

Notice Number 2024-59

Rule Number Env-Sw 300

<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: <u>RSA 149-M:7, II, III, IV, V, XIV, and XVI</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Repeal <u>X</u></p> <p>Readoption <u>X</u></p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Solid Waste Program: Permits**

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 adopt, readopt, readopt with amendment, or repeal all of the rules in Chapter Env-Sw 300, which specify the procedures for implementing the permitting system required by RSA Chapter 149-M; namely, which facilities require permits, the types of permits available, and how to obtain such permits. The existing rules also specify permit-exempt facilities; registering for exemption from the solid waste rules for landfills that stopped receiving waste prior to July 10, 1981; and registering to operate a solid waste facility under a general permit.

Most of the existing rules in Chapter Env-Sw 400 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 302.03 concerning solid waste permit exemptions: relocated exemption for the collection, storage, and management of manure for composting to reflect changes to statute, added exemption for waste generators who elect to manage a waste as a hazardous waste, added exemption for teaching activities and academic studies, and revised for clarity. Env-Sw 302.04 concerning solid waste permit types was revised for clarity and consistency. The section heading of Env-Sw 302.05 concerning functional classification of solid waste facility types was revised for clarity. Env-Sw 302.06 concerning permitting system criteria: added quantity as a factor used to determine applicable permitting requirements.**
- **Env-Sw 303.02 concerning applicability of filing provisions for applications, registrations, and reports: added general permit registration, added incident reports as an example, added references to RSA 149-M and the facility permit, and revised for clarity.**
- **Env-Sw 303.03 concerning basic filing requirements: added notifications and other submittals, added registrants and permittees, added notifications, changed requirement from submitting three paper copies of a document to submitting an electronic copy or a single paper copy, revised to identify when a single paper copy of plans is required, revised to identify how fees are required to be submitted in consideration of electronic filing, and revised for consistency.**
- **Env-Sw 303.04 concerning signature requirements was revised for clarity and consistency.**

- **Env-Sw 303.05 concerning notices of filing:** revised to identify requirements for notices, removed reference to abutters, revised to identify who is required to make notices and in accordance with which provisions of rule, revised information required to be provided in a notice of filing including describing the quantity and types of waste to be processed/treated and/or disposed at a facility, added requirement that email address(es) be provided, and revised for clarity and consistency.
- **Env-Sw 303.06 concerning notice of filing to abutters:** retitled section; revised to identify requirements specific to abutters; identified when notices of filing to abutters are required by adding reference to statute, by adding reference to “affiliate,” and by adding requirement that a notice of filing to abutters include a statement that the notice be shared with all tenants of the property; added requirement that, when an abutter requests in writing additional copies of the notice of filing, the applicant has five business days to provide the additional copies.
- **Env-Sw 303.07 concerning notice of filing to municipalities and districts:** retitled section, revised to better reflect when notices to a municipality and district are required, added municipal manager or administrator to list of persons to be notified, added requirement that municipalities and districts in which an abutter is located be notified, revised to reduce number of copies of applications required to be sent to a municipality or district and that additional copies are available upon request, and revised for consistency.
- **Env-Sw 303.08 concerning notice of groundwater protection areas** was revised for clarity and consistency.
- **Env-Sw 303.09 concerning notices for areas of threatened or endangered species:** updated identification of the Department of Natural and Cultural Resources, and Natural Heritage Bureau, and revised for clarity and consistency.
- **Env-Sw 303.10 concerning notices for airport proximity:** identified Department of Transportation, Bureau of Aeronautics, as an entity to be notified; added requirement that applicants proposing a municipal solid waste landfill within a six-mile radius of a public airport notify the affected airport, the Federal Aviation Administration, and the Department of Transportation Bureau of Aeronautics, and request response regarding certain federal requirements; and revised for clarity and consistency.
- **Env-Sw 303.11 concerning notices of designated river areas** was revised to reflect changes in RSA 483 and for clarity and consistency.
- **Env-Sw 303.12 concerning notice to the Department of Justice** was revised for clarity and consistency.
- **Env-Sw 303.13 concerning compliance status and history** was revised for clarity and consistency.
- **Env-Sw 303.14 concerning compliance certification** was revised to add “complete, and not misleading to the applicant’s knowledge and belief,” and for clarity.
- **Env-Sw 303.15 concerning compliance reporting:** added Env-Sw 303.15(c) to clarify that certain entities are not eligible to submit a compliance report for certain application types and to reinforce existing requirements.

