

Readopt with amendment Chapter Env-Sw 2100, eff. 2-16-02 (#7647), to read as follows:

CHAPTER Env-Sw 2100 MANAGEMENT AND CONTROL OF ASBESTOS DISPOSAL SITES NOT OPERATED AFTER JULY 9, 1981

Statutory Authority: RSA 141-E:4, XVIII

PART Env-Sw 2101 PURPOSE AND SCOPE

Env-Sw 2101.01 Purpose.

(a) The purpose of the rules in this chapter is to protect public health, safety, and the environment by establishing requirements for managing asbestos disposal sites not regulated under the state solid waste management act, RSA 149-M, and rules adopted pursuant thereto, namely sites where asbestos exists on or in the ground due to dumping activities that ceased prior to July 10, 1981, including but not limited to the many sites in Nashua and Hudson filled with asbestos manufacturing waste from the Johns-Manville Corporation.

(b) It is intended that the rules in this chapter be used in conjunction with other federal, state, and local requirements for managing and controlling asbestos, including but not limited to:

(1) New Hampshire administrative rules in ~~He P 5000~~ ***Env-A 1800*** pertaining to licensing contractors and certifying individuals who disturb asbestos at asbestos disposal sites, as adopted by the department of ~~health and human services~~ pursuant to RSA 141-E;

(2) New Hampshire administrative rules in Env-Sw 901 pertaining to the collection, storage and off-site transfer, processing, treatment, and disposal of asbestos waste, as adopted by the department pursuant to RSA 149-M;

(3) Federal regulations pertaining to occupational safety and health, including regulations established and implemented by:

a. The Occupational Safety and Health Administration in 29 CFR 1910 and 29 CFR 1926; and

b. The U.S. Environmental Protection Agency (***USEPA***) in 40 CFR 763;

(4) Federal regulations pertaining to transportation of asbestos, including regulations established by the U.S. Department of Transportation in 49 CFR 107 and 49 CFR 171-172; and

(5) Federal regulations pertaining to management of inactive disposal sites for asbestos, including regulations established by the ~~U.S. Environmental Protection Agency~~ ***USEPA*** in 40 CFR 61 or the substitute provisions, if any, approved by the ~~U.S. Environmental Protection Agency~~ ***USEPA*** under 40 CFR 63.93 and identified in 40 CFR 63.99.

Env-Sw 2101.02 Applicability.

(a) The rules in this chapter shall apply to asbestos disposal sites, as defined by RSA 141-E:2, III and Env-Sw 2102.03.

(b) The asbestos disposal sites identified in (a), above, shall include but are not limited to the many sites in Nashua and Hudson filled with asbestos manufacturing waste from the Johns-Manville Corporation.

(c) The rules in this chapter shall not apply to asbestos abatement activities, as defined in RSA 141-E:2, II, that are subject to the NH administrative rules for asbestos management and control, Env-A 1800, including but not limited to the removal, repair, or encapsulation of asbestos containing materials during demolition or renovation of buildings.

PART Env-Sw 2102 DEFINITIONS

Env-Sw 2102.01 "Asbestos" means "asbestos" as defined by RSA 141-E:2, I, namely "amosite, chrysotile, crocidolite, or asbestiform tremolite, actinolite, or anthophyllite." As used in this chapter, the term includes asbestos contained in any material, product, or by-product.

Env-Sw 2102.02 "Asbestos waste" means any asbestos or asbestos-containing material, product, or by-product that is discarded or abandoned.

Env-Sw 2102.03 "Asbestos disposal site " means "asbestos disposal site" as defined by RSA 141-E:2, III, namely "land where asbestos waste exists, either in or on the ground, due to dumping activities which ceased by July 10, 1981. The term includes inactive disposal sites as defined by 40 CFR 61.141. The term does not include any disposal site which is subject to the permitting requirements of RSA 149-M."

Env-Sw 2102.04 "Cover material" means non-asbestos-containing material overlying asbestos at an asbestos disposal site, including but not limited to clean soil, rock, and other earthen materials, geotextiles and other types of geosynthetics, concrete, bituminous concrete, and vegetation.

Env-Sw 2102.05 "Department" means the New Hampshire department of environmental services.

Env-Sw 2102.06 "Emergency project" means an unforeseen major or minor project that is the result of a sudden or unexpected event and must proceed expeditiously in order to protect public health, safety, or the environment. The term does not include work that is extraneous to abating the immediate threat to public health, safety, or the environment.

Env-Sw 2102.07 "Licensed contractor" means:

(a) The entity or individual undertaking a minor or major project and holding a valid license issued pursuant to ~~He P-5011~~***Env-A 1811***; or

(b) If the project is license exempt pursuant to ~~He P-5011~~***Env-A 1811***, the qualified person who is in charge of the project.

Env-Sw 2102.08 "Major project" means any activity at an asbestos disposal site that involves the excavation, removal, exposure, or other disturbance of more than 160 square feet, which is approximately 15 square meters, or 35 cubic feet, which is approximately one cubic meter, of asbestos or any material mixed with or containing asbestos, where the total disturbance involved in a project is measured cumulatively.

