

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Hw 300 PERMITS

Statutory Authority: RSA 147-A:3

REVISION NOTE:

Document #9362, effective 1-28-09, readopted with amendments and renumbered the permit rules on hazardous waste management, formerly in Part Env-Wm 301 and Part Env-Wm 351 through Part Env-Wm 353 (Part Env-Wm 352 reserved), under a new subtitle as Env-Hw 300. The redesignation from subtitle Env-Wm to Env-Hw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. Document #9362 replaces all prior filings for hazardous waste rules formerly in Chapter Env-Wm 300.

The prior filings for the former rules in Env-Wm 300 on hazardous waste include the following documents:

- #5053, eff 1-24-91
- #5886, eff 8-26-94
- #6619-B, eff 10-29-97
- #7207-B, eff 2-26-00
- #7333, eff 8-1-00
- #7578, eff 10-13-01
- #8462-A, eff 10-28-05
- #9215, INTERIM, eff 8-1-08

PART Env-Hw 301 PURPOSE AND APPLICABILITY

Env-Hw 301.01 Purpose. The purpose of the rules in this chapter is to establish provisions for administering a hazardous waste management facility permit system pursuant to RSA 147-A.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 301.02 Applicability. The rules in Env-Hw 300 shall apply to permitting hazardous waste management facilities.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

PART Env-Hw 302 DEFINITIONS

Env-Hw 302.01 "Application" means the department's standard form or the EPA standard national form for applying for a permit.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 302.02 "Draft permit" means a document prepared under Env-Hw 304.19 indicating the department's intent to issue, modify, revoke and reissue, or reissue a permit.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

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Env-Hw 302.03 "Emergency permit" means a permit issued pursuant to Env-Hw 304.05(a).

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 302.04 "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 302.05 "Limited permit" means a permit issued to elementary neutralization and wastewater treatment units in accordance with Env-Hw 304.04.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 302.06 "National Pollutant Discharge Elimination System (NPDES)" means the national permit program for imposing and enforcing pretreatment requirements under §§307, 318, 402 and 405 of the Clean Water Act, as amended, 33 U.S.C. §§1251 et seq.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

PART Env-Hw 303 PERMIT REQUIREMENTS; EXEMPTIONS

Env-Hw 303.01 Requirement to Obtain a Permit.

(a) No person shall construct, modify or operate a facility without first obtaining a permit from the department or without qualifying for and maintaining interim status.

(b) An operator of an existing facility that files an interim status application with the department and otherwise qualifies for interim status in accordance with Env-Hw 304.02 may operate without a standard permit or transfer facility permit until the department makes a final determination on its standard permit or transfer facility permit application. An interim status facility shall comply with all requirements established by Env-Hw 304.02 in order to maintain interim status and shall submit an application for a standard permit or transfer facility permit in a timely fashion as required by Env-Hw 304.10(b).

(c) Unless exempted under Env-Hw 303.02, the operator of any new facility shall obtain a standard permit in accordance with all requirements of Env-Hw 304 before construction or operation of the facility begins.

(d) The operator of any facility, including a generator, which operates an elementary neutralization unit or wastewater treatment unit including an evaporation unit, shall obtain a limited permit for that unit in accordance with Env-Hw 304.04.

(e) The operator of a facility shall have a duly issued permit from the department throughout the facility's active life, including closure and post-closure care. Denial of a permit under this part for the active life of a facility shall not affect the requirement to prepare and implement a closure and post-closure plan.

(f) The operator of any facility holding one or more permits under other New Hampshire or federal programs shall also obtain a permit under this part unless specifically exempted in the hazardous waste rules.

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(g) When a facility is owned by one person but is operated by another person, the operator shall obtain the permit, except that the owner shall also sign the permit application.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 303.02 Exemptions.

(a) The operator of a transfer facility shall be exempt from:

- (1) Obtaining a standard permit if the operator obtains a transfer facility permit; and
- (2) The prohibitions of Env-Hw 304.09(e) and (f)(6).

(b) Any generator managing hazardous waste in accordance with Env-Hw 500 shall be exempt from facility permit requirements.

(c) The operator of any facility that meets the requirements of Env-Hw 701.02(a)(6), (a)(8), and (a)(9) shall be exempt from facility permit requirements.

(d) Any farmer who disposes of hazardous waste pesticides from the farmer's own use in accordance with Env-Hw 501.02 shall be exempt from facility permit requirements.

(e) Any generator who has applied for a storage permit shall be exempt from Env-Hw 304.09, provided that all hazardous waste is stored in an enclosed area.

(f) Any applicant for a transfer facility permit who can provide technical documentation to demonstrate the facility meets the following conditions shall be exempt from Env-Hw 304.11(a)(8):

- (1) The facility is operated so that all waste handling occurs in an enclosed building with an impervious floor designed in accordance with the criteria defined in 40 CFR Part 264, Subpart I and Subpart J, 7-1-99 edition;
- (2) All hazardous waste containers, tanks, and transport vehicles are not located or stored at any time outside of the transfer facility building; and
- (3) The location of the transfer facility does not contravene the siting requirements of Env-Hw 304.09.

(g) Any generator who receives small quantity generator waste in accordance with Env-Hw 501.02(c) shall be exempt from facility permitting requirements.

(h) Any government entity that sponsors a household hazardous waste collection project that receives hazardous waste from small quantity generators shall be exempt from facility permitting requirements, provided that the hazardous waste is:

- (1) Manifested in accordance with Env-Hw 510;
- (2) Received only during a one day household hazardous waste collection event; and
- (3) Given directly by the small quantity generator to a New Hampshire registered hazardous waste transporter during a one day collection event.

(i) The rules in Env-Hw 304 shall not apply to universal waste handlers and universal waste transporters handling universal waste, provided that the waste is managed in accordance with Env-Hw 1100.

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(j) Any government entity that receives household hazardous waste from another government entity shall be exempt from facility permitting requirements provided it ships the household hazardous waste off-site within 90 days after receipt.

(k) For the duration of the emergency response only, a person shall not be required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

- (1) An unplanned discharge of a hazardous waste;
- (2) An imminent and substantial threat of a discharge of hazardous waste; or
- (3) A discharge of a material which, when discharged, becomes a hazardous waste.

(l) Any person who continues or initiates hazardous waste treatment or containment activities after the emergency response is over shall be subject to all applicable permitting requirements for those activities.

