

CHAPTER Env-Hw 800 REQUIREMENTS FOR RECYCLING OF HAZARDOUS WASTES

Statutory Authority: RSA 147-A:3; RSA 147-B:7

Readopt with amendments Env-Hw 801, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

PART Env-Hw 801 PURPOSE AND DEFINITIONS

Env-Hw 801.01 Purpose. The purpose of this chapter is to:

- (a) Identify those materials that are to be recycled that are wastes and therefore subject to regulation under Env-Hw 804 through Env-Hw 811;
- (b) Identify those materials that are to be recycled that are not wastes and therefore not subject to regulation under the hazardous waste rules; and
- (c) Set forth requirements for the management of materials identified both as wastes and as hazardous wastes, that are to be recycled. Such materials shall be termed recyclable materials.

Env-Hw 801.02 Definitions. For purposes of this chapter, the following definitions shall apply:

- (a) “Act of marketing” means the transfer of used oil from one party to another, regardless of whether a fee or charge is collected for the transfer;
- (b) “Hazardous waste fuel” means hazardous waste that is burned for energy recovery. The term includes fuel produced from hazardous waste by processing, blending, or other treatment. The term does not include a gas recovered from hazardous waste management activities when the gas is burned for energy recovery. For the purposes of this paragraph, “gas” means material that is in the gaseous state;
- (c) “Recyclable material” means material that is:
 - (1) A waste as defined in Env-Hw 104;
 - (2) Identified as a hazardous waste in Env-Hw 400; and
 - (3) To be recycled as defined in (e), below;
- (d) “Recyclable materials used for precious metal recovery” means recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these;
- (e) “Recycled” means used, reused, or reclaimed; and
- (f) “Used oil marketer” means any person who engages in the act of marketing unless exempt under Env-Hw 807.08(b).

PART Env-Hw 802 APPLICABILITY AND EXEMPTIONS

Readopt with amendments Env-Hw 802.01, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 802.01 Applicability. Subject to Env-Hw 802.02, this chapter shall apply to the following persons who manage recyclable materials, as defined in Env-Hw 801.02(c):

- (a) Generators;
- (b) Transporters;
- (c) Owners and operators of facilities that store recyclable materials before they are recycled, including those facilities that also recycle the materials; and
- (d) Owners and operators of facilities that recycle recyclable materials without storing the materials.

Readopt with amendments Env-Hw 802.02, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 802.02 Exemptions. A recycling process itself shall not be subject to regulation under the hazardous waste rules.

PART Env-Hw 803 CLASSIFICATION OF MATERIALS BEING RECYCLED

Readopt with amendments Env-Hw 803.01, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 803.01 Purpose. The purpose of Env-Hw 803, regarding the identification of materials as wastes, is to establish the equivalent of the rules set forth under 40 CFR 261.2(c) through (e), 7-1-08 edition, in New Hampshire rules.

Readopt Env-Hw 803.02, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 803.02 Categorization. Materials that are to be recycled, as defined in Env-Hw 801.02(e), shall be classified as follows:

(a) Materials that are wastes when recycled, as identified in Env-Hw 803.03, and therefore subject to regulation as recyclable materials under Env-Hw 804 through Env-Hw 811; and

(b) Materials that are not wastes when recycled, as identified in Env-Hw 803.04, and therefore not subject to regulation under the hazardous waste rules.

Readopt with amendments Env-Hw 803.03 through Env-Hw 803.05, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 803.03 Materials That Are Wastes When Recycled.

(a) A material shall be a waste when it is recycled, or accumulated, stored, or treated before recycling, if it is:

- (1) Used in a manner constituting disposal such that it is:
 - a. Applied to or placed on the land either without mixing or after mixing with any other substances, such as is prohibited by Env-Hw 805.01(e); or
 - b. Used to produce products that are applied to or placed on the land or is otherwise contained in products that are applied to or placed on the land, in which case the product itself shall remain a waste, unless it is a commercial chemical product listed in Env-Hw 402.04 and Env-Hw 402.05 being applied to the land in its ordinary manner of use;
- (2) Subject to (c), below, burned for energy recovery such that it is:
 - a. Burned to recover energy; or
 - b. Used to produce a fuel or is otherwise contained in fuels, in which case the fuel itself shall remain a waste;
- (3) Reclaimed, except those recycled materials identified in Env-Hw 803.04(b); or
- (4) Accumulated speculatively, as determined in Env-Hw 811, except for the recycled materials identified in Env-Hw 803.04(c).

(b) The following recycled materials shall be wastes, even if the recycling involves use, reuse, or return to the original process, as specified in Env-Hw 803.04(a):

- (1) Materials used in a manner constituting disposal, or used to produce products that are applied to the land;
- (2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels;

- (3) Materials accumulated speculatively;
- (4) Inherently waste-like material as defined in Env-Hw 103; or
- (5) Materials classified by the commissioner or designee as inherently waste-like using the following criteria:
 - a. The materials are ordinarily disposed of, burned, or incinerated, or the materials contain toxic constituents listed in 40 CFR 261 Appendix VIII, and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and
 - b. The materials pose a hazard to human health and the environment when recycled.
- (c) Notwithstanding (a)(2), above, a commercial chemical product is not a waste if it is itself a fuel.

Env-Hw 803.04 Materials That Are Not Wastes When Recycled.

