

Readopt with amendment Chapter Env-Wm 400, eff. 8-26-94 (doc #5886), as amended, eff. 11-26-96 (doc #6384-B) and, as amended, eff. 2-26-00 (doc #7207-B) and (doc# 7208), to read as follows:

CHAPTER Env-Wm 400 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES:

PART Env-Wm 401 PURPOSE, APPLICABILITY, EXEMPTIONS, AND METHODS

Env-Wm 401.01 Purpose of and Directory for Env-Wm 400.

- (a) ~~Chapter~~ Env-Wm 400 identifies those wastes which are subject to regulation as hazardous wastes.
- (b) The terms "waste" and "hazardous waste" are defined at Env-Wm 110.01~~(b)~~(c). Other terms relevant to the definitions of "waste" and "hazardous waste" include "abandoned", "discarded," "disposal", "inherently waste-like", "reclaimed", "recycled", "spent," "spill" and "used or reused", which are also defined at Env-Wm 110.01~~(b)~~(c). The term "accumulated speculatively" is also relevant and is explained at ~~Part~~ Env-Wm 811.
- (c) Wastes exempted from regulation under the hazardous waste rules are identified in Env-Wm 401.03.
- (d) Specific chemical wastes and industrial process source wastes that have been listed as hazardous wastes are identified in ~~Part~~ Env-Wm 402. The ~~division~~ *department* can list additional wastes as hazardous waste in accordance with ~~Part~~ Env-Wm 405.
- (e) Characteristic hazardous wastes are identified in ~~Part~~ Env-Wm 403. A waste that meets the criteria of ignitability, corrosivity, reactivity or toxicity set forth in ~~Part~~ Env-Wm 403 is a characteristic hazardous waste. The ~~division~~ *department* can identify additional hazardous characteristics in accordance with Env-Wm 405.03.
- (f) Hazardous waste mixtures and other contaminated or residual materials subject to regulation as hazardous waste are identified in ~~Part~~ Env-Wm 404.
- (g) ~~Part~~ Env-Wm 406 sets forth criteria and procedures for delisting hazardous wastes.
- (h) All hazardous wastes identified in ~~Chapter~~ Env-Wm 400 that are to be recycled are regulated under ~~Chapter~~ Env-Wm 800.

Env-Wm 401.02 Applicability.

- (a) A waste which is not exempted from regulation under Env-Wm 401.03 becomes a hazardous waste when any of the following events occur:
 - (1) In the case of a waste listed in ~~Part~~ Env-Wm 402, when the waste first meets the listing description set forth in ~~Part~~ Env-Wm 402;
 - (2) In the case of a mixture of any waste with one or more listed hazardous wastes, when the hazardous waste listed in ~~Part~~ Env-Wm 402 is first added to the mixture, ~~except as provided in Env-Wm 401.02(a)(3);~~
 - ~~(3) In the case of any mixture regulated under Env-Wm 404.01(b), when the waste contains a listed constituent in concentrations that exceed the levels established in Env-Wm 404.01(b); and~~
 - (4) (3)In the case of any other waste or waste mixture, when the waste or waste mixture exhibits any of the characteristics identified in ~~Part~~ Env-Wm 403 or by the ~~division~~ *department* in

accordance with Env-Wm 405.03.

(b) A hazardous waste shall remain a hazardous waste unless and until it meets the following criteria:

(1) In the case of any waste, if the waste does not exhibit any of the characteristics of hazardous waste identified in ~~Part~~ Env-Wm 403;

(2) In the case of a federally listed waste or a waste which contains or is derived from a federally listed waste, if the EPA has excluded the waste in accordance with 40 CFR 260.22 and the ~~division~~ ***department*** has delisted the waste under ~~Part~~ Env-Wm 406. "Federally listed wastes" means those wastes listed under Env-Wm 402.04(b), Env-Wm 402.05(b), Env-Wm 402.06(a) and Env-Wm 402.07(a);

(3) In the case of a hazardous waste regulated only by New Hampshire, ~~the rules below apply. Hazardous wastes regulated only by New Hampshire are wastes listed under Env-Wm 402.04(c), Env-Wm 402.05(c), Env-Wm 402.06(b) or Env-Wm 402.07(b), waste mixtures regulated under Env-Wm 404.01(b) and wastes derived from those wastes:~~

~~a. In the case of New Hampshire listed wastes, if the division ***department*** has delisted the waste under ~~Part~~ Env-Wm 406; and~~

~~b. In the case of a New Hampshire regulated waste mixture or a waste derived from a New Hampshire listed waste or a New Hampshire regulated mixture, if the concentration of the listed constituent or constituents falls below the levels established in Env-Wm 404.01(b) or if the mixture has been exempted by the division under Env-Wm 404.01(f).~~

Env-Wm 401.03 Exemptions.

(a) The following materials shall not be considered hazardous wastes under the hazardous waste rules:

(1) Domestic sewage. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

(2) Wastewater discharges in compliance with applicable New Hampshire and federal permits. "Wastewater discharges" means industrial point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. "Point source" means any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or floating craft, or other discernable, defined and discrete conveyance from which pollutants are or may be discharged. The term "point source" shall not include agricultural irrigation return waters;

(3) Irrigation return waters; and

(4) Source, special nuclear, or nuclear by-product material as defined by the Atomic Energy Act of 1954 as amended, 42 USC 2011 et seq.;

~~(b)(5)(5)~~ Material subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;

~~(b)(9)~~ (6) Pulping liquors, that is black liquors, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Env-Wm 811.01;