(m) The owner and operator of a totally enclosed treatment facility as defined in Env-Hw 104 shall be exempt from the facility permit requirements of Env-Hw 304.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

PART Env-Hw 304 PERMITTING HAZARDOUS WASTE FACILITIES

Env-Hw 304.01 Standard Permits. Standard permits shall be issued to treatment, storage and disposal facilities by the department pursuant to RSA 147-A and all applicable sections of Env-Hw 304.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.02 Qualifying for Interim Status.

(a) In order to be granted and to maintain interim status authorization to operate, an existing facility shall:

- (1) Notify the department in accordance with Env-Hw 702.01;
- (2) Obtain an EPA identification number;
- (3) Submit interim status part A application information in accordance with 40 CFR 270.13, 7-1-99 edition, no later than the earliest of the following:
 - a. 6 months after the publication date of regulations which first require the facility to comply with Env-Hw 700; or
 - b. 30 days after the facility first becomes subject to the standards set forth in Env-Hw 700.
- (4) Comply with the transfer of ownership and relinquishment of property requirements of Env-Hw 304.28;
- (5) Comply with the emergency/remedial action requirements of Env-Hw 706;
- (6) Submit a completed standard permit or transfer facility permit application in accordance with Env-Hw 304.10; and

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(7) Implement all changes at the facility during interim status, including changes in facility operation, design, ownership, or operational control, only in accordance with 40 CFR 270.72, 7-1-99 edition.

(b) If the department has reason to believe upon examination of an interim status part A permit application that it fails to meet the requirements of 40 CFR 270.13, 7-1-99 edition, the department shall notify the owner or operator of the facility in writing of the apparent deficiency. Such notice shall specify the grounds for the department's belief that the application is deficient. The owner or operator of the facility shall, within 30 days from receipt, respond to such a notification and explain or cure the alleged deficiency in the permit application.

(c) An existing facility which previously has been denied a facility permit or where authority to operate the facility previously had been terminated shall not qualify for interim status.

(d) During the interim status period the facility shall not:

- (1) Treat, store, or dispose of hazardous waste not specified in the permit application;
- (2) Employ processes not specified in the permit application; or
- (3) Exceed the design capacities specified in the permit application.

(e) During the interim status period, the facility shall comply with the interim status standards set forth in Env-Hw 700.

(f) All facility operators shall comply with the following requirements for updating interim status part A applications:

- (1) Updated interim status part A applications shall be filed with the department or the EPA as required by 40 CFR 270.10(g)(1), 7-1-99 edition;
- (2) Interim status shall only attach to activities expressly covered by the interim status part A application; and
- (3) An operator who does not file an updated interim status part A application for new or expanded activities as allowed by 40 CFR 270.72, 7-1-99 edition, shall not receive interim status for those activities.

(g) Interim status shall terminate upon:

- (1) The final administrative disposition of the standard or transfer facility permit application;
- (2) Failure to furnish a completed permit application on time;
- (3) Failure to furnish information required by Env-Hw 304.11 and Env-Hw 304.12 in a timely fashion; or
- (4) Failure to comply with the conditions of this part.

(h) Interim status shall terminate when a land disposal facility, in existence on the effective date of statutory or regulatory amendments under RSA 147-A that render the facility subject to the requirement to have a hazardous waste permit, 12 months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

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- (1) Submits, in accordance with Env-Hw 304.10, an application for a standard permit for such facility 12 months after the date on which the facility first becomes subject to such permit requirement; and
- (2) Certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.03 Permits-by-Rule. An owner or operator shall be deemed to have a permit-by-rule if the facility meets the conditions specified in 40 CFR 270.60(a) and (c), 7-1-07 edition.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.04 Limited Permits.

(a) The requirements specified in this section shall apply to owners and operators of elementary neutralization units and wastewater treatment units provided that, in the case of elementary neutralization units which are transport vehicles or vessels or containers otherwise used to transport the waste after neutralization, neutralization occurs in these units while they remain stationary and before transport of the neutralized waste begins.

(b) The requirements of this section shall not apply to the owner or operator of an elementary neutralization or wastewater treatment unit who is a small quantity generator as described in Env-Hw 503.01.

(c) A limited permit shall be granted only if the applicant meets the conditions specified in (d) through (j), below.

(d) The owner or operator shall not treat or store a hazardous waste in an elementary neutralization unit or a wastewater treatment unit without having received an EPA identification number in accordance with Env-Hw 504.

(e) The operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry of persons or livestock into or onto the elementary neutralization or wastewater treatment unit, unless:

- (1) Physical contact with the waste contained in the unit will not injure unknowing or unauthorized persons or livestock which may enter the unit; and
- (2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock into or onto the unit will not cause a violation of the requirements of this section.

(f) The operator shall inspect the elementary neutralization or wastewater treatment unit for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to, unauthorized release of hazardous waste to the environment or a threat to human health.

(g) The operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment and in accordance with the following:

- (1) The operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment such as tank walls and pumps, that are important to preventing environmental or human health hazards;

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- (2) This schedule shall be kept at the facility;
 - (3) The schedule shall identify the types of problems, such as malfunctions or deterioration, including inoperative pump, leaking fitting, heavy corrosion, which are to be looked for during the inspection;
 - (4) The frequency of inspection may vary for the items on the schedule. The frequency shall be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if any deterioration or malfunction or operator error goes undetected between inspections;
 - (5) The operator shall remedy any deterioration or malfunction of equipment or structures detected in an inspection. Remediation shall be done on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately;
 - (6) The operator shall record inspections in an inspection log;
 - (7) The inspection records required by (g)(6) above shall include, at a minimum, the following:
 - a. The date and time of each inspection;
 - b. The name of the inspector;
 - c. A recording of the observations made; and
 - d. The date and nature of any repairs or other remedial actions taken as a result of inspection observations; and
 - (8) The inspection log required by (g)(6) above shall be maintained for at least 3 years from the date of each inspection.
- (h) The operator of an elementary neutralization or wastewater treatment unit shall ensure:
- (1) That the unit is constructed of sturdy, leakproof material;
 - (2) That the unit is designed, constructed and operated so as to prevent hazardous wastes from being spilled or leaked into or onto any land or water during the operating life of the unit; and
 - (3) That the treatment process conducted in the unit does not:
 - a. Generate extreme heat or pressure, fire or explosion, or violent reaction;
 - b. Produce uncontrolled toxic mists, fumes, or gases in sufficient quantities to threaten human health;
 - c. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;
 - d. Damage the structural integrity of the tank or equipment containing the waste;
 - e. Through like means threaten human health or the environment; or
 - f. Include placement of hazardous wastes or treatment reagents if they could cause the unit or any of its equipment to rupture, leak, abnormally corrode, or otherwise fail before the end of its intended life.

