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## CHAPTER Env-Hw 200 PROCEDURAL RULES

Statutory Authority: RSA 147-A:3

### REVISION NOTE:

Document #9361-A, effective 1-28-09, readopted with amendments and renumbered as Part Env-Hw 201 through Part Env-Hw 203 the rules in former Part Env-Wm 211 through Part Env-Wm 213 that had contained procedural rules on hazardous waste management in the areas of applicability and purpose, waivers, and claims of confidentiality.

Document #9361-B, effective 1-28-09, readopted with amendments and renumbered as Part Env-Hw 204 through Part Env-Hw 206 the rules in former Part Env-Wm 214 through Part Env-Wm 216 that had contained procedural rules on hazardous waste management in the area of non-adjudicative hearings, adjudicative hearings, and rulemaking petitions.

Document #9442, effective 3-27-09, repealed the former Env-Wm 201.01 on applicability, which was the last procedural rule on hazardous waste management formerly in Chapter Env-Wm 200.

Document #9361-A, Document #9361-B, and Document #9442 replace all prior filings for procedural rules on hazardous waste formerly in Chapter Env-Wm 200. The redesignation from subtitle Env-Wm to Env-Hw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for the former procedural rules in Env-Wm 200 on hazardous waste management include the following documents:

- #5053, eff 1-24-91
- #5886, eff 8-26-94
- #6384-B, eff 11-26-96
- #7207-B, eff 2-26-00
- #7333, eff 8-1-00
- #7577, eff 10-13-01
- #8461-A, eff 10-28-05
- #9215, INTERIM, eff 8-1-08

### PART Env-Hw 201 APPLICABILITY AND PURPOSE

Env-Hw 201.01 Purpose. The purpose of the hazardous waste procedural rules is to identify the procedural requirements for waivers and claims of confidentiality specific to the hazardous waste rules.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

Env-Hw 201.02 Applicability. The requirements set forth in Chapter Env-Hw 200 shall apply to all procedures undertaken pursuant to RSA 147-A and the hazardous waste rules.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

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PART Env-Hw 202 WAIVERS

Env-Hw 202.01 Applicability.

(a) Any person who is or would be directly and adversely affected by the strict application of a hazardous waste rule may apply to the department for a waiver provided that the requirement for which the waiver is requested is more stringent than federal requirements.

(b) Except as limited by Env-Hw 202.01(a), waivers may be requested from the following requirements:

- (1) Small quantity generator requirements of Env-Hw 500;
- (2) Used oil requirements of Env-Hw 807;
- (3) Classification as a regulated waste for certain recycled materials as defined by 40 CFR 260.30, 7-1-07 edition;
- (4) Classification as a boiler as defined in Env-Hw 103;
- (5) Siting requirements of Env-Hw 304.09; and
- (6) Any requirement in the hazardous waste rules that is more stringent than any requirements imposed by EPA in 40 CFR 260 through 280, 7-1-99 edition.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

Env-Hw 202.02 Requests for Waivers.

(a) Each request for a waiver shall be submitted in writing and shall include the following:

- (1) An identification of the facility or activity to which the request relates;
- (2) An identification of the specific section of the rules from which a waiver is sought;
- (3) A full explanation of why a waiver is being requested;
- (4) A full explanation of any alternate procedure, method, or other activity that is sought to be substituted for the procedure, method or other activity required by the rule from which a waiver is being sought;
- (5) Results of all tests, studies or other data generated to determine the need for a waiver and which support the request;
- (6) A full explanation of how the requirement for which the waiver is requested is more stringent than federal requirements;
- (7) A full explanation of why the person believes that having the waiver granted will not adversely impact public health or the environment; and
- (8) For a temporary waiver, the duration of the waiver requested and the proposed time frame and manner in which full compliance shall be achieved.

(b) In addition to the above information, a request for waiver from the Env-Hw 304.09 siting requirements shall include information demonstrating that the engineering safeguards of the facility are

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designed to ensure normal operation, prevention of public health threatening accidents and mitigation of hazardous waste discharges to the environment. This evidence may include studies demonstrating that the site has characteristics or features making it unlikely that the facility will pose environmental and public health risks.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### Env-Hw 202.03 Review Process.

(a) A request for waiver from the siting requirements of Env-Hw 304.09 shall be made at the time of application submittal under Env-Hw 304.15. The department shall address the applicant's waiver request within the site evaluation required by Env-Hw 304.15(c), which is subject to public review under Env-Hw 304.21.

(b) Other requests for waivers which relate to a permit application shall be submitted to the department with the application or as soon thereafter as the need is identified. The department shall consider the request as part of the application.

(c) Any request that does not relate to a permit application shall be submitted directly to the department for consideration.

(d) Upon receipt of a request for a waiver, the department shall review the submitted information. If the request does not contain all information required by Env-Hw 202.02, the department shall notify the applicant of what information is needed to complete the request.