Env-Sw 2102.09 "Minor project" means any activity at an asbestos disposal site that involves the excavation, removal, exposure, or other disturbance of asbestos, or any material mixed with or containing asbestos that is not a major project. The term does not include a major project divided into smaller segments.

Env-Sw 2102.10 "Owner" means the owner of record of a parcel of land where there is an asbestos disposal site.

Env-Sw 2102.11 "Qualified person" means an individual who:

(a) Is capable of identifying asbestos, asbestos waste at asbestos disposal sites, and asbestos hazards;

(b) Is capable of selecting the appropriate control strategies for the release of asbestos fibers to the environment and human asbestos exposure;

(c) Has read and understands the information provided in the document titled "Guidance for Managing Asbestos Disposal Sites", published by the department in May, 2000;

(d) Has all credentials and holds all licenses, certificates, registrations or other authorizations needed pursuant to federal, state, and local requirements for the performance of the work or delivery of the service that necessitates the qualifications, including but not limited to a valid certificate issued pursuant to ~~He-P-5012-Env-A 1812~~, when required; and

(e) Performs work at an asbestos disposal site under the authority of an entity or individual holding a valid license issued pursuant to ~~He-P-5011-Env-A 1811~~, unless the work being performed is license exempt pursuant to ~~He-P-5011-Env-A 1811~~.

~~Env-Sw 2102.12 "USEPA" means the United States Environmental Protection Agency.~~

Env-Sw 2102.4312 "Utility project" means a minor or major project by a utility company or public authority to install, repair, replace, or decommission a private or public utility system, or portion thereof, at locations where the responsible utility company or public authority holds such rights of access, and includes the installation, repair, replacement, and decommissioning of the following:

- (a) Sanitary sewerage, water, or drainage systems, and related appurtenances;
- (b) Steam lines and related appurtenances;
- (c) Natural gas pipelines and related appurtenances; and
- (d) Above-ground or underground electric, telephone, telecommunication cables or other conduits, and related appurtenances.

Env-Sw 2102.4413 "Visible emission" means any emission that is visually detectable without the aid of instruments, coming from asbestos waste. The term does not include condensed, uncombined water vapor.

PART Env-Sw 2103 WAIVER

Env-Sw 2103.01 Applicability.

(a) Except as specified by (b) and (c), below, the rules in this part shall apply to any person seeking a waiver to a requirement in this chapter.

(b) The rules in this part shall not apply to obtaining a waiver to any rule in this chapter that incorporates a statutory requirement, including but not limited to:

- (1) Env-Sw 2104.02 and Env-Sw 2105.05(a), prohibiting the release of asbestos fibers to the environment; and
- (2) Env-Sw 2104.08(a), specifying disclosure requirements.

(c) The rules in this part shall not apply to obtaining a waiver when both (1) and (2), below, are true, unless the applicant first obtains approval from the USEPA for the same waiver and provides a copy of the approval as specified in Env-Sw 2103.02(b)(10):

- (1) The request is to waive a rule that the USEPA has approved pursuant to 40 CFR 63.93 and identified in 40 CFR 63.99 as a substitute for a rule promulgated under ~~section~~ §112 of the federal Clean Air Act; and
- (2) The waiver is intended to apply to an asbestos disposal site that was operated by sources

covered under 40 CFR 61.142, 40 CFR 61.144, and 40 CFR 61.147, including but not limited to the sites in Nashua and Hudson formerly operated by the Johns-Manville Corporation.

Env-Sw 2103.02 Waiver Applications.

(a) Any person seeking a waiver to a requirement in this chapter shall submit an application for waiver to the department, in writing, as specified in (b), below, and concurrently provide a copy of the application to the local health officer.

(b) Each application for waiver shall include the following information:

- (1) The name, mailing address, and ***daytime*** telephone number of the applicant;
- (2) Identification of the specific rule(s) the applicant is seeking to have waived;
- (3) Identification of the asbestos disposal site(s) to which the waiver is intended to apply, if granted, or a statement that the requested waiver is intended to apply without regard to a specific site;
- (4) Description of the specific project(s) to which the waiver is intended to apply, if granted, or a statement that the requested waiver is intended to apply without regard to a specific project;
- (5) The period of time during which the applicant wishes the waiver to be effective;
- (6) If the waiver is intended to apply to a specific asbestos disposal site, a statement indicating whether the applicant wants the waiver, if granted, to include provisions for automatic transfer to subsequent owners;
- (7) A full explanation of why the waiver is necessary, including an explanation of the hardship that would be caused by having to comply with the rule;
- (8) A full explanation, with supporting data, of the alternative(s), if any, that the applicant proposes to use in lieu of complying with the rule;
- (9) A full explanation of how each of the alternatives proposed pursuant to (8), above, is consistent with the purpose and intent of RSA 141-E and the rules in this chapter, and is otherwise adequate to protect public health, safety and the environment; and
- (10) If the applicant is seeking a waiver of any rule needing USEPA approval, as described in Env-Sw 2103.01(c), a copy of the approval issued by the USEPA.

(c) Each application for waiver shall be dated and signed by the applicant under penalties of RSA 641:3.