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(i) At closure, the operator of an elementary neutralization or wastewater treatment unit shall remove all hazardous waste and hazardous waste residues from the unit.

(j) Within 15 days after any spill or leakage of hazardous waste from an elementary neutralization or wastewater treatment unit, the operator of the unit shall submit a written report to the department which shall contain the following information:

- (1) Name, address, and telephone number of the owner or operator;
- (2) Name, address, and telephone number of the facility;
- (3) Date, time, and nature of the incident;
- (4) Name and quantity of material(s) involved;
- (5) The extent of injuries, if any;
- (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (7) Estimated quantity and disposition of recovered material that resulted from the incident.

(k) A limited permit shall be granted only for an elementary neutralization unit or wastewater treatment unit that:

- (1) Meets the definition(s) for such unit(s) in Env-Hw 103 or Env-Hw 104;
- (2) Has obtained and complies with a National Pollution Discharge Elimination System (NPDES) Permit if the unit discharges directly into surface waters;
- (3) Meets the best engineering judgment for such units;
- (4) Possesses an EPA identification number, unless the unit is totally enclosed with no hazardous waste sludges produced;
- (5) Complies with the manifesting requirements of Env-Hw 510; and
- (6) Complies with the record keeping and reporting requirements of Env-Hw 512, for a generator, or Env-Hw 705, for an owner or operator of a hazardous waste facility.

(l) A limited permit shall be granted for wastewater evaporation units only if the applicant demonstrates that:

- (1) The facility uses an evaporation-type unit which removes wastewaters by an evaporation/heat process;
- (2) The unit is permitted for air emission discharges or demonstrates on documents that air emission discharges from the evaporation unit do not significantly impact ambient air quality; and
- (3) The facility complies with the requirements of (d) through (j), above.

(m) The operator of each unit meeting the criteria in (k) and (l), above, shall submit a limited permit application on a form provided by the department which includes the following information:

- (1) A list of the types and quantities of treated wastes;

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- (2) A description of how the wastes are treated;
- (3) A diagram of the facility's treatment unit(s); and
- (4) A copy of an authorized wastewater discharge permit.

(n) Such application shall be accompanied by a fee as specified in Env-Hw 304.07(d).

(o) Should a facility not meet the requirements in (k) through (n), above, it shall secure a standard permit, if applicable, under the hazardous waste rules. If an elementary neutralization or wastewater treatment facility has a standard permit or is applying for such, then that facility shall not be required to submit the aforementioned application form or its related fee.

(p) Should a facility that is subject to this section conduct hazardous waste activities beyond that specified in its limited permit, all applicable requirements in the hazardous waste rules shall be followed.

(q) A limited permit shall expire 5 years from the date of issuance.

(r) A limited permit shall be renewed in accordance with the following:

(1) The permittee shall apply for a permit renewal to the department at least 90 days before the limited permit's expiration date in accordance with the procedures of (m) through (o), above; and

(2) Applications for limited permit renewals shall be submitted with the fee set forth at Env-Hw 304.07(e)(7).

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.05 Special Permits.

(a) Emergency permits shall be issued in accordance with 40 CFR 270.61, 7-1-07 edition.

(b) Hazardous waste incinerator permits shall be issued in accordance with 40 CFR 270.62, 7-1-99 edition.

(c) Permits for land treatment demonstrations using field test or laboratory analyses shall be issued in accordance with 40 CFR 270.63, 7-1-07 edition.

(d) Research, development and demonstration permits shall be issued in accordance with 40 CFR 270.65, 7-1-07 edition.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.06 Effect of a Permit.

(a) Compliance with a permit issued under RSA 147-A during the permit term shall not relieve the permit holder from compliance with requirements that, after the permit is issued:

(1) Become effective by New Hampshire or federal law;

(2) Are adopted by the department under RSA 147-A:3;

(3) Are promulgated by EPA under 40 CFR Part 268, 7-1-99 edition, restricting the placement of wastes in or on the land; or

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(4) Are promulgated by EPA under 40 CFR 265 Subparts AA, BB, or CC, 7-1-99 edition, limiting air emissions.

(b) The issuance of a permit does not convey any:

- (1) Property rights of any sort; or
- (2) Exclusive privileges.

(c) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or rules.

(d) Permittees shall prevent the release of any hazardous substance into the environment by applying the maximum preventive measures to their activities.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.07 Fees.

(a) Pursuant to RSA 147-A:4, II, a non-refundable fee shall be submitted with each permit application.

(b) The fee for a standard permit application shall be:

- (1) \$7,500 for a disposal facility;
- (2) \$7,500 for a treatment facility;
- (3) \$7,500 for a storage facility;
- (4) \$4,500 for a generator storage facility that stores 1,000 kg or more for longer than 90 days; and
- (5) \$2,000 for a generator storage facility that stores between 100 kg and 1,000 kg for longer than 90 days.

(c) The fee for a transfer facility permit application shall be \$4,500.

(d) The fee for a limited permit application shall be \$750.

(e) The fee for an application for permit renewal or modification shall be:

- (1) \$4,000 for standard permit for a disposal facility;
- (2) \$4,000 for standard permit for a treatment facility;
- (3) \$4,000 for standard permit for a storage facility;
- (4) \$2,500 for standard permit for a generator storage facility that stores 1,000 kg or more for longer than 90 days;
- (5) \$1,000 for a standard permit for a generator storage facility that stores between 100 kg and 1,000 kg for longer than 90 days;
- (6) \$3,000 for a transfer facility permit; and
- (7) \$400 for a limited permit.

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(f) Fees paid by check or money order shall be made payable to “Treasurer, State of New Hampshire”.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.08 Siting Requirements for Existing Facilities.

(a) Existing facilities may remain located in a 100-year floodplain only if they are designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood or the operator ensures that all waste can be removed safely before floodwaters can reach the facility to a location where the wastes will not be vulnerable to flood waters.

(b) Floodplain determinations shall be made in accordance with Env-Hw 304.09(b).

(c) The placement of any hazardous waste in a salt dome formation, salt bed formation, underground mine or cave shall be prohibited.

(d) Portions of facilities where treatment, storage, or disposal of hazardous waste is conducted shall not be located within 61 meters or 200 feet of a fault which has had displacement in Holocene time.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.09 Siting Requirements for New Facilities.

(a) No new facility shall be issued a permit unless the applicant demonstrates that the active portion of the facility shall be sited so that it does not contravene the requirements of Env-Hw 702.08.

(b) Determination of the existence and location of floodplains shall be made based on the latest Flood Insurance Studies or flood hazard boundary maps prepared by the Federal Emergency Management Agency.

