

Readopt Env-Sw 701 through Env-Sw 704, effective 7-1-14 (Document #10596), cited and to read as follows:

CHAPTER Env-Sw 700 INCINERATION FACILITY REQUIREMENTS

Statutory Authority: RSA 149-M:7

PART Env-Sw 701 APPLICABILITY

Env-Sw 701.01 Applicability.

(a) The rules in this chapter shall apply to processing/treatment (P/T) facilities that incinerate solid waste, including waste-derived fuel not certified for distribution and use as fuel pursuant to Env-Sw 1500.

(b) The requirements in this chapter shall apply as the complement of the P/T facility requirements in Env-Sw 500.

PART Env-Sw 702 INCINERATOR PERMIT APPLICATION REQUIREMENTS

Env-Sw 702.01 Permit Required.

(a) A permit issued pursuant to the solid waste rules shall be required for construction, operation and closure of an incinerator, unless exempt pursuant to Env-Sw 302.03 or Env-Sw 708.

(b) The type of permit required shall be as specified in Env-Sw 302.

Env-Sw 702.02 Permit Application Requirements. Incinerator permit applications shall conform to the permit application requirements in:

- (a) Env-Sw 314 for a standard permit;
- (b) Env-Sw 313 for an emergency permit;
- (c) Env-Sw 312 for a research and development permit; and
- (d) Env-Sw 311 for a permit-by-notification.

PART Env-Sw 703 SITING REQUIREMENTS

Env-Sw 703.01 Siting Requirements. Incinerators shall be sited in conformance with Env-Sw 1003, Env-Sw 1102, Env-Sw 1203, and Env-Sw 503, as applicable.

PART Env-Sw 704 DESIGN REQUIREMENTS

Env-Sw 704.01 Applicability.

(a) The design requirements in this part shall apply to all incinerators, except:

- (1) Permit-exempt incinerators identified in Env-Sw 302.03 or Env-Sw 708;
- (2) Permit-by-notification incinerators having an active life of 90 days or less;
- (3) Research and development incinerators as provided by Env-Sw 312.02(b); and
- (4) Emergency permit incinerators as provided by Env-Sw 313.02(b).

(b) The design requirements in this part shall apply as the complement of the design requirements in Env-Sw 1004 for all facilities, Env-Sw 1103 for facilities having an active life longer than 90 days, Env-Sw 1200 for permit-by-notification facilities, Env-Sw 504, and, depending on the type of waste managed, Env-Sw 900.

Env-Sw 704.02 General Design Requirements. An incinerator shall be designed to operate in conformance with Env-Sw 705.

Env-Sw 704.03 Combustion Unit. The design of the combustion unit shall comply with state rules and federal regulations for controlling air pollution, including RSA 125-C.

Readopt Env-Sw 705.01 through Env-Sw 705.05, effective 7-1-14 (Document #10596), cited and to read as follows:

PART Env-Sw 705 OPERATING REQUIREMENTS

Env-Sw 705.01 Applicability.

- (a) The operating requirements in this part shall apply to all incinerators, except:
- (1) Permit-exempt incinerators identified in Env-Sw 302.03 or Env-Sw 708;
 - (2) Permit-by-notification incinerators, having an active life of 90 days or less;
 - (3) Research and development permit incinerators, as provided by Env-Sw 313.02(b); and
 - (4) Emergency permit incinerators, as provided by Env-Sw 313.02(b).

(b) The operating requirements in this part shall apply as the complement of the operating requirements in Env-Sw 1005 for all facilities, Env-Sw 1105 for facilities having an active life longer than 90 days, Env-Sw 1204 for permit-by-notification facilities, Env-Sw 505 and, depending on the type of waste managed, Env-Sw 900.

Env-Sw 705.02 General Operating Requirements. The operation of an incinerator shall comply with state rules and federal regulations for controlling air pollution, including RSA 125-C.

Env-Sw 705.03 Additional Signs and Postings.

(a) The permittee shall post signs, at a conspicuous place or places adjacent to the incinerator, stating the following information based on the provisions of the facility permit:

- (1) Authorized wastes;
- (2) Prohibited wastes;
- (3) Ash residue and waste storage limitations; and
- (4) Instructions for ash residue storage and disposal.

(b) Emergency procedures, including the telephone number for emergency assistance, shall be posted at a conspicuous place or places adjacent to the incinerator.

(c) A copy of the operating instructions manual for the combustion unit shall be maintained in close proximity to the incinerator so as to be readily available for reference.

Env-Sw 705.04 Combustion Requirements. An incinerator shall combust waste in a manner and to a degree that results in an ash residue that contains little to no combustible materials.

Env-Sw 705.05 Ash Residue Management. Ash residue shall be managed in accordance with Env-Sw 902.

Readopt Env-Sw 705.06, effective 7-1-14 (Document #10596), as amended effective 9-27-18 (Document #12627), to read as follows:

Env-Sw 705.06 Prohibitions. The following wastes shall not be incinerated:

- (a) Wet cell batteries, pursuant to RSA 149-M:27, II;
- (b) Leaf or yard waste, except as provided in RSA 149-M:27, III;
- (c) Video display devices, central processing units from computers, or non-mobile video game display media recorders or players, pursuant to RSA 149-M:27, IV;
- (d) Mercuric oxide batteries, pursuant to RSA 149-M:28, IV;
- (e) Mercury-added products, pursuant to RSA 149-M:58, I; and
- (f) Wood components of construction and demolition debris, or any mixture or derivation from said component, unless allowed under RSA 125-C:10-c, II.

Readopt Env-Sw 706 through Env-Sw 708, effective 7-1-14 (Document #10596), to read as follows:

PART Env-Sw 706 CLOSURE REQUIREMENTS

Env-Sw 706.01 Closure Requirements. Incinerators shall be closed in accordance with:

- (a) Env-Sw 1006;
- (b) Env-Sw 1106;
- (c) Env-Sw 506; and
- (d) Env-Sw 900, as applicable based on type of waste.

PART Env-Sw 707 PERMIT-BY-NOTIFICATION INCINERATORS

Env-Sw 707.01 Purpose. The purpose of the rules in this part is to identify incinerators eligible for a permit-by-notification pursuant to Env-Sw 311.

PART Env-Sw 708 PERMIT-EXEMPT INCINERATORS

Env-Sw 708.01 Purpose. The purpose of the rules in this part is to identify incinerators which are - permit exempt, pursuant to Env-Sw 302.03(b)(2).

Env-Sw 708.02 General Conditions for Exemption.

(a) The incinerators described in this part shall be exempt from obtaining a permit, subject to the following conditions:

- (1) The facility shall comply with:
 - a. The universal facility requirements in Env-Sw 1000; and
 - b. The waste specific requirements in Env-Sw 900, as applicable based on the type of waste managed by the facility; and
- (2) All waste managed at the facility shall be actively managed.

(b) A permit exemption shall not affect a person's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district or local permits, ordinances, laws or approvals or conditions pertaining to the permit-exempt activities.

Env-Sw 708.03 Animal Crematoriums. Subject to Env-Sw 708.02, no permit shall be required for an animal crematorium, provided that the facility shall be used only for the incineration of animal carcasses not classified as infectious waste under Env-Sw 904.01(a)(5).

Readopt Env-Sw 900, effective 7-1-14 (Document #10598), to read as follows:

CHAPTER Env-Sw 900 MANAGEMENT OF CERTAIN WASTES

Statutory Authority: RSA 149-M:7

PART Env-Sw 901 ASBESTOS

Env-Sw 901.01 Applicability.

- (a) The rules in this part shall apply to the management of asbestos waste, both friable and non-friable.
- (b) The rules in this part shall apply to the management of material having the potential to be asbestos waste based on its visual appearance, form, function and other available information, unless testing in accordance with the analytical procedures in 40 CFR 61 determines the waste to be non-asbestos based.
- (c) The rules in this part shall apply to wastes and materials that are combined or mixed with asbestos waste.
- (d) The rules of this part shall apply from the point of waste origination to the point of waste disposal.

Env-Sw 901.02 Collection, Storage and Transfer Requirements.

(a) Collection, storage and transfer of asbestos waste shall be accomplished in a manner as to prevent the release of asbestos fibers to the environment, and in conformance with Env-Sw 400, 40 CFR 61, 29 CFR 1910, 29 CFR 1926, He-P 5000, Env-A 1800 and (b) through (f) below.

(b) Collected asbestos waste that is friable or exhibits friable characteristics shall be processed or treated in accordance with Env-Sw 901.03 prior to storage, transfer or disposal.

(c) Collected asbestos waste shall be packaged and labeled in accordance with Env-Sw 901.06 prior to storage or transfer.

(d) Asbestos waste shall be stored only in areas:

- (1) Restricted from public access;
- (2) Protected from the elements, specifically including wind and water;
- (3) Regularly monitored to assure site security; and
- (4) Conspicuously posted with legible signs imprinted with the following:
 - a. "Danger";
 - b. "Asbestos waste storage area";
 - c. "Dust, cancer and lung disease hazard"; and
 - d. "Authorized personnel only."

(e) The permittee shall notify local fire officials as to the establishment and location of an asbestos storage facility requiring a standard permit to alert responding fire personnel of the potential hazard in the event of a fire.

(f) Asbestos waste shall be transferred only to facilities authorized to receive asbestos waste.

Env-Sw 901.03 Processing and Treatment Requirements.

(a) Asbestos waste shall be processed or treated in accordance with Env-Sw 500 and this section, and in accordance with other applicable state rules and federal regulations including 40 CFR 61, 29 CFR 1910 and 1926, Env-A 1800 and He-P 5000.

(b) Prior to packaging, storage or disposal, asbestos waste that is friable or exhibits friable characteristics shall be treated to limit the potential for release of asbestos fibers using one or more of the following methods in accordance with 40 CFR 61 and Env-A 1800:

- (1) Spray with water or amended water;
- (2) Cover with an encapsulant or sealant, using an airless or electrostatic sprayer if the material is hydrophobic; or
- (3) Another method determined pursuant to Env-A 1800 to be functionally equivalent to the above, based on information submitted by the person responsible for the treatment.

(c) Facilities that process or treat asbestos waste shall collect, store and transfer the waste in accordance with Env-Sw 901.02.

Env-Sw 901.04 Disposal Requirements.

(a) Asbestos waste shall be landfilled at authorized facilities only.

(b) Asbestos waste that is friable or exhibits friable characteristics shall not be landfilled prior to being:

- (1) Treated in accordance with Env-Sw 901.03; and
- (2) Packaged and labeled in accordance with Env-Sw 901.06.

(c) Facilities which landfill asbestos waste shall be equipped and staffed to manage the asbestos in conformance with the solid waste rules, including:

- (1) Personnel protective equipment pursuant to Env-Sw 901.08(a);
- (2) Staff trained pursuant to Env-Sw 901.08(a);
- (3) Equipment for wetting asbestos; and
- (4) Decontamination equipment.

(d) Prior to receiving asbestos waste, the landfill operator shall prepare a disposal area within the permitted footprint to allow the asbestos waste to be placed and immediately covered without release of asbestos fibers to the air and without direct contact between the asbestos waste and personnel and equipment.

(e) Containers of asbestos waste shall be unloaded at landfills in such a manner as to prevent:

- (1) Release of asbestos fibers;
- (2) Personal exposure to asbestos fibers; and
- (3) Direct contact with asbestos fibers by personnel and equipment.

(f) Non-rigid containers which have been exposed to asbestos waste shall be disposed with the asbestos waste.

