

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-32

Rule Number Env-Sw 316.04 and Env-Sw 316.06

1. Agency Name & Address:

Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

2. RSA Authority: RSA 149-M:7, II, III, V, XIV, XV

3. Federal Authority: n/a

4. Type of Action:

- ☐ Adoption
☐ Repeal
☐ Readoption
☒ Readoption w/amendment

5. Short Title: Amendments to Align Rules with Revised Personal and Business Disclosure Forms for Solid Waste Facilities

6. Contact person for copies and questions:

Name: Debra Sonderegger

Title: Enforcement Program Coordinator

Address: Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-0674

7. Yes ☐ No ☒ Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on **March 10, 2022**.

SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET

AND 2 COPIES OF THE FOLLOWING:

(and numbered correspondingly)

9. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

11. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

12. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number **2022-32** Rule Number **Env-Sw 316.04, and Env-Sw 316.06**

1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: RSA 149-M:7, III; RSA 149-M:9, III 3. Federal Authority: <u>n/a</u> 4. Type of Action: Adoption _____ Repeal _____ Readoption _____ Readoption w/amendment <u> X </u>
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5. Short Title: **Amendments to Align Rules with Revised Personal and Business Disclosure Forms for Solid Waste Facilities**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules specify requirements for using, signing, and submitting the Personal Disclosure Form (PDF) and Business Disclosure Form (BDF) for applicants for solid waste facility permits. The rules are proposed to be readopted with amendments to align the rules with the updated forms that were recently adopted in a separate rulemaking.

6. (b) Brief description of the groups affected:

The rules affect applicants for solid waste facility permits, requests to modify existing permits and the affiliated businesses and individuals.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	Statute(s) Being Implemented
Env-Sw 316.04, Env-Sw 316.06	RSA 149-M:6, III; RSA 149-M:9, III & IX

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Debra Sonderegger	Title:	Enforcement Program Coordinator
Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-0674
		Fax#:	(603) 271-2456
		E-mail:	Debra.A.Sonderegger@des.nh.gov

The rules also can be viewed in PDF at the Public Comment Opportunities section of the NHDES website at <https://www.des.nh.gov/public-comment-opportunities> and selecting "Rulemaking"

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 PM on Tuesday, April 12, 2022**

☐ Fax

☒ E-mail

☐ Other format (specify):

Please submit comments via email to swmbrules@des.nh.gov.

9. Public hearing scheduled for:

Date and Time:

Tuesday, April 5, 2022 at 3:00 PM

Room 208C, DES Offices, 29 Hazen Drive, Concord NH

NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.

The public may also attend the hearing virtually via GoTo Webinar, which can be accessed through the following link:

<https://attendee.gotowebinar.com/register/684567355720141069>

Place:

Meeting number (access code): After registering using this link, interested participants will be provided a confirmation email with information about joining the hearing remotely.

You also may join the meeting by phone:

Call in Number: 1 (914) 614-3221 US Toll

Access Code: 828-332-083

If any questions or technical issues, please contact Julie Ashton at 603-271-7837 or via email at Julie.A.Ashton@des.nh.gov.

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 22:023 dated: 02/15/2022 :

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost between the proposed rules and the existing rules.

- 2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):**

- A. To State general or State special funds:**

None.

- B. To State citizens and political subdivisions:**

None.

- C. To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify, but do not expand, the requirements for the existing forms that are required for the permitting program. The rules thus do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the New Hampshire Constitution.



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Robert R. Scott, Commissioner

FP 2022-032, Env-Sw 316.04 and Env-Sw 316.06
Amendments to Align Rules with Revised Personal and Business Disclosure Forms for Solid Waste Facilities
Summary of Comments on Initial Proposal with DES Responses
April 26, 2022

Introduction

The existing rules specify requirements for using, signing, and submitting the Personal Disclosure Form (PDF) and Business Disclosure Form (BDF) for applicants for solid waste facility permits. The rules are proposed to be readopted with amendments to align the rules with the updated forms that were recently adopted in a separate rulemaking.