(c) Landfills, land treatment facilities, piles and surface impoundments shall not be located within the 500-year floodplain.

(d) Transfer, treatment, storage and disposal facilities shall not be located within the 100-year floodplain.

(e) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters or 200 feet of a fault which has had displacement in Holocene time.

(f) Unless a facility is granted a waiver under Env-Hw 202 or is exempt under Env-Hw 304.03, the department shall not issue a permit to any new facility whose active portion is to be sited:

(1) Within 1,000 feet of a residence as defined in Env-Hw 104 that exists at the time an applicant submits a permit application. For the purposes of this subparagraph, a residence shall be deemed to exist as soon as actual construction of the residence has begun;

(2) Within 1,000 feet for transfer facilities or within 3,000 feet for treatment, storage, or disposal facilities of a school, hospital, or home for the elderly that exists at the time an applicant submits a permit application, if such an institution:

a. Is a publicly owned institution and the municipality or other governing body has reached the level of planning whereby it has already committed specified funds toward the purchase or lease of a specific site for the project or toward construction of the project; or

b. Is privately owned and the owner has already begun construction on the project;

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- (3) Within 200 feet for transfer, treatment, or storage facilities or within 500 feet for incinerators, landfills, land treatment facilities, piles or surface impoundments of an adjacent property line;
 - (4) Within an area that has hydrologic characteristics such that an accidental discharge of hazardous waste from the active portion could take less than one year to migrate through the ground to:
 - a. The proposed property line of the facility;
 - b. A down-gradient discharge of groundwater to any surface water described in (f)(9), (10), or (12), below; or
 - c. Any aquifer described in (f)(6), below;
 - (5) For landfills, land treatment facilities, piles and surface impoundments, within an area not underlain by an aquiclude as defined in Env-Hw 103 unless an artificial barrier is installed which has a hydraulic conductivity for water of 1×10^{-7} cm per second or less and which has sufficient thickness to function as an aquiclude;
 - (6) Within an area underlain by an aquifer occurring in non-bedrock formations capable of having a safe yield greater than 200,000 gallons per day;
 - (7) Within 5,000 feet for landfills, land treatment facilities, piles or surface impoundments, within 3,000 feet for treatment, storage or other disposal facilities, or within 1,000 feet for transfer facilities, of a surface water public water system intake or of the zone of contribution for a groundwater public water system intake;
 - (8) Within the watershed of a river designated as a Class A water pursuant to RSA 485-A:9 as of the time the applicant submits a permit application;
 - (9) Within 250 feet for transfer facilities or within 500 feet for treatment, storage, or disposal facilities of the edge of a river or stream having a drainage area of one square mile or more;
 - (10) Within 250 feet for transfer facilities or within 1,000 feet for treatment, storage, or disposal facilities of a pond, lake, or reservoir whose surface area exceeds 10 acres;
 - (11) Within 1,500 feet for landfills, land treatment facilities, piles or surface impoundments, within 750 feet for treatment, storage and other disposal facilities, or within 250 feet for transfer facilities, of the edge of a river or stream whose normal width is 100 feet or more;
 - (12) Within 250 feet for transfer facilities or within 1,000 feet for treatment, storage, or disposal facilities of a wetland as regulated under RSA 482-A whose surface area exceeds 25 acres;
 - (13) Within the corridor of a river designated as a natural river pursuant to RSA 483; and
 - (14) Within any salt dome formation, salt bed formation, underground mine or cave.
- (g) Determination of safe yield pursuant to (f)(6), above, shall be made in accordance with accepted hydrogeological practices.
- (h) As used in (f)(7), above, public water systems shall be as defined in RSA 485:1-a as of the time the applicant submits a permit application.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

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Env-Hw 304.10 Permit Application Process.

(a) Before beginning construction or operation of any new facility, including a presently operating non-hazardous waste facility that proposes to treat, store, or dispose of hazardous waste on-site, the operator shall:

- (1) Request a standard permit or transfer facility permit application form;
- (2) Submit the application signed in accordance with Env-Hw 304.10(e), containing the information required in Env-Hw 304.11 and Env-Hw 304.12; and
- (3) Obtain a standard permit or transfer facility permit from the department.

(b) For existing facilities that have interim status, the operator shall make a written request to the department for a standard permit or transfer facility permit application form, in accordance with the following deadlines:

- (1) Disposal facilities in existence on July 1, 1980 shall be qualified to maintain interim status only if the permit application request was submitted by October 1, 1981;
- (2) Treatment facilities and storage facilities in existence on July 1, 1980 shall be qualified to maintain interim status only if the permit application request was made by October 1, 1982; and
- (3) For any other facility that qualifies for interim status, a written request for a standard permit or transfer facility permit application shall be made within 180 days of the date it filed its interim status part A application unless subject to an earlier deadline as provided in Env-Hw 304.02(h).

(c) All existing facilities shall submit a completed standard permit or transfer facility permit application to the department no later than 180 days from the date that the department mails the application form to the facility.

(d) Existing facilities which do not qualify for interim status shall submit a standard permit or transfer facility permit application immediately to the department.

(e) Signatory requirements shall be as set forth in 40 CFR 270.11, 7-1-99 edition.

(f) For good cause, the department's review process for a standard permit or transfer facility permit application shall be suspended until further notice. Good cause shall include insufficient application information, legal proceedings and the necessity of a proposed facility to gain prior siting approval from the town. The department shall notify, in writing, the applicant and local community offices of a suspension of the review process.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.11 Required Standard Permit and Transfer Facility Permit Application Information.

(a) The applicant shall submit the following information:

- (1) The Part A application information required by 40 CFR 270.13, 7-1-99 edition, and the Part B application information required by 40 CFR 270.14(b) through (d), 7-1-07 edition;
- (2) Name(s) of contact person(s) for the site;
- (3) For new land disposal facilities, the floodplain information required by 40 CFR 270.14(b)(11), including an identification of whether the facility is to be located within a 500-year floodplain;