(e) If a complete request does not provide sufficient information to allow the department to independently conclude that the criteria in Env-Hw 202.04 will be met, the department shall so inform the applicant and offer the applicant an opportunity to supply additional information. If the applicant does not supply additional information, the department shall deny the waiver request.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### Env-Hw 202.04 Waiver Criteria.

(a) The department shall grant a waiver if it determines that the following criteria have been met:

- (1) The requested waiver will not result in conditions that are likely to threaten public health or cause degradation of the environment;
- (2) The economic, technological and safety benefits of granting a waiver are greater than the benefits of not granting a waiver;
- (3) The waiver does not result in less stringent requirements than the federal requirements;
- (4) With respect to classification of recycled materials as a regulated waste as specified in 40 CFR 260.30, 7-1-89 edition, the criteria set forth in 40 CFR 260.31, 7-1-89 edition, are also satisfied; and
- (5) With respect to waivers to be classified as a boiler, the criteria set forth in 40 CFR 260.32, 7-1-89 edition, are also satisfied.

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(b) A waiver shall be granted only if the information submitted by the applicant allows the department to independently conclude that the criteria specified in (a), above, will be met.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### Env-Hw 202.05 Waiver Issuance or Denial.

(a) The department shall notify the person requesting the waiver of the department's determination in writing. If the waiver request is part of a permit application, it shall become part of the permit if the request is approved and the permit granted.

(b) With respect to waiver requests from classification as a regulated waste under 40 CFR 260.30, 7-1-89 edition, and waiver requests to be classified as a boiler, the department shall follow the review and notification procedures set forth in 40 CFR 260.33(b).

(c) If a petitioner is denied a request for a waiver, he/she shall be provided an opportunity to be heard using the procedures set forth in Env-Hw 205.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### Env-Hw 202.06 Compliance with Waiver Conditions.

(a) If a waiver is granted, the department shall include such conditions as are necessary to ensure that the criteria specified in Env-Hw 202.04(a) will be met for the duration of the waiver.

(b) Any petitioner granted a waiver or temporary waiver shall comply with the conditions set forth in the waiver or temporary waiver and with all applicable sections of the hazardous waste rules.

(c) Failure to comply with the conditions of a waiver or temporary waiver shall constitute grounds for modification as specified in Env-Hw 304.26, or suspension or revocation as specified in Env-Hw 304.27, as well as enforcement actions as set forth in RSA 147-A.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

## PART Env-Hw 203 CLAIMS OF CONFIDENTIALITY

Env-Hw 203.01 Purpose. The purpose of this part is to provide a mechanism by which persons submitting information to the department can protect trade secrets.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### Env-Hw 203.02 Procedure for Asserting Claim.

(a) Subject to Env-Hw 203.03, any person submitting information to the department, which the person reasonably and in good faith believes constitutes a trade secret as defined in Env-Hw 104, may assert a claim of confidentiality with respect to the information submitted in accordance with this section.

(b) A claim that information being submitted constitutes a trade secret shall be asserted at the time the information is initially submitted to the department by stamping the word "confidential" on each page containing such information. If less than all of the information on a page so stamped is a trade secret, the

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claimant shall, at the time of submission, identify the portion(s) of the information on the page to which the claim applies.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

Env-Hw 203.03 Exceptions. No claim of confidentiality shall be made with respect to the following:

(a) Any information for which no claim of confidentiality was made at the time of the initial submission of the information to the department;

(b) The name and address of any applicant for a permit; and

(c) Copies of hazardous waste manifests.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-A, eff 1-28-09

### PART Env-Hw 204 NON-ADJUDICATIVE HEARINGS

Env-Hw 204.01 Non-Adjudicative Hearings. Non-adjudicative hearings shall be conducted in accordance with the applicable provisions of Env-C 200.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09

### PART Env-Hw 205 ADJUDICATIVE HEARINGS

Env-Hw 205.01 Adjudicative Hearings. Adjudicative hearings shall be conducted in accordance with the applicable provisions of Env-C 200.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09

### PART Env-Hw 206 RULEMAKING PETITIONS

Env-Hw 206.01 Rulemaking Petitions. Any person may petition the commissioner to amend or repeal any provision in the hazardous waste rules in accordance with Env-C 207 and 40 CFR 260.20, 7-1-07 edition.

Source. (See Revision Note at chapter heading for Env-Hw 200) #9361-B, eff 1-28-09

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APPENDIX

<b>Rule Section(s)</b>	<b>State or Federal Statute(s) or Federal Regulations Implemented</b>
Env-Hw 201	RSA 147-A:3; RSA 541-A:16, I(b)
Env-Hw 202	RSA 147-A:3, I, III and IV; RSA 541-A:22, IV; 40 CFR 260 Subpart C
Env-Hw 203 - 205	RSA 147-A:3, I, III and IV; 40 CFR 260 Subpart C
Env-Hw 206	RSA 541-A:16, I(c); 40 CFR 260 Subpart C