(g) Following placement in the disposal area, asbestos waste shall be immediately covered with at least 3 feet of non-asbestos waste or 18 inches of soil.

(h) An asbestos waste disposal facility shall compile records pursuant to 40 CFR 61, to include a map or diagram of the disposal area identifying the location, depth, area and quantity of asbestos waste landfilled at the facility.

(i) Records specified by (h) above shall be maintained in accordance with Env-Sw 1105.06.

Env-Sw 901.05 Reuse Requirements and Limitations.

(a) Asbestos waste shall not be reused.

(b) Reuse of containers used for storage or transportation of asbestos waste shall comply with Env-Sw 901.06 (d) through (f).

Env-Sw 901.06 Transportation, Packaging and Labeling Requirements.

(a) Prior to storage, transportation or disposal, asbestos waste shall be packaged and labeled in accordance with state rules and federal regulation, including as applicable, 40 CFR 61, 29 CFR 1910, 29 CFR 1926, Env-A 1800 and this section.

(b) Prior to being packaged, asbestos waste that is friable or exhibits friable characteristics shall be treated in accordance with Env-Sw 901.03.

(c) Bags used for disposal of friable asbestos waste shall be made of at least 6 mil polyethylene or a functional equivalent.

(d) Bags identified in (c) above shall not be reused.

(e) Containers receiving bulk unwrapped asbestos waste shall be lined with at least 20 mil polyethylene or its functional equivalent.

(f) The liner material identified in (e) above shall not be reused.

(g) A waste shipment record shall accompany all asbestos waste when transported, pursuant to the provisions of 40 CFR 61.

(h) Asbestos waste transporters shall comply with United States Department of Transportation regulations and New Hampshire department of safety rules, as applicable.

(i) Asbestos waste transporters shall notify the receiving landfill prior to delivering a shipment of asbestos waste, so as to provide the landfill operator with the opportunity to properly prepare the disposal area pursuant to Env-Sw 901.04.

Env-Sw 901.07 Testing and Reporting Requirements.

(a) If during transportation a person spills one pound or more of asbestos waste that is friable or exhibits friable characteristics, the person shall immediately report the incident by telephone to the following agencies and entities:

- (1) The department's air resources division and waste management division;
- (2) The hazardous material team at the department of safety; and
- (3) The national response center.

(b) The analytical testing procedures specified in 40 CFR 61 shall be used to determine whether a waste is asbestos waste.

Env-Sw 901.08 Other Requirements.

- (a) Personnel handling asbestos waste shall be trained and equipped as required by 29 CFR 1910 and Env-A 1800.
- (b) Asbestos waste shall not be intentionally combined or mixed with other waste types prior to disposal.
- (c) Asbestos waste shall not be incinerated.
- (d) Asbestos waste and waste mixtures shall not be composted.
- (e) Asbestos waste and waste mixtures shall not be land applied.

PART Env-Sw 902 ASH

Env-Sw 902.01 Applicability.

- (a) Except as provided in (b) below, the rules in this part shall apply to management of bottom ash and fly ash from the point of origin to the point of final disposal.
- (b) The rules in this part shall not apply to:
 - (1) Ash generated by private residences from the combustion of wood or fossil fuel;
 - (2) Ash from crematoriums;
 - (3) Wood ash certified for distribution and use pursuant to Env-Sw 1700, provided it is distributed and used in accordance with the certification; and
 - (4) Boiler slag from the combustion of coal managed in accordance with Env-Sw 302.03(b)(8).

Env-Sw 902.02 Collection, Storage and Transfer Requirements.

- (a) Collection, storage and transfer of ash shall comply with Env-Sw 400 and this section.
- (b) Ash shall be collected and stored in containers in a manner which:
 - (1) Avoids the dispersion of ash residue, including particulates;
 - (2) Is fire safe;
 - (3) Prevents rain water infiltration; and
 - (4) Collects and controls the free liquid that drains from the ash, if the ash is quenched or treated with applied liquids.
- (c) Prior to transfer, ash generators shall comply with the hazardous waste determination requirements in Env-Hw 502 and thereby assure proper management of the ash as follows:
 - (1) If the ash is determined to be a hazardous waste, it shall be managed as a hazardous waste in accordance with all applicable state rules and federal hazardous waste regulations; and
 - (2) If the ash is determined to be non-hazardous, it shall be managed as a solid waste in accordance with this part.
- (d) Ash shall not be transferred from the generator's collection area until cooled sufficiently as to eliminate the potential to cause fire and burn injury.
- (e) The transfer of ash from one location to another shall comply with Env-Sw 902.06.

(f) Prior to unloading, ash shipments received by a collection, storage and transfer facility shall be inspected by the receiving facility to determine whether the load is hot.

(g) Hot ash shall not be deposited at a receiving facility where it might start a fire or cause burn injury.

(h) Hot ash shall be segregated from combustible materials, contained and extinguished.

Env-Sw 902.03 Processing and Treatment Requirements.

(a) Processing and treatment of ash shall comply with Env-Sw 500 and this section.

(b) Processing and treatment of ash shall be carried out in a manner which:

(1) Avoids the dispersion of ash residue, including particulates;

(2) Is fire safe;

(3) Prevents rainwater infiltration; and

(4) Collects and controls the free liquid that drains from the ash, if quenched or treated with applied liquids.

(c) Prior to unloading, ash shipments received by a processing or treatment facility shall be inspected by the receiving facility to determine whether the load is hot.

(d) Hot ash shall not be deposited at a receiving facility where it might start a fire or cause burn injury.

(e) Hot ash shall be segregated from combustible materials, contained and extinguished.

Env-Sw 902.04 Disposal Requirements.

(a) Ash shall be disposed only at authorized facilities.

(b) If disposed in a New Hampshire landfill, the facility shall be a lined facility meeting the requirements of Env-Sw 800 as follows:

(1) Ash from the combustion of municipal solid waste shall be disposed in double lined facilities only;

(2) Ash from the combustion of coal may be disposed in either a double lined facility or single lined facility as provided by (3) below; and

(3) Coal ash shall be disposed in a single lined facility only if:

a. The facility shall be a monofill; and

b. The required groundwater monitoring system shall be designed to serve as a leak detection system.

(c) Prior to unloading, ash shipments received by a New Hampshire landfill shall be inspected by the receiving facility to determine whether the load is hot.

(d) Hot ash shall not be deposited where it might start a fire or cause burn injury.

(e) Hot ash shall be segregated from combustible materials, contained and extinguished.

Env-Sw 902.05 Reuse Requirements and Limitations. Ash and ash-derived products shall be certified in accordance with Env-Sw 1500 prior to distribution and use in New Hampshire.

Env-Sw 902.06 Transportation, Packaging and Labeling Requirements.

(a) Ash shall be transported in a manner which shall prevent dispersion of ash residue, including particulates.

(b) Ash shall not be transported in or through New Hampshire unless the generator has first completed a hazardous waste determination in accordance with Env-Hw 502.

(c) Ash shall not be transported unless cooled sufficiently to eliminate the potential for fire or burn injury while in-transit and following delivery.

(d) Ash that is quenched or contains free liquid shall be transported in leak tight containers or shall be sufficiently dry prior to transport as to preclude the discharge of liquids from the transportation vehicle while in-transit.

Env-Sw 902.07 Testing and Reporting Requirements.

(a) The ash generator shall comply with the hazardous waste determination requirements in Env-Hw 502 by developing and implementing a quality assurance/quality control (QA/QC) plan for ash sampling and analysis.

(b) The QA/QC plan for ash sampling and analysis shall specify:

(1) The procedures by which representative samples of ash will be obtained;

(2) The contaminants and parameters for which testing will be conducted;

(3) The data analysis necessary to demonstrate the level of precision and accuracy are acceptable; and

(4) The testing methods.

(c) Ash testing results and QA/QC plan information shall be maintained by the ash generator and made available to department for inspection pursuant to Env-Sw 2000 and the hazardous waste rules.

Env-Sw 902.08 Other Requirements.

(a) A New Hampshire facility that receives ash generated in another state shall obtain from the ash generator copies of the required hazardous waste determination.

(b) Information pursuant to (a) above shall be maintained by the permittee as part of the facility operating records pursuant to Env-Sw 1105.06.

PART Env-Sw 903 CONTAMINATED SOILS

Env-Sw 903.01 Applicability.

(a) Except as provided by (b), below, the rules in this part shall apply to the management of soils with contamination, as defined in Env-Or 602.07, that are not regulated as hazardous waste.

(b) The rules in this part shall not apply to contaminated soils managed on-site pursuant to Env-Or 600.

Env-Sw 903.02 Collection, Storage and Transfer Requirements.

(a) Collection, storage and transfer of contaminated soils shall comply with Env-Sw 400 and this section.

(b) Contaminated soils shall be collected and stored in leak tight containers or be underlain by impermeable surfaces or by other means to prevent the discharge of contaminants to groundwater and surrounding soils.

(c) Contaminated soils shall be stored under cover in a manner that protects the waste from exposure to precipitation or by a method that collects and manages all leachate generated.

(d) Contaminated soils shall be stored in accordance with applicable air and water quality rules and regulations.

(e) Prior to transfer, the generator shall comply with the testing requirements in Env-Sw 903.07 to assure proper management of the contaminated soils as follows:

(1) If the contaminated soil is determined to be a hazardous waste, it shall be managed as a hazardous waste in accordance with all state rules and federal regulations for managing hazardous waste; and

(2) If the contaminated soil is determined to be non-hazardous, it shall be managed in accordance with the solid waste rules.

(f) Prior to receiving contaminated soils from off-site locations, a facility shall obtain documentation from the generator demonstrating compliance with (e) above.

(g) A facility that collects contaminated soils from off-site locations shall inspect the waste upon receipt and verify that the waste is the same waste as characterized by the generator in conformance with Env-Sw 903.07.

Env-Sw 903.03 Processing and Treatment Requirements.

(a) Processing and treatment of contaminated soils shall comply with Env-Sw 500 and this section.

(b) A facility that processes or treats contaminated soils shall employ technologies demonstrated to successfully manage the specific contaminants present in the soil.

(c) A facility that processes or treats contaminated soils shall comply with the waste collection, storage and transfer requirements in Env-Sw 903.02.

(d) Contaminated soils shall be processed or treated in compliance with applicable air and water quality rules and regulations.

Env-Sw 903.04 Disposal Requirements.

(a) The disposal of contaminated soils shall occur only at authorized facilities.

(b) Prior to disposal, contaminated soils shall be tested in accordance with Env-Sw 903.07 and the receiving facility's permit.

(c) Contaminated soil from out-of-state shall not be disposed in a NH landfill if it fails the disposal criteria of its state of origin.

Env-Sw 903.05 Reuse Requirements and Limitations.

(a) Contaminated soils, if reused for purposes other than those provided in (b) below, shall not be distributed and used except in accordance with certification pursuant to Env-Sw 1500, subject to the following limitations:

(1) The concentration of contaminants in the soil shall not exceed the soil remediation standards specified in Env-Or 606.19;

(2) Notwithstanding Env-Or 606.19, the concentration of total petroleum hydrocarbons in the soil shall be less than 100 parts per million;

- (3) The soil shall not be distributed or used in any:
 - a. Residential applications;
 - b. Playground applications;
 - c. Application within a 100-year floodplain or wetland;
 - d. Application to land used for the production of crops for direct human consumption;
 - e. Application within a recharge area of any sole source drinking water supply; or
 - f. Application within 100 feet from any surface water; and
- (4) A person who distributes contaminated soil shall:
 - a. Comply with the testing and reporting requirements of Env-Sw 903.07; and
 - b. Maintain a record of all locations to which contaminated soil has been distributed and produce such records for inspection by the department upon request.