- **NEW Env-Sw 303.16 Professional Engineer**
 - Added section to clarify existing requirements that certain documents be sealed by a qualified professional engineer.
- **NEW Env-Sw 303.17 Professional Geologist**
 - Added section to clarify existing requirements that certain documents be sealed by a qualified professional geologist.
- **Env-Sw 304.01 - Env-Sw 304.08 concerning procedures for receipt and review of applications for completeness: added new section concerning pre-application meetings, including when a pre-application meeting is required and the information to be presented to the department at a pre-application meeting at Env-Sw 304.02; added statement that an applicant may refile a returned application consistent with similar such statements in rule; added provision that applications for permits-by-notification and Type III permit modifications that are accompanied by a waiver application shall be processed in accordance with the waiver application timelines; added provisions that the department may enter into a written agreement with the applicant for the department to retain at the applicant's expense an independent licensed professional engineer or hydrogeologist (PEG) consistent with RSA 149-M:9, XV; added requirement that applications for permits-by-notification and Type III permit modifications accompanied by waiver applications be processed in accordance with waiver provisions; revised for conciseness, clarity, and consistency; sections renumbered; added exception(s); amended process for returning incomplete applications; added provision consistent with RSA 541-A that a deadline for a determination may be extended by prior written agreement; updated citations; added requirement for email address(es); added provisions that the department may request additional information during review of a complete application.**
- **Env-Sw 304.09 concerning public hearing on applications: revised for clarity and consistency; removed exception for applications for a Type IV permit modification to transfer a permit; updated citations; revised requirements for notices to the public; added publication to the department's webpage consistent with RSA 149-M:7, III; added that hearings for facilities with unlimited service areas be noticed in a newspaper of statewide circulation; differentiated notice requirements for public hearings with written and oral testimony, versus public hearing with written testimony only; added references to statute; added requirement consistent with RSA 149-M that applications for a Type IV permit modification to transfer a permit are subject to a hearing; added requirement that applicant provide proofs of notification or attempted notification.**
- **Env-Sw 305.01 and Env-Sw 305.03 through Env-Sw 305.06 concerning decisions on applications: revised to reflect changes in RSA 149-M:9, added reference to Env-Sw 202 for waivers, revised for clarity and consistency, added reference to email address(es), relocated from Env-Sw 315.10 grounds for denial of a modification, added reference to Env-Sw 202 for waivers, added allowance for compensating terms and conditions, revised for flexibility and renumbered; added grounds for denial; added expiration provision for a type I-A permit modification.**
- **NEW Env-Sw 305.07 Permit Termination**
 - **Env-Sw 305.07 – Added provisions for when a permittee voluntarily requests its permit be terminated or retired. Added provisions for when a permit is deemed terminated, namely, when another permit replaces the permit being terminated.**
- **Env-Sw 306 concerning revocation and suspension was revised for clarity and consistency, added reference to email address(es).**

- **Env-Sw 307 concerning the status of existing permits:** revised to add clarifying information about prior rules and to reflect corrected dates, removed requirement that permit be retired and allow permittee to decide whether the facility remains under a permit or moves to permit-exempt status, rearranged existing requirements for readability, updated citations; added that there shall be an administrative benefit if the permit, permit modification or waiver was deemed approved pursuant to RSA 541-A:29-a.
- **NEW Env-Sw 308 SOLID WASTE GENERAL PERMITS**
- **Env-Sw 308 – Part added to establish a general permit program pursuant to RSA 149-M:6, III and specify requirements for registering to use a general permit. The following sections were added:**
 - **Purpose and Applicability**
 - **Establishment Criteria for Facility Categories and General Permits**
 - **Facility Categories for General Permits**
 - **Procedure for Establishing General Permits**
 - **Procedures for Modification, Revocation, or Suspension of a General Permit**
 - **Public Hearing During the Establishment or Modification of a General Permit**
 - **Decision on Establishment or Modification of a General Permit**
 - **General Permit Appeals**
 - **General Permit Terms and Conditions**
 - **Registration Required**
 - **Registration Content and Format**
 - **Registration Filing**
 - **Registration Processing**
 - **Decision on Registration**
 - **Confirmation of Registration**
 - **Denial, Suspension, or Revocation of Authorization to Operate Under a General Permit**
- **Env-Sw 309 concerning pre-1981 landfill registrations:** replaced rule content with form incorporated by reference; revised reference to prior rules; added requirement that the department determine whether the information provided is sufficient for a claim of exemption; added that registrations filed contrary to requirements or with insufficient information will be returned with an explanation; added that registrations returned for improperly filing or completing the registration does not preclude obtaining registration at a later date; added requirements identifying response options based on the department's determination as to whether the facility is exempt, or it is not exempt; added requirement that registration be attached to property deed; added identification of who owns a registered pre-1981 landfill; added that re-registration is not required when landfill ownership is transferred.
- **Env-Sw 310 concerning applications and registration fees:** part retitled to better reflect contents, revised to further clarify applicability requirements, revised to add cost of hiring a professional engineer or hydrogeologist (PEG), revised for consistency, section(s) renumbered and retitled; added cost of a public notice and hearing and cost of hiring PEG; amended for clarity and consistency; added four new sections to eliminate filing fees for waivers, registration, certification of waste-derived products, and certification of wood ash.
- **Env-Sw 311 concerning permit-by-notification (PBN) requirements:** section(s) retitled, revised introductory language, replaced rule content with form incorporated by reference,

revised and amended for clarity and consistency, added items subject to verification: proof of notifications, and proof of adequate funds.