The Department conducted a hybrid public hearing on these rules via WebEx and in person on April 5, 2022. No one from the public attended the hearing. Had anyone attended, the Department would have enabled the microphone of each individual one at a time in order to ensure that each person had an opportunity to comment. The Department did not hear from anyone during the hearing or subsequent to the hearing about any technical difficulties with access to the WebEx forum. No written comments from the public were received by the close of comment period (April 12, 2022). Written comments were received from the Office of Legislative Services, Administrative Rules (OLS); those comments and the Department's responses thereto are summarized below.

Env-Sw 316.04(e)(3)a.-c., Env-Sw 316.04(f)(4)a.-b., Env-Sw 316.04(h)(4)a.-b. re: the word “may”

Comment: OLS suggested to replace “may” to “might”.

Response: The Department did not revise the rules based upon OLS' comments. The use of “might” is not consistent with the language in forms previously approved by JLCAR.

**The Department did change the second reference in Env-Sw 316.04(e)(3)b. to Env-Sw 316.04(e)(3)c. as there was a typo and there were two paragraphs labelled Env-Sw 316.04(e)(3)b.

Env-Sw 316.04(f)(4)b. and Env-Sw 316.04(h)(4)c.

Comment: OLS suggested to replace “may be” to “is”.

Response: The Department did not revise the rules based upon OLS' comments. The use of “might” is not consistent with the language in forms previously approved by JLCAR.

Readopt with amendments Env-Sw 316.04, eff. 7-1-14 (Document #10595), to read as follows:Env-Sw 316.04 Use of Disclosure Forms; Signatures.

(a) Disclosure of personal information shall be on a “Personal Disclosure Form” (PDF) dated April 2021.

(b) Disclosure of business information shall be on a “Business Disclosure Form” (BDF) dated April 2021.

(c) Any PDF filed shall be signed and dated by the individual who is the subject of the PDF.

(d) If a PDF is completed by someone other than the individual who is the subject of the PDF, the name, address, and telephone number of the individual who completed the PDF shall be stated on the PDF.

{(e) has been moved, renumbered as (g), below}

(e) The signature provided pursuant to (c), above, shall constitute a sworn or affirmed statement that:

(1) The signer has made diligent inquiry into all matters addressed in the PDF;

(2) Based on such inquiry, the submitted information is true, complete, and not misleading to the best of the signer’s knowledge and belief; and

(3) The signer understands that if any of the statements are false, incomplete, or misleading, then:

a. Processing of the application **may** be delayed;

b. The permit sought **may** be denied or revoked; and

c. He or she **may** be subject to prosecution for false swearing under RSA 641:3 or any successor statute.

(f) The individual who prepares a BDF on behalf of an entity shall complete, sign, and have notarized an “Affidavit of Author”, which shall constitute a sworn or affirmed statement that:

(1) The signer is the individual who filled out the attached BDF in the name of the entity that is the subject of the BDF or who directed that the information contained in the BDF be set down therein;

(2) The signer has made diligent inquiry into all matters addressed in the BDF;

(3) Based on such inquiry, the submitted information is true, complete, and not misleading to the best of the individual’s knowledge and belief; and

(4) The signer understands that if any of the statements are false, incomplete, or misleading, then:

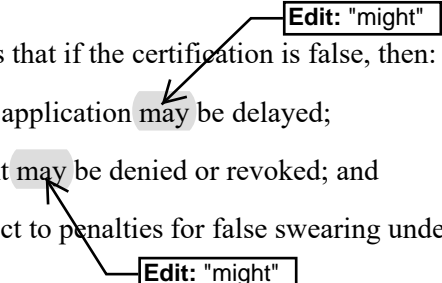
a. Processing of the application **may** be delayed;

b. The permit sought **may** be denied or revoked; and

c. He or she is subject to penalties for false swearing under RSA 641:3 or any successor statute.