(b) Contaminated soil may be used as daily landfill cover at facilities permitted to dispose of the contaminated soil, provided that:

- (1) The material shall meet the requirements for alternative daily cover specified in Env-Sw 806.03; and
- (2) The material shall not be stored or otherwise placed outside the active footprint of the facility.

Env-Sw 903.06 Transportation Requirements.

- (a) Contaminated soil shall be transported using a standard bill of lading.
- (b) Contaminated soil shall be transported in a manner which shall prevent dispersion of the waste to the air, ground or waterways.
- (c) Contaminated soil shall not be transported from the site of generation prior to completing a hazardous waste determination pursuant to Env-Hw 502.

Env-Sw 903.07 Testing and Reporting Requirements.

- (a) The generator of contaminated soil shall comply with the hazardous waste determination requirements in Env-Hw 502 and the other testing requirements in Env-Or 600, as applicable, prior to transferring the waste off-site if generated in New Hampshire or prior to transporting into New Hampshire if generated out-of-state.
- (b) The generator shall produce records of testing pursuant to (a) above for inspection by the department.

PART Env-Sw 904 INFECTIOUS WASTE

Env-Sw 904.01 Applicability.

- (a) The rules in this part shall apply to management of infectious waste and treated infectious waste which is not ash residue, from the point of origin to the point of final disposal, including the following:
 - (1) Cultures and stocks of infectious agents and associated biologicals, including:
 - a. Cultures and stocks of infectious agents from research and industrial laboratories;
 - b. Wastes from the production of biologicals, discarded live and attenuated vaccines; and
 - c. Culture dishes and devices used to transfer, inoculate and mix cultures;

- (2) Pathological wastes, including tissues, organs, and body parts that were removed during surgery or autopsy;
 - (3) Waste human blood and products of blood, including:
 - a. Serum, plasma and other blood components;
 - b. Containers contaminated with a. above which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals; and
 - c. Items saturated or dripping with human blood or items that were saturated or dripping with human blood that are now caked with dried human blood or blood components;
 - (4) Sharps that have been used in human or animal patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass and scalpel blades;
 - (5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;
 - (6) Wastes from human or animal patient care, surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;
 - (7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons;
 - (8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;
 - (9) Discarded medical equipment and parts that were in contact with infectious agents;
 - (10) Biological waste and discarded materials contaminated with blood, excretion, exudates or secretion from humans or animals who are isolated to protect others from communicable diseases;
 - (11) Any discarded preparations made from genetically altered living organisms and their products; and
 - (12) Such other waste material that results from the administration of medical care to a patient whether human or animal by a health care provider and is found by the director in consultation with the division of public health services or state veterinarian to pose a threat to human health or the environment due to its infectious nature.
- (b) The rules in this part shall not apply to the following types of waste:
- (1) Gloves, gowns, underpads or any other materials that come in contact with patients, but not saturated with blood, body fluids or secretions, through routine examination or patient care;
 - (2) Animal carcasses not included in (a)(5) above; and
 - (3) Household infectious waste, provided that:
 - a. Sharps shall be enclosed inside rigid, puncture-resistant containers;
 - b. Containers encasing sharps shall be sealed and labeled “not for recycling”; and
 - c. The waste shall be disposed at an authorized facility only.

Env-Sw 904.02 Collection, Storage and Transfer Requirements.

- (a) Collection, storage and transfer of infectious waste shall comply with Env-Sw 400 and this section.
- (b) The waste shall be stored in a pre-designated location, protected from water, rain and wind.
- (c) Storage containers and packaging shall be labeled conspicuously in a legible manner with the words “infectious waste,” or “biohazard waste,” or with the universal biohazard symbol.
- (d) Waste stored at generator facilities shall be maintained in a nonputrescent state, using refrigeration when necessary.
- (e) Waste shall not be stored at room temperatures in excess of 72 hours.
- (f) Outdoor storage areas containing the waste, such as dumpsters, sheds, tractor trailers, or other storage areas, shall be locked to prevent unauthorized access.
- (g) Access to on-site storage areas shall be limited to authorized persons.
- (h) The waste shall be stored in a manner that shall provide protection from animals and shall not provide a breeding place or a food source for insects or rodents.
- (i) Storage containers and packaging shall be of sufficient structural integrity to ensure that the waste shall not be released to the environment during storage.
- (j) The contents of damaged or ruptured containers shall be re-packaged.
- (k) Infectious waste shall be transferred by the generator to authorized facilities only.
- (l) Facilities which receive infectious waste from off-site generators shall not store the waste in excess of 7 days from date of receipt.

Env-Sw 904.03 Processing and Treatment Requirements.

- (a) Except as noted in Env-Sw 904.08, the generator of infectious waste shall assure that the waste is treated at an authorized facility to achieve high-level disinfection plus a 4 log 10 reduction of Bacillus subtilis or Bacillus stearothermophilus.
- (b) Facilities that process or treat infectious waste in New Hampshire, including generator facilities, shall meet (a), above, in conformance with Env-Sw 500 and the following:
 - (1) All infectious waste managed by the facility shall be collected and stored as specified in Env-Sw 904.02, pending treatment in accordance with (a) above;
 - (2) If the facility processes or treats infectious waste by methods other than incineration, the efficacy of the processing or treatment method shall be demonstrated by testing as specified in Env-Sw 904.07; and
 - (3) If the facility is an incinerator that treats the infectious waste by combustion, the facility shall meet Env-Sw 700.
- (c) Infectious waste treated under (a) above shall not be combined or mixed with other waste prior to disposal, unless authorized by the receiving disposal facility.

Env-Sw 904.04 Disposal Requirements.

- (a) Infectious waste shall not be landfilled in New Hampshire unless treated to achieve the standard specified in Env-Sw 904.03(a).

(b) Treated infectious waste shall be disposed at authorized facilities only.

(c) Notification shall be given by the transporter to the receiving facility prior to the disposal of treated infectious waste.

(d) Liquid infectious waste may be disposed via a sanitary sewer, subject to the provisions of local sewer ordinances and regulations, only if the receiving wastewater treatment facility includes secondary treatment.

Env-Sw 904.05 Reuse Requirements and Limitations.

(a) Infectious waste shall not be reused or certified for distribution and use pursuant to Env-Sw 1500, except as provided in (b) below.

(b) Materials or equipment contaminated with infectious waste, for example surgical equipment, maintenance carts, bedding, waste containers and the like, may be salvaged and reused in-kind pursuant to Env-Sw 1503.04, subject to the following requirements:

(1) If reused within the generating facility, the materials and equipment shall be cleaned and disinfected prior to reuse to achieve the standards for disinfection prescribed by the facility's internal management protocol; and

(2) If sent off-site for reuse, the materials and equipment shall be cleaned and disinfected prior to leaving the generating facility to achieve at least the level of treatment specified in Env-Sw 904.03(a).

Env-Sw 904.06 Transportation, Packaging and Labeling Requirements.

(a) Infectious waste transported off-site for treatment prior to disposal shall be transported in conformance with the United States Department of Transportation hazardous materials regulations as provided in 49 CFR 171-180 or as specified in (b) below.

(b) The transportation of infectious waste not subject to 49 CFR 171-180 shall be subject to the following:

(1) Sharps as described in Env-Sw 904.01(a)(4) shall be segregated and encased inside rigid, puncture-resistant containers;

(2) Infectious waste and sharps containers shall be placed in a sealed nonpermeable 3 mil polyethylene bag or equivalent, which is itself placed in a second bag of similar construction and sealed; and

(3) The outermost container or package shall be labeled with the following:

a. Clear markings indicating the contents which shall include the words "Infectious waste," or "Biohazard waste" or the universal biohazard symbol; and

b. The name, address and telephone number of the generator and transporter.

(c) Transporters shall notify the receiving facility prior to delivering infectious waste to a New Hampshire landfill.

Env-Sw 904.07 Testing and Reporting Requirements. Facilities, including generator facilities, which treat infectious waste by methods other than incineration shall be subject to the following:

(a) QA/QC efficacy testing shall be performed during initial facility operations to verify facility operating procedures meet Env-Sw 904.03(a);

(b) Following verification as specified in (a) above, the facility shall perform QA/QC efficacy testing no less than 4 times yearly, to demonstrate compliance with Env-Sw 904.03(a); and

(c) The facility shall maintain the records of QA/QC efficacy testing for a minimum of 3 years.

Env-Sw 904.08 Other Requirements. Limbs and recognizable organs, excluding teeth and contiguous gum tissue, shall be disposed by incineration or interment.

PART Env-Sw 905 TIRES

Env-Sw 905.01 Applicability. The rules in this part shall apply to the management of waste or scrap tires, from the point of waste origination to the point of waste disposal.

Env-Sw 905.02 Collection, Storage and Transfer Requirements.

(a) Tires shall be collected, stored and transferred in accordance with Env-Sw 400 and this section.

(b) Outdoor storage of tires shall be in:

(1) Covered trailers;

(2) Transfer containers; or

(3) In stockpiles as follows:

a. The diameter of the piles shall not exceed 25 feet;

b. The height of the piles shall not exceed 15 feet;

c. Fire lanes no less than 25 feet in width shall be maintained around each pile;

d. Each pile shall have a berm with a minimum height of 12 inches constructed around its perimeter capable of containing any pyrolytic oils or other liquids generated by fire; and

e. The stockpiling facility shall have equipment, cover material and other supplies, including water, sufficient to control a fire until the nearest fire company capable of extinguishing the fire arrives.

(c) Indoor storage shall conform to the applicable requirements of Saf-C 6000.

Env-Sw 905.03 Processing and Treatment Requirements.

(a) Chipping, shredding and other physical processing of tires shall comply with the requirements in Env-Sw 500 and this section.

(b) Collection and storage of tires by facilities that process or treat tires shall conform to Env-Sw 905.02.

(c) Processing of tires shall be done in a manner to limit noise, odor and fugitive dust emissions to the greatest extent possible.

Env-Sw 905.04 Disposal Requirements.

(a) Waste tires shall be disposed at authorized facilities only.

(b) Tires shall be landfilled only in a manner that shall preclude movement of the tires after burial, such as by shredding, splitting or quartering the tires prior to landfilling or by filling the tires during landfilling.

Env-Sw 905.05 Reuse Requirements and Limitations.

(a) Waste tires, if reused, shall be certified for distribution and use in accordance with Env-Sw 1500.

- (b) Tires shall not be certified for distribution and use if distribution and use:
- (1) Constitutes a fire hazard;
 - (2) Provides a habitat for breeding mosquito populations;
 - (3) Constitutes a safety hazard;
 - (4) Constitutes a nuisance; or
 - (5) Violates any federal regulation or state rule.

Env-Sw 905.06 Transportation Requirements. Tires, either whole or processed, shall be transported in a manner to prevent blowing or falling debris.

Env-Sw 905.07 Testing and Reporting Requirements. Facilities managing tires shall comply with the reporting requirements specified in Env-Sw 400 through Env-Sw 1200, as applicable.

Env-Sw 905.08 Other Requirements.

- (a) The open burning of tires or processed tires shall be prohibited.
- (b) Tires shall be managed in a manner as to avoid establishing habitat for breeding mosquito populations.

Readopt Env-Sw 1501 and Env-Sw 1502, effective 7-1-14 (Document #10599), cited and to read as follows:

CHAPTER Env-Sw 1500 CERTIFICATION OF WASTE-DERIVED PRODUCTS

Statutory Authority: RSA 149-M:7, RSA 149-M:9

PART Env-Sw 1501 PURPOSE AND APPLICABILITY

Env-Sw 1501.01 Purpose. The purpose of the rules in this chapter is to establish criteria and procedures by which waste-derived products, as defined by Env-Sw 104, shall be certified for distribution and use.