- (a) Except as set forth in Env-Hw 803.03(b), a material shall not be a waste when it can be shown to be recycled by being:
 - (1) Used or reused as an ingredient in an industrial process to make a product, provided the material is not being reclaimed;
 - (2) Used or reused as an effective substitute for commercial products, provided the material is not being reclaimed; or
 - (3) Returned to the original process from which it is generated, without first being reclaimed or land disposed, if such material is:
 - a. Returned as a substitute for feedstock materials; and
 - b. In cases where the original process to which the material is returned is a secondary process, managed such that it is not placed on land.
- (b) The following materials shall not be wastes when recycled by being reclaimed:
 - (1) Sludges, as defined in Env-Hw 104, that are deemed to be hazardous solely because they exhibit one or more of the characteristics of hazardous waste set forth in Env-Hw 403;
 - (2) By-products, as defined in Env-Hw 103, that are deemed to be hazardous solely because they exhibit one or more of the characteristics of hazardous waste set forth in Env-Hw 403;
 - (3) Commercial chemical products listed in Env-Hw 402.04 or Env-Hw 402.05; and
 - (4) Commercial chemical products not listed in Env-Hw 402.04 or Env-Hw 402.05 that are deemed to be hazardous solely because they exhibit one or more of the characteristics of hazardous waste set forth in Env-Hw 403 except when they are recycled in ways that differ from their normal manner of use.
- (c) The following materials shall not be wastes when they are accumulated speculatively, as determined in Env-Hw 811:
 - (1) Commercial chemical products listed in Env-Hw 402.04 or Env-Hw 402.05; and
 - (2) Commercial chemical products not listed in Env-Hw 402.04 or Env-Hw 402.05 that are deemed to be hazardous solely because they exhibit one or more of the characteristics of hazardous waste set forth in Env-Hw 403 except when they are recycled in ways that differ from their normal manner of use.

Env-Hw 803.05 Documentation of Claims That Recycled Materials Are Not Wastes or Are Exempt from Regulation. A person who claims that a certain recycled material is not a hazardous waste or is exempt from regulation under the hazardous waste rules shall comply with Env-Hw 401.03(j).

PART Env-Hw 804 REQUIREMENTS FOR MANAGEMENT OF RECYCLABLE MATERIALS

Readopt with amendments Env-Hw 804.01, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 804.01 Requirements.

(a) Recyclable materials, as defined in Env-Hw 801.02(c), shall be managed as set forth in Env-Hw 804 unless specifically exempt as specified in Env-Hw 401.03(b)(36) through (39).

(b) Except as set forth in Env-Hw 804.02, a person who manages recyclable materials shall comply with the following requirements:

- (1) A generator of recyclable materials shall be subject to Env-Hw 500;
- (2) A transporter of recyclable materials shall be subject to Env-Hw 600;
- (3) An owner or operator of a facility that stores recyclable materials before they are recycled, including a facility that also recycles the materials, shall be subject to Env-Hw 300 and Env-Hw 700; and
- (4) An owner or operator of a facility that recycles recyclable materials without storing the materials before they are recycled shall be subject to the following:
 - a. Notification requirements as set forth in Env-Hw 702; and
 - b. Manifest requirements as set forth in Env-Hw 703.

Readopt with amendments Env-Hw 804.02, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 804.02 Requirements for Management of Specific Recyclable Materials.

(a) Generators, transporters, and owners and operators of facilities that store recyclable materials before they are recycled, who manage the recyclable materials specified in (b) through (f), below, shall not be subject to Env-Hw 804.01(b), but instead shall be subject to Env-Hw 805 through Env-Hw 809, respectively.

(b) Recyclable materials used in a manner constituting disposal shall be managed in accordance with Env-Hw 805.

(c) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Env-Hw 707 or Env-Hw 708 shall be managed in accordance with Env-Hw 806.

(d) Used oil being recycled shall be managed in accordance with Env-Hw 807.

(e) Recyclable materials used for precious metal recovery shall be managed in accordance with Env-Hw 808.01 through Env-Hw 808.03 or, if applicable, in accordance with Env-Hw 808.04 or Env-Hw 808.05.

(f) Spent lead-acid batteries that are being reclaimed shall be managed in accordance with Env-Hw 809 or Env-Hw 1100.

Readopt with amendments Env-Hw 805, eff.1-28-09 (doc. #9367), to read as follows:

PART Env-Hw 805 RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

Env-Hw 805.01 Requirements That Apply to Using Recyclable Materials In A Manner Constituting Disposal.

- (a) Recyclable materials used in a manner constituting disposal as described in Env-Hw 803.03 shall be subject to this part.
- (b) Generators and transporters of recyclable materials that are used in a manner that constitutes disposal shall be subject to the applicable requirements of Env-Hw 300, Env-Hw 500 and Env-Hw 600.
- (c) Owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but that are not the ultimate users of the materials, shall be subject to Env-Hw 300 and Env-Hw 700.
- (d) Subject to 40 CFR 266.20(b) and (c), 7-1-02 edition, owners and operators of facilities that use recyclable materials in a manner that constitutes disposal shall be subject to Env-Hw 300, Env-Hw 700, and Env-Hw 1200.

Env-Hw 805.02 Materials Not To Be Used On Roads. The following materials shall not be used for dust suppression or road treatment:

- (a) Discarded oil or other material that is contaminated with dioxin;
- (b) Any used oil as defined in Env-Hw 104; and
- (c) Any hazardous waste or any material contaminated with hazardous waste.

PART Env-Hw 806 HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

Readopt with amendments Env-Hw 806.01, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 806.01 Applicability. This part shall apply to hazardous waste fuels, as defined in Env-Hw 801.02(b), that are burned for energy recovery in any boiler or industrial furnace that is not regulated under Env-Hw 707 or Env-Hw 708.

Readopt with amendments Env-Hw 806.02 and Env-Hw 806.03, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 806.02 Generator Requirements.