- **Env-Sw 312 concerning research and development projects permitting provisions: section(s) retitled, revised for clarity and consistency, replaced rule content with form incorporated by reference.**
- **Env-Sw 313 concerning emergency facility permit provisions: section(s) retitled; revised for clarity, consistency, and conciseness; replaced rule content with form incorporated by reference.**
- **Env-Sw 314 concerning standard facility permitting provisions: section(s) retitled; revised for clarity, consistency, and conciseness; replaced rule content with form incorporated by reference; sections renumbered.**
- **Env-Sw 315 concerning permit modifications: revised to clarify PBN eligibility; revised for clarity and consistency with current practice; amended and revised notification requirements to the department; revised to allow electronic storage of records; revised to replace application content with forms incorporated by reference.**
- **Env-Sw 316 concerning performance history requirements: revised for consistency with changes to RSA 149-M, revised for clarity and consistency, updated references to forms, sections renumbered; repealed Env-Sw 316.06 on scope of disclosure and release authorization.**

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

The rules apply to owners of solid waste facilities that require a permit.

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

Rule Section(s)	Statute(s) Being Implemented
Env-Sw 301	RSA 149-M:6, III; RSA 149-M:7
Env-Sw 302	RSA 149-M:6, III; RSA 149-M:7, V
Env-Sw 303	RSA 149-M:6, III; RSA 149-M:7, III, XVI; RSA 149-M:9; RSA 149-M:10
Env-Sw 304	RSA 149-M:6, III, V; RSA 149-M:7, III, XVI; RSA 149-M:9, VIII, XV; RSA 149-M:11, IV(a)
Env-Sw 305	RSA 149-M:6, III; RSA 149-M:7, III, XVI; RSA 149-M:9; RSA 149-M:11; RSA 149-M:12
Env-Sw 306	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:12
Env-Sw 307	RSA 149-M:6, III; RSA 149-M:7, III, XVI
Env-Sw 308	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9, I-a, I-b; RSA 149-M:59; RSA 149-M:60
Env-Sw 309	RSA 149-M:7, V, XIV, XVI
Env-Sw 310	RSA 149-M:6, III; RSA 149-M:7, IV; RSA 149-M:9, V
Env-Sw 311	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9; RSA 149-M:10
Env-Sw 312	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9; RSA 149-M:10
Env-Sw 313	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9; RSA 149-M:10
Env-Sw 314	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9; RSA 149-M:10
Env-Sw 315	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9; RSA 149-M:10
Env-Sw 316	RSA 149-M:6, III; RSA 149-M:9, III, IX, XII; RSA 149-M:10

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** Phone #: **1-603-271-6467**
P.O. Box 95 Fax#: **1-603-271-2456**
Concord, NH 03302-0095 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 3, 2024**

Fax E-mail Other format (specify):USPS

Please submit comments to
swmbrules@des.nh.gov

9. Public hearing scheduled for:

Date and Time: **Thursday, April 25, 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](#)

Electronic Access (if applicable): **Meeting number (access code):** 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: [+1 603-931-4944](tel:+16039314944),[215652479#](tel:+1603215652479)
Passcode: bWntez
Meeting ID: 270 273 522 76

If any questions or technical issues, please contact Jeanne Roningen at 1-603-271-8740 or via email at Jeanne.M.Roningen@des.nh.gov.

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

FIS # 24:039 , dated 3/11/2024

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

The proposed rules will result in additional costs to political subdivisions and independently owned businesses that elect to operate, construct, or close a solid waste facility. Not applicable to Env-SW 303.16, 303.17, 304.02, 305.07, 308.01 through 308.16, and 310.12 through 310.15, which are new.

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

There is no federal mandate for the proposed readoption of the rules. The Department notes, however, that the state has received a U.S. Environmental Protection Agency (EPA) determination of adequacy for its municipal solid waste landfill (MSWLF) permit program under the Resource Conservation Recovery Act (RCRA), effectively delegating implementation of 40 CFR 258, relative to RCRA Subtitle D landfills, to the state. These rules enact, in part, that federal delegation.

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

The cost of the proposed rule will vary based on the type of permit or permit modification being sought, the type of solid waste facility proposed or being modified, and the location of a proposed or existing solid waste facility. Changes are proposed to notification requirements when an application is filed, and requirements are added for pre-application meetings. These changes will create an indeterminate increase in costs, but the increase is anticipated to be nominal. Additional changes proposed may reduce costs, such as by eliminating or reducing the number of paper copies of an application that must be provided to the Department and to municipalities. A program to implement and administer general permits is proposed. The costs associated with the rules will depend on the facility and its adherence to the general permit requirements; however, there is no cost to register for coverage under a general permit. Costs are only incurred if an entity elects to construct, operate, and/or close a solid waste facility.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

See #3 for the potential cost to political subdivisions. There will be no cost or benefits to State citizens.

C. To independently owned businesses:

See #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.