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- (4) Facility design plans and specifications, prepared and stamped approved by a New Hampshire registered professional engineer, including a scale drawing of the facility, showing the location of all past, present, and future treatment, storage, and disposal area(s) in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor;
- (5) Construction schedule for any new construction or planned modifications to the existing structures;
- (6) If the applicant is leasing the property upon which the facility is located, a certified statement from the owner of the property verifying that such a lease exists and specifying the duration of that lease;
- (7) A criminal record, if any, and a performance history of the applicant and of its officers and directors relative to the operation, financial security, and ownership of all facilities owned or operated by the applicant, submitted in accordance with RSA 147-A:4, II-c, II-d and IV-a;
- (8) Unless exempted at Env-Hw 304.03(e) or (f), a hydrogeological analysis which shall include the following:
 - a. Information required by 40 CFR 264.97;
 - b. An accumulation and evaluation of published or existing hydrogeological information;
 - c. An accumulation and evaluation of geological structural controls at the site to determine the site's relationship with intermediate and regional flow systems;
 - d. An assessment of the geophysical characteristics of the underlying materials so that proper evaluation of the hydrogeological characteristics of the site can be determined;
 - e. A determination of the configuration of the groundwater table, including groundwater gradients of the unconfined and, where appropriate, confined aquifers;
 - f. Saturated thickness of the aquifers and the hydraulic interconnection between them shall be established;
 - g. Field data to represent high and low water table conditions;
 - h. The installation of groundwater monitoring wells that are designed and located so as to yield the following data from which site impacts can be formulated:
 1. Test pits;
 2. Well logs;
 3. Boring logs; and
 4. Well construction specifications;
 - i. An evaluation of pump tests to determine hydraulic conductivity, migration rates, and aquifer transmissivities and storativities;
 - j. A determination of background water quality, and a submittal of the sampling and analysis methods used for such determination; and

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k. A written confirmation from the department whether a groundwater permit is required;

(9) If applicable, the information specified in 40 CFR 270.10(j), 40 CFR 270.15, 40 CFR 270.16, 40 CFR 270.17, 40 CFR 270.18, 40 CFR 270.19, 40 CFR 270.20, 40 CFR 270.21 and 40 CFR 270.23, 7-1-99 edition; and

(10) Additional information, if the department determines that the information submitted is insufficient to form the basis of a decision that human health, safety and the environment will be protected.

(b) As used in (a)(8)i., above, "transmissivity" means the rate at which water of a prevailing density and viscosity is transmitted through a unit width of aquifer or confining bed under a unit hydraulic gradient.

(c) As used in (a)(8)i., above, "storativity" means the volume of water taken into or released from storage per unit change in head per unit area.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.12 Additional Information Requirements for New Treatment, Storage or Disposal Facilities. For new treatment, storage, or disposal facilities, when the department determines that permit application information submitted is insufficient to form the basis of a decision that human health or the environment will be protected, the applicant shall submit the following information:

(a) A health assessment that evaluates the hazardous nature of the wastes which will be handled at the facility and their potential impact on the public health resulting from the operation of the facility, including the following:

(1) Data on the hazardous wastes regarding:

a. Known or suspected health effects associated with the wastes being handled, which includes information on acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, teratogenicity and reproductive effects;

b. Environmental persistence in soil, air, and water;

c. Bioaccumulation potential;

d. Emission or discharge rates of the hazardous wastes or by-products from the facility;

e. Potential pathways of human exposure or environmental receptors to the hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures; and

f. Existing regulatory or suggested exposure limits for the hazardous wastes or their by-products; and

(2) An identification and discussion of the applicant's applicable health and safety procedures and control measures intended to minimize the public health and safety risks associated with the facility's operation and location based on the health assessment;

(b) An ecological analysis of the potential adverse effects to the local biotic habitat due to accidental discharge of hazardous waste that describes the environment of the area of the facility and includes a biologist's report that lists the wildlife species known to live in or migrate through the environmental area and evaluates the potential adverse biological effects of such a discharge upon said species;

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(c) An air impact analysis which includes the following:

- (1) An identification of all pollutants and their emission rates from all emission points at the facility including mobile, fugitive, and stack emissions;
- (2) The seasonal emission variation;
- (3) Process and control technology information;
- (4) The ambient background concentrations for all pollutants;
- (5) Modeled ground-level concentrations for all pollutants using EPA guidelines; and
- (6) The impact on soils, vegetation, visibility, climate, meteorology, and terrain;

(d) A transportation impact and safety analysis that assesses the potential public health and environmental risks associated with transporting hazardous waste to the facility with a focus upon those primary and alternate routes most likely to be used by transporters traveling to the facility from their point of exit off the nearest divided, limited-access highway, and frontage roadways providing immediate, direct access to the facility, that includes the following:

- (1) The identification of all routes and frontage roads by federal, state and/or local name within each of the major transportation corridors, and a map or maps which clearly depict each of these routes;
- (2) A description of each major transportation corridor and each frontage roadway, which, at a minimum, includes all relevant information pertaining to the type, width, and condition of the routes in question;
- (3) A description of the type, size and configuration of vehicles expected to be transporting hazardous waste to the facility;
- (4) The identification of all structurally, functionally, or topologically deficient road segments which exist along the major transportation corridors and frontage roads, made on the basis of the latest American Association of State Highway and Transportation Officials (AASHTO) standards, New Hampshire department of transportation adjusted sufficiency ratings, and sound engineering judgment;
- (5) A discussion of all known or planned highway improvements which will affect the major transportation corridors and the frontage roadways;
- (6) A general traffic study for each major transportation corridor and each frontage roadway which shall include data pertaining to average daily traffic volumes and peak hour traffic volumes, as well as all appropriate capacity analyses, and to the proposed facility's impact upon the generation of new traffic and new traffic patterns;
- (7) The identification and engineering analysis of all accidents which have occurred within the previous 5 years along each of the major transportation corridors and each frontage roadway, with particular emphasis placed upon those accidents which could have posed public health or environmental risks had they involved a vehicle transporting hazardous waste;
- (8) The identification of and an emergency response analysis for each location along each major transportation corridor and each frontage road where there is reasonable potential for the occurrence of future accidents and where there is reasonable potential for the occurrence of public health and environmental risks should such accidents involve a vehicle transporting hazardous waste; and

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(9) An analysis of improvements which might be incorporated along the major transportation corridors and frontage roads to reduce the risks associated with the transportation of hazardous wastes along said roads, such as the correction of topological or structural deficiencies or the upgrading of traffic control devices and signing.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.13 Application Recordkeeping Requirements.

(a) Applicants shall keep records of all data used to complete permit applications and any information required to be submitted under Env-Hw 304.11 or Env-Hw 304.12, for a period of at least 3 years from the date the application was signed.

(b) The retention period for all records required under this part shall be extended automatically to include the course of any unresolved enforcement action regarding the facility.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.14 Pre-Submittal Conference. Upon the applicant's request, the department shall afford the applicant an opportunity to meet with the department before submitting an application in order to review the department's permit application requirements, including, if applicable, the siting requirements of Env-Hw 304.09.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.15 Submission of Application.

