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III. Technical and Financial Assistance

A. Introduction

As previously noted, DES has long recognized that regulatory compliance is best attained and sustained using a combination of approaches, including outreach/education and technical and financial assistance. Frequently, outreach/education activities and technical assistance activities overlap. For example, fact sheets on very specific topics, such as “Management of Waste Photoprocessing Solutions” and “Management of Dry Cleaning Wastes”, educate as well as provide specific advice. Also, seminars on program-specific requirements and guidance documents often are targeted at a particular regulated sector for purposes of increasing awareness and compliance. For purposes of this discussion, technical assistance is deemed to focus on providing site-, activity-, or facility-specific compliance-related advice.

Because DES believes that compliance is the ultimate goal to ensure protection of public health and the environment, DES places a high priority on providing technical assistance to regulated entities. Some programs are specifically designed to provide technical assistance to regulated entities (and so do not have any direct regulatory responsibilities); these include the NH Pollution Prevention Program housed in DES’s Waste Management Division, the Operations Section in DES’s Water Division/Wastewater Engineering Bureau, and the Small Business Technical Assistance Program in DES’s Air Resources Division. Programs that have direct regulatory responsibilities (such as permitting, compliance inspections, and enforcement) are typically more limited in the amount or type of assistance they can provide, often due to resource constraints or potential liabilities for providing advice that may not completely solve a problem that is subject to an enforcement action. Not all DES staff can provide assistance on all things, and sometimes a facility’s need for advice will be beyond the scope of what DES can provide even with all applicable programs working together, so there will be times when DES will suggest that a consultant be retained. A description of DES programs and the technical assistance offered by each can be found in **Appendix III-1**.

DES also strongly supports financial assistance for regulated entities, especially those in the public sector that rely on public monies to fund operations and compliance activities. DES takes an active role in identifying areas where financial assistance is needed, such as in closing unlined landfills, removing old underground petroleum storage tanks, and upgrading public drinking water supplies, and in supporting legislation to provide for such assistance. A brief description of existing financial assistance programs can be found in Part C, below.

The table at the end of this chapter provides contact information on technical and financial assistance for various DES programs.

B. Obtaining Technical Assistance

Regulated entities can seek technical assistance before violations are identified by DES, after violations are identified by DES, and even after identified violations have been corrected. Technical assistance can be obtained from DES as well as from private environmental consultants

Before Violations are Identified by DES

As noted above, DES has several programs whose primary function is to provide technical assistance. Regulated entities can seek assistance from these programs even prior to intervention by a regulatory program, and are encouraged to do so. Obtaining assistance may allow a regulated entity to correct deficiencies prior to a compliance inspection or other investigatory activity, thus avoiding or minimizing a subsequent enforcement action.

Often, regulated entities that are inspected regularly establish a good working relationship with the DES inspector. This allows the regulated entity to feel comfortable in calling the inspector with compliance-related questions unrelated to a specific inspection.

DES offers pollution prevention (P2) assistance to help businesses and municipalities reduce pollution at the source in order to minimize the amount of waste generated. P2 can be used to bring facilities into compliance, to help them maintain compliance, to help them to go beyond compliance, and even to help them to fall below the regulatory threshold. New Hampshire's commitment to promoting P2 is supported by provisions in RSA 21-O:15-22. Those provisions also encourage small businesses which are subject to environmental laws to seek assistance by prohibiting DES staff who provide technical assistance from disclosing information obtained in the course of providing the assistance to any DES regulatory program (or to any other regulatory or enforcement agency) in most circumstances. The prohibition applies if a small business voluntarily requests technical assistance, is not the subject of an active enforcement action, and has not been notified of an impending regulatory inspection at the time the request is made, subject to certain exclusions. The prohibition does not apply if:

The person requesting technical assistance agrees that such information may be made available to the regulatory programs;

The information is a public record under RSA 91-A;

The information pertains to an imminent threat to human life or the environment;

The information reveals evidence of a knowing criminal violation; or

The information is presented in aggregate form with no identification of individual entities, in order to develop P2 assistance activities.

The statutory provision does not override any obligation the person may have to provide notice, information, or a report required by any statute, rule, permit, or order.

Other DES programs that are primarily intended to provide technical assistance are not bound by these statutory provisions, but generally will not report minor violations to the regulatory programs if the responsible party promptly corrects the violations.