- (a) A generator of hazardous waste that is used as a fuel or to produce a fuel shall be subject to Env-Hw 500.
- (b) A generator who markets hazardous waste fuel to a burner shall also be subject to Env-Hw 806.04.
- (c) A generator who burns hazardous waste fuel shall also be subject to Env-Hw 806.05.

Env-Hw 806.03 Transporter Requirements. A transporter of hazardous waste fuel or hazardous waste that is used to produce a fuel shall be subject to Env-Hw 600.

Readopt with amendments Env-Hw 806.04, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 806.04 Hazardous Waste Fuel Marketer Requirements.

- (a) “Hazardous waste fuel marketer (HWF Marketer)” means:
 - (1) A generator who markets hazardous waste fuel directly to a burner;

- (2) A person who receives hazardous waste from generators and produces, processes, or blends hazardous waste fuel from the hazardous waste; and
 - (3) A person who distributes but does not process or blend hazardous waste fuel.
- (b) A HWF marketer shall be subject to:
- (1) The notification requirements of Env-Hw 702;
 - (2) The permitting requirements of Env-Hw 300, if applicable,
 - (3) The accumulation and storage requirements set forth in Env-Hw 500 and Env-Hw 700; and
 - (4) The requirements set forth in Env-Hw 500 when a HWF marketer initiates a shipment of hazardous waste fuel.
- (c) A HWF marketer shall notify the department of hazardous waste fuel activities even if the HWF marketer has previously obtained an EPA identification number for other hazardous waste management activities.
- (d) Before a HWF marketer initiates the first shipment of hazardous waste fuel to a burner or another HWF marketer, the HWF marketer shall obtain a one-time written and signed notice from the recipient certifying, subject to Env-Hw 207, that:
- (1) The recipient of the fuel has notified the department to identify the recipient's hazardous waste fuel activities; and
 - (2) If the recipient is a hazardous waste fuel burner, as defined in Env-Hw 806.05(a), the recipient will burn the hazardous waste fuel only in an industrial furnace or boiler identified in Env-Hw 806.05(f).
- (e) A person shall only market hazardous waste fuel:
- (1) To persons who have notified the department of their hazardous waste fuel activities and have an EPA identification number; and
 - (2) If the fuel is burned, to persons who burn the fuel in boilers or industrial furnaces identified in Env-Hw 806.05(f).
- (f) Before accepting the first shipment of hazardous waste fuel from another HWF marketer, the receiving HWF marketer shall provide the shipping HWF marketer with a one-time written and signed certification, subject to Env-Hw 207, that the receiving HWF marketer has notified the department as specified in (b)(1) and (c), above, to identify hazardous waste fuel activities.
- (g) In addition to the applicable recordkeeping requirements of Env-Hw 500 and Env-Hw 700, the HWF marketer shall keep, for 3 years from the date the HWF marketer last engages in a hazardous waste fuel marketing transaction with the person who sends or receives the certification notice, a copy of each certification notice the HWF marketer receives or sends.

Readopt with amendments Env-Hw 806.05, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 806.05 Hazardous Waste Fuel Burner Requirements.

- (a) "Hazardous Waste Fuel Burner (HWF Burner)" means an owner or operator of an industrial furnace or boiler identified in (g), below, that burns hazardous waste fuel.
- (b) A HWF burner shall:
 - (1) Notify the department of its hazardous waste fuel activities in accordance with Env-Hw 702; and

(2) Comply with the following storage requirements:

- a. For accumulation for less than 90 days by generators who burn their hazardous waste fuel on site, the accumulation and storage requirements as set forth in Env-Hw 500; and
- b. For existing or new storage facilities, the applicable provisions of Env-Hw 300 and Env-Hw 700.

(c) A HWF burner shall notify the department of hazardous waste fuel activities even if the HWF burner has previously obtained an EPA identification number for other hazardous waste management activities.

(d) An owner or operator of a facility who intends to burn hazardous waste fuel shall obtain any required permits relating to control of air emissions from the department under RSA 125-C prior to burning such fuels.

(e) Before accepting the first shipment of hazardous waste fuel from a HWF marketer, the HWF burner shall provide the marketer a one-time written and signed notice certifying, subject to Env-Hw 207, that:

- (1) The HWF burner has notified the department of the burner's hazardous waste fuel activities; and
- (2) The HWF burner will burn the fuel only in a boiler or furnace as identified in (g), below.

(f) In addition to the applicable recordkeeping requirements of Env-Hw 500 and Env-Hw 700, a HWF burner shall keep, for 3 years from the date the burner last receives hazardous waste fuel from that marketer, a copy of each certification notice that the burner sends to a marketer.

(g) Hazardous waste fuel shall be burned for energy recovery in the following devices only:

- (1) Industrial furnaces as defined in Env-Hw 103; or
- (2) Boilers, as defined in Env-Hw 103, that are:
 - a. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or
 - b. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

(h) No fuel that contains any hazardous waste shall be burned in any cement kiln located within the boundaries of any incorporated municipality having a population greater than 500,000, based on the most recent federal census statistics, unless such kiln fully complies with Env-Hw 707.04(h) and Env-Hw 708.03(d)(7) as applicable to incinerators.

PART Env-Hw 807 REQUIREMENTS FOR MANAGEMENT OF USED OIL BEING RECYCLED

Readopt with amendments Env-Hw 807.01 through Env-Hw 807.03, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 807.01 Applicability, Exemptions, and Prohibitions.