(a) The applicant shall submit the following:

(1) All information required by Env-Hw 304.11 and Env-Hw 304.12;

(2) A cover letter signed by the applicant certifying that the submitted application meets all necessary application requirements sufficient to render it technically adequate to undergo an engineering review; and

(3) The fee required by Env-Hw 304.07.

(b) Copies of all permit application information shall be submitted in quadruplicate.

(c) An applicant who wishes to apply for a waiver pursuant to Env-Hw 202 to any provision of Env-Hw 304.09(f) shall do so at the time of application submittal under this section. The department shall address the applicant's waiver request within its site evaluation which shall be subject to public review under Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.16 Determination of Completeness.

(a) Upon receipt of a permit application, the department shall determine whether the application is complete by carefully evaluating all technical information submitted by the applicant to ensure that the

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submitted information is adequate, accurate, and technically sufficient to meet the submittal requirements of the hazardous waste rules.

(b) The application shall clearly demonstrate that the proposed facility is capable of being operated safely and that the operation of the facility will not pose an unreasonable risk or threat to human health or the environment.

(c) If the application is deemed to be incomplete, the department shall send a letter to the applicant which states the reason for incompleteness.

(d) The applicant shall resubmit the application only if all deficiencies noted by the department in the letter of incompleteness are addressed and the resubmittal is accompanied by the resubmittal fee specified in Env-Hw 304.07(f).

(e) If the department determines that a standard permit application is complete, the department shall review the application in accordance with Env-Hw 304.18 through Env-Hw 304.23. If the department determines that a transfer facility permit application is complete, the department shall review the application in accordance with Env-Hw 304.21 through Env-Hw 304.23.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.17 Notification Upon Receipt of Completed Applications.

(a) Upon determining that a standard permit application is complete according to the criteria set forth in Env-Hw 304.16, the department shall make the following notifications:

(1) The department shall send a letter to the applicant informing the applicant that the application is considered to be complete and will undergo the review process specified in Env-Hw 304.18;

(2) The department shall send notification to the local governing body of the receipt of the completed application so that a municipal review committee can be appointed in accordance with RSA 147-C:2;

(3) For new facilities, the department shall send notification to the siting board along with the application for its review pursuant to RSA 147-A:4-a;

(4) Within 15 days, the department shall publish notification to the general public that the completed application is available for review; and

(5) Notice shall be made according to the procedures of Env-Hw 304.21, and shall allow for a 30-day public comment period.

(b) If the department determines that a transfer facility permit application is complete, a notification of the department's completeness determination shall be sent to:

(1) The applicant;

(2) The local governing body for the town in which the facility is proposed to be located; and

(3) The general public in accordance with Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

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Env-Hw 304.18 Review Process for Completed Standard Permit Application.

(a) After the application is deemed complete in accordance with Env-Hw 304.16, the commissioner, or designee, shall assign a staff engineer to conduct a complete technical review of the application. The engineer shall evaluate all information submitted with the application, all facility requirements, and all information submitted during the public comment period and public hearing(s). The engineer shall also evaluate information provided by the siting board pursuant to RSA 147-A:4-a.

(b) Public involvement shall be in accordance with Env-Hw 304.21.

(c) The department shall use all available information to determine whether the permitting process will continue or the permit application will be denied in accordance with Env-Hw 304.23. The department shall make this decision within 30 days after the public hearing, if any, or within 30 days after the close of the public comment period.

(d) Draft permits for standard permit applications shall be prepared in accordance with Env-Hw 304.19.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.19 Preparation of Draft Permit and Fact Sheets.

(a) The provisions of a draft permit shall be based on the administrative record as defined by 40 CFR 124.9, 7-1-07 edition.

(b) Once a decision has been made to prepare a draft permit, the department shall prepare one that contains the following information:

- (1) All required general and specific conditions;
- (2) All compliance schedules;
- (3) All monitoring requirements; and
- (4) Standards for treatment, storage, and/or disposal and other permit conditions.

(c) All draft permits prepared by the department shall be accompanied by a fact sheet which:

- (1) Briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit;
- (2) Describes the type of facility or transfer facility or activity subject to the draft permit;
- (3) Identifies the type and quantity of wastes proposed to be treated or being treated, stored, disposed of, emitted, or discharged;
- (4) Summarizes the basis for the draft permit conditions including applicable regulatory citations;
- (5) Describes the procedures for making a final decision on the draft permit;
- (6) Describes the procedures for public comment and hearing; including:
 - a. The beginning and ending date of the public comment period;
 - b. The address where comments will be received;

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- c. The procedures for requesting a hearing and the nature of that hearing; and
 - d. Any other procedures by which the public may participate in the final decision;
- (7) Lists the name and telephone number of an individual to contact for further information;
- (8) Is sent to the applicant, to persons identified in Env-Hw 304.21(a)(5)b. and, on request, to any other person; and
- (9) Describes the reasons why any requested waivers or alternatives to required standards do or do not appear justified.

(d) The fact sheet and the draft permit, as well as the rest of the administrative record, shall be made available for public comment in accordance with Env-Hw 304.20 and Env-Hw 304.21.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.20 Review of Draft Permit.

(a) Upon the preparation of a draft permit, the department shall submit the draft permit to the applicant for review and comments. The applicant shall have 30 days from when the department mails the draft permit to the applicant to review the draft permit and to submit comments and suggested revisions to the department.

(b) The department shall review all comments and suggested revisions. If the department determines that requested changes meet the requirements of Env-Hw 304 and Env-Hw 700, the department shall incorporate the suggested revisions into the draft permit.

(c) After the applicant's review has been completed and after any revisions have been incorporated into the draft permit, the department shall make the draft permit available for a 45-day public comment period. During this period, a written request to hold a public hearing may be submitted. The public involvement procedures set forth in Env-Hw 304.21 shall be followed in the permitting process, including the provisions for deciding whether or not to hold a public hearing.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.21 Public Involvement in the Permitting Process.