Technical assistance can also be sought from a private environmental consultant, which may be especially useful if the regulated entity decides to undertake an environmental self-audit such as described in RSA 147-E. While many regulated entities undertake such audits as a sound business

practice, the statute creates two incentives for regulated entities to do self-audits: the regulated entity can choose to maintain the audit report as a confidential document, or can choose to disclose the violations identified by the audit and obtain a waiver of penalties (except for any economic benefit that accrued as a result of a violation). In order to qualify for these benefits, the detailed criteria and procedures specified in RSA 147-E must be met.

2 After Violations are Identified by DES

If a DES regulatory program identifies violations at a site or facility or connected to a regulated activity, the program often will recommend that the responsible party obtain technical assistance to address the violation. Under certain circumstances (as described in Chapter I, Part D), an enforcement action will not be initiated if the responsible party obtains assistance and promptly corrects the violation. Even if an enforcement action is appropriate, the responsible party may be able to lessen the severity of the action by promptly obtaining assistance and implementing the recommendations while the action is pending, since doing so can demonstrate that the responsible party is cooperative and is making a good faith effort to comply and prevent recurrences of the violation.

If a study or other investigation must be done to determine the underlying cause of the violation, or if several options for correcting the violation are available and need to be examined to determine the “best fit”, the regulated entity usually will be directed to engage a private consultant. If the violations identified are relatively minor and easy to correct, a DES inspector may be more likely to provide assistance directly or to suggest that the regulated entity contact a DES assistance program. DES regulatory inspectors are not obligated to provide any specific advice, and generally will not provide site-, facility-, or activity-specific assistance during an investigation if the inspector believes that a significant enforcement action is likely to be initiated.

In programs where a typical violation or some other condition or process at a facility typically inspected by the program can be successfully addressed using P2, any Letter of Deficiency (as described in Chapter I, Part E.2.b and Chapter V, Part C.2) issued by the program will include a referral to DES’s P2 Coordinator. The P2 Coordinator receives a copy of the LOD, and will follow up with the Respondent to offer information on how P2 might be able to help the Respondent. Many programs also include this information in cover letters transmitting administrative orders.

3 After Identified Violations are Corrected

Sometimes, the quickest way to correct a violation is not the best way to fix it from the perspective of long-term benefits, such as reducing the likelihood of repeat violations or the amount of pollution generated. A regulated entity thus may be interested in seeking technical assistance to implement a more favorable long-term solution. This is especially important if the technical assistance can reduce or eliminate the need to comply with the same set of regulatory standards, for instance by eliminating a particular waste stream or reducing the amount of waste generated to below a regulatory threshold. Even where a major change in regulatory status is not possible, reducing the likelihood of recurring violations is of considerable benefit, since the severity of the enforcement action for a repeat violation tends to increase with each recurrence.

C. Obtaining Financial Assistance

Each financial assistance program implemented by DES is created by statute and typically is implemented through rules adopted by DES. Eligibility criteria and application requirements vary from program to program and are found in the statute and/or the rules.

Closure of Solid Waste Facilities

a. Unlined Municipal Solid Waste Landfills

For many years, solid waste generated by households and general business activities (referred to as “municipal solid waste”, or “MSW”) was disposed of in unlined landfills. Most of these landfills were owned and operated by municipalities for the benefit of their residents. Although current standards require new MSW landfills to be double-lined and provided with leachate collection and leak detection systems, more than a dozen unlined MSW landfills are still operating in New Hampshire. Unlined MSW landfills pose a significant threat to groundwater, which is particularly serious in New Hampshire where nearly 60% of drinking water is drawn from groundwater sources.

In 1992, New Hampshire established a \$30 million State-guaranteed landfill closure bond program to enable municipalities to benefit from the State’s lower interest rates. The program is also available for closure and clean-up of other solid waste facilities and hazardous waste sites (other than Superfund sites). Requirements for this program are specified in RSA 149-M:31.

In 1995, DES expanded the coverage of the State Revolving Fund (“SRF”) Loan Program to include landfill closure projects. The SRF Loan Program provides low interest loans for all of the eligible capital costs of landfill closure, including studies, engineering design, and construction. Eligibility criteria and application requirements for landfill closure SRF loans are specified in Env-C 500, as part of the non-point source program (ref. Env-C 505.01(c)).