(a) This part shall apply to:

- (1) Used oil, as defined in Env-Hw 104;
- (2) Any person who generates, transports, collects, or markets used oil destined to be recycled by being burned for energy recovery or rerefined; and

- (3) Any person who burns used oil fuel for energy recovery, except where exempt as specified in (b), below.
- (b) A person who generates used oil as a household waste shall be exempt from this part.
- (c) Recycling of used oil shall be subject to the following prohibitions:
 - (1) Used oil shall not be applied to roads or other land areas for the purpose of dust suppression or any other reason. Use of used oil for such purposes shall be deemed to be disposal of hazardous waste;
 - (2) Off-specification used oil, as defined in Env-Hw 807.03, shall not be used as an automotive undercoating; and
 - (3) Used oil shall not be mixed with any other waste identified as a hazardous waste under Env-Hw 400, unless it is being purposely blended with hazardous waste to formulate a hazardous waste fuel to be burned pursuant to Env-Hw 806.

Env-Hw 807.02 Specification Used Oil. Used oil shall be classified as specification used oil if the oil:

- (a) Has not been mixed with hazardous waste; and
- (b) Meets all of the standards in Table 8.1 below and does not otherwise exhibit any hazardous waste characteristics specified in Env-Hw 403:

Table 8.1 Specification Used Oil Standards

Constituent/Property	Allowable Level
Arsenic	5 parts per million, dry weight basis (ppm-dw) maximum
Cadmium	2 ppm-dw maximum
Chromium	10 ppm-dw maximum
Lead	100 ppm-dw maximum
Flash point	100 degrees Fahrenheit minimum
Polychlorinated biphenyls (PCBs)	less than 2 ppm-dw
Total Halogens	1,000 ppm-dw maximum

Env-Hw 807.03 Off-Specification Used Oil.

- (a) Used oil shall be classified as off-specification used oil if the oil:
 - (1) Does not meet all of the standards in Table 8.1;
 - (2) Has not been mixed with hazardous waste; and
 - (3) Meets the standards in Table 8.2 below and does not otherwise exhibit any hazardous waste characteristics specified in Env-Hw 403:

Table 8.2 Off-Specification Used Oil Standards

Constituent/Property	Allowable Level
Arsenic	18 ppm-dw maximum
Cadmium	10 ppm-dw maximum
Chromium	35 ppm-dw maximum
Lead	1,000 ppm-dw maximum
Flash Point	100 degrees Fahrenheit minimum

- (b) Except as provided in Env-Hw 401.03(b)(25), used oil containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 2 ppm shall be classified as off-specification used oil that

is subject to all requirements for managing off-specification used oil in Env-Hw 807. Used oil containing PCBs also shall be subject to regulation under the Toxic Substances Control Act and its rules codified under 40 CFR Part 761.

Readopt with amendments Env-Hw 807.04, eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 807.04 Used Oil That Exceeds Standards for Off-Specification Used Oil.

(a) Except as provided in (b), below, used oil shall be managed in accordance with Env-Hw 300, Env-Hw 500, Env-Hw 600 and Env-Hw 700 if it:

- (1) Has been mixed with hazardous waste;
- (2) Exhibits a hazardous waste characteristic as set forth in Env-Hw 403, except as provided for in Env-Hw 807.02 or Env-Hw 807.03; or
- (3) Does not meet the standards for off-specification used oil specified in Env-Hw 807.03.

(b) Used oil regulated pursuant to this section that is burned for energy recovery shall be managed as a hazardous waste fuel in accordance with Env-Hw 806.

(c) Used oil containing more than 1,000 ppm of total halogens shall be presumed by the department to have been mixed with halogenated hazardous waste listed in Env-Hw 400. A person may rebut this presumption by providing conclusive information that the used oil has not been mixed with halogenated hazardous waste listed in Env-Hw 400.

(d) Used oil regulated under Env-Hw 807.04 shall not be blended to meet the standards specified in Env-Hw 807.02 or Env-Hw 807.03.

Readopt with amendments Env-Hw 807.05 through Env-Hw 807.10, eff. 1-28-09 (doc. #9367), to read as follows:

Env-Hw 807.05 Sampling and Analytical Methods. Sampling and analysis of used oil shall be conducted in accordance with Env-Hw 401.04.

Env-Hw 807.06 Standards for Generators of Used Oil Being Recycled.

(a) This section shall apply to:

- (1) Any person who generates used oil that is destined to be burned for energy recovery or rerefined; and
- (2) Any person, including any municipality, that collects used oil generated as a household waste as described in (b)(9), below.

(b) A generator who stores used oil on-site shall comply with the following requirements:

- (1) The used oil shall be stored in containers that meet the US DOT container specifications under 49 CFR 173 or in a structurally sound tank;
- (2) Aboveground storage tanks shall comply with all applicable local ordinances and state laws pertaining to storage of petroleum products, including Saf-C 6009 and Saf-C 6012, state fire code, and Env-Or 300;
- (3) Underground storage tanks shall be designed and operated in compliance with Env-Or 400, except that the exemption for tanks with a capacity less than 110 gallons shall not apply;
- (4) Used oil containers and tanks shall be clearly labeled with the words "Used Oil for Recycle" at all times during accumulation and storage;