Env-Sw 1501.02 Applicability.

- (a) The rules in this chapter shall apply to persons distributing or using a waste-derived product in New Hampshire, except wood ash as specified by (b) below.
- (b) The rules in this chapter shall not apply to persons who distribute or use wood ash for agricultural land application in compliance with Env-Sw 1700.

PART Env-Sw 1502 CERTIFICATION REQUIREMENTS

Env-Sw 1502.01 Certification Required.

- (a) Except as specified by (b) below, no person shall distribute or use a waste-derived product within New Hampshire unless the product is:
- (1) Certified for distribution and use in accordance with this chapter; and
 - (2) Used in accordance with the provisions of the certification.
- (b) A person distributing and using wood ash for agricultural land application shall comply with the requirements of Env-Sw 1700 instead of the requirements of (a) above.

Env-Sw 1502.02 Status of Certified Waste-Derived Products.

(a) A waste-derived product certified for distribution and use pursuant to this chapter, which is actively managed and used in accordance with the applicable provisions of the certification, shall be deemed not a solid waste and therefore not subject to regulation by the solid waste rules.

(b) Certification granted pursuant to this chapter shall not constitute an endorsement by the department of the waste-derived product.

(c) Certification shall not mean that a product is benign to the environment, public health and safety or that the product will perform according to consumer expectations or manufacturer or distributor representations.

(d) Certification shall not constitute authorization for a facility producing a waste-derived product to be exempt from the solid waste rules. It shall be the waste-derived product, not the waste used to manufacture the product, which is certified and thereby deemed not a solid waste.

(e) Certification shall not affect any person's obligation to obtain all requisite federal, state or local permits, licenses or approvals to comply with all other applicable federal, state, district or local permits, ordinances, laws or approvals or conditions pertaining to distribution, use and disposal of a certified waste-derived product.

(f) Certification shall not exempt any person from the provisions of RSA 149-M and the solid waste rules when the certified waste-derived product resumes the status of a solid waste, including when it ceases to be actively managed or is otherwise abandoned or discarded.

Env-Sw 1502.03 General Provisions for Obtaining Certification.

(a) Waste-derived products shall be certified for distribution and use pursuant to one of the following provisions:

(1) Certain waste-derived products and groups of waste-derived products sharing common characteristics shall be automatically certified by rule, as provided in Env-Sw 1503; and

(2) Waste-derived products not certified by rule pursuant to Env-Sw 1503 shall become certified if, based on an application filed pursuant to Env-Sw 1505, the department determines that the waste-derived product meets the criteria for certification specified in Env-Sw 1504.

(b) Pursuant to Env-Sw 1508, the department shall compile, maintain and distribute a list of all certified waste-derived products including:

(1) Those certified by rule pursuant to Env-Sw 1503; and

(2) Those certified by application pursuant to Env-Sw 1505.

(c) For a non-proprietary waste-derived product not certified and listed pursuant to Env-Sw 1508, any person may seek to have the product certified by filing an application for certification pursuant to Env-Sw 1505.

(d) For a proprietary waste-derived product not certified and listed pursuant to Env-Sw 1508, only the person having proprietary control of the product may file an application for certification pursuant to Env-Sw 1505.

Env-Sw 1502.04 General Requirements and Limitations. Certification of a waste-derived product, whether provided by rule pursuant to Env-Sw 1503 or pursuant to the application provisions of Env-Sw 1505, shall be subject to each of the following general requirements and limitations:

(a) A certified waste-derived product shall not contain:

(1) A hazardous waste;

- (2) A hazardous air pollutant including asbestos waste;
- (3) Any waste identified in Env-Sw 900 as non-reusable, including asbestos waste and infectious waste; or
- (4) Any other waste requiring treatment and disposal to protect human health and the environment from exposure hazards documented in nationally recognized scientific and public health studies and publications;

(b) A certified waste-derived product, if produced from a waste identified in Env-Sw 900, shall be subject to the reuse requirements and limitations specified in Env-Sw 900;

(c) The certified waste-derived product shall not be distributed or used except in compliance with all applicable state and federal laws;

(d) Distributors and users of certified waste-derived products shall manage the products in conformance with the universal environmental performance standards in Env-Sw 1002;

(e) When specified by the solid waste rules as a condition of the certification or when required to comply with state or federal marketing or consumer protection laws, distributors of certified waste-derived products shall disclose the following information to consumers:

- (1) The content and nature of the waste-derived product contained in the product;
- (2) The proper uses of the materials and any restrictions related thereto;
- (3) Any hazards that might result from use of the waste-derived product as directed;
- (4) Proper disposal methods; and
- (5) Other such information as may be required by applicable state or federal marketing or consumer protection laws; and

(f) Certification granted pursuant to Env-Sw 1505 shall be subject to revocation and suspension pursuant to Env-Sw 1509.

Readopt Env-Sw 1503.01 through Env-Sw 1503.09, effective 7-1-14 (Document #10599), cited and to read as follows:

PART Env-Sw 1503 WASTE-DERIVED PRODUCTS CERTIFIED BY RULE

Env-Sw 1503.01 Purpose.

(a) The purpose of the rules in this part is to identify waste-derived products which are deemed certified by rule for distribution and use.

(b) The rules in this part are intended to certify by rule all waste-derived products which are common to the market place and pose no greater risk to the environment, public health and safety than exists by distributing and using comparable products which are not waste-derived.

(c) The waste-derived products identified in Env-Sw 1503.04 through Env-Sw 1503.14 are not necessarily mutually exclusive. Due to the diversity of waste-derived products, it is plausible for a given product to be certified for distribution and use under more than one section of this part.

Env-Sw 1503.02 Applicability. The rules in this part shall apply to all persons distributing or using in New Hampshire any of the waste-derived products identified herein as certified by rule for distribution and use.

Env-Sw 1503.03 General Provisions. The waste-derived products identified in Env-Sw 1503.04 through Env-Sw 1503.16 shall be deemed certified for distribution and use, subject to the requirements and limitations specified in Env-Sw 1502.04.

Env-Sw 1503.04 Salvaged Materials and Items.

(a) Salvaged materials and items shall be deemed certified for distribution and use for their original intended purpose provided that when so used, the materials and items shall not pose a greater risk to the environment, public health or safety than when first marketed and used.

(b) Salvaged materials and items specified by (a) above shall include:

- (1) Used equipment which is cleaned, repaired and reconditioned for continued use in a manner consistent with the purpose of the equipment when originally marketed, such as used lawnmowers, tools and furniture;
- (2) Used brick reused as brick;
- (3) Auto parts removed from a vehicle, repaired or reconditioned to a serviceable condition, and reused on another vehicle for their originally prescribed purpose;
- (4) Non-hazardous latex paint used as paint;
- (5) Scrap fabric reused as fabric; and
- (6) Scrap lumber reused as lumber.

Env-Sw 1503.05 Cloned Products.

(a) A waste-derived product serving the same purpose and of the same material composition as the discarded product from which it is derived, hereafter referred to as a cloned product, shall be deemed certified for distribution and use for said purpose, provided that the cloned product, when used for its intended purpose, shall not pose a greater risk to the environment, public health or safety than the product from which it is cloned.

(b) Cloned products as specified in (a) above shall include:

- (1) A paper product made from a comparable discarded paper product;
- (2) Glass products made from a comparable discarded glass product;
- (3) A plastic product made from a comparable discarded plastic product;
- (4) A metal product made from a comparable discarded metal product;
- (5) A textile product made from a comparable discarded textile product;
- (6) A wood product made from a comparable discarded wood product;
- (7) An asphalt product made from a comparable discarded asphalt product; and
- (8) A gypsum product made from a comparable discarded gypsum product.

Env-Sw 1503.06 Products from Select Processed Recyclables.

(a) A product which is made by substituting a processed select recyclable material, as defined by Env-Sw 104, for a raw material and which is comparable in form and function, although not necessarily material composition, to an existing non-waste-derived product, shall be deemed certified for distribution and use for the same purpose as the comparable non-waste-derived product, provided that:

(1) The waste-derived product shall not be used to fill land or water bodies or to amend or mix with soils for agricultural or other purposes, unless the product is also certified for such purpose pursuant to Env-Sw 1503.07; and

(2) The waste-derived product shall perform as effectively or more effectively than the comparable existing non-waste-derived product(s).

(b) The waste-derived products specified by (a) above shall include:

(1) Synthetic fabrics made from used plastic soda bottles and other discarded plastic materials, comparable in form, function and performance to non-waste derived fabrics;

(2) Reflectorized paint produced using glass beads made from discarded glass containers, comparable in form, function and performance to reflectorized paint produced using glass beads from virgin materials; and

(3) Any product into which a select processed recyclable material is incorporated and which, by form, function and performance, is indistinguishable from a non-waste-derived product in the market place except by knowing through labeling or other external information that the product contains a recyclable material.

Env-Sw 1503.07 Products Meeting Published State or National Standards.

(a) A waste-derived product which meets a published standard shall be deemed certified for distribution and use for the purpose prescribed in the published standard, provided that:

(1) The standard shall be published by an agency or organization having no direct sales interest in the product, as identified in (b) below; and

(2) Production, distribution and use of the waste-derived product for the intended purpose shall not:

a. Cause a violation of the universal environmental performance standards specified in Env-Sw 1002; or

b. Pose a greater risk to the environment, public health and safety than is posed by a comparable existing non-waste-derived alternative product or, if no such comparable product exists, by disposing of the waste of origin in accordance with the solid waste rules.

(b) The published standards referenced in (a) above shall include standards published by:

(1) The ASTM International (ASTM); and

(2) New Hampshire and federal agencies which establish standards for the procurement or distribution of goods for public use or consumption, including departments overseeing transportation, environmental protection, health and welfare, agriculture, education and defense.

(c) The subject waste-derived products shall include:

(1) Coal-fired electric power plant fly ash used as a lightweight aggregate in concrete masonry units meeting the standard published in ASTM C-331-03/C331M-10; and

(2) Processed glass aggregate for roadway construction meeting a published state or federal highway construction standard.

Env-Sw 1503.08 Waste Paper for Bulking. Shredded waste paper and cardboard shall be deemed certified for distribution and use as a bulking agent for composting, including septage or sludge composting and as a bulking agent for landfilling, including septage or sludge landfilling.

Env-Sw 1503.09 Derivatives of Discarded Wood. Chips, shavings, and sawdust from virgin wood or from pallets or crates meeting the criteria for permit exemption in Env-Sw 302.03(b)(10), shall be deemed certified for distribution and use as:

- (a) Fuel;
- (b) Mulch;
- (c) Animal bedding; and

(d) A bulking agent for composting or landfiling, including septage or sludge composting or landfiling, provided that at least 80 percent of the wood material is 3/4 inch, or less, in size.

Readopt Env-Sw 1503.10, effective 3-23-22 (Document #13358), to read as follows:

Env-Sw 1503.10 Compost.

(a) Except as provided in (b) and (c) below, compost derived from solid waste shall be deemed certified by rule for distribution and use as compost, provided it meets the quality requirements specified in Env-Sw 605.04, and the maturity requirements specified in Env-Sw 605.05.

(b) Compost derived from animal carcasses shall be used in conformance with the livestock mortality composting best management practices provided in the “Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire”, revised July 2019, published by New Hampshire Department of Agriculture, Markets, and Food, accessed as noted in Appendix B.

