

Notice Number 2024-55

Rule Number Env-Sw 1400

<p>1. Agency Name &amp; Address:</p> <p><b>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</b></p>	<p>2. RSA Authority: <u><b>RSA 149-M:7, II, III, V, XIV, and XVI</b></u></p> <p>3. Federal Authority: <u><b>40 CFR 258</b></u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u><b>X</b></u></p>
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5. Short Title: **Financial Assurance**

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 with amendment Chapter Env-Sw 1400 to revise, specify, and clarify the requirements, which specify requirements and procedures for providing and maintaining financial assurance plans to guarantee the cost of closing or providing corrective action after closure for a solid waste landfill subject to 40 CFR 258 and operating on the effective date of the rule. Financial assurance must be provided prior to commencing facility operations and updated regularly to reflect current permit, facility, and economic conditions.**

**The existing rules in Chapter Env-Sw 1400 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:**

- **Env-Sw 1401.02(b) concerning facilities that are exempt from the rules: removed Env-Sw 1401.02(b)(7) because it referenced Env-Sw 1900 which expired and is now “Reserved.”**
- **Env-Sw 1402.02 concerning definitions specific to the Chapter: added the definition of “call” to specify when the Department will access funds guaranteed by a financial assurance mechanism; added the definition of “nonaffiliated” to specify that closure cost estimates are to be calculated based on nonaffiliated third parties performing all required closure activities.**
- **Env-Sw 1403.02 concerning closure cost estimation: added language to Env-Sw 1403.02(b) to incorporate “non-affiliated” and to clarify that the post-closure period is to be based on the most recent estimate; removed the word “select” from Env-Sw 1403.02(e) and added a reference to Env-Sw 104; revised Env-Sw 1403.02(g)(2) to clarify that facilities are to submit documentation to support the non-affiliated third-party estimate; revised Env-Sw 1403.02(g)(3) to require that closure cost estimates for landfills bear the signature and seal of a qualified professional engineer; removed the content requirements in Env-Sw 1403.02(g)(4) through (7) because the content is addressed with the addition of Env-Sw 1403.02(h) through (l); added Env-Sw 1403.02(h)-(j) to incorporate three cost estimate forms by reference; and added Env-Sw 1403.02(k) and (l) to clarify the signature and submittal requirements.**
- **Env-Sw 1403.03(g) concerning letters of credit: removed Env-Sw 1403.03(g)(2).**

- **Env-Sw 1404.02 concerning the review and approval of a financial assurance plan was revised for clarity.**
- **Env-Sw 1405.02 concerning updates to a facility’s closure cost estimate: revised Env-Sw 1405.02(b) to clarify the applicability of collection, storage, and transfer facilities with an unlimited service area and processing/treatment facilities to submit an updated cost estimate during the non-submittal years; revised Env-Sw 1405.02(c) to specify the requirement of modifying a facility’s financial assurance mechanism if the permittee obtains an updated estimate that exceeds the most recent estimate and the total cost is greater than \$15,000; added Env-Sw 1405.02(d) to specify the requirement for updated closure cost estimates for facilities that exceed the most recent estimate, but the total cost is below \$15,000, to comply with Env-Sw 1405.02 and Env-Sw 1405.03.**
- **Env-Sw 1405.03 concerning a replacement financial assurance plan: added “mechanism” for clarity and consistency.**
- **NEW Env-Sw 1405.04 Release of Financial Assurance Obligation**
  - **Added to provide for the incidence when a permittee is released from financial assurance obligations.**
- **NEW Env-Sw 1406.01 Calling a Financial Assurance Mechanism**
  - **Added to identify events when the department will access funds guaranteed by a permittee’s financial assurance mechanism in their financial assurance plan.**

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

**The proposed rules will apply to owners of all solid waste facilities that require a permit, except permit-by-notification facilities; facilities for which the closure cost estimate, prepared in accordance with Env-Sw 1403.02, is \$3,000 or less; emergency permit facilities; limited private non-landfill facilities; and limited public non-landfill facilities.**

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

<b>Rule</b>	<b>State Statute(s) Implemented</b>	<b>Federal Regulations Implemented</b>
Env-Sw 1400	RSA 149-M:7, II, III, and XIV; RSA 149-M:9, X	40 CFR 258

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

Name:	<b>Emily Jones</b>	Title:	<b>Compliance Assurance Section Supervisor</b>
Mailing Address:	<b>Department of Environmental Services P.O. Box 95 Concord, NH 03302-0095</b>	Phone #:	<b>1-603-271-6467</b>
		Fax#:	<b>1-603-271-2456</b>
		E-mail:	<b><a href="mailto:Emily.M.Jones@des.nh.gov">Emily.M.Jones@des.nh.gov</a></b>

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](mailto:swmbrules@des.nh.gov)

9. Public hearing scheduled for:

Date and Time: **Wednesday, May 1, 2024, at 1:00 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,,210302645#](tel:+16039314944210302645)

**Passcode:** Ymve2u

**Meeting ID:** 235 937 421 409

**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](mailto:Jeremy.M.Lewis@des.nh.gov).**

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

FIS # 24:051 , 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 will increase costs to certain political subdivisions and independently owned businesses that elect to own and operate a landfill or solid waste facility.

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

All landfills that received solid waste after April 9, 1994, or did not complete closure by October 9, 1994, are subject to the requirements of 40 CFR 258 including the financial assurance requirements of 40 CFR 258 Subpart G. Env-Sw 314.12(e), Env-Sw 807.05, and Env-Sw 1400 implement the federal mandate for financial assurance for closure, post-closure monitoring and maintenance, and corrective action. There is no impact on State funds.

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

The proposed rules will require permittees of collection, storage, and transfer (CST) facilities, processing/treatment (P/T) facilities, and unlined landfills to update closure cost estimates annually. Under the existing rules, all permittees subject to the rule are required to update closure cost estimates once every three years. The expected cost to these facilities is less than \$500 per year. For permittees operating a municipal solid waste (MSW) landfill subject to 40 CFR 258, the proposed rule will increase costs by an amount necessary to secure increased financial assurance in the amount required for (a) an increase in the contingency percentage added to a post-closure care cost estimate, increasing from 10% to 15%, and (b) the addition of a corrective action line item to the post-closure care cost estimate. The mechanism used to secure the additional funds will impact the potential cost. There are six landfill permittees that will be subject to the change, three use capital reserve funds, one a savings account, and two use insurance policies. Based on discussions with permittees, the Department indicates any increase is unlikely to significantly impact operating costs.

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

None.

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

There will be no cost or benefit to State citizens. Political subdivisions that own and operate a landfill may experience the costs described in #3 above.

**C. To independently owned businesses:**

Independently owned businesses that elect to own and operate a solid waste facility may experience the costs 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.**