- (5) A generator shall ensure that containers or tanks are closed at all times except when used oil is being added to or removed from the container or tank;
- (6) All tanks and containers shall be maintained and operated to prevent spillage, seepage, or other discharge of used oil into storm or sanitary sewers, onto the land, or into ground or surface waters;
- (7) Subject to (b)(9), below, a generator shall conduct an initial used oil determination on the used oil by analyzing it for all of the parameters specified in Env-Hw 807.02 and Env-Hw 807.03, except that a generator may omit the analysis for PCBs if no sources of PCBs are present in the process generating the used oil;
- (8) The analysis required by (b)(7), above, shall be repeated whenever the process generating the used oil changes, or the oil has been mixed with other materials. In cases where used oils from 2 or more different sources are collected in one container or tank in proportions that vary over time, the generator shall conduct analyses with sufficient frequency to ensure that the oil is correctly classified before being offered for transport;
- (9) A municipality that collects used oil generated as a household waste and a generator of used oils that are comprised solely of used automotive oils may omit the initial used oil determination required by (b)(7) and (8), above, if the municipality or generator ensures that the oil is not mixed with any other types of oil or wastes. For the purposes of this exemption, automotive oil means motor, engine, and gear oils, and transmission and brake fluids;
- (10) A generator shall not mix used oil with any other hazardous waste;
- (11) A generator shall deliver used oil to a facility authorized to accept used oil, or burn the used oil on-site in accordance with Env-Hw 807.10;
- (12) Subject to (b)(14), below, used oil shall be transported by duly registered hazardous waste transporters only, using a 3-copy bill of lading that contains the information specified in (b)(13), below;
- (13) Each bill of lading for used oil shall include the following information:
 - a. A shipment number unique to each shipment;
 - b. The name and site address of the generator/shipper, transporter/carrier, and receiving facility/consignee;
 - c. The EPA identification number of:
 1. The shipper, if the shipper is required by Env-Hw 504 to have a number;
 2. The transporter; and
 3. The receiving facility;
 - d. The quantity of used oil to be delivered;
 - e. The date of shipment and date of delivery; and
 - f. The following certification, subject to Env-Hw 207, signed by the generator:

“This used oil is destined to be recycled and is subject to regulation by the New Hampshire Department of Environmental Services under Env-Hw 807. I certify that this used oil is not a hazardous waste fuel as defined in Env-Hw 807.04 and that I have not mixed this used oil with any other hazardous wastes identified in Env-Hw 400 or any used oil classified as hazardous waste fuel under Env-Hw 807.04.”;
- (14) If used oil is being shipped to another state that regulates used oil:

- a. A hazardous waste manifest may be used in lieu of a bill of lading; and
- b. The NH01 waste code shall not be recorded on the manifest;

(15) Generators who market their used oil directly to a burner shall comply with Env-Hw 807.09;

(16) Generators who burn their own used oil shall comply with Env-Hw 807.10; and

(17) Generators shall maintain on file copies of all bills of lading or used oil analyses for three years from the date of shipment or analysis.

Env-Hw 807.07 Standards for Transporters of Used Oil Being Recycled.

(a) Subject to (b), below, a transporter of used oil being recycled shall comply with Env-Hw 600.

(b) Any generator transporting up to 110 gallons at a time of the generator's own used oil shall comply with (c) and (d), below, in lieu of complying with Env-Hw 600.

(c) A bill of lading shall be used for transportation of used oil in accordance with Env-Hw 807.06(b)(13) in lieu of the uniform hazardous waste manifest required by Env-Hw 604, except in cases where used oil is being shipped to another state or jurisdiction that requires the use of a hazardous waste manifest for used oil, in which case the NH01 waste code shall not be recorded on the manifest.

(d) The transporter shall keep a copy of the bill of lading for each shipment on file for 3 years from the date of shipment. The 3-year record retention period shall be extended automatically while any enforcement action is pending.

(e) A transporter shall submit an annual used oil activity report for any used oil transported in the immediately preceding calendar year, as specified in (f) through (i), below.

(f) The report required by (e), above, shall include the following information on a form obtained from the department:

- (1) The name, mailing address, contact person, telephone number, New Hampshire transporter registration number, and EPA identification number of the transporter;

- (2) The reporting year; and

- (3) The total amount of used oil transported within the reporting year, including the total amounts of specification and of off-specification used oil transported from:

- a. In-state generators to in-state burners;
- b. In-state generators to in-state marketers;
- c. In-state generators to out-of-state entities;
- d. In-state marketers to in-state and out-of-state entities;
- e. Out-of-state entities to in-state burners; and
- f. Out-of-state entities to in-state marketers.

(g) A responsible company official shall attest in writing to the accuracy of the report.

(h) The report shall be submitted to the department by March 1 of the year immediately following the reporting year.

Env-Hw 807.08 Identification of Marketers of Used Oil Being Recycled.

(a) The following persons shall be classified as used oil marketers:

- (1) Generators who market their used oil directly to one or more burners;
 - (2) Persons who receive used oil from generators and produce, process, or blend used oil fuel from the used oils received, including persons sending blended or processed used oil to brokers or other intermediaries; and
 - (3) Persons, including transporters who take ownership of the oil they collect, who distribute but do not process or blend used oil.
- (b) Subject to (c), below, the following persons shall not be classified as used oil marketers unless they transfer their used oil directly to a person who burns it for energy recovery:
- (1) Used oil generators; and
 - (2) Transporters who transport used oil received only from generators.
- (c) A person who burns some used oil fuel incidental to processing or other treatment to produce used oil fuel for marketing shall not be classified as a used oil fuel burner who is subject to Env-Hw 807.10.
- (d) Generators, and transporters who collect used oil only from generators, who transfer used oil only to incidental burners as described in (c), above, shall not be classified as marketers who are subject to Env-Hw 807.09.

Env-Hw 807.09 Standards for Marketers of Used Oil Being Recycled.