(c) Off-specification compost, as defined by Env-Sw 605.06, shall be managed in accordance with the provisions of that section.

Readopt Env-Sw 1503.11 through Env-Sw 1503.17, effective 7-1-14 (Document #10599), to read as follows:

Env-Sw 1503.11 Soils Decontaminated by Treatment Processes. Clean soil derived from contaminated soil, by having fully treated the soil at an authorized facility to meet the standards specified in Env-Sw 903, shall be deemed certified for distribution and use as soil, excluding uses:

- (a) In residential applications;
- (b) In playground applications;
- (c) Within the 100-year flood plain or a wetland;
- (d) On or in lands used for the production of crops for direct human consumption;
- (e) Within a recharge area of any sole source drinking water supply; or
- (f) Within 100 feet of any surface water.

Env-Sw 1503.12 Wood Ash as a Bulking Agent or Odor Control Agent. Wood ash that is certified for land application pursuant to Env-Sw 1700 shall be deemed certified for distribution and use as:

- (a) An approved bulking agent for composting, including sludge composting; and
- (b) An odor control agent for septage and sludge management.

Env-Sw 1503.13 Manufactured Topsoil. Topsoil which is manufactured using wood ash shall be deemed certified for distribution and use as topsoil provided that:

- (a) The wood ash is certified for land application pursuant to Env-Sw 1700; and
- (b) The other topsoil ingredients shall be limited to one or more of the following:
 - (1) Sludge, if in compliance with Env-Wq 800;
 - (2) Yard waste; or
 - (3) Uncontaminated soil, not including soil certified pursuant to Env-Sw 1503.11.

Env-Sw 1503.14 Coal Ash. Boiler slag from the combustion of coal shall be deemed certified for distribution and use as a raw material for industrial and commercial purposes.

Env-Sw 1503.15 Methane Fuel. Methane fuel derived from the decomposition of waste at an authorized facility shall be deemed certified for distribution and use as fuel, provided that it meets market fuel standards.

Env-Sw 1503.16 Energy. Energy derived from the combustion of solid waste at authorized facilities shall be deemed certified for distribution and use as power.

Env-Sw 1503.17 Cement Kiln Dust. Cement kiln dust shall be deemed certified for distribution and use as an odor control agent for sludge and septage, as provided in Env-Wq 800 and Env-Wq 1600.

Readopt Env-Sw 1503.18, effective 3-23-22 (Document #13358), to read as follows:

Env-Sw 1503.18 Woody Tailings from Compost Screening Activities. Clean woody particles resulting from screening of finished compost shall be certified for distribution and use as:

- (a) A mulch product;
- (b) A bulking agent for composting; and
- (c) An odor filtration medium for use with composting systems.

Readopt Env-Sw 1504 through Env-Sw 1509, effective 7-1-14 (Document #10599), to read as follows:

PART Env-Sw 1504 CRITERIA FOR CERTIFICATION

Env-Sw 1504.01 Purpose. The purpose of the rules in this part is to establish the criteria for certifying a waste-derived product for distribution and use pursuant to an application filed in accordance with Env-Sw 1505.

Env-Sw 1504.02 Applicability. The criteria in this part shall apply to having a waste-derived product certified for distribution and use pursuant to the application provisions in Env-Sw 1505.

Env-Sw 1504.03 Certification Criteria. Applicants seeking to have a waste-derived product certified for distribution and use shall demonstrate in the application filed pursuant to Env-Sw 1505 that the overall benefit(s) derived for society from production and use of the product shall exceed the benefit(s) of not producing and using the product, based on the criteria specified in Env-Sw 1504.04 through Env-Sw 1504.06.

Env-Sw 1504.04 Need. The applicant shall demonstrate a need for the waste-derived product based on the following criteria:

- (a) The waste-derived product shall either:
 - (1) Be comparable in form and function to an existing product in the market place which is not derived from waste, and shall perform as effectively or more effectively than the existing product; or
 - (2) Satisfy an identifiable and unfulfilled need in society without violating the universal environmental performance standards in Env-Sw 1002;

(b) There shall be an identifiable user or buyer for the waste-derived product; and

(c) Waste derived products used for agronomic purposes shall provide an identifiable benefit(s) to the sites to which it is land applied.

Env-Sw 1504.05 Product Quality and Quality Control. The applicant shall demonstrate that the production process meets the following requirements:

(a) Production of the waste-derived product shall not:

(1) Cause a violation of any requirement in Env-Sw 1000; or

(2) Pose a greater risk to the environment, public health and safety than does the production of an existing comparable non-waste-derived product or, if no comparable non-waste-derived product exists, by directly disposing of the waste in accordance with the solid waste rules;

(b) The physical and analytical characteristics of the waste used to produce the product shall be defined in a written specification;

(c) The physical and analytical characteristics of the waste-derived product shall be defined in a written specification; and

(d) The production process shall include quality assurance/quality control procedures to assure the defined specifications shall be met through the production process.

Env-Sw 1504.06 Impact on Society. The applicant shall demonstrate that use of the waste-derived product in society shall have a minimal net impact based on the following requirements:

(a) Use of the waste-derived product as intended shall not:

(1) Cause a violation of any requirement in Env-Sw 1000; or

(2) Pose a greater risk to the environment, public health and safety than does the use of an existing comparable non-waste-derived product or, if no comparable non-waste-derived product exists, by disposing of the waste in accordance with the solid waste rules; and

(b) Disposal of the waste-derived product shall not pose a greater risk to the environment, public health and safety than would be posed by directly disposing of the waste from which the product is produced.

PART Env-Sw 1505 APPLICATION REQUIREMENTS

Env-Sw 1505.01 Applicability.

(a) Except as specified by (b) and (c) below, the rules in this part shall apply to any person seeking to have a waste-derived product certified for distribution and use.

(b) The rules in this part shall not apply to waste-derived products already certified for distribution and use, as listed by the department pursuant to Env-Sw 1509.

(c) For a proprietary waste-derived product, the rules in this part shall apply only to the person having proprietary control of the product.

Env-Sw 1505.02 Application Content and Format. An application to certify a waste-derived product for distribution and use shall include the information specified in Env-Sw 1505.03 through Env-Sw 1505.09, compiled in the order shown.

Env-Sw 1505.03 Applicant Identification. The applicant shall provide the following information to identify the applicant:

- (a) If an individual, name, mailing address and telephone number;
- (b) If other than an individual:
 - (1) The information specified in RSA 149-M:10, I(b); and
 - (2) The name, title, mailing address and telephone number of the individual designated by the applicant to be the contact individual for matters concerning the application; and
- (c) A statement identifying the applicant's interest in having the waste-derived product certified, including any of the following as applicable:
 - (1) The applicant produces or intends to produce the waste-derived product;
 - (2) The applicant distributes or intends to distribute the waste-derived product to users or other distributors;
 - (3) The applicant generates or intends to generate the waste used to produce the waste-derived product;
 - (4) The applicant collects or intends to collect from generators or others, the waste used to produce the waste-derived product; or
 - (5) The applicant uses or intends to use the waste-derived product.

Env-Sw 1505.04 Product Identification and General Description. The applicant shall provide the following information to identify and describe in general terms the subject waste-derived product:

- (a) Product name, including:
 - (1) A common name which denotes the general purpose of the product, such as "aggregate," "driveway sealer," "glue," or "absorbent"; and
 - (2) A trade name, if applicable;
- (b) General product description, including:
 - (1) Purpose(s) for which the product will be used; and
 - (2) Physical appearance of the product, distinguishing characteristics, and waste and other material content;
- (c) Identification of a comparable existing non-waste-derived product(s), if any, by common name and trade name if applicable; and
- (d) A statement identifying the reason(s) why the applicant believes the waste-derived product is not yet certified for distribution and use, including a brief description of the product characteristic(s) or other factors used by the applicant to rule out a determination that the product is already certified by either of the following 2 mechanisms:
 - (1) By rule pursuant to Env-Sw 1503; and
 - (2) By department approval of a previously filed application, as determined by the certified waste-derived product listing compiled, maintained and distributed by the department pursuant to Env-Sw 1508.

Env-Sw 1505.05 Manufacturer Identification. The applicant shall provide the following information to identify the manufacturer(s) of the waste-derived product:

- (a) A statement identifying whether the waste-derived product is a proprietary product;
- (b) If the waste-derived product is proprietary, identification of the person(s) having proprietary control of the product, including:
 - (1) For an individual, the individual's name, date of birth, mailing address and telephone number; and
 - (2) For other than an individual:
 - a. The information specified in RSA 149-M:10, I(b); and
 - b. The name, title, mailing address and telephone number of the person designated by the applicant to be the contact person for matters concerning the application; and
- (c) If the waste-derived product is non-proprietary, the name(s) and location(s) of all existing manufacturers and potential manufacturers known to the applicant, including the applicant if applicable.

Env-Sw 1505.06 Production. The applicant shall provide the following information to describe the production process:

- (a) Identification and characterization of the waste(s) used to produce the waste-derived product, including:
 - (1) A brief description of its physical appearance and physical state, including whether the waste is a solid, liquid or gas;
 - (2) A description of other distinguishing characteristics, including characteristics which have the potential to create a nuisance or adversely affect the environment, public health and safety, such as odor, dust, fire, explosion, respiratory hazards including the potential for dust or fumes, and dermal contact hazards for instance chemical burns to skin;
 - (3) Documentation and materials detailing the general quality of the waste including:
 - a. Physical, chemical and, where appropriate, biological characteristics of the waste based on current and representative sampling or equivalent documentation and including analytical test results for those constituents that are reasonably thought to be present in the waste and which are known or suspected, by way of published scientific documentation, to pose a potential risk to human health or the environment;
 - b. Material safety data sheets for the waste and constituents of the waste, if published pursuant to regulations adopted to implement 29 U.S.C. 651 et seq., the Occupational Safety and Health Act (OSHA); and
 - c. Samples of the waste, if requested by the department to either enhance the department's understanding of the appearance and characteristics of the waste, or to verify the applicant's analytical test results in instances where the waste has the potential to contain constituents harmful to human health or the environment;
 - (4) Source(s) of the waste, including:
 - a. A description of the process by which the waste is generated; and
 - b. Identification of all generators known to the applicant, including name(s) and location(s); and
 - (5) Estimated quantity of waste generated annually in New Hampshire; and

(b) A detailed description of the process by which the waste-derived product is or will be produced, including:

- (1) Product specifications, establishing:
 - a. Material and waste content;
 - b. Acceptance limits for material and waste constituents, using physical, chemical and biological parameters as appropriate to the type(s) of material(s) and type(s) of waste being used to produce the waste-derived product; and
 - c. Other factors, as necessary to identify the minimum standards the waste-derived product shall meet prior to being released by the manufacturer for distribution and use;
- (2) Narrative description of the process, from beginning to end, including a description of:
 - a. Any processing or treatment applied to the waste prior to producing the waste-derived product;
 - b. Industrial or manufacturing practices or technologies used to produce the waste-derived product; and
 - c. Residual and bypass waste management practices;
- (3) Process flow diagrams and schematic diagrams as appropriate, depicting the process described pursuant to (2) above; and
- (4) Product quality assurance/quality control procedures used to affirm the waste-derived product meets the standards specified pursuant to (1) above.