(d) If the application for waiver is site specific and the applicant is not the owner, the application shall also include a statement dated and signed by the owner under penalties of RSA 641:3, certifying that the owner is aware that the application is being made and agrees to the information contained therein.

Env-Sw 2103.03 Review and Decision.

(a) Applications for waiver shall be reviewed by the department in accordance with RSA 541-A:29.

(b) The department shall grant the requested waiver if:

(1) The proposed alternative:

- a. Is in keeping with the purpose and intent of RSA 141-E and the rules in this chapter;

- b. Will protect the public health, safety, and environment to the same or greater extent than the rule being waived;
 - c. Does not violate RSA 141-E or any other state or federal requirement for management and control of asbestos, including but not limited to the requirements identified in Env-Sw 2101.01(b); and
 - d. Is enforceable; and
- (2) At least one of the following conditions is satisfied:
- a. Strict compliance with the rule will result in an adverse effect on the public health, safety, or the environment; or
 - b. Strict compliance with the rule will provide no benefit to the public and will cause a hardship to the applicant.
- (c) The department shall notify the following parties in writing of the decision to either grant or deny the requested waiver:
- (1) The applicant;
 - (2) The owner, if different than the applicant and the waiver is site-specific;
 - (3) The local health officer; and
 - (4) The USEPA, if the waiver is for a rule that cannot be waived without having first obtained USEPA approval, as specified in Env-Sw 2103.01(c).
- (d) A notice of denial shall state clearly the reasons for denial.
- (e) Waivers, when issued, shall include:
- (1) The name of the person to whom the waiver is issued;
 - (2) Identification of the rule being waived;
 - (3) The terms and conditions under which the waiver is granted;
 - (4) The effective date and expiration date; and
 - (5) The signature of the department's commissioner or ~~his/her~~ designee.
- (f) In no case shall the waiver of any requirement in this chapter be construed ~~to mean as~~:
- (1) An authorization of any activity that occurred prior to the effective date of the waiver;
 - (2) An authorization of any activity that does not comply with the requirements of this chapter or RSA 141-E;
 - (3) Elimination of any obligation to comply with all other applicable federal, state, and local requirements for asbestos management and control, including, but not limited to the requirements identified in Env-Sw 2101.01(b);
 - (4) Elimination of any obligation to obtain all requisite local, state, and federal permits or approvals; or
 - (5) A waiver of any cause of action for violations predating the waiver.

PART Env-Sw 2104 GENERAL REQUIREMENTS

Env-Sw 2104.01 Applicability. The rules in this part shall apply to managing and controlling asbestos disposal sites.

Env-Sw 2104.02 Release Prohibited.

- (a) As required by RSA 141-E:21, "no person shall cause or allow asbestos fibers to be released to the environment from an asbestos disposal site."
- (b) A release to the environment, as specified in (a), above, shall include but not be limited to:
 - (1) A visible emission;
 - (2) An uncontained airborne concentration of asbestos fibers that exceeds the ambient concentration;
 - (3) An off-site discharge of storm water, surface water, or waste water that has been in contact with asbestos, unless the water is filtered and discharged in accordance with Env-Sw 2105.14(c);
 - (4) The off-site removal of asbestos, unless the asbestos is collected, stored, transferred, and disposed in accordance with Env-Sw 901; and
 - (5) The off-site removal of individuals, equipment, supplies, clothing, or any other materials or items that have been in contact with asbestos, unless first decontaminated in accordance with Env-Sw 2105.14 or collected, stored, transferred, and disposed in accordance with Env-Sw 901.

Env-Sw 2104.03 Cover Requirements.

- (a) All asbestos at an asbestos disposal site shall be buried under a capping system that is designed using sound engineering practices and meets the criteria specified in (b) through (e), below.
- (b) The capping system shall prevent the asbestos from becoming exposed under the following site-specific conditions and events:
 - (1) The 100-year, 24-hour storm;
 - (2) The 100-year flood;
 - (3) Seasonal frost action;
 - (4) Erosion due to wind, water, and other factors; and
 - (5) Site land use and activities.
- (c) The capping system shall be comprised of cover materials placed in layers, as follows:
 - (1) Surface cover materials shall be of such type as will eliminate or control erosion, including but not limited to one or more of the following:
 - a. Riprap, densely packed;
 - b. Bituminous concrete, free of cracks or openings;
 - c. Portland cement concrete, free of cracks or openings; and
 - d. Vegetation that, if up-rooted, will not expose the asbestos layer;

- (2) The cover material immediately below the surface cover materials shall be of sufficient character and thickness to support and enhance the long-term effectiveness of the surface cover materials; and
- (3) Earthen cover material immediately in contact with the asbestos deposit shall be a free draining sandy gravel material.
- (d) The total depth of the cover materials shall be 6 inches or more as required to satisfy the performance standard provided in (b), above.
- (e) Geotextiles shall be incorporated in the capping system when necessary to:
 - (1) Inhibit asbestos from becoming exposed to the ground surface as a result of frost action;
 - (2) Prevent different layers of cover materials from inter-mixing; or
 - (3) Create a barrier to warn against digging into the underlying asbestos.
- (f) Typical capping system specifications are provided in appendix I for residential sites that:
 - (1) Are located in Nashua or Hudson, New Hampshire, or another area of the state having the same average depth of ground frost;
 - (2) Have a level or gently sloping ground surface;
 - (3) Do not border on any surface water; and
 - (4) Are not situated within the 100-year flood hazard zone.
- (g) Nothing stated in (a) through (f), above, shall be construed to mean there is no obligation to also comply with other local, state, and federal building codes, construction standards, and other requirements that apply to establishing the capping system and undertaking the type of land uses and activities the capping system is designed to support pursuant to (b)(5), above.