- (a) This section shall apply to all used oil marketers as identified in Env-Hw 807.08.
- (b) A used oil marketer shall comply with the following requirements:
 - (1) A used oil marketer shall notify the department of used oil management activities by completing and submitting to the department a notification form obtained from the department that includes the following:
 - a. The information specified in Env-Hw 504.02(a), as applicable; and
 - b. Certification, subject to Env-Hw 207, signed by the marketer's authorized representative that:
 - i. The information provided on the notification form is true, complete, and not misleading to the knowledge and belief of the signer; and
 - ii. The marketer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.
 - (2) A used oil marketer shall notify the department of used oil management activities even if the used oil marketer has previously obtained an EPA identification number for other hazardous waste management activities;
 - (3) A marketer shall perform sampling and analyses in accordance with Env-Hw 807.05 for the parameters specified in Env-Hw 807.02 and Env-Hw 807.03 on used oil being marketed;
 - (4) A marketer shall assign a unique number or code to each batch of used oil tested and record the number or code on the corresponding analytical reports and on the bill of lading or hazardous waste manifest documenting shipment of that batch;
 - (5) If a previously tested batch is subsequently mixed with more used oil, a new number or code shall be assigned to the consolidated batch and testing shall be repeated prior to marketing;

- (6) A marketer may market specification or off-specification used oil subject to the following restrictions:
- a. Off-specification used oil shall be marketed only to rerefiners or to owners and operators of burning devices identified in Env-Hw 807.10(b)(4), or to other marketers; and
 - b. Specification used oil shall be marketed only to rerefiners or to owners and operators of burning devices identified in Env-Hw 807.10(b)(5), or to other marketers;
- (7) When initiating a shipment of used oil, a marketer shall use a 3-copy bill of lading as described in Env-Hw 807.06(b)(13);
- (8) In addition to the information required by Env-Hw 807.06(b)(13), a marketer shall indicate, on the bill of lading, the batch code or number corresponding to the batch being shipped and whether the oil is specification or off-specification used oil;
- (9) A copy of the analytical report shall accompany the bill of lading;
- (10) The marketer, transporter, and the receiving facility shall each maintain on file a copy of the bill of lading;
- (11) The following notices shall be required:
- a. Before initiating the first shipment of used oil to a burner, rerefiner, or other marketer, the marketer shall obtain a one-time written and signed notice from the recipient certifying, subject to Env-Hw 207, that:
 1. The recipient of the used oil has notified the department of the recipient's used oil management activities; and
 2. If the recipient is a burner, the recipient will burn the used oil only in a device that complies with Env-Hw 807.10; and
 - b. Before accepting the first shipment of used oil from another marketer subject to this section, the receiving marketer shall provide the shipping marketer with a one-time written and signed notice certifying, subject to Env-Hw 207, that the receiving marketer has notified the department of the receiving marketer's used oil management activities;
- (12) A marketer shall keep the following records on file:
- a. A copy of each certification notice that the marketer receives or sends for 3 years from the date the marketer last engages in a used oil marketing transaction with the person who sends or receives the certification notice;
 - b. Copies of all used oil analysis reports for 3 years from the date that the oil is marketed to another marketer, rerefiner, or burner;
 - c. A copy of each bill of lading for 3 years from the date of shipment; and
 - d. An operating log, with the following information regarding each shipment of used oil fuel, for 3 years from the date of shipment:
 1. The name and address of the facility receiving the shipment;
 2. The quantity of used oil fuel delivered;
 3. The date of shipment or delivery; and
 4. A cross-reference to the record of the used oil analysis, including the batch code or number; and
- (13) The 3-year record retention period specified in (b)(12), above, shall be extended automatically while any enforcement action is pending.

Env-Hw 807.10 Standards for Burners of Used Oil Fuel.

(a) For the purpose of this section, “Used oil fuel burner (UOF burner)” means an owner or operator of an industrial furnace, boiler, or space heater identified in (b)(4) - (6), below, that burns used oil fuel, except as specified in Env-Hw 807.08(c).

(b) A UOF burner shall comply with the following standards:

(1) A UOF burner shall notify the department of its used oil management activities by completing and submitting to the department a notification form obtained from the department that includes the following:

a. The information specified in Env-Hw 504.02(a), as applicable; and

b. Certification, subject to Env-Hw 207, signed by the burner’s authorized representative that:

i. The information provided on the notification form is true, complete, and not misleading to the knowledge and belief of the signer; and

ii. The burner is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.

(2) A UOF burner shall notify the department of used oil management activities even if the UOF burner has previously obtained an EPA identification number for other hazardous waste management activities;

(3) Owners and operators of facilities who intend to burn used oil fuel shall also notify the department's air resources division to secure any required permits prior to burning such fuels;

(4) Off-specification used oil fuel shall be burned only in the following devices:

a. Industrial furnaces as defined in Env-Hw 103;

b. Boilers, as defined in Env-Hw 103, that are:

1. Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

2. Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale; or

c. Used oil fired space heaters, provided that:

1. The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

2. Combustion gases from the heater are vented to the outside ambient air; and

3. The burner burns only used oil that is generated on site;

(5) Specification used oil fuel shall be burned only in the following devices:

a. Oil furnaces and boilers, except those located at private residences, hotels, motels, apartment buildings, and residential institutions including hospitals, residential treatment facilities, and retirement homes; or

- b. Used oil fired space heaters, provided that the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour, and combustion gases from the heater are vented to the outside ambient air;
- (6) Used oils containing greater than or equal to 2 ppm PCBs shall be burned only in units allowed under 40 CFR 761.60, pursuant to the Toxic Substances Control Act;
- (7) A UOF burner shall perform analyses of the oil for the parameters outlined in Env-Hw 807.02 and Env-Hw 807.03, unless:
- a. The UOF burner has received the used oil fuel from a UOF marketer that has tested the batch in question and has provided a copy of the resulting analytical report to the burner;
 - b. The UOF burner is burning only used automotive oil that is generated on-site; or
 - c. The UOF burner is burning only used oil collected from persons generating the oil as a household waste;
- (8) Before accepting the first shipment of off-specification used oil fuel from a marketer, a UOF burner shall provide the marketer a one-time written and signed notice certifying, subject to Env-Hw 207, that:
- a. The burner has notified the department of the location and general description of the burner's used oil management activities; and
 - b. The burner will burn the used oil only in a device specified in this section;
- (9) A UOF burner shall keep the following records on file:
- a. A copy of each certification notice that the burner sends to a marketer for 3 years from the date the burner last receives used oil fuel from that marketer;
 - b. Copies of all used fuel analysis reports for 3 years from the date that the oil is received at the burner's facility; and
 - c. A copy of each bill of lading for 3 years from the date that the oil is received at the burner's facility; and
- (10) The 3 year record retention period specified in (b)(9), above, shall be extended automatically while any enforcement action is pending.