Env-Sw 1505.07 Use, Distribution and Markets. The applicant shall provide the following information to describe how the waste-derived product will be distributed and used and to identify markets:

- (a) Description of all intended uses of the product;
- (b) Potential hazards to the environment, public health and safety resultant from product use as intended;
- (c) Description of specific product use and disposal restrictions essential to assuring no increased risk to the environment, public health and safety resultant from use and disposal of the product;
- (d) A demonstration of the existence or reasonable expectation of the existence of a market for the waste-derived product, based on the following:
 - (1) A comparison of the characteristics and specifications of the waste-derived product or material and the required market characteristics and specifications of the product or material;
 - (2) The benefit that will be achieved by use of the waste-derived product; and
 - (3) Information to document existing use of the same or similar waste-derived product or a contract to purchase the waste-derived product, or both;
- (e) Estimated market value of the waste-derived product, in dollars; and
- (f) Description of how the waste-derived product will be distributed for use.

Env-Sw 1505.08 Demonstration of Criteria. Using the information provided pursuant to Env-Sw 1505.03 through Env-Sw 1505.07, the applicant shall provide a written assessment demonstrating how each of the criteria for certification in Env-Sw 1504.04 through Env-Sw 1504.06 shall be met by the production, distribution and use of the waste-derived product.

Env-Sw 1505.09 Signature and Certification of Application Information.

- (a) Each application shall be signed by the applicant.
- (b) If the applicant is other than an individual, the application shall be signed by the person(s) so authorized by the applicant.
- (c) The signature shall constitute an affirmation that the material and information submitted is correct and complete to the best of his/her knowledge and belief.

PART Env-Sw 1506 APPLICATION FILING

Env-Sw 1506.01 Application Filing.

- (a) Applications shall be prepared:
 - (1) On and with such forms as the department provides; or
 - (2) If no form shall be provided pursuant to (1) above, on paper supplied by the applicant in a format consistent with the application content and format requirements specified in Env-Sw 1505.
- (b) Applications to certify a waste-derived product for distribution and use shall be filed with the department in triplicate.
- (c) Each copy of the application filed with the department shall bear an original signature pursuant to Env-Sw 1505.09.

PART Env-Sw 1507 APPLICATION REVIEW

Env-Sw 1507.01 Application Receipt.

- (a) Upon receipt of an application, the department shall determine whether the filing requirements in Env-Sw 1506 have been met.
- (b) Applications filed contrary to Env-Sw 1506 shall not be processed by the department, but shall be held by the department while the applicant is notified of the deficiency and given an opportunity to correct the deficiency.
- (c) If, after notice pursuant to (b) above, the applicant fails to correct the deficiency within 10 working days or within another mutually-agreed time, the department shall return the application as filed, with a written explanation as to the reason(s) for returning the application.

Env-Sw 1507.02 Application Completeness Determination.

- (a) Within 60 days after the date an application is filed in accordance with Env-Sw 1506, the department shall determine whether the application is complete.
- (b) If the applicant submits any information to complete the application between the date of initial filing and the date the application is deemed complete, the 60-day review time shall be measured from the date of latest submittal.

Env-Sw 1507.03 Incomplete Applications.

- (a) If the application is incomplete, the applicant shall be so notified in writing as specified by (b) below.
- (b) Notice given pursuant to (a) above shall:

- (1) Identify the applicant, type of application and all documents that constitute the incomplete application;
- (2) Identify the deficiencies;
- (3) Provide instructions for completing the application;
- (4) Provide the name, title, mailing address and telephone number of the agency official or employee who may be contacted regarding the application; and
- (5) Alert the applicant to the application dormancy provisions in (g) and (h) below.

(c) In the event that an incomplete application provides information sufficient for the department to determine that the criteria for issuance shall not be met, the department shall deny the requested approval and send written notice thereof in accordance with Env-Sw 1507.05, in lieu of deeming the application incomplete.

(d) If an application is incomplete for incidental and not substantive reasons, the department shall so notify the applicant by telephone in lieu of providing a written notice of incompleteness, provided:

- (1) The anticipated time required for the applicant to correct the deficiency is less than the anticipated time required for the department to notify the applicant in writing; and
- (2) The department specifies in the verbal notice a reasonable time period, determined in consultation with the applicant, for correcting the deficiency, after which written notice will be sent by the department in accordance with (b) above if the applicant has failed to respond within the specified time.

(e) Upon notifying an applicant that the application is incomplete, the department shall suspend further processing of the application pending receipt of the additional information required.

(f) No portion of the time between the date a notice of incompleteness is provided and the date the applicant responds shall be included in computing the time limits for processing the application.

(g) The applicant shall submit all information required to complete an incomplete application within one year from the date the application is initially deemed incomplete.

(h) An incomplete application that becomes a dormant application as defined by Env-Sw 102 shall be deemed denied without further action by the department.

Env-Sw 1507.04 Complete Applications. A complete application shall undergo a technical review by the department pursuant to the criteria for certification specified in Env-Sw 1504.

Env-Sw 1507.05 Application Decision.

(a) If the criteria for certification in Env-Sw 1504 are met, the department shall certify the waste-derived product for distribution and use, subject to terms and conditions, by:

- (1) Placing the waste-derived product on the list pursuant to Env-Sw 1508; and
- (2) Notifying the applicant in writing.

(b) If the criteria for certification in Env-Sw 1504 are not met, the department shall deny the requested approval and so notify the applicant in writing.

(c) The notice of denial shall:

- (1) Identify the applicant, type of application and all documents that constitute the complete application or, if the decision for denial is made without a complete application pursuant to Env-Sw 1505, all documents submitted by the applicant that form the basis of the decision;
- (2) State the specific reasons for the denial;
- (3) Provide the name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the application and denial;
- (4) Identify the applicable provisions for appeal pursuant to RSA 21-O:9, V; and
- (5) Be signed by the director or department employee so authorized by the director.

PART Env-Sw 1508 LIST OF CERTIFIED WASTE-DERIVED PRODUCTS

Env-Sw 1508.01 Purpose.

(a) The purpose of the rules in this part is to describe the procedures by which the department shall compile, maintain and distribute a list of all certified waste-derived products.

(b) The purpose for compiling, maintaining and distributing the list as identified in (a) above shall be to provide current information to the public concerning the identity and status of waste-derived products.

Env-Sw 1508.02 Applicability. The rules in this part shall specify the procedures by which the department shall compile, maintain and distribute a list of waste-derived products certified for distribution and use pursuant to this chapter.

Env-Sw 1508.03 Compilation and Maintenance of List.

(a) All waste-derived products certified by rule as specified in Env-Sw 1503 shall be placed on a list for public distribution pursuant to Env-Sw 1508.04.

(b) Any waste which was certified for reuse under the provisions of Env-Wm 318 in effect prior to and repealed on October 29, 1997 that continues to be generated pursuant to the original certification shall be deemed certified for distribution and use pursuant to this chapter and accordingly placed on the list, provided that the waste is a waste-derived product and not a processed recyclable material not yet made into a product.

(c) Each time the department certifies a new waste-derived product by approving an application for certification pursuant to Env-Sw 1505, the department shall add the new certified waste-derived product to the list identified in (a) above.

(d) The information on the list shall include:

- (1) Product identification, including:
 - a. Common name;
 - b. Trade name, if any; and
 - c. Description, including waste content;
- (2) Identification of the person having proprietary control of the product, if any;
- (3) Authorized uses and restricted uses;
- (4) Date of certification; and
- (5) Reference to all documents which constituted the complete application.

Env-Sw 1508.04 Distribution of List. The list identified in Env-Sw 1508.03 shall be available for public distribution, at no charge, following either a written or verbal request.

PART Env-Sw 1509 REVOCATION AND SUSPENSION OF CERTIFICATION

Env-Sw 1509.01 Applicability. The rules in this part shall apply to actions by the department to revoke or suspend certifications issued pursuant to Env-Sw 1507.05.

Env-Sw 1509.02 Procedure.

(a) Revocation or suspension of certification shall proceed in accordance with RSA 541-A:30 and this part.

(b) Prior to making a decision to revoke or suspend certification, the department shall hold an adjudicative hearing in accordance with the provisions of Env-C 200 that apply to adjudicative proceedings.

(c) A written notice of hearing shall be provided to the general public by publication in a statewide newspaper and to persons the department knows to have a direct interest in the product, including product manufacturers, distributors and waste generators.

(d) The hearing notice shall identify:

- (1) The product;
- (2) The action the department proposes to take;
- (3) The reason(s) for the proposed action;
- (4) The department's authority for taking such action;
- (5) The date, time and place for the hearing; and
- (6) The name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the notice.

(e) Certification shall be revoked if the department determines, following the procedures in RSA 541-A:30, that:

- (1) Good cause as provided in Env-Sw 1509.03 exists; and
- (2) There are no circumstances by which the underlying problem can be corrected or eliminated for the product and certification in question.

(f) Subject to (g) below, certification shall be suspended if the department determines, following the procedures in RSA 541-A:30, that:

- (1) Good cause as provided in Env-Sw 1509.03 exists; and
- (2) Given time to do so, there are circumstances by which the underlying problem can be corrected or eliminated, thereafter allowing the certification to be reinstated as originally issued.

(g) Written notice of the department's decision shall be provided to the public, all other persons receiving notice of the hearing pursuant to (c) above and all hearing participants.

(h) Upon revocation or suspension of certification, the department shall remove the waste-derived product from the list maintained pursuant to Env-Sw 1508.

Env-Sw 1509.03 Good Cause. The following shall provide good cause to revoke or suspend certification:

(a) The certification was issued based on false, incomplete or misleading information which, if known at the time the application was being processed, would have prohibited issuance of the certification based on the criteria for certification in Env-Sw 1504;

(b) New information, not available to the department prior to issuance of the certification, becomes available and shows that the waste-derived product does not in fact meet the criteria for certification in Env-Sw 1504;

(c) For a proprietary product, the proprietor meets the criteria for permit denial pursuant to RSA 149-M:9, IX; or

(d) For a proprietary product, the facility producing the product is not in compliance with the solid waste rules and the terms and conditions for facility operation or closure as provided in the facility permit or permit exemption as the case may be.

Readopt Env-Sw 1700, effective 7-1-14 (Document #10601), to read as follows:

CHAPTER Env-Sw 1700 REQUIREMENTS FOR LAND APPLICATION OF WOOD ASH

Statutory Authority: RSA 149-M:7

PART Env-Sw 1701 PURPOSE AND APPLICABILITY

Env-Sw 1701.01 Purpose. The purpose of the rules in this chapter is to establish criteria and procedures by which ash generated from the combustion of clean wood shall be certified for distribution and beneficial use in agricultural land applications.

Env-Sw 1701.02 Applicability; Exemptions.

(a) Except as provided in (b), below, the rules in this chapter shall apply to any person distributing and using wood ash for agricultural land application in New Hampshire.

(b) The rules in this chapter shall not apply to:

- (1) Persons using wood ash from their household wood stove(s) for agricultural land application in New Hampshire;
- (2) Persons generating 500 or fewer tons per year of wood ash from the combustion of clean wood as defined by RSA 125-R:1, provided that the ash is actively managed and beneficially used in agricultural land applications; and
- (3) Persons distributing and using 500 or fewer tons per year of wood ash obtained from generators described in (2) above, provided that the ash is actively managed and beneficially used in agricultural land applications.

PART Env-Sw 1702 LAND APPLICATION REQUIREMENTS

Env-Sw 1702.01 Certification Required. No person shall distribute, receive, store or use wood ash that is subject to this chapter for land application in New Hampshire unless the wood ash is:

- (a) Certified for distribution and use in accordance with this chapter;
- (b) Actively managed; and
- (c) Managed as required by the certification.

Env-Sw 1702.02 General Provisions for Obtaining Certification.

