

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Sw 1500 CERTIFICATION OF WASTE-DERIVED PRODUCTS

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

REVISION NOTE:

Document #8459, effective 10-28-05, readopted with amendments, renumbered, and redesignated former Chapter Env-Wm 3200 as Env-Sw 1500, pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. The source notes for each section of Env-Sw 1500 identify the former subtitle Env-Wm and number for the respective rule prior to Document #8459.

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3201.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3201.02); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3202.01); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3202.02); ss by #10599, eff 7-1-14

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.

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(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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3202.03); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3202.04); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.02); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.03); ss by #10599, eff 7-1-14

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.

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Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.04); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.05); ss by #10599, eff 7-1-14

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

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(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.

Source. #6619-B, eff 10-29-97; amd by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.06); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; amd by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.07); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; ss by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss

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by #8459, eff 10-28-05 (formerly Env-Wm 3203.08); ss by #10599, eff 7-1-14

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 landfilling, including septage or sludge composting or landfilling, provided that at least 80 percent of the wood material is 3/4 inch, or less, in size.

Source. #6619-B, eff 10-29-97; ss by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.09); ss by #10599, eff 7-1-14

Env-Sw 1503.10 Waste-derived Compost. Compost derived from waste shall be deemed certified by rule for distribution and use as follows:

- (a) If Class AA compost, for use as compost without restriction;
- (b) If Class A compost, for use as compost within the limits identified in Env-Sw 605.07 and subject to identification in accordance with Env-Sw 605.09; and
- (c) If Class A compost except for particle size being greater than 10 millimeters (0.39 inches), for use in landfill cover systems pursuant to Env-Sw 605.08.
- (d) If derived from animal carcasses, for use 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 2008, published by New Hampshire Department of Agriculture, Markets, and Food.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.10); ss by #10599, eff 7-1-14

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.

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Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.11); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; ss by #7225, eff 3-31-00; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.12); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.13); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.14); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.15); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.16); ss by #10599, eff 7-1-14

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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.

Source. #7225, eff 3-31-00; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3203.17); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.02); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.03); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.04); ss by #10599, eff 7-1-14

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:

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(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.

Source. #6619-B, eff 10-29-97; amd by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.05); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3204.06); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.01); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.02); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.03); ss by #10599, eff 7-1-14

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;

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(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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.04); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.05); ss by #10599, eff 7-1-14

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;

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- (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.

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Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.06); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.07); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.08); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3205.09); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3206.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3207.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3207.02); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3207.03); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500) ss by #8459, eff 10-28-05 (formerly Env-Wm 3207.04); ss by #10599, eff 7-1-14

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### 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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3207.05); ss by #10599, eff 7-1-14

### 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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3208.01); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3208.02); ss by #10599, eff 7-1-14

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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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3208.03); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3208.04); ss by #10599, eff 7-1-14

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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3209.01); ss by #10599, eff 7-1-14

Env-Sw 1509.02 Procedure.

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

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(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.

Source. #6619-B, eff 10-29-97; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3209.02); ss by #10599, eff 7-1-14

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;

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(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.

Source. #6619-B, eff 10-29-97; amd by #6894-B, eff 12-1-98; (See Revision Note at chapter heading for Env-Sw 1500); ss by #8459, eff 10-28-05 (formerly Env-Wm 3209.03); ss by #10599, eff 7-1-14

APPENDIX

<b>Rule</b>	<b>State Statute(s) Implemented</b>
Env-Sw 1500	RSA 149-M:7, II, V, and XV; RSA 149-M:9, XIV