PART Env-Hw 808 RECYCLABLE MATERIALS USED FOR PRECIOUS METAL RECOVERY

Adopt Env-Hw 808.01 to read as follows:

Env-Hw 808.01 Applicability and Exemptions.

- (a) This part shall apply to recyclable materials used for precious metal recovery and any person who generates, transports, or stores recyclable materials used for precious metal recovery, except as specified in Env-Hw 808.06
- (b) Subject to Env-Hw 808.02, Env-Hw 808.05, and Env-Hw 808.06, Env-Hw 500 shall not apply to a person who generates recyclable materials used for precious metal recovery.
- (c) Subject to Env-Hw 808.03, Env-Hw 808.05, and Env-Hw 808.06, Env-Hw 600 shall not apply to a person who transports recyclable materials used for precious metal recovery.
- (d) Subject to Env-Hw 808.04, Env-Hw 808.05, and Env-Hw 808.06, Env-Hw 300 and Env-Hw 700 shall not apply to a person who stores recyclable materials used for precious metal recovery.

Readopt with amendments Env-Hw 808.01, eff. 1-1-14 (doc. #10494), and renumber as Env-Hw 808.02, to read as follows:

Env-Hw 808.02 Generator Requirements. Any person who generates recyclable materials used for precious metal recovery shall comply with:

- (a) The notification requirements of Env-Hw 504;
- (b) The manifest requirements of Env-Hw 510;
- (c) As applicable, either:
 - (1) The small quantity generator self-certification requirements of Env-Hw 514; or
 - (2) The certified hazardous waste coordinator requirements of Env-Hw 509.04;
- (d) The notification requirements of Env-Hw 1200;
- (e) For precious metals exported to or imported from designated OECD member countries for recovery, 40 CFR 262 Subpart H and 40 CFR 265.12(a)(2); and
- (f) For precious metals exported to or imported from non-OECD countries for recovery, 40 CFR 262 Subparts E and F.

Readopt with amendments Env-Hw 808.02 through Env-Hw 808.05, eff. 1-28-09 (doc. #9367), and renumber as Env-Hw 808.03 through Env-Hw 808.06, to read as follows:

Env-Hw 808.03 Transporter Requirements. Any person who transports recyclable materials used for precious metal recovery shall comply with:

- (a) The notification requirements of Env-Hw 602;
- (b) The manifest requirements of Env-Hw 604;
- (c) The delivery requirements of Env-Hw 606;
- (d) The registration requirements of Env-Hw 609;
- (e) For precious metals exported to or imported from designated OECD member countries for recovery, 40 CFR 262 Subpart H and 40 CFR 265.12(a)(2); and
- (f) For precious metals exported to or imported from non-OECD countries for recovery, 40 CFR 262 Subparts E and F.

Env-Hw 808.04 Storage Facility Requirements. Any person who stores recyclable materials used for precious metal recovery shall:

- (a) Comply with:
 - (1) The notification requirements of Env-Hw 702;
 - (2) The manifest requirements of Env-Hw 703;
 - (3) For precious metals exported to or imported from designated OECD member countries for recovery, 40 CFR 262 Subpart H and 40 CFR 265.12(a)(2); and
 - (4) For precious metals exported to or imported from non-OECD countries for recovery, 40 CFR 262 Subparts E and F; and
- (b) To document that the materials are not being accumulated speculatively, as determined under Env-Hw 811, maintain records of:

- (1) The amount of materials stored at the beginning of the calendar year;
- (2) The amount of materials generated or received during the calendar year; and
- (3) The amount of materials remaining at the end of the calendar year;

Env-Hw 808.05 Speculative Accumulation of Recyclable Materials Used for Precious Metal Recovery. Recyclable materials used for precious metal recovery that are accumulated speculatively, as determined under Env-Hw 811, shall be regulated as hazardous wastes under Env-Hw 100-700 and not regulated as recyclable materials under this chapter.

Env-Hw 808.06 Increased Regulation of Recyclable Materials Used for Precious Metal Recovery.

(a) Any person who accumulates or stores recyclable materials used for precious metal recovery in a manner that does not protect human health and the environment, as determined in accordance with 40 CFR 260.40, shall comply with Env-Hw 300, 500, 600, and 700, as applicable.

(b) For purposes of making a determination pursuant to (a), above, the department shall use the standards and procedures established in 40 CFR 260.40 and 40 CFR 260.41, with the following modifications:

- (1) “Regional administrator” or “administrator” shall mean the commissioner or designee;
- (2) “Subparts A, C, D, and E of part 262 of this chapter” and “part 262” as used in 260.41(a) shall mean Env-Hw 500, Env-Hw 600, and Env-Hw 700; and
- (3) “Parts 270 and 124 of this chapter” as used in 260.41(b) shall mean Env-Hw 300.

PART Env-Hw 809 SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Readopt with amendments Env-Hw 809.01 through Env-Hw 809.03, eff.1-28-09 (doc. #9367), to read as follows:

Env-Hw 809.01 Applicability.