In 1996, the New Hampshire General Court enacted a Landfill Closure Grant Program to assist municipalities in closing unlined landfills. (The program also covers the public share of those MSW landfills on the Superfund National Priorities List and provides reimbursement for landfill closure projects completed between 1985 and 1995.) The program pays for 20% of eligible capital costs of landfill closure, which include costs relating to hydrogeological and engineering investigation and design, construction of closure elements required by rules, and construction supervision. Eligibility criteria and application requirements for these grants are specified in RSA 149-M:41-50 and Env-Wm 3000. Grant applications are prioritized according to criteria specified in the statute.

b. Solid Waste Incinerators

In addition to the grant program for closure of unlined landfills, the Legislature has established a program (Laws of 1999, Ch. 347, eff. January 1, 2000) to provide state aid to certain municipalities to assist with the closure of their MSW incinerators. The program is modeled on the landfill closure grant program, and reimburses up to 20% of eligible closure costs (which do not include fiscal, legal, or administrative costs). The program applies to the 18

municipally-owned MSW incinerators constructed prior to July 1, 1998, namely the waste-to-energy incinerator operated by the Lamprey Regional Solid Waste Cooperative in Durham, the waste-to-energy incinerator operated by the City of Portsmouth at the former Pease Air Force Base, and the municipal incinerators in Auburn, Bridgewater, Candia, Canterbury, Durham, Lincoln, Litchfield, Nottingham, Ossipee, Pelham, Pittsfield, Plymouth, Sutton, Wilton, Windham and Wolfeboro.

2 Water Pollution Control

New Hampshire has long recognized that proper treatment of wastewater is essential to protect the quality and uses of the State's waters. To encourage and support efforts to construct and improve wastewater treatment facilities and associated collection systems, New Hampshire participated in the federal program under the Clean Water Act to provide funds to municipalities for those purposes. In 1992, anticipating the phase-out of federal funds, the New Hampshire General Court established a new state-based grant program for municipal water pollution control projects. DES maintains and annually updates a priority list of eligible projects based on pre-applications received and using the criteria established for the former federal Construction Grants Program. Eligibility criteria and application requirements are specified in RSA 486.

The SRF Loan Program that provides funding for landfill closure projects was originally established for, and still applies to, improving publicly-owned wastewater treatment facilities and associated infrastructure. Loans from the program are also available for projects relating to control of non-point source pollution and to development and implementation of estuary conservation and management plans. Federal grants provided \$160 million to the SRF Loan Program from 1989 through 1998, matched at the 20% level by State funds for a total of \$192 million. Monies that are repaid on the loans, including principal and interest, are then loaned out for other projects. Eligibility criteria and application requirements are specified in RSA 486:14 and Env-C 501-509.

Drinking Water Projects

a Drinking Water State Revolving Fund

The federal Safe Drinking Water Act ("SDWA") Amendments of 1996 established federal funding for a Drinking Water State Revolving Fund ("DWSRF") program, to provide financial assistance for infrastructure improvements at public water systems. The amendments also emphasized the importance of preventing contamination and enhancing water system management by allowing states to use some of the funding for source water protection, capacity development, and operator certification. Publicly- and privately-owned community water systems are eligible for loans, as are non-profit noncommunity water systems.

Assistance is primarily in the form of low-interest loans. In addition, New Hampshire has chosen to provide additional subsidies to certain disadvantaged communities and/or water systems, including, in certain cases, up to 30% forgiveness of principal. In order to qualify, the median household income ("MHI") of the residents served by the system must be less than the statewide MHI based upon the most recent census data and/or salary survey. Other eligibility criteria and application requirements are specified in RSA 486:14 and Env-C 510-522.

b. Surface Water Treatment Grants

State grants are available to public water systems which are required to comply with the surface water treatment rule of the federal Safe Drinking Water Act of 1986. Systems may be eligible for a contribution of up to 20% of the annual principal and interest on the costs resulting from the construction of new wells or filtration systems designed to meet the requirements of the surface water treatment rule. An extra 10% may be awarded to public water systems where user rates are 20 percent above the state average. Eligibility criteria and application requirements are specified in RSA 486-A and Env-Ws 382.

c. Water Supply Land Conservation Grant Program

During the 2000 session, the NH Legislature amended RSA 486 to create the Water Supply Land Conservation Grant Program (Laws of 2000, Ch. 310 (SB 135-FN), eff. June 21, 2000). This program provides grants to municipal or non-profit water suppliers for the purchase of land or conservation easements critical to protecting the quality of their source waters. To be eligible, water supply lands must be within the source water protection areas for existing or planned public drinking water sources. The Legislature appropriated \$1.5 million for DES to distribute through grants during the first year of the program.

The state grants must be matched 75% from local sources. These match sources can include donated land or easements that also lie within the source water protection area, public funds, transaction expenses, or private funds. Also, the DWSRF identified in 3.a., above, can be used by communities to finance some or all of the match.

