

Notice Number 2024-84

Rule Number Env-A 1800

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 141-E:4</u></p> <p>3. Federal Authority: <u>42 U.S.C. 7412(l); 15 U.S.C. 2643(m)</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Asbestos Management and Control**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The Department of Environmental Services (Department) is proposing to readopt with amendments Env-A 1800, *Asbestos Management and Control*, after receiving stakeholder and U. S. Environmental Protection Agency (EPA) input. Env-A 1800 implements RSA 141-E by establishing asbestos abatement standards and notification, recordkeeping, and fee requirements. The rules also maintain minimum requirements that will be at least as stringent as the federal requirements in 40 CFR 61, Subpart M and 40 CFR 763, Subpart E. EPA has delegated its authority to implement the federal standard to the Department, pursuant to section 112 of the Clean Air Act and 40 CFR 763.98. The proposed rules implement enforceable, practical changes that streamline and clarify requirements in the rule. The proposed rules also specify asbestos analytical requirements, training course and provider requirements, safe worker practices, administrative fines, and licensing and certification requirements for asbestos abatement, school asbestos abatement planning, and asbestos disposal site management. The proposed rules protect public health by ensuring that asbestos is managed in a manner that minimizes the release of asbestos fibers to the environment and human exposure thereto. The Department conducted two stakeholder meetings to receive feedback on the proposed changes and sent a draft of the rules to EPA for review.

Env-A 1800 has been reorganized and re-written to better fulfill the directive of RSA 141-E:1 for the Department "... to control the exposure of the public to asbestos by regulation of asbestos abatement and asbestos disposal site activities. The intent of this chapter is not to overburden the unknowing homeowner, but rather to assure commercial and industrial compliance with asbestos disposal site regulation and asbestos abatement efforts."

Amendments to Env-A 1800 include: (1) revising and consolidating all requirements for homeowners into Part Env-A 1803; (2) adding definition of "homeowner"; (3) simplifying the definition of "major asbestos abatement"; (4) revising the definition of "rental dwelling"; (5) clarifying inspection requirements; (6) adding limited exemptions to inspection; (7) revising recordkeeping requirements; (8) revising notification requirements; (9) clarifying the procedures for ordered demolition and emergency abatement; (10) adding an exemption to the demolition work practice requirement for moving intact structures; (11) streamlining glovebag requirements and the alternative procedure process; (12) revising asbestos removal requirements to allow for no wetting if temperatures are below freezing; (13) clarifying waste shipment record requirements; (14) clarifying requirements for approved training and accredited training; (15) modifying application fees in Env-A 1815.09 so that the first replacement of a license or certification is free; (16) revising license and certification criteria for denial, suspension, and revocation; (17) clarifying

training requirements for all license or certification types; (18) streamlining requirements for entity licenses and personnel certifications; and (19) revising asbestos disposal site contractor and worker requirements.

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

The rule applies to any person, including individuals and legal entities, who owns or operates any building containing regulated asbestos-containing material (RACM) and who either renovates or demolishes the building, and any person involved in asbestos abatement activities, including analytical laboratories, consultants, and asbestos abatement contractors.

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

Rule Number(s)	State Statute(s) Implemented	Federal Regulations Implemented
Env-A 1801.01	RSA 141-E:1	
Env-A 1801.02	RSA 141-E:3	40 CFR 61.140 and 61.145(a)
Env-A 1801.03 and Env-A 1801.04	RSA 141-E:4, XVI(c)	42 U.S.C. 7412
Env-A 1801.05	RSA 141-E:3, II and VI; RSA 141-E :4, II and XVI(a)	42 U.S.C. 7412; 40 CFR 61, Subpart M
Env-A 1801.06	RSA 141-E:4	15 U.S.C. 2643(m); 40 CFR 763, Subpart E
Env-A 1802.01 – Env-A 1802.04	RSA 141-E:4	
Env-A 1802.05	RSA 141-E:2, I	
Env-A 1802.06	RSA 141-E:2, II	
Env-A 1802.07 – Env-A 1802.11	RSA 141-E:4	
Env-A 1802.12	RSA 141-E:4	40 CFR 763, subpart E, appendix D
Env-A 1802.13	RSA 141-E:2, III	
Env-A 1802.14 – Env-A 1802.20	RSA 141-E:4	
Env-A 1802.21	RSA 141-E:2, IV	
Env-A 1802.22 – Env-A 1802.28	RSA 141-E:4	
Env-A 1802.29	RSA 141-E:2, VI	
Env-A 1802.30	RSA 141-E:4	40 CFR 763, subpart E, appendix D
Env-A 1802.31 – Env-A 1802.34	RSA 141-E:4	
Env-A 1802.35 – Env-A 1802.37	RSA 141-E:4, I	
Env-A 1802.38	RSA 141-E:4	40 CFR 61.141, appendix D
Env-A 1802.39	RSA 141-E:4	
Env-A 1802.40	RSA 141-E:4	29 CFR 1926.1001(b), appendix D
Env-A 1802.41	RSA 141-E:2, VII	
Env-A 1802.42 – Env-A 1802.45	RSA 141-E:4	
Env-A 1802.46	RSA 141-E:2, VIII	
Env-A 1802.47 – Env-A 1802.49	RSA 141-E:4	
Env-A 1802.50	RSA 141-E:2, IX	
Env-A 1802.51 - Env-A 1802.53	RSA 141-E:4	