(a) Public notice shall be given as follows:

(1) The department shall give public notice whenever the following actions have occurred:

- a. A completed permit application has been received;
- b. A draft permit has been prepared;
- c. A notice of intent to terminate has been issued under Env-Hw 304.27;
- d. A public hearing has been scheduled; or
- e. An appeal has been granted;

(2) Public notice that a completed application or a notice of intent to terminate is available for public review shall allow for at least 30 days for public comment;

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- (3) Public notice that a draft permit has been prepared shall allow for at least 45 days for public comment;
- (4) If a public hearing is to be held, public notice of a public hearing shall be given at least 30 days before the hearing;
- (5) Public notice shall be given by the following methods:
 - a. By publication of a notice in a newspaper of daily statewide circulation as well as in a local newspaper, and by broadcast over local radio stations;
 - b. By mailing a copy of the notice and, if available, a copy of the fact sheet and the draft permit to the applicant;
 - c. By mailing a copy of the notice to New Hampshire agencies that implement programs which could be affected by or which are required to issue permits for the proposed facility, federal agencies with jurisdictions over fish and wildlife resources, New Hampshire historic preservation officers, including affected indian tribes and, if applicable, over coastal zone management plans, and each unit of local government having jurisdiction over the area where the facility is to be located;
 - d. By mailing a copy of the notice to persons on a mailing list developed by:
 1. Including those who request in writing to be on the list;
 2. Soliciting persons for area lists from participants in past permit proceedings in the area; and
 3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals; and
 - e. By any other method calculated to give actual notice of the action in question to persons potentially affected by it, including press releases or any other forum or medium to elicit public participation; and
- (6) All public notices issued under this section shall include the following information:
 - a. Name and address of the department;
 - b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - c. A brief description of the business conducted at the facility or transfer facility or activity described in the permit application or draft permit;
 - d. The location(s) where and the times during which the permit application and other applicable documents are available for review;
 - e. A statement that all information submitted by the applicant is available as part of the administrative record;
 - f. Name, address, and telephone number of an individual from whom interested persons may obtain further information, including a copy of the fact sheet, draft permit, and the application;
 - g. A brief description of the public comment procedures, including:

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1. A statement of the procedures to request a hearing or, if a hearing has already been scheduled, the date, time, and place of the hearing; and
 2. Other procedures by which the public may participate in the final permit decision;
- h. Reference to the date of previous public notices relating to the topic;
 - i. A brief description of the nature of the hearing, if applicable; and
 - j. Any additional information considered necessary or proper.

(b) During the comment period(s), any person may submit written comments and a public hearing may be requested in writing. All comments and requests shall be made in writing and shall contain the name and affiliation of the person making the comment or request, as well as a short statement regarding the need for a hearing if so requested. All comments shall be duly considered in making the final decision and shall be answered as provided in (c), below.

(c) Response to public comments shall be as follows:

- (1) At the time that any final permit is issued, the department shall issue a response to public comments which shall be available to the public; and
- (2) This response shall, for standard permit applications, specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for that change, and shall describe and respond to comments on the fact sheet and on the draft permit that were raised during the comment periods or during the hearing.

(d) Public hearings shall be as follows:

- (1) A public hearing shall be mandatory for disposal facilities, or if the department receives written notice of opposition to a draft permit and a request for a hearing within 45 days after public notice is issued under (a)(5), above;
- (2) In all other cases, a public hearing shall be held if such a hearing will clarify one or more issues involved in the permit decision;
- (3) All public hearings shall be conducted according to the procedures applicable to non-adjudicative proceedings specified in Env-C 200; and
- (4) Whenever possible, all public hearings shall be held at a location near the facility.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.22 Permit Issuance.

(a) The department shall, pursuant to the procedures of Env-Hw 304, evaluate all duly-submitted information and either issue the permit in whole or in part or deny the application either in its entirety or as to the active life of the facility only. Such information shall include the completed application, all duly-submitted public comment, hearing testimony, and the draft permit if one is written in accordance with Env-Hw 304.19. The decision to issue a permit or deny an application shall be based upon whether the information demonstrates compliance with the requirements of Env-Hw 700, RSA 147-A:4, II-a, RSA 147-A:4, II-d, and any other applicable provisions.

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(b) The department shall not issue a standard permit unless the location has been approved by a siting board pursuant to RSA 147-A:4-a.

(c) The department, as applicable, shall inform the applicant of its decision no later than 90 days after the final date that the public may submit information.

(d) If an application for a standard permit, transfer facility permit or limited permit is approved, a renewable permit shall be granted for a maximum term of 5 years, subject to modification, suspension, or revocation by the department.

(e) Issuance or denial of a standard permit or transfer facility permit shall terminate any interim status held by the facility.

(f) If an applicant is issued a standard permit or transfer facility permit, the owner or operator may begin construction of the facility in agreement with conditions of the permit.

(g) An owner or operator shall not commence operation of a new facility or any modified portion of an existing facility before:

- (1) Construction has been completed;
- (2) The department has received a letter signed by the owner or operator and a New Hampshire registered professional engineer stating that the facility has been constructed in compliance with the standard permit or transfer facility conditions; and
- (3) The department has verified the facility's compliance and has notified the owner or operator in writing that operation of the facility may begin.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.23 Permit Application Denial.

(a) If a permit application is denied the following shall apply:

- (1) The department shall send written notice of denial to the applicant by registered mail, return receipt requested;
- (2) The notice of denial shall include a list of specific reasons for denial; and
- (3) The applicant whose permit application has been denied may appeal such denial to the waste management council in accordance with Env-WMC 200.

(b) If a permit application is denied, the owner or operator may reapply to the department after making necessary modifications to the original permit application. The applicant shall submit the appropriate fee, as specified in Env-Hw 304.07(b) through (d), with any such reapplication.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.24 Permit Conditions and Schedules of Compliance.

(a) All facility permits shall contain terms and conditions necessary for the operator to comply with the hazardous waste rules.

(b) Permit conditions shall be in accordance with 40 CFR 270.30, 270.31, and 270.32, 7-1-99 edition.

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(c) The department shall also establish conditions to assure compliance with all applicable requirements of RSA 147-A and the hazardous waste rules.

(d) Schedules of compliance shall be in accordance with 40 CFR 270.33, 7-1-99 edition. "Schedule of Compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with RSA 147-A and the hazardous waste rules.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.25 Permit Modification Requested by Permittee. Permit modifications at the request of the permittee shall:

(a) Be acknowledged by the department within 60 days as required by RSA 541-A:29, I; and

(b) Be in accordance with 40 CFR 270.42(a) through (e), and (g) and Appendix I to Section 270.42, 7-1-07 edition.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.26 Permit Modification or Revocation and Reissuance Initiated by the Department Including Modification or Revocation and Reissuance Requested by Third Parties.

(a) Cause shall exist for the department to initiate permit modification if cause is established under 40 CFR 270.41(a) or if the criteria for permit modification pursuant to 40 CFR 270.41(b) are met.

(b) When a permit is modified under this section, only the conditions subject to modification shall be reopened when a draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the permit.

(c) Cause shall exist for the department to initiate permit revocation and reissuance if the criteria for permit revocation and reissuance pursuant to 40 CFR 270.41(b) are met.

(d) When a permit is revoked and reissued under this section, the entire permit shall be subject to revision just as if the permit had expired and the permit reissued for a new term.