(a) Any person who wishes to obtain certification for wood ash shall:

- (1) File an application in accordance with Env-Sw 1705; and
- (2) Demonstrate in the application that the wood ash meets the criteria for land application in Env-Sw 1703.

(b) Certification to distribute and use wood ash in excess of 500 tons per year from a single source shall be obtained and held by the wood ash generator.

(c) Certification to distribute and use wood ash in excess of 500 tons per year from sources that individually generate 500 or fewer tons per year shall be obtained and held by the broker or other person responsible for distributing the wood ash.

PART Env-Sw 1703 CRITERIA FOR LAND APPLICATION

Env-Sw 1703.01 Source of Ash. Only ash generated from the combustion of clean wood as defined by RSA 125-R:1, shall be land applied.

Env-Sw 1703.02 Quality of Ash.

(a) Wood ash that is land applied shall not contain heavy metals in excess of the following concentrations, as determined on a dry weight basis in accordance with Env-Sw 1706:

- (1) For arsenic, 41 milligrams per kilogram (mg/kg);
- (2) For cadmium, 39 mg/kg;
- (3) For chromium, 1,200 mg/kg;
- (4) For copper, 1,500 mg/kg;
- (5) For lead, 300 mg/kg;
- (6) For mercury, 17 mg/kg;
- (7) For molybdenum, 75 mg/kg;
- (8) For nickel, 420 mg/kg;
- (9) For selenium, 100 mg/kg;
- (10) For zinc, 2,800 mg/kg; and

(b) Wood ash that is land applied shall be substantially free of uncombusted material.

Env-Sw 1703.03 Use of Ash. Wood ash certified pursuant to this chapter shall be land applied only at sites for which a site-specific management plan has been prepared as specified in Env-Sw 1704.04.

PART Env-Sw 1704 PERMIT-EXEMPT LAND APPLICATION SITES

Env-Sw 1704.01 Land Application Sites. Wood ash land application sites shall be exempt from obtaining a solid waste facility permit pursuant to RSA 149-M:9 for the management and spreading of wood ash provided the site meets the requirements in Env-Sw 1704.02 through Env-Sw 1704.05.

Env-Sw 1704.02 Limitations on Land Application Sites. A permit-exempt land application site shall only receive and use wood ash that:

- (a) Has been certified for distribution and use in accordance with this chapter; or
- (b) Is exempt from this chapter under Env-Sw 1701.02(b) .

Env-Sw 1704.03 Management Plan Required. The owner of a permit-exempt land application site shall use wood ash received in conformance with a site-specific management plan developed by the certificate holder for that specific site pursuant to Env-Sw 1704.04.

Env-Sw 1704.04 Site-Specific Management Plans.

(a) Prior to distributing any certified wood ash for use in land application, the certificate holder shall develop a site-specific management plan for each site where the certified wood ash will be land applied.

(b) The site-specific management plan shall include provisions for:

- (1) Storing the wood ash in conformance with the universal environmental performance standards established in Env-Sw 1002;
- (2) Testing the wood ash as required by Env-Sw 1706.02;

(3) Application rates, supported by site soil testing to assure that use of wood ash at the site satisfies an agronomic need; and

(4) Actively managing the wood ash.

Env-Sw 1704.05 Universal Environmental Performance Requirements. Wood ash land application practices shall not violate the universal environmental performance requirements in Env-Sw 1002.

PART Env-Sw 1705 APPLICATION AND APPROVAL

Env-Sw 1705.01 Application Content and Format.

(a) An applicant for wood ash certification pursuant to this chapter shall provide the following in writing to the department:

(1) The name, address and telephone number of the applicant, and whether the applicant is the wood ash generator or another person;

(2) If the applicant is not the generator or is not the sole generator, the name and location of each generator of the wood ash for which certification is sought;

(3) For each generator identified pursuant to (1) or (2), above, the estimated quantity in tons of wood ash to be managed under the requested certification;

(4) A statement signed by each generator identified in (1) or (2), above, certifying that the generator combusts only clean wood as defined by RSA 125-R:1; and

(5) Analytical test results of representative samples of the wood ash pursuant to Env-Sw 1706.02.

(b) The applicant shall sign and date the document that conveys the information required by (a), above.

(c) The signature of the applicant shall constitute certification that:

(1) The information provided in the application is true, complete, and not misleading to the applicant's knowledge and belief; and

(2) The applicant understands that the applicant is:

a. Subject to penalties of law for false swearing if the information submitted is not true, complete, and not misleading; and

b. Required to comply with all applicable requirements of RSA 149-M and the solid waste rules.

Env-Sw 1705.02 Application Filing. The applicant shall file an application to certify wood ash for distribution and use with the department as specified in Env-Sw 303.03.

Env-Sw 1705.03 Application Review. The department shall review applications to certify wood ash for distribution and use as specified in Env-Sw 304.

Env-Sw 1705.04 Application Decision.

(a) If the criteria for certification in Env-Sw 1703 are met, the department shall issue a certificate authorizing the distribution and use of the wood ash pursuant to (d) below.

(b) If the criteria for certification in Env-Sw 1703 are not met, the department shall deny the requested approval and shall so notify the applicant in writing.

(c) The notice of denial shall:

- (1) Identify the applicant, type of application, and all documents that constitute the complete application or, if the decision for denial is made without a complete application pursuant to Env-Sw 304.04(c), all documents submitted by the applicant that form the basis of the decision;
 - (2) State the specific reasons for the denial;
 - (3) Provide the name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the application and denial;
 - (4) Identify the applicable provisions for appeal pursuant to RSA 21-O:14; and
 - (5) Be signed by the director or a department employee authorized by the director.
- (d) The certification to distribute and use wood ash shall:
- (1) Identify the certificate holder;
 - (2) Identify the type of approval and authority for issuance;
 - (3) Identify all documents that constitute the complete application;
 - (4) Identify the specific source(s) of the wood ash to which the certification exclusively applies, including the name of the generator and location of the wood ash generating facility;
 - (5) Specify the terms and conditions under which the approved activity is authorized, including:
 - a. The effective date of the certification;
 - b. The expiration date of the certification, if any, and provisions for renewal as applicable; and
 - c. The requirements established in Env-Sw 1706; and
 - (6) Be signed by the director or a department employee authorized by the director.
- (e) A certificate issued to a non-generator shall authorize the certificate holder to manage ash from generators not identified in the original application for certification, provided the certificate holder notifies the department in writing of the change and provides the information specified in Env-Sw 1705.01(a)(2)-(5).
- (f) Any decision by the department to issue certification shall not affect the applicant's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district or local permits, ordinances, laws or approvals or conditions pertaining to the approved activity.

PART Env-Sw 1706 SAMPLING, TESTING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Env-Sw 1706.01 Wood Ash Sampling.

- (a) Each certificate holder shall obtain representative composite samples of wood ash destined for land application and submit the samples for testing in accordance with Env-Sw 1706.02.
- (b) Ash samples composited to create representative composite samples shall be taken not less than monthly.

Env-Sw 1706.02 Wood Ash Testing.

- (a) Each certificate holder shall test representative composite samples of the wood ash:
 - (1) On at least a quarterly basis for wood ash that is distributed regularly; or
 - (2) On a batch basis if the ash is distributed on a batch basis.

(b) Analyses of representative composite samples of wood ash shall be as follows:

(1) The analyses shall use EPA test procedures in EPA manual SW 846;

(2) The analyses shall include testing for the following constituents:

- a. Cadmium;
- b. Chromium;
- c. Copper;
- d. Lead;
- e. Mercury;
- f. Nickel;
- g. Zinc;
- h. Potassium;
- i. Molybdenum;
- j. Selenium;
- k. Calcium;
- l. Magnesium;
- m. Arsenic;
- n. Phosphorus; and
- o. Lime equivalence; and

(3) The test for the metals listed in (2), above, shall be for total metals.

Env-Sw 1706.03 Recordkeeping.

(a) Certificate holders shall maintain records that document the following:

- (1) Each source of the wood ash, by generator and location;
- (2) Location of each wood ash land application sites;
- (3) Quantity of wood ash distributed at each land application site;
- (4) Analytical results for the testing required by Env-Sw 1706.02;
- (5) Date and location of each wood ash delivery; and
- (6) A copy of the site-specific management plan for each land application site where the wood ash is used.

(b) The certificate holder shall make available to the department records and site-specific management plans pursuant to Env-Sw 2000.

(c) The certificate holder shall keep all records required by this section for a period of not less than 3 years.

Env-Sw 1706.04 Reporting Requirements. Analytical data for wood ash that does not meet the requirements specified in Env-Sw 1703.02 shall be reported to the department in accordance with Env-Sw 1005.09.

PART Env-Sw 1707 STATUS OF APPROVALS GRANTED BEFORE THE 2014 EFFECTIVE DATE OF THIS CHAPTER

Env-Sw 1707.01 Applicability. The rules in this part shall apply to any person holding a written certification or approval to distribute and use wood ash for agricultural land application granted by the department prior to the 2014 effective date of this chapter and signed by the director or the director's authorized designee, who continues to operate under the certification or approval.

Env-Sw 1707.02 Status of Approval.

(a) A written certification or approval identified in Env-Sw 1707.01 shall remain valid provided the holder of the certification or approval complies with the terms of the written certification or approval and with Env-Sw 1000.

(b) The terms and conditions of the certification or approval shall remain unchanged unless modified pursuant to applicable provisions of Env-Sw 300.

(c) If required for administrative purposes, the department shall:

(1) Assign a new number to the certification or approval granted prior to the 2014 effective date of this chapter; and

(2) Send written notice thereof to the person holding the certification or approval.

Readopt Env-Sw 1800, effective 7-1-14 (Document #10601), to read as follows:

CHAPTER Env-Sw 1800 REDUCTION OF TOXICS IN PACKAGING

Statutory Authority: RSA 149-M:7

PART Env-Sw 1801 PURPOSE AND APPLICABILITY

Env-Sw 1801.01 Purpose. The purpose of these rules is to supplement the provisions of RSA 149-M:32-40, relative to reducing heavy metals in package and packaging components as one step in reducing the toxicity of solid waste when it is disposed of by landfilling or incineration.

Env-Sw 1801.02 Applicability. These rules shall apply to all package and packaging components sold, offered for sale or otherwise distributed in New Hampshire except as provided by RSA 149-M:35.

PART Env-Sw 1802 DEFINITIONS

Env-Sw 1802.01 "Intentional introduction" means "intentional introduction" as defined in RSA 149-M:33, IV.

Env-Sw 1802.02 "Manufacturer" means "manufacturer" as defined in RSA 149-M:33, VI.

Env-Sw 1802.03 "Package" means "package" as defined in RSA 149-M:33, VII.

Env-Sw 1802.04 "Packaging component" means "packaging component" as defined in RSA 149-M:33, VIII.

Env-Sw 1802.05 "Petitioner" means a manufacturer or supplier filing a petition for exemption from RSA 149-M:35.

Env-Sw 1802.06 "Post-consumer material" means "post-consumer material" as defined in RSA 149-M:33, IX.

Env-Sw 1802.07 “Purchaser” means any person receiving a package or packaging component directly from the manufacturer or supplier of the package or packaging component who then sells or distributes the package or packaging component to a retail consumer.

Env-Sw 1802.08 “Reformulate” means to change the way a package or packaging component is manufactured so as to result in a different concentration of lead, cadmium, mercury or hexavalent chromium.

Env-Sw 1802.09 “Supplier” means “supplier” as defined by RSA 149-M:33, X.