Env-Sw 2104.04 Activity and Use Restrictions.

- (a) No person shall excavate, remove, expose or otherwise disturb any asbestos at an asbestos disposal site, unless the work is conducted in accordance with the work practices and engineering controls in Env-Sw 2105.
- (b) No person shall alter the capping system or the type of cover materials at an asbestos disposal site in a manner that causes the capping system to be less effective in meeting the performance criteria specified in Env-Sw 2104.03(b).
- (c) Owners shall restrict the use of a site to only those uses and activities that the capping system is designed to sustain without loss of integrity, as required by Env-Sw 2104.03(b)(5).

Env-Sw 2104.05 Access Control. The owner shall control access to the site as necessary to comply with Env-Sw 2104.04.

Env-Sw 2104.06 Site Monitoring and Reporting.

- (a) The owner shall monitor the asbestos disposal site to assure that all asbestos waste remains covered in accordance with the requirements of this chapter.
- (b) The owner shall promptly report to the local health officer and the department any situation involving either uncovered asbestos waste or a release to the environment as identified in Env-Sw 2104.02(b), or both.

(c) The owner shall promptly report to the local health officer and the department any conditions developing at the site that have the potential to result in either uncovered asbestos waste or a release to the environment as identified in Env-Sw 2104.02(b), or both.

Env-Sw 2104.07 Site Maintenance. Owners shall provide site maintenance as needed to keep the site covered in compliance with Env-Sw 2104.03 and to otherwise prevent a release to the environment as identified in Env-Sw 2104.02(b).

Env-Sw 2104.08 Disclosure and Record Keeping.

(a) Owners shall comply with the disclosure requirements specified in RSA 141-E:23, including requirements for:

- (1) Recording notice in the chain of title for the property;
- (2) Providing notice to tenants, contractors, and other site users;
- (3) Providing notice to potential buyers; and
- (4) Providing notice to the department following a transfer of title.

(b) Owners shall register sites in accordance with Env-Sw 309 and provide to the department, in writing, other information needed to maintain the registry of sites required by RSA 141-E:3, ~~XVII(j)~~.

(c) Owners shall keep records or have access to records required to comply with the seller to buyer disclosure requirements in RSA 141-E:23, I(d), including:

- (1) A site plan showing the asbestos disposal area and the cover materials;
- (2) Site monitoring and maintenance records pursuant to Env-Sw 2104.06 and Env-Sw 2104.07;
- (3) Site inspection reports, ***including reports prepared for inspections conducted*** pursuant to RSA 141-E:24; and
- (4) Project summary information for all major and minor projects undertaken at the site, including, as applicable:
 - a. A copy of project commencement notices pursuant to Env-Sw 2105.07;
 - b. Weekly project reports pursuant to Env-Sw 2105.17(a); and
 - c. Project completion reports pursuant to Env-Sw 2105.17.

PART Env-Sw 2105 WORK PRACTICES AND ENGINEERING CONTROLS

Env-Sw 2105.01 Purpose. The purpose of the rules in this part is to establish work practices and engineering controls for excavating, removing, exposing, or otherwise disturbing asbestos at an asbestos disposal site in a manner that is protective of public health, safety and the environment.

Env-Sw 2105.02 Applicability. The requirements in this part shall apply to all minor and major projects.

Env-Sw 2105.03 Qualified Persons Required. No person shall excavate, remove, expose, or otherwise disturb asbestos at an asbestos disposal site unless the person is a qualified person pursuant to Env-Sw 2102.11.

Env-Sw 2105.04 Types of Projects.

(a) For the purposes of the rules in this chapter, work involving the disturbance of asbestos at asbestos disposal sites shall be classified as either a:

- (1) Major project, as defined by Env-Sw 2102.08; or
- (2) Minor project, as defined by Env-Sw 2102.09.

(b) For the purposes of the rules in this chapter, major and minor projects shall be further classified as either:

- (1) Emergency projects, as defined by Env-Sw 2102.06; or
- (2) Non-emergency projects.

(c) Any of the project types specified in (a) and (b), above, shall also be further classified as either:

- (1) Utility projects, as defined by Env-Sw 2102.13; or
- (2) Non-utility projects.

Env-Sw 2105.05 General Requirements.

(a) The excavation, removal, exposure, or other disturbance of asbestos at an asbestos disposal site shall be conducted in a manner that:

- (1) Is protective of public health, safety, and the environment; and
- (2) Does not cause a release of asbestos fibers to the environment, including any release identified in Env-Sw 2104.02.