The Society for the Protection of New Hampshire Forests, under contract with DES, will provide assistance to applicants and landowners who are interested in the program. Eligibility criteria and application requirements are specified in RSA 486-A and Env-Ws 394.

4. ODD, FOD, MOD Funds

RSA 146-D, RSA 146-E, and RSA 146-F provide authority for the State to reimburse owners of eligible petroleum storage facilities for costs incurred as a result of implementing corrective actions or as a result of damages to third parties due to a release of stored petroleum product. Together, these statutes create a comprehensive reimbursement (*i.e.*, insurance) program which protects facility owners from financial devastation and ensures the timely and cost-effective cleanup of petroleum contamination.

RSA 146-D established the ODD Fund in 1988 to provide reimbursement to facilities that store motor fuel, including regulated underground and above-ground storage facilities. Money for reimbursement is generated by a fee of \$0.015 per gallon of oil imported into New Hampshire. The ODD Fund is administered by the Oil Fund Disbursement Board ("Board"), which is administratively attached to DES. Eligibility criteria and application requirements are specified in RSA 146-D:6-8.

RSA 146-E established the Fuel Oil Discharge Cleanup Fund ("FOD Fund") in 1993 to provide financial assistance to owners of facilities that store heating fuel oil, including above-

ground bulk storage facilities and on-premise-use facilities (including individual homeowners). Money for this fund is generated by a fee of \$0.002 per gallon of fuel oil imported into the state, and the fund is administered by the Board. Eligibility criteria and application requirements are specified in RSA 146-E:4-6.

RSA 146-F established the Motor Oil Discharge Cleanup Fund (“MOD Fund”) in 1995 to provide assistance to owners of facilities that store motor oil and used motor oil. RSA 146-F also provides for reimbursement of up to \$1,000 to owners of on-premise-use facilities for the costs of repair or replacement of substandard systems *before* a release occurs. Money for this fund, which also is administered by the Board, is generated by a fee of \$0.04 per gallon of motor oil imported into the state. Eligibility criteria and application requirements are specified in RSA 146-F:4-5.

Used Oil Grant Program

To encourage the proper collection of Do-It-Yourselfer (“DIY”) used oil, in 1994 the New Hampshire Legislature imposed a per-gallon fee (currently \$0.02 per gallon) on the import of virgin automotive oil into the state. The monies collected are deposited into a dedicated portion of the New Hampshire Hazardous Waste Cleanup Fund and are used to award grants to political subdivisions to establish or improve used oil collection centers. Municipalities have used the grants to purchase equipment such as collection tanks, filter crushers, and used oil heaters and to improve infrastructure such as secondary containment and protective structures.

The grants originally were capped by statute at \$1,500 per collection center. After the program had been in place for a time, it became apparent that \$1,500 often was not enough to cover the costs of establishing or upgrading a collection center. The Legislature therefore has increased the maximum award limit to \$2,500 per political subdivision. Political subdivisions also now may combine their awards to a maximum of \$5,000 for a collection center that is jointly run by two or more political subdivisions. Eligibility criteria and application requirements are specified in RSA 147-B:13 and Env-Wm 1004.

During the 2000 legislative session, RSA 147-B:13 was amended to provide additional incentives for encouraging more centers to be established. The amendments were designed to accomplish three objectives:

Allow more than one grant per municipality, since larger municipalities need more locations to adequately collect used oil from residents;

Allow public/private partnerships to receive grants for collection purposes in those areas of the state lacking collection centers; and

Provide financial assistance to municipalities to remove oil from collection centers

6 NH Brownfields Program

The overall goal of New Hampshire’s Brownfields program is to encourage the voluntary cleanup, remediation, and redevelopment of contaminated properties (brownfields sites) in the state. DES is working jointly with EPA to provide financial assistance to achieve this goal. New

Hampshire's integrated approach to Brownfields redevelopment is to use all resources available at the local, state, and federal levels of government to leverage private sector investment in brownfields revitalization.

The original EPA Brownfields Assessment Demonstration Pilot of \$200,000 was made in 1998. EPA generally prefers that the site receiving assistance be municipally-owned, or that the municipality have the ability to acquire the property (*e.g.*, due to back taxes). The grant provides for site investigation work conducted by DES contractors at five brownfields sites. Most of this money has been allocated. In March 2000, DES was awarded a \$150,000 Supplemental Funding Assistance Grant and will begin site selection in September, 2000.