PART Env-Sw 1803 EXEMPTIONS

Env-Sw 1803.01 Petition for Exemption.

(a) No petition for exemption shall be necessary if a package or packaging component is eligible for an automatic exemption under RSA 149-M:35.

(b) Subject to (c) below, in order for a petition for exemption from RSA 149-M:32-40 to be valid, the manufacturer of the package or packaging component shall file the petition.

(c) If a manufacturer of a package or packaging component does not provide a supplier with a certificate of compliance and the supplier believes the package or packaging component is eligible for an exemption, the supplier may file a petition for exemption.

(d) The petition for exemption shall be filed with the department.

(e) The petition shall include the following:

- (1) The name, address, and telephone number of the manufacturer or supplier seeking the exemption;
- (2) The name and position of the individual who can answer questions on behalf of the petitioner about the petition;
- (3) The reason why the exemption is being sought;
- (4) The type of package or packaging component for which the exemption is sought and the use thereof;
- (5) The heavy metals identified in RSA 149-M:32 that are present in the package or packaging components;
- (6) The concentration(s) of the identified heavy metal(s) present in the package or packaging component, and the testing methods used to determine the concentration(s);
- (7) If the package or packaging components are necessary in order to comply with health or safety requirements of federal law as specified in RSA 149-M:35, I(b), identification of the federal law(s) together with a copy of the law(s); and
- (8) If there is no feasible alternative for reducing the identified heavy metals in the package or packaging components, substantiating information addressing the criteria in Env-Sw 1803.02, including a timetable for ongoing and future efforts to achieve compliance through feasible alternatives to using the identified heavy metals.

Env-Sw 1803.02 Criteria for Petitioned Exemptions.

(a) No petition for an exemption shall be granted unless the petitioner demonstrates to the commissioner either that:

- (1) The identified heavy metals present in the package or packaging component are necessary in order to comply with federal health or safety requirements; or
- (2) No feasible alternative to the use of the identified heavy metals exists, as “no feasible alternative” is defined in RSA 149-M:35, I(c).

(b) A petitioner shall demonstrate that the identified heavy metals present in the package or packaging component are necessary in order to comply with federal health or safety requirements by providing a copy of the federal requirements together with such additional information as would allow an independent reasonable person to conclude that the metals are necessary.

(c) A petitioner shall demonstrate that no feasible alternative exists to the use of the heavy metal in the package or packaging component by submitting such written materials as would allow an independent reasonable person to conclude that the metals are essential to the protection, safe handling or functioning of the package’s contents.

Env-Sw 1803.03 Processing of Petition for Exemption.

(a) The department shall notify the petitioner in writing within 5 working days of receiving a petition for exemption that the exemption petition has been received.

(b) The department shall review the exemption petition for completeness within 30 days of receipt.

(c) If the exemption petition is determined to be incomplete, the department shall notify the petitioner within 10 working days of the determination with a specific request for the information needed to complete the application.

(d) If the exemption petition is determined to be complete, the commissioner shall designate staff to review the petition and make a recommendation to grant or deny, within 60 days of designation, based on the criteria specified in Env-Sw 1803.02.

(e) The commissioner shall review the petition, the recommendation, and the criteria specified in Env-Sw 1803.02. If the commissioner determines that the petition meets the criteria, the commissioner shall grant the petition within 30 days of the date it was forwarded, and shall notify the petitioner in writing of the decision.

(f) If the petition is granted, the written notice shall include:

- (1) The effective date of the exemption;
- (2) The expiration date of the exemption, which shall be the shorter of 2 years or the period requested by the petitioner; and
- (3) If the exemption is for 2 years, the deadline for the application for renewal of the exemption, which shall be 90 days prior to the expiration date of the exemption.

(g) The petitioner shall send an annual progress report to the commissioner based on the petitioner’s efforts to come into compliance with RSA 149-M:32-40.

(h) If the commissioner determines that the petition does not meet the criteria, the commissioner shall deny the petition within 30 days of the date it was forwarded, and shall notify the petitioner in writing of the decision and of applicable appeal procedures. The written notice shall state the reason(s) for the denial.

PART Env-Sw 1804 RENEWAL OF EXEMPTIONS

Env-Sw 1804.01 Request for Renewal of Exemption.

(a) Any manufacturer or supplier seeking a renewal of an exemption received pursuant to Env-Sw 1803.03 shall file a written renewal request at least 90 days prior to the exemption’s expiration date.

(b) The renewal request shall contain:

- (1) The information specified in Env-Sw 1803.01(d);
- (2) The differences, if any, between the information in the renewal request and the information provided with the original exemption petition; and
- (3) For exemption renewals based on there being no feasible alternative to the use of the identified heavy metal, a report on progress in meeting the timetable for achieving compliance that was submitted with the original exemption request.

Env-Sw 1804.02 Criteria for Renewal of Exemption. Criteria for renewal of exemption shall be as specified in Env-Sw 1803.02.

Env-Sw 1804.03 Processing of Petition for Renewal of Exemption. The renewal request shall be processed in accordance with Env-Sw 1803.03.

PART Env-Sw 1805 CERTIFICATE OF COMPLIANCE

Env-Sw 1805.01 Availability of Certificate of Compliance.

- (a) Certificates of compliance shall be made available as prescribed by RSA 149-M:36, I.
- (b) If a supplier is unable to obtain a certificate of compliance from a manufacturer of a package or packaging component but has sufficient information to prepare the certificate, the supplier shall prepare the certificate based on that information.
- (c) If a supplier is unable to obtain a certificate of compliance from a manufacturer of a package or packaging component and does not have sufficient information to prepare the certificate, the supplier shall not be guilty of a failure to provide the certificate if the supplier has notified the department in accordance with (e) below that the certificate is unavailable from the manufacturer.
- (d) If a purchaser is unable to obtain a certificate of compliance from a manufacturer or supplier of a package or packaging component, the purchaser shall not be liable for failure to retain the certificate as required by RSA 149-M:36, I, if the purchaser has notified the department in accordance with (e) below that the certificate is unavailable from the manufacturer or supplier.

(e) Notification under (c) or (d) above shall:

- (1) Be in writing; and
- (2) Include the following:
 - a. The name, address and telephone number of the person filing the notification;
 - b. The type of package or packaging component for which a certificate cannot be obtained;
 - c. The name(s) and address(es) and, if available, the telephone number(s) of the manufacturer of the package or packaging component;
 - d. If the notice is filed pursuant to (d) above, the name(s) and address(es) and, if available, the telephone number(s) of the supplier(s) of the package or packaging component; and
 - e. A brief summary of the attempts made to obtain the certificate.

(f) No person shall be held responsible for erroneous information in a certificate of compliance if all of the following are true:

- (1) The person is not the manufacturer of the package or packaging component;

- (2) The person did not prepare the certificate;
- (3) The person did not have any reason to believe the information in the certificate was erroneous;
and
- (4) The person in good faith believed the information in the certificate to be true.

Env-Sw 1805.02 Certificate of Compliance Contents.

- (a) All certificates of compliance for package or packaging components shall be completed by the manufacturer or supplier and included in the shipment of the package or packaging component to the purchaser.
- (b) Each certificate of compliance shall include the following:
 - (1) Type of package or packaging component;
 - (2) Company name;
 - (3) Company address;
 - (4) Name, signature, and title of authorized official;
 - (5) Name and position of the individual who can answer questions regarding the composition of the package or packaging component;
 - (6) Date the certificate of compliance is completed;
 - (7) Either a statement that there has been no intentional introduction of the identified heavy metals in the package or packaging component, or, for a package or packaging component for which an exemption has been granted under RSA 149-M:35, a statement identifying the applicable exemption which allows the intentional introduction; and
 - (8) Either a statement that the total concentration of any incidental amounts of the identified heavy metals in the package or packaging component does not exceed the limit established in RSA 149-M:34 or, for a package or packaging component for which an exemption has been granted under RSA 149-M:35, a statement identifying the applicable exemption allowing the exceedance of the limits.

Env-Sw 1805.03 Requests for Certificate of Compliance.

- (a) Requests for copies of certificates of compliance shall be made in accordance with RSA 149-M:39.
- (b) The manufacturer or supplier who receives a request for a certificate of compliance in accordance with RSA 149-M:39 shall provide a copy of the written request to the department with the copy of its response required by RSA 149-M:39.

Env-Sw 1805.04 Amended Certificate of Compliance.

- (a) Amendments to certificates of compliance shall be made in accordance with RSA 149-M:36, II.
- (b) In addition to the information specified in Env-Sw 1804.02, the amended certificate shall include the following:
 - (1) The previous composition of the package or packaging component;
 - (2) The reformulation, including the new level of identified heavy metals used; and

- (3) Any difference(s) between the grounds for compliance as stated in the original certificate of compliance and the amended certificate of compliance.

Readopt Env-Sw 2000, effective 7-1-14 (Document #10601), to read as follows:

CHAPTER Env-Sw 2000 INSPECTIONS

Statutory Authority: RSA 149-M:7

PART Env-Sw 2001 APPLICABILITY

Env-Sw 2001.01 Applicability. All facilities, including permit-exempt facilities, shall be subject to the inspection provisions of this chapter.

PART Env-Sw 2002 INSPECTION PROCEDURES

Env-Sw 2002.01 Right of Inspection. In order to investigate either actual or suspected sources of potential harm to human health or the environment and to ascertain compliance or non-compliance with the solid waste rules, the department shall:

- (a) Inspect any public or private property or premises as authorized by RSA 149-M:6, IV, including collection, storage, transfer, processing, treatment, and disposal facilities;
- (b) Gather evidence on existing conditions and procedures;
- (c) Obtain representative samples of containers, materials and wastes;
- (d) Conduct tests, analyses, and evaluations;
- (e) Photograph containers, tanks, labels, processes or conditions related to waste collection, storage, transfer, processing, treatment, and disposal;
- (f) Inspect or be provided copies of, or both, any pertinent records, reports of information and test results relating to the requirements of the solid waste rules upon request; and
- (g) Obtain any other information as authorized by law.

Env-Sw 2002.02 Credential Presentation. In conducting an inspection of a facility, department personnel shall, subject to privileges provided for by law, present his/her identification to, in order of preference, the owner or operator or their representative or to the senior company representative present, if any.

Env-Sw 2002.03 Inspection Reports. Upon conducting an inspection of a facility, the department shall, subject to RSA 91-A:

- (a) Make a written report listing the conditions found during the inspection;
- (b) Keep the report on file at the department; and
- (c) Provide a copy of the report to the owner or operator or his agent, if requested.

Rule Sections	State Statute(s) Implemented
Env-Sw 700	RSA 149-M:6, III; RSA 149-M:7, II, III, V, VIII, and XIV; RSA 149-M:9
Env-Sw 900	RSA 149-M:7; II and VIII; RSA 149-M:9, X
Env-Sw 1500	RSA 149-M:7, II, V, and XV; RSA 149-M:9, XIV
Env-Sw 1700	RSA 149-M:6, XIV; RSA 149-M:7, II and III
Env-Sw 1800	RSA 149-M:7, XIII; RSA 149-M:32-40
Env-Sw 2000	RSA 149-M:6, I and IV; RSA 149-M:7, XV

APPENDIX B: INCORPORATED REFERENCE

Rule	Reference (Date/Edition)	Obtain From (Cost)
Env-Sw 1503.10(b)	Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire: Nutrient Best Management Practices for Agriculture Nonpoint Source Pollution (2019)	New Hampshire Department of Agriculture, Markets & Food. Free online at: https://www.agriculture.nh.gov/publications-forms/documents/best-management-practices-bmp-manual.pdf