(e) The permittee shall comply with all conditions of the existing permit during modification proceedings or permit revocation and reissuance proceedings until a new final permit is issued.

(f) Suitability of the facility location shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

(g) Any interested third party may request modification, or revocation and reissuance of a permit. All requests shall be in writing and contain facts or reasons supporting the request.

(h) The department shall follow the procedures set forth below when it initiates a permit modification or revocation and reissuance under this section:

(1) If necessary to assist the department's decision to modify a permit, the department shall request the permittee to submit additional information and an updated application;

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- (2) In the case of a permit to be revoked and reissued, the permittee shall submit a new application and such additional information as is necessary to assist the department's decision;
- (3) The department shall prepare a draft permit incorporating the proposed changes in accordance with Env-Hw 304.20;
- (4) The department shall make the draft permit available to the permittee for review and allow for public comment in accordance with Env-Hw 304.21;
- (5) At the end of the public comment period, the department shall give the permittee an opportunity for an adjudicative hearing in accordance with the applicable provisions of RSA 541-A and Env-C 200 before modifying or revoking and reissuing the permit;
- (6) In order to receive an opportunity to be heard under this section, the permittee shall:
 - a. Submit a written request for a hearing to the department no later than 30 days after the department issues its draft permit; and
 - b. Include in the request a short and plain statement of the permittee's objections or concerns with regard to the department's proposed action, a summary of the permittee's compliance history and current compliance status, and any other relevant information;
- (7) If both a public hearing is requested during the public comment period and an adjudicative hearing is requested by the permittee under this section, the department shall determine whether to hold a single hearing or two separate hearings; and
- (8) If a single hearing is held, it shall be conducted as an adjudicative hearing in accordance with the applicable provisions in Env-C 200, and public notice shall be given in accordance with Env-Hw 304.21(a)(4), (5), and (6).

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.27 Termination of Permits.

- (a) The department shall terminate a permit or refuse to renew a permit if it determines there is cause.
- (b) The following shall constitute cause for permit termination or permit nonrenewal:
 - (1) Noncompliance by the permittee with any condition of the permit;
 - (2) The permittee's failure in the permit renewal application or during the permit renewal process to disclose fully all relevant facts, or the permittee's misrepresentation by act or omission of any relevant facts at any time;
 - (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination, suspension, or nonrenewal;
 - (4) Noncompliance by the permittee with any applicable standard, requirement, or provision set forth in the hazardous waste rules or RSA 147-A; or
 - (5) Noncompliance by the permittee with any administrative order, compliance schedule, judicial decree, or consent agreement issued under the hazardous waste rules or RSA 147-A.
- (c) Any interested person may request the termination or nonrenewal of a permit. All requests shall be in writing and shall contain facts or reasons supporting the request.

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(d) If the department decides to terminate or refuse to renew a permit, the department shall prepare a notice of intent to terminate. The notice of intent to terminate shall contain the reasons supporting the department's decision to terminate, or refuse renewal and shall be based upon the administrative record. For standard permits, the notice of intent to terminate shall also include a fact sheet prepared in accordance with Env-Hw 304.19.

(e) The department shall issue the notice of intent to terminate to the permittee for review and allow for public notice and comment in accordance with Env-Hw 304.21.

(f) At the end of the public comment period, the department shall give the permittee an opportunity for an adjudicative hearing in accordance with the applicable provisions of RSA 541-A and Env-C 200 before terminating the permit.

(g) In order to receive an opportunity to be heard under this section, the permittee shall:

(1) Submit a written request for a hearing to the department no later than 30 days after the department issues its notice of intent to terminate; and

(2) Include in the request, a short and plain statement of the permittee's objections or concerns with regard to the department's proposed action, a summary of the permittee's compliance history and current compliance status, and any other relevant information.

(h) The department shall order the immediate suspension of a permit in whole or in part, if the department finds that public health, safety or welfare requires emergency action.

(i) An order of suspension shall act as a temporary termination or modification of the permit, as specified in the department's order and shall be immediately effective.

(j) The order shall be vacated if the department does not begin an adjudicative proceeding in accordance with the applicable provisions of RSA 541-A and Env-C 200 within 10 business days of the issuance of the suspension order.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.28 Transfer of Permits. Transfer of permits shall be in accordance with 40 CFR 270.40, 7-1-99 edition and RSA 147-A:4, IV-a.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.29 Appeals.

(a) The permittee may appeal to the waste management council in accordance with RSA 147-A:15 within 30 days of the issuance of a final decision of the department to:

- (1) Grant or deny a permit application, in whole or in part;
- (2) Grant or deny the permittee's request for permit modification;
- (3) Modify or revoke and reissue a permit;
- (4) Terminate a permit or refuse to renew a permit; or
- (5) Suspend a permit.

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(b) Any other person aggrieved by a final permitting decision of the department may appeal in accordance with (a), above, if that person has standing as determined under Env-WMC 200.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.30 Continuation of Expiring Permits.

(a) If the permittee wishes to continue an activity regulated by his permit after the expiration date of the permittee's permit, the permittee shall apply for and obtain a new permit in accordance with Env-Hw 304.31.

(b) Continuation of expiring permits shall be in accordance with 40 CFR 270.51, 7-1-99 edition and RSA 541-A:30, provided the permittee has submitted a new application in accordance with Env-Hw 304.31.

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

Env-Hw 304.31 Permit Renewal.

(a) Any facility with an effective permit shall submit a new application, in accordance with Env-Hw 304.10 and Env-Hw 304.11, at least 270 days before the permit's expiration date.

(b) An applicant may request an extension of time of the application submittal deadline by submitting a request for waiver in accordance with Env-Hw 202.

(c) Except for limited permit renewals, an application for permit renewal shall be treated as a new application for purposes of fees and review, except that denial of the permit renewal shall be in accordance with Env-Hw 304.27. Limited permit renewals shall be in accordance with Env-Hw 304.04(r).

Source. (See Revision Note at chapter heading for Env-Hw 300) #9362, eff 1-28-09

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APPENDIX

Rule Section(s)	State Statute(s) Implemented	Federal Statute/Regulation Implemented
Env-Hw 301	RSA 147-A:3	
Env-Hw 302 - 304	RSA 147-A:3, III, IV, VII-XI and XXV; RSA 147-A:4; RSA 147-A:4-a; RSA 147-A:4-b; RSA 147-A:5; RSA 147-B:4; RSA 147-B:8; RSA 147-B:11; RSA 541-A:30;	40 CFR 124; 40 CFR 270; 40 CFR 264.1; 40 CFR 265.1; 40 CFR 270.60