(b) The excavation, removal, exposure, or other disturbance of asbestos at an asbestos disposal site shall be carried out in conformance with other federal, state, and local requirements pertaining to the management and control of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable.

(c) Major non-emergency projects shall proceed in accordance with the provisions of a work plan approved pursuant to Env-Sw 2106, unless exempt pursuant to Env-Sw 2106.02(d).

(d) At project sites that are subject to the work plan requirement cited in (c), above, the qualified person in charge of the work shall maintain a copy of the work plan at the work site, for reference by workers and for inspection by the department, ~~the department of health and human services,~~ and the local health officer.

(e) During any minor or major project, the licensed contractor shall comply with the requirements of ~~He P-5011.08-Env-A 1811.08~~ and this part.

Env-Sw 2105.06 Factors to Consider. The following site-specific factors shall be considered when determining the appropriate engineering controls, work practices, and equipment needed to comply with the rules in this part:

(a) Pathways by which asbestos fibers could be released from the site to the environment, including but not limited to releases to air and surface water, and releases off-site by contaminated persons or equipment leaving the site;

(b) Number and proximity of human receptors;

- (c) Prevailing wind direction;
- (d) Weather and seasonal conditions, including but not limited to frozen ground and flooding;
- (e) Project duration;
- (f) Quantity and area of asbestos being disturbed;
- (g) Nature of the asbestos being disturbed, including:
 - (1) Whether it is friable or non-friable; and
 - (2) If non-friable, whether it has the potential to become friable when disturbed;
- (h) Vertical and lateral limits of the asbestos disposal site;
- (i) Depth and type of cover materials;
- (j) Existing site features, including but not limited to:
 - (1) Surface topography;
 - (2) Property lines, rights-of-way, and easements;
 - (3) Surface waters and wetlands;
 - (4) Roadways, driveways and parking areas;
 - (5) Buildings and other structures;
 - (6) Above-ground and below-ground utilities; and
 - (7) Above-ground and below-ground storage tanks;
- (k) Slope stability;
- (l) Load bearing capacity of the site;
- (m) Visibility and illumination;
- (n) Site accessibility;
- (o) Site history information; and
- (p) Site assessment and characterization information, and degree of confidence that the information is both complete and accurate.

Env-Sw 2105.07 Project Notice Requirements.

- (a) Except as provided by (d) below, the licensed contractor shall notify the following parties about the commencement of work:
 - (1) The local health officer; ***and***
 - (2) ~~The asbestos program coordinator for the department of health and human services~~ ***department's division of air resources***; and
 - (3) For major projects only, the department's ***division of waste management.***
- (b) Notice pursuant to this section shall be provided according to the following schedule:

- (1) If the project is an emergency project, verbal notice shall be provided as soon as practicable under the circumstances and written confirmation shall be provided within 48 hours of commencing the project;
 - (2) If the project is a minor non-emergency project, notice shall be provided as soon as practicable after the person doing the work knows or should have known the work involves asbestos and, if such notice is given verbally, written confirmation shall be provided within 48 hours following project commencement; ***and***
 - (3) If the project is a major non-emergency project, notice shall be provided as specified in the work plan approved pursuant to Env-Sw 2106.
- (c) Notice provided pursuant to this section shall include the following information:
- (1) Project location;
 - (2) Name, mailing address, and ***daytime*** telephone number of the entity or individual responsible for initiating and undertaking the project;
 - (3) Name, mailing address, ***daytime*** telephone number, and current ~~He-P-5011-Env-A 1811~~ license number of the licensed contractor who will be implementing the plan or, if the work does not require a licensed contractor because it will be performed by the owner at his/her single-family owner occupied property in accordance with the license exemption provisions in ~~He-P-5012.03(b)-Env-A 1812.03(b)~~ ***Env-A 1812.03(b)***, a statement to that effect;
 - (4) Name, mailing address, telephone number and the current ~~He-P-5012-Env-A 1812~~ certificate number of the qualified person who will be in charge of the work;
 - (5) Project schedule, including the starting and completion dates;
 - (6) Reason for disturbing the asbestos and a general description of the project; and
 - (7) If the project is subject to the work plan requirements in Env-Sw 2106, the date the work plan was approved by the department.
- (d) Notwithstanding the above requirements, no notice shall be required for projects identified in ~~He-P-5012.03-Env-A 1812.03~~ that can be performed by qualified persons not certified under ~~He-P-5012-Env-A 1812~~.

- (e) Notice transmitted via e-mail or fax shall constitute a form of written notice.

Env-Sw 2105.08 Site Preparation. Prior to commencing a minor or major project, the licensed contractor shall prepare the site so that the work can be executed in accordance with the work plan, if applicable, and all other requirements of this chapter.

Env-Sw 2105.09 Site Work Zones.

- (a) To reduce the potential for asbestos fibers to be released to the environment by persons and equipment leaving a major or minor project site, site work zones shall be established and delineated to:
 - (1) Separate clean operations from contaminated operations; and
 - (2) Control the flow of personnel and equipment between such operations.
- (b) The site work zones required to comply with (a), above, shall be established and maintained in accordance with the provisions for site control provided in Section 9 of the Occupational Safety and Health

Guidance Manual for Hazardous Waste Site Activities, NIOSH publication No. 85-115.