- (a) This part shall apply to any person who:
- (1) Generates or collects spent lead-acid batteries destined for reclamation;
 - (2) Transports spent lead-acid batteries destined for reclamation;
 - (3) Reclaims spent lead-acid batteries; or
 - (4) Exports spent lead-acid batteries for reclamation.

Env-Hw 809.02 Generators and Collectors. Any person who generates or collects spent lead-acid batteries destined for reclamation shall store the batteries in a manner designed to ensure that the battery housings do not break or leak acid onto the soil or into any groundwaters or surface waters, but shall not otherwise be subject to the hazardous waste rules.

Env-Hw 809.03 Transporter Requirements. A transporter of lead-acid batteries destined for reclamation shall:

- (a) Ensure that the batteries are loaded and braced so as to prevent damage and short circuits while in transit;
- (b) Comply with 49 CFR 173.159(e) and Saf-C 600;
- (c) If transporting within the United States to export the batteries to an OECD country, specified in 40 CFR 262.58(a)(1), for reclamation, comply with the applicable requirements of 40 CFR 262 Subpart H; and

(d) If transporting within the United States to export the batteries to a non-OECD country for reclamation:

- (1) Decline to accept a shipment if the transporter knows the shipment does not conform with the EPA acknowledgement of consent;
- (2) Ensure that a copy of the EPA acknowledgement of consent accompanies the shipment; and
- (3) Ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

Readopt with amendments Env-Hw 809.04, eff.1-28-09 (doc. #9367), as amended eff. 10-19-12 (doc. #10205), to read as follows:

Env-Hw 809.04 Reclamation Facility Requirements. An owner or operator of a facility at which spent lead-acid batteries are reclaimed and stored prior to reclamation shall be subject to the:

- (a) Storage facility permit requirements specified in Env-Hw 300; and
- (b) Facility requirements specified in Env-Hw 700, except for:
 - (1) The waste analysis requirements of Env-Hw 707.03(a)(2) and Env-Hw 708.02(a)(2); and
 - (2) The manifest requirements of Env-Hw 703.

Adopt Env-Hw 809.05 to read as follows:

Env-Hw 809.05 Exporter Requirements. An exporter of spent lead-acid batteries destined for reclamation shall be subject to Env-Hw 400 and Env-Hw 502 and shall:

- (a) If shipping to an OECD country specified in 40 CFR 262.58(a)(1), comply with the applicable requirements of 40 CFR 262 Subpart H; or
- (b) If shipping to a non-OECD country:
 - (1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 40 CFR 262.56(a)(1)-(4), (a)(6), and (b), and 40 CFR 262.57;
 - (2) Export the batteries only upon consent of the receiving country and in conformance with the EPA acknowledgement of consent as defined in Env-Hw 103; and
 - (3) Provide a copy of the EPA acknowledgement of consent for the shipment to the transporter transporting the shipment for export.

Readopt with amendments Env-Hw 810, eff.1-28-09 (doc. #9367), to read as follows:

PART Env-Hw 810 WAIVERS

Env-Hw 810.01 Waivers. The following requests for waivers shall be processed as specified in Env-Hw 202:

- (a) Waivers from classification as a waste pursuant to Env-Hw 803; and
- (b) Waivers to classify a combustion device as a boiler for purposes of Env-Hw 806.05 when such device does not satisfy the definition of a boiler in Env-Hw 103.

Readopt with amendments Env-Hw 811, eff.1-28-09 (doc. #9367), to read as follows:

PART Env-Hw 811 SPECULATIVE ACCUMULATION

Env-Hw 811.01 Identification of Speculative Accumulation.

(a) A material that is accumulated before being recycled shall be deemed to be accumulated speculatively, unless the person accumulating the material can show that:

- (1) The material has potential to be recycled;
- (2) A feasible means of recycling exists for the material; and
- (3) During the calendar year commencing on January 1, at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period is:
 - a. Recycled at the site where it is accumulated; or
 - b. Transferred to a different site for recycling.

(b) Compliance with (a)(3), above, shall be determined as follows:

- (1) In calculating the percentage of turnover, the 75 percent requirement shall be applied to each material of the same type that is recycled in the same way; and
- (2) Materials exempt under Env-Hw 401.03(b)(11) shall not be included in making the calculation.

APPENDIX A: STATE STATUTES, FEDERAL REGULATIONS IMPLEMENTED

Rule Section(s)	State Statute(s)	Federal Regulation(s)
Env-Hw 801	RSA 147-A:3, I, IV	40 CFR 261; 40 CFR 266; 40 CFR 279
Env-Hw 802	RSA 147-A:3, I	40 CFR 261
Env-Hw 803	RSA 147-A:3, I, VI	40 CFR 261
Env-Hw 804	RSA 147-A:3, IV	40 CFR 261; 40 CFR 266; 40 CFR 279
Env-Hw 805	RSA 147-A:3, IV	40 CFR 266
Env-Hw 806	RSA 147-A:3, IV, VI	40 CFR 266
Env-Hw 807	RSA 147-A:3, I, IV, VI; RSA 147-B:14	40 CFR 261; 40 CFR 279
Env-Hw 808	RSA 147-A:3, III, IV, VI; RSA 147-A:5, III, IV	40 CFR 266
Env-Hw 809	RSA 147-A:3, IV	40 CFR 266
Env-Hw 810	RSA 147-A:3, I, III, IV	40 CFR 260.30 - 260.33; 40 CFR 261
Env-Hw 811	RSA 147-A:3, IV, VI	40 CFR 261

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

[none in this chapter]

APPENDIX C: STATUTORY DEFINITIONS

[none in this chapter]

APPENDIX D: FEDERAL DEFINITIONS AND REGULATIONS

[none in this chapter]

APPENDIX E: EMERGENCY TELEPHONE NUMBERS

[none in this chapter]