required closure activities at a non-landfill facility.
- Env-Sw 1106.07 concerning the cessation of facility construction or operations: section retitled for clarity.

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

The rules apply to owners of all facilities having an active life longer than 90 days, that require a solid waste permit, except research and development permit facilities, emergency permit facilities, and general permit facilities.

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

Rule Sections	State Statute(s) Being Implemented
Env-Sw 1100	RSA 149-M:6, III; RSA 149-M:7, II, III, XIV; RSA 149-M:9, I, III

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

Name:	Emily Jones	Title:	Compliance Assurance Section Supervisor
Mailing Address:	Department of Environmental Services P.O. Box 95 Concord, NH 03302-0095	Phone #:	1-603-271-6467
		Fax#:	1-603-271-2456
		E-mail:	Emily.M.Jones@des.nh.gov
		TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)	

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 pm on Friday, May 10, 2024**

Fax
 E-mail
 Other format (specify): **USPS**

Please submit comments to swmbrules@des.nh.gov

9. Public hearing scheduled for:

Date and Time: **Wednesday, May 1, 2024, at 2:00 pm**

Physical Location: **Auditorium, DMV building, 23 Hazen Drive, Concord, NH**

You also may attend the hearing via Microsoft Teams, which can be accessed through the following link:
[Click here to join the meeting](#)

Meeting number (access code): After registering using this link, interested participants will be provided a confirmation email with information about joining the hearing remotely.

Electronic Access (if applicable): **You also may join the meeting by phone:**

Call in Number: [+1 603-931-4944,,496103550#](tel:+16039314944496103550)

Passcode: dnNxEy

Meeting ID: 278 508 159 785

If any questions or technical issues, please contact Jeremy Lewis at 1-860-387-9931 or via email at Jeremy.M.Lewis@des.nh.gov.

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

FIS # 24:056 , dated 3/20/2024

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may increase administrative costs for certain political subdivisions and independently owned businesses by an indeterminable amount. Not applicable to Env-Sw 1104.09, Env-Sw 1106.03, and Env-Sw 1106.06 which are new sections.

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

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The amendments to the recordkeeping requirements in Env-Sw 1104.07(b)(6), Env-Sw 1104.07(f)(2), Env-Sw 1104.09, Env-Sw 1105.12, and Env-Sw 1106.06 may result in indeterminable administrative costs. Proposed amendments to the requirements for facility operating plans proposed in Env-Sw 1105.11(d)(3) & (4) and Env-Sw 1105.11(d)(9), may result in additional administrative costs if the permittee retains the services of a technical professional to prepare the site plan and process flow diagram. There is no additional cost associated with Env-Sw 1106.03.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

There is no additional cost or benefit to State citizens. There may be administrative costs to a political subdivision operating a solid waste facility for compliance with the proposed rules as described in #3 above.

C. To independently owned businesses:

There may be administrative costs to an independently owned business operating a solid waste facility for compliance with the proposed rules as described in #3 above.

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

Any costs associated with the proposed rules are primarily attributable to the statute(s). The proposed rules do not mandate or assign to any local subdivision a program or responsibility that is new, expanded or modified from what existed before state action which would necessitate additional expenditures by a local subdivision. The proposed rules do not impose a substantial change to an underlying function, duty, or activity performed or to be performed by a local government, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.