Env-Sw 2105.10 Access Control and Site Security.

- (a) During a major or minor project, access control and site security shall be provided as necessary to:
- (1) Prevent unauthorized persons and unprotected persons from being exposed to site hazards;
 - (2) Reduce the potential for vandalism or unlawful dumping of other wastes at the project site;
 - (3) Reduce the potential for neighborhood pets and other animals to enter the project site and traverse contaminated areas; and
 - (4) Avoid interference with safe working procedures.
- (b) Access control and site security shall include displaying a warning sign in such manner and location that a person can easily read the legend, including the following information:
- (1) Asbestos work in progress; and
 - (2) Authorized persons only.
- (c) Site security and access control pursuant to (a) and (b), above, shall be provided during both working and non-working hours.

Env-Sw 2105.11 Excavation or Other Disturbance.

- (a) The area of excavation, removal, exposure, or other disturbance of asbestos waste at an asbestos disposal site shall be confined to the smallest area practicable.
- (b) Wet methods, or wetting agents, shall be used to prevent the airborne release of asbestos fibers during a major or minor project.
- (c) All asbestos being removed from a site shall be managed in accordance with Env-Sw 901.
- (d) The excavation, removal, exposure, or other disturbance of asbestos waste at an asbestos disposal site shall not result in increasing the size of the disposal area.
- (e) Upon completion of the excavation, removal, exposure, or other disturbance activity, cover materials shall be placed in conformance with Env-Sw 2104.

Env-Sw 2105.12 Personal Protective Equipment. No individual shall enter a contaminated work area unless the individual uses personal protective equipment in conformance with the personal protective equipment requirements for asbestos workers established by the Occupational Safety and Health Administration in 29 CFR 1910 and 29 CFR 1926.

Env-Sw 2105.13 Air Monitoring. Air monitoring shall be provided in accordance with 29 CFR 1910, 29 CFR 1926; 40 CFR 763, and the approved work plan, as applicable.

Env-Sw 2105.14 Decontamination of Personnel and Equipment.

- (a) All personnel, equipment, supplies, and materials situated within a contaminated work zone established pursuant to Env-Sw 2105.09 shall be decontaminated prior to being removed to a clean zone established pursuant to Env-Sw 2105.09.
- (b) Decontamination shall be achieved by removing all asbestos contamination from the personnel, equipment, supplies, and materials in accordance with the decontamination methods and procedures set forth in Section 10 of the Occupational Safety and Health Guidance Manual for Hazardous Waste Site

Activities, NIOSH publication No. 85-115.

(c) Waste water from decontamination procedures shall be either:

- (1) Discharged to the ground at the project site within a portion of the open excavation area that is already asbestos contaminated and in such a manner as not to become surface run-off; or
- (2) Discharged off-site in accordance with applicable local, state, and federal waste water discharge requirements, after being filtered through progressively smaller filters ending with a filter with openings no larger than 5 microns.

(d) Filters used pursuant to (c), above, shall be handled and disposed as asbestos waste in accordance with Env-Sw 901.

(e) Care shall be taken during the decontamination process to avoid cross contamination of equipment, personnel, or materials.

Env-Sw 2105.15 Clearance Determination.

(a) Following completion of any major or minor project, and before allowing normal use of the site to resume, the licensed contractor shall make a site clearance determination in accordance with (b), below.

(b) A site clearance determination shall not be made unless the licensed contractor determines that all of the following statements are true:

- (1) All excavated, removed, exposed, or other disturbed asbestos either:
 - a. Has been removed from the site in accordance with Env-Sw 901; or
 - b. Is covered in accordance with Env-Sw 2104.03;
- (2) No asbestos-contaminated equipment, materials, clothing, or other supplies remain at the site; and
- (3) It is safe to resume use of the site in a manner consistent with Env-Sw 2104.04.

(c) The licensed contractor shall give the owner a written copy of the clearance determination, signed under the penalties of RSA 641:3.

Env-Sw 2105.16 Project Recordkeeping and Reporting.

(a) Activities involving the excavation or other disturbance of asbestos at an asbestos disposal site shall be documented and records thereof shall be maintained by the owner as specified in Env-Sw 2104.08(c).

(b) Waste shipment records shall be maintained in accordance with 40 CFR 61 and 49 CFR 171 - 172, as applicable.

(c) Within 60 days after completion of a project that changes either the lateral limits of the disposal area, the depth of the disposal area, or the type or thickness of cover materials, the licensed contractor shall submit to the department as-built drawings that:

- (1) Show the new configuration of the disposal area, including its boundaries and cover materials; and
- (2) Bear the stamp of a professional engineer licensed in New Hampshire, when required pursuant to RSA 310-A:18, with certification either that the altered capping system complies with Env-Sw 2104.03 or that the capping system requirements in Env-Sw 2104.03 no longer

apply to the site because all asbestos has been removed from the site.

Env-Sw 2105.17 Additional Reporting Requirements for Major Projects.

(a) During a major project taking longer than 2 weeks to complete, the licensed contractor shall submit the following to the department and the local health officer:

- (1) Weekly progress reports; and
- (2) Notice of any schedule adjustments for the balance of the project.

