

Notice Number 2024-53

Rule Number Env-Sw 400

1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: <u>RSA 149-M:7, II, III, V, VIII, XIV, XV, and XVI</u> 3. Federal Authority: <u>N/A</u> 4. Type of Action: Adoption <u>X</u> Repeal _____ Readoption <u>X</u> Readoption w/amendment <u>X</u>
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5. Short Title: **Collection, Storage, and Transfer 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 adopt, readopt, or readopt with amendment all of the rules in Chapter Env-Sw 400 in order to revise, specify, and clarify the requirements, which specify the siting, design, operation, and closure requirements for solid waste collection, storage, and transfer facilities. The rules help assure protection of public health, safety, and the environment.

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 403.02(b) concerning the facility property line siting requirement: added wording to exempt facilities initially permitted prior to 2024 that have remained in continuous operation.**
- **Env-Sw 404.03(a)(11) concerning shelter for facility operators: added heating, ventilation, and air conditioning as examples.**
- **Env-Sw 404.05 concerning the design requirements of waste stockpiles: added Env-Sw 404.05(j) to provide provisions for containing wastes that have the potential to erode or spread to prevent adverse impacts to the environment, public health, and safety.**
- **Env-Sw 405.02(g) concerning white goods that might contain chlorinated fluorocarbons (CFCs): add “and other refrigerants” to create a more comprehensive requirement that aligns with federal definitions.**
- **Env-Sw 405.04(b)(2) concerning demonstration that a facility meets the requirement to provide a substantial public benefit as specified in Env-Sw 1005: removed “lined” and “with a leachate collection system” to encourage diversion of recyclable materials from disposal in keeping with the waste management hierarchy and goals, as well as public benefit requirements, in RSA 149-M:11.**
- **Env-Sw 407.02(c) concerning the list of accepted wastes at limited public transfer station facilities: added “household infectious waste” as defined in Env-Sw 103 and “used cooking oil and latex paint collected for recycling” to be consistent with Env-Sw 1200.**
- **Env-Sw 407.02(d) concerning restrictions on facility capacity: added “processed” in Env-Sw 407.02(d)(3) to clarify the existing exclusion of this type of recyclable material from a**

facility's storage limit; and added Env-Sw 407.02(d)(4) to set a capacity limit for not more than 550 gallons, combined, of used cooking oil and latex paint collected for recycling.

- **Env-Sw 407.02 concerning eligibility requirements of a facility:** added Env-Sw 407.02(f) to limit select recyclable material processing activities to sorting, cutting, crushing, or baling, or a combination thereof; and added Env-Sw 407.02(g) to allow a facility to accept select recyclable materials from other permitted limited public transfer stations that elect to use the facility as a collection center for the consolidation of loads for economic transfer to markets.
- **Env-Sw 407.03 concerning the permit-by-notification eligibility requirements for collection centers for select recyclables:** section retitled and revised to include a provision for select recyclable material processing activities conducted at the facility to be limited to incidental sorting and separation of recyclable materials to ensure market quality and baling or otherwise physically processing and packaging recyclable materials in a manner satisfying the specifications for transportation and acceptance by a market.
- **Env-Sw 407.05(b) concerning the permit-by-notification eligibility requirements for truck transfer stations** was revised to add “written” to provide clarity.
- **Env-Sw 407.06 concerning the permit-by-notification eligibility requirements for asbestos holding facilities and asbestos disposal site contractors:** section retitled; revised to allow for asbestos disposal site wastes for consistency within this part and with other Department rules.
- **NEW Env-Sw 407.07 Collection Center for Non-Select Recyclable Materials**
 - Added section to provide a permit-by-notification and eligibility requirements for a collection center for non-select recyclable materials.
- **Env-Sw 408.07 concerning the conditions for a roadside clean-up staging area permit exemption:** added Env-Sw 408.07(c) as a condition to prevent an adverse impact to the environment, public health, or safety; added Env-Sw 408.07(d) as a condition for the facility to have a written plan for the removal of the waste.
- **NEW Env-Sw 408.09 Contractor Waste Consolidation Facility**
 - Added to provide a permit exemption and conditions for the consolidation of solid waste from a contractor's job site.
- **NEW Env-Sw 408.10 Infectious Waste C/S/T for Health Care and Veterinary Facilities**
 - Added to provide a permit exemption and conditions for licensed health care facilities or licensed veterinarians to accept and manage infectious waste from affiliated facilities, non-profit organizations, and households within the community the facility serves.
- **NEW Env-Sw 408.11 Needle Collection**
 - Added to provide a permit exemption and conditions for the collection, storage, and transfer of needles and other sharps.
- **NEW Env-Sw 408.12 Drug Takeback Program**
 - Added to provide a permit exemption for the collection, storage, and transfer of pharmaceutical drugs to an authorized disposal facility in accordance with other state and federal regulations.

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

The proposed rules will apply to owners of collection, storage, and transfer facilities, including transfer stations and recycling facilities that require a solid waste permit.

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

Rule Sections	Statute(s) Being Implemented
Env-Sw 400	RSA 149-M:6, III; RSA 149-M:7, II, III, V, VIII, XIV; RSA 149-M:9
Env-Sw 407.03(d), 407.06(k)	RSA 149-M:6, III; RSA 149-M:9, I
Env-Sw 408.08	RSA 149-M:6, III; RSA 149-M:7, II, III, V, VIII, XIV, XV; RSA 149-M:9
Env-Sw 408.09 through Env-Sw 408.12	RSA 149-M:6, XIV; RSA 149-M:7, XVI; RSA 149-M:9

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 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 9:00 am**

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](tel:+16039314944), [122944593#](tel:+122944593)
Passcode: haKsaH
Meeting ID: 211 603 702 217

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 # 24:045 , dated 3/12/2024

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 costs to certain political subdivisions and independently owned businesses. Not applicable to Env-Sw 407.07 or Env-Sw 408.09 through 408-12 which are new rules.

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):

There is no additional cost or benefit attributable to new Env-Sw 407.07 or Env-Sw 408.09 through 408-12. The existing rules require all waste to be actively managed. The proposed rules add language which specifies for stockpiles to be contained for wastes that have the potential to erode or spread. The added requirement may be an existing feature at a permitted facility. If not, the cost to remove and remedy any environmental impacts, if identified, may result in an additional cost to the facility.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

Some political subdivisions with a solid waste facility may incur the additional cost described in #3 above. There will be no cost or benefit to State citizens.

C. To independently owned businesses:

Certain independently owned businesses which own or operate a facility may incur the additional 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.