(g) Any BDF filed for an entity shall be signed and dated by the individual(s) identified below, as applicable to the legal form of the entity:

(1) If the entity is a corporation, the:

- a. President, chairman of the board, or chief executive officer;
 - b. Secretary; and
 - c. Treasurer;
- (2) If the entity is any type of partnership, each general partner;
- (3) If the entity is a sole proprietorship, the owner; and
- (4) If the entity is any other business form, the individuals having positions equivalent to a corporation's chief executive officer, secretary, and treasurer.
- (h) The signatures provided pursuant to (g), above, shall constitute certification that:
- (1) The signer has examined the BDF;
 - (2) The BDF contains no statement or information the signer knows to be false, incomplete, or misleading; and
 - (3) The signer understands that if the certification is false, then:
 - a. Processing of the application **may** be delayed;
 - b. The permit sought **may** be denied or revoked; and
 - c. He or she is subject to penalties for false swearing under RSA 641:3 or successor statute.
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Readopt with amendments Env-Sw 316.06, eff. 7-1-14 (doc. #10595) to read as follows:

Env-Sw 316.06 Scope of Disclosure; Release Authorization.

- (a) Each individual required to submit a disclosure form shall provide the information requested on the PDF, including:
- (1) Personal identifying data such as name, address, physical description, date and place of birth, nationality, and residential history;
 - (2) Marital and family information, including information about relatives in the solid waste industry;
 - (3) Education, military and professional experience, employment history, public offices, and waste management licenses and experience;
 - (4) All other business and financial interests; and
 - (5) Involvement in professional or environmental violations, or civil or criminal proceedings.
- (b) Each entity required to submit a disclosure form shall provide the information requested on the BDF, including:
- (1) Business identifying data such as names, date and nature of organization, ownership, principal location and address, and past and present facilities;
 - (2) Corporate, partnership or business venture history and structure, including information about key employees, officers, directors, partners and trustees as applicable;
 - (3) Information about subsidiaries and affiliated entities;

- (4) Experience and credentials in the waste management industry, including waste permits and licenses held;
 - (5) History of environmental violations, and other administrative, civil or criminal proceedings;
 - (6) Equity structure and debt liability; and
 - (7) Financial history.
- (c) Each individual who files a PDF shall sign, date, and have notarized a release to inform courts, probation departments, selective service boards, employers, banks, financial and other such institutions, and all government agencies, whether federal, state, or local without exception both foreign and domestic, that:
- (1) The individual is affiliated with an applicant for a solid waste permit;
 - (2) The recipient of the release is authorized to release any and all information pertaining to the individual, documentary or otherwise, as requested by an appropriate employee, agent, or representative of the New Hampshire attorney general;
 - (3) The authorization supersedes and countermands any prior request or authorization to the contrary; and
 - (4) A photostatic or electronic copy of the authorization shall be considered as effective and valid as the original.
- (d) Each entity that files a BDF shall duly authorize an individual to sign, date, and have notarized a release to inform courts, probation departments, selective service boards, employers, banks, financial and other such institutions, and all government agencies, whether federal, state, or local without exception both foreign and domestic, that:
- (1) The individual has been duly authorized to authorize the office of the attorney general of New Hampshire to conduct an investigation into the background of the named business for the purpose of determining its suitability to hold a solid waste permit;
 - (2) The recipient of the release is authorized to release any and all information pertaining to the named business, documentary or otherwise, as requested by an appropriate employee, agent, or representative of the New Hampshire office of the attorney general;
 - (3) The authorization supersedes and countermands any prior request or authorization to the contrary; and
 - (4) A photostatic or electronic copy of the authorization shall be considered as effective and valid as the original.

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	Statute(s) Being Implemented
Env-Sw 316.04, Env-Sw 316.06	RSA 149-M:6, III; RSA 149-M:9, III & IX