Also available directly from EPA to municipalities are Targeted Brownfields Assessment Awards for site investigation services. The municipality makes application to EPA for the award, and EPA uses its own Superfund contractors (Weston START, Tetra Tech, and Metcalf & Eddy) to perform a site investigation at a site selected by the municipality. In general, the site should be municipally-owned or the municipality should have the ability to acquire the property. While these assessments are awarded directly from EPA to municipalities, DES provides technical assistance by working closely with the municipality and EPA's contractors to develop an appropriate work scope for the site investigation. EPA has provided additional funding under the Targeted Brownfields Assessment program directly to DES via the Multi-Site Cooperative Agreement. This money is used to perform site investigations at selected sites in the state using DES's contract consultants. To date, \$135,000 has been received.

The New Hampshire Brownfields Cleanup Revolving Loan Fund ("BCRLF") will make financing available for the remediation of brownfields sites, where conventional financing has not been readily available. The program will be used as a component of an integrated approach to brownfields redevelopment, in that a site may also receive assistance under other brownfields initiatives such as the EPA Brownfields Demonstration Pilot, the Targeted Site Assessment program, the NH Brownfields Covenant program, and the Taxpayer's Relief Act of 1997. New Hampshire's BCRLF pilot program will be capitalized by a \$1.45 million grant awarded to a coalition of five EPA Brownfields pilot recipients: DES, the NH Office of State Planning (OSP), the City of Concord, the Town of Durham, and the Town of Londonderry.

The BCRLF, which will be managed by DES, will be used to provide loans to eligible borrowers to finance the costs of site remediation at brownfields sites. The loan program will be available statewide, but sites that have been directly assisted under the original Brownfields Pilots will receive first priority for participation. In the 2000 Legislative Session, the NH Legislature enacted Laws of 2000, Ch. 82 (HB 1416-FN), effective June 20, 2000. This law grants authority to DES to administer the BCRLF. DES is currently working to develop a financial plan and loan application procedures. It is anticipated that the first loan will be obligated in the Fall of 2000.

**NH Department of Environmental Services
Technical Assistance Contacts**

Programs	Contact	Assistance Types					
		P2 Assistance	On-site Assistance	Technology Assistance	Regulatory Transfer	Funding Assistance	Hotline
AST Program	Tom Willis 271-6058		X	X	X		
Air Credit Trading	Joe Fontaine 271-6794		X	X	X		
Air Emissions Inventory	Sonny Strickland 271-6283		X		X		
Air Mobile Sources	Mike Fitzgerald 271-6390			X			
Air Resources Compliance	Mary Ruel 271-6795		X		X		
Air Stationary Source Permitting	Craig Wright 271-6791		X	X	X		
Air Toxics	Rick Rumba 800-498-6868		X		X		X
Asbestos (Removal/Demo)	Steve Cullinane 271-1373		X		X		
Asbestos Waste Sites	Dan Spear 271-2929		X		X		
Brownfields Program	Mike Wimsatt 271-6422		X	X	X	X	
Dams	Steve Doyon 271-3406		X	X	X	X	
Gasoline Vapor Recovery	Jim Poisson 271-2790		X		X		X
Greenhouse Gases	Don LaTourette 271-5552	X		X	X		
Hazardous Waste Compliance	John Duclos 271-1998	X	X	X	X		X
Haz. Waste Remediation	John Regan 271-3744		X	X	X		
Household Haz. Waste Prog.	271-2047			X	X	X	
Industrial Wastewater Pretreatment	George Carlson 271-2052	X	X	X	X	X	
Municipal Wastewater	George Neill 271-3325		X	X	X		
Non-Point Source Program	Eric Williams 271-2353	X	X	X	X	X	
Open Burning	Dave Degler 271-0537		X		X		
Permit Coordination (DES-wide)	Tim Drew 271-3306				X		
Petroleum Site Remediation	Gary Lynn 271-8873		X	X	X	X	
Pollution Prevention Program	Lin Hill 800-273-9469	X	X	X	X		X
Public Drinking Water Prog.	Bernie Lucey 271-2952	X	X	X	X	X	
Public Pools Water Quality	Jody Connor 271-3414		X	X	X		
Small Business Technical	Rudy Cartier 800-837-0656	X	X				X
Solid Waste Program	Richard Reed 271-2925		X	X	X	X	
Source Water Protection	Paul Susca 271-7061	X	X		X	X	
Underground Injection Control	Mitch Locker 271-2858	X	X		X	X	
UST Program	Tom Beaulieu 271-2986		X	X	X		
Used Oil Program	888-TAKEOIL (825-3645)	X	X		X	X	X
Waste Management Planning and Community Assistance	Christopher Way 271-6847		X		X		
Winnepesaukee WWTF Pretreatment	Randy Monti 934-2809	X	X		X		