(b) Within 60 days after a major project is completed, the licensed contractor shall submit a project completion report to the department and the local health officer, including:

- (1) The name, mailing address, and telephone number of the owner and the licensed contractor;
- (2) The location of the project site;
- (3) The date the project commenced and the date it was completed;
- (4) A brief narrative description of the work undertaken, including an explanation of any deviation from the applicable work plan and any unexpected events;
- (5) For any asbestos removed from the site, a copy of the waste shipment records pursuant to 40 CFR 61 and 49 CFR 171 - 172, as applicable;
- (6) A brief narrative description of site conditions following completion;
- (7) As-built drawings of the completed work, including asbestos disposal site details;
- (8) Air monitoring results pursuant to Env-Sw 2105.13;
- (9) A copy of the site clearance determination pursuant to Env-Sw 2105.15;
- (10) A statement, signed by the licensed contractor, certifying that:
 - a. The information submitted in the report is correct and complete;
 - b. The required work was completed in conformance with the approved work plan, except as noted pursuant to (b)(4), above, and the requirements of this chapter; and
 - c. In order to facilitate compliance with RSA 141-E:23, I(d), either:
 1. The owner has been provided a copy of the project completion report; or
 2. In the case of a utility project, the owner has been notified that a copy of the project completion report is available from the utility company or authority, by request.

PART Env-Sw 2106 WORK PLANS FOR MAJOR NON-EMERGENCY PROJECTS

Env-Sw 2106.01 Applicability. The rules in this part shall establish provisions for work plans for major non-emergency projects.

Env-Sw 2106.02 General Requirements.

(a) Except as provided in (d), below, no person shall undertake a major non-emergency project except in accordance with a written work plan prepared and approved in accordance with this part.

(b) Work plans shall be:

(1) Prepared in writing by a qualified person who is certified pursuant to ~~He P 5012-Env-A 1812~~; and

(2) Stamped by a registered professional engineer in New Hampshire when required pursuant to RSA 310-A;

(3) Submitted to the department for approval pursuant to Env-Sw 2106.05; and

(4) Concurrently submitted to the local health officer.

(c) Work plans shall provide sufficient detail to allow qualified persons to implement the plan and complete the proposed work tasks in compliance with the work practices and engineering controls specified in Env-Sw 2105, all other requirements in this chapter, and RSA 141-E without further explanation or guidance.

(d) No work plan shall be required for a major non-emergency project if, pursuant to the provisions of ~~He P 5012-Env-A 1812~~, the work can be performed by persons not certified pursuant to ~~He P 5012-Env-A 1812~~.

Env-Sw 2106.03 Types of Work Plans.

(a) There shall be 2 basic types of work plans, as follows:

(1) Project specific work plans, developed for the performance of work involving a discrete project at a discrete time and place; and

(2) Generic work plans, developed for the performance of recurrent types of work that will be undertaken at indeterminate times and places, including but not limited to utility projects.

(b) A project-specific work plan shall be used to establish the work procedures to be used by persons disturbing asbestos at a specific asbestos disposal site during a project that is planned in advance of the work actually taking place.

(c) A generic work plan shall be used to establish the work procedures to be used by persons disturbing asbestos during projects that are routinely undertaken by the responsible party at various locations and at various times not specifically known at the time the plan is prepared.

Env-Sw 2106.04 Project-Specific Work Plans. A project-specific work plan for major non-emergency projects shall include:

(a) Name, mailing address, ***daytime*** telephone number, and credentials of the qualified person who prepared the plan;

(b) Project location;

(c) Name, mailing address, and ***daytime*** telephone number of the entity or individual responsible for initiating and undertaking the project;

(d) Project schedule, including the anticipated starting date and completion date;

(e) If known, the name, mailing address, telephone number, and current ~~He P 5011-Env-A 1811~~ license number of the licensed contractor who will be implementing the plan or, if the work does not require a licensed contractor because it will be performed by the owner at his/her single-family owner occupied property in accordance with the license exemption provisions in ~~He P 5012.03(b)-Env-A~~

1812.03(b), a statement to that effect;

(f) If known, the name, mailing address, telephone number, and current ~~He P 5012-Env-A~~ **1812** certificate number of the qualified person who will be in charge of the work;

(g) A description of the work to be undertaken, including:

(1) The reason for undertaking the work;

(2) Quantity of asbestos to be disturbed;

(3) Type and general description of asbestos to be disturbed;

(4) Sequence of tasks;

(5) A description of the procedures and equipment to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the asbestos waste, including the methods and procedures by which the work practices and engineering controls in Env-Sw 2105 will be met; and

(6) The location of any temporary storage site and the final disposal site for asbestos excavated or otherwise removed from the site;

(h) A scaled plan of the site showing the existing site features and the proposed work area; and

(i) A scaled plan and related specifications showing the proposed conditions of the site following completion of the work, including information that demonstrates the proposed post-project conditions comply with the cover requirements in Env-Sw 2104.03;

(j) Provisions for providing project commencement notice pursuant to Env-Sw 2105.07;

(k) A list and status of all other local, state, or federal permits and other approvals required to implement the plan;

(l) A statement, signed by the qualified person who prepared the plan, certifying that the plan meets all applicable local, state, and federal requirements for management of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable, and the rules in this chapter;

(m) A signed statement by the owner, certifying acceptance of the proposed work plan; and

(n) If the entity or individual named pursuant to (c), above, is not the owner, a signed statement by that entity or individual certifying acceptance of the proposed work plan.