Rule Number(s)	State Statute(s) Implemented	Federal Regulations Implemented
Env-A 1803.01 – Env-A 1803.08	RSA 141-E:1, III; RSA 141-E:3, VIII and IX; RSA 141-E:4, XVI	
Env-A 1804.01	RSA 141-E:3, X; RSA 141-E:4, XVI	
Env-A 1804.02 and Env-A 1804.03	RSA 141-E:3, VI and X; RSA 141- E:4, VI	
Env-A 1804.04	RSA 141-E:3, X; RSA 141-E:4, XVI	
Env-A 1804.05	RSA 141-E:4, XIII; RSA 141-E:12, II	
Env-A 1805.01 – Env-A 1805.03	RSA 141-E:3, XI; RSA 141-E:4, XVI	
Env-A 1806.01 – Env-A 1806.06	RSA 141-E:3, XI	40 CFR 61.145
Env-A 1806.07	RSA 141-E:3, XII; RSA 141-E:4, XVI(d); RSA 141-E:12, II	
Env-A 1806.08	RSA 141-E:3, XI	40 CFR 61.145
Env-A 1806.09	RSA 141-E:3, X	
Env-A 1807	RSA 141-E:3, VIII; RSA 141-E:4, II & XVI(a)	
Env-A 1808	RSA 141-E:3, VIII; RSA 141-E:4, II & XVI(a)	
Env-A 1809	RSA 141-E:3, VIII; RSA 141-E:4, II & XVI(a)	
Env-A 1810	RSA 141-E:3, VIII; RSA 141-E:4, II & XVI(a)	
Env-A 1811.01	RSA 141-E:4, II(a)(3)	42 U.S.C. 7412; 40 CFR 61, Subpart M
Env-A 1811.02	RSA 141-E	15 U.S.C. 2643(m); 40 CFR 763, Subpart E
Env-A 1812	RSA 141-E:3, IX; RSA 141-E:4, XVII	40 CFR 61.145 and 61.150
Env-A 1813	RSA 141-E:8 & 13	
Env-A 1814	RSA 141-E:4, II & VIII	40 CFR 763, subpart E, Appendix C
Env-A 1815.01 – Env-A 1815.08	RSA 141-E:3, II; RSA 141-E:4, II, VII & VIII; RSA 141-E:10-11	
Env-A 1815.09	RSA 141-E:3, III; RSA 141-E:4, II, IX & XI; RSA 141-E:12, I	
Env-A 1815.10	RSA 141-E:4, II & VIII; RSA 141- E:10-11	
Env-A 1816	RSA 141-E:3, II; RSA 141-E:4, II, VII & VIII; RSA 141-E:10-11	
Env-A 1817	RSA 141-E:3, I and XXI; RSA 141- E:4, XV; RSA 141-E:10	
Env-A 1817.04(a)(3)	RSA 141-E:3, III; RSA 141-E:4, XV	
Env-A 1817.10(c)(1)	RSA 141-E:4, XV; RSA 141-E:10	29 CFR 1910.120, 29 CFR 1926.1101
Env-A 1817.10(d)	RSA 141-E:4, XV; RSA 141-E:10	29 CFR 1910.1001 & 1910.1020; 29 CFR 1910.1101
Env-A 1818	RSA 141-E:3: II and XXI; RSA 141- E:4, XV; RSA 141-E:11	
Env-A 1818.04(d)	RSA 141-E:3, III; RSA 141-E:4, XV	
Env-A 1818.08(d)	RSA 141-E:4, XV; RSA 141-E:11	29 CFR 1910.120, 29 CFR 1926.1101
Env-A 1819	RSA 141-E:3, III; RSA 141-E:4, XV	
Env-A 1819.01(b)	RSA 141-E:4, XV; RSA 141-E:11	29 CFR 1910.1001 & 1910.1020; 29 CFR 1910.1101

Rule Number(s)	State Statute(s) Implemented	Federal Regulations Implemented
Env-A 1820	RSA 141-E:4, XII; RSA 541-A:22, IV	

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

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The rules also can be viewed in PDF in 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 p.m. on Friday, July 5, 2024**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, June 18, 2024 at 9:30 AM**

Physical Location: **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.

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Phone conference ID: 376 240 50#

Contact Meg King at Margaret.M.King@des.nh.gov or (603) 271-7669 if you have any questions or technical issues connecting to the hearing.

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

FIS # 24:037, dated 05/06/2024

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

When compared to the existing rules the proposed rules will impact state revenue to the dedicated asbestos account established in RSA 141-E, and impact costs to state citizens and independently owned businesses subject to the licensure and certification requirements.

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

The EPA has delegated to the Department the authority to implement the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos through the Env-A 1800 rules, pursuant to 42 U.S.C. 7412(l); 40 CFR 61, subpart M. The Department must implement and enforce federal standards pursuant to the delegation agreement between the Department and EPA. If the Department does not adopt