Env-Sw 2106.05 Generic Work Plans. A generic work plan for major non-emergency projects shall include:

(a) Name, mailing address, ***daytime*** telephone number, and credentials of the qualified person who prepared the plan;

(b) Name, mailing address, and ***daytime*** telephone number of the entity or individual responsible for initiating and undertaking the project;

(c) If known, the name, mailing address, ***daytime*** telephone number, and current ~~He P 5011-Env-A~~ **1811** license number of the licensed contractor who will be implementing the plan or, if the work does not require a licensed contractor because it will be performed by the owner at his/her single-family owner occupied property in accordance with the license exemption provisions in ~~He P 5012.03(b)-Env-A~~ **1812.03(b)**, a statement to that effect;

(d) If known, the name, mailing address, telephone number, and current ~~He-P-5012-Env-A 1812~~ certificate number of the qualified person who will be in charge of the work;

(e) A description of the work to be undertaken, including:

(1) The type and scope of work that the plan is designed to address;

(2) Sequence of tasks;

(3) A description of the procedures and equipment to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the asbestos waste, including the methods and procedures by which the work practices and engineering controls in Env-Sw 2105 will be met; and

(4) The location of any temporary storage site and the final disposal site for asbestos excavated or otherwise removed from the site;

(f) A description of how the site will be left following completion of the work, including related drawings of the replacement cover materials in conformance with Env-Sw 2104.03;

(g) Provisions for providing project commencement notice pursuant to Env-Sw 2105.07;

(h) If the entity or individual named pursuant to (b) above is not the owner, a statement indicating how the project records will be made available to the owner to facilitate compliance with ~~the~~ RSA 141-E:23, I(d).

(i) A list and status of all other local, state, or federal permits and other approvals required to implement the plan;

(j) A statement, signed by the qualified person who prepared the plan, certifying that the plan meets all applicable local, state, and federal requirements for management of asbestos, including but not limited to the requirements listed in Env-Sw 2101.01(b), as applicable, and these rules;

(k) A statement, signed by the owner, or in the case of a utility project, the utility, certifying acceptance of the proposed work plan; and

(l) If the entity or individual named pursuant to (b), above, is not the owner, a signed statement by that entity or individual certifying acceptance of the proposed work plan.

Env-Sw 2106.06 Work Plan Review.

(a) The department shall review a proposed work plan in accordance with RSA 541-A:29.

(b) If the department determines that the work plan does not satisfy the work practices and engineering controls in Env-Sw 2105, other requirements in this chapter, or RSA 141-E, the department shall so notify the applicant and provide an opportunity for the applicant to correct the deficiencies.

(c) If no deficiencies are noted, the department shall approve the work plan and so notify the applicant in writing.

(d) The department shall provide a copy of the work plan approval to the local health officer.

(e) Work plan approval shall not be construed in any way as:

(1) An authorization of any activity that occurred prior to the effective date of the approval;

(2) An authorization of any activity that does not comply with the requirements of this chapter or RSA 141-E;

- (3) An authorization of any activity that is not in compliance with other applicable federal, state, or local requirements, including the requirements identified in Env-Sw 2101.01(b);
- (4) A waiver of any cause of action for violations predating approval; or
- (5) Elimination of any obligation to obtain all requisite local, state, and federal permits or approvals for the proposed activities.

(f) In no case shall a work plan approval be construed to mean there is no obligation to comply with all other applicable federal, state, and local requirements for asbestos management and control, including, but not limited to the requirements identified in Env-Sw 2101.01(b).

PART Env-Sw 2107 SUSPENSION AND REVOCATION

Env-Sw 2107.01 Procedure.

(a) Revocation or suspension of any approval issued pursuant to this chapter shall proceed in accordance with RSA 541-A:30.

(b) The department shall revoke an approval if there is:

- (1) Good cause pursuant to Env-Sw 2107.02; and
- (2) There are no circumstances under which the holder of the approval can correct or eliminate the underlying problem.

(c) The department shall suspend an approval if there is:

- (1) Good cause pursuant to Env-Sw 2107.02; and
- (2) Given time to do so, the holder of the approval can correct or eliminate the underlying problem.

Env-Sw 2107.02 Good Cause. The following shall constitute good cause to suspend or revoke an approval issued pursuant to this chapter:

- ~~(1a)~~ The approval was issued based on false or misleading information;
- ~~(2b)~~ The terms and conditions of the approval are not met; or
- ~~(3c)~~ The approved activity, once implemented, fails to meet the criteria for having issued the approval.

APPENDIX

Rule Section(s)	State Statute(s) Implemented	Federal Statute(s)/Regulations Implemented
Env-Sw 2100	RSA 141-E:21 - RSA 141-E:24	<i>40 CFR 61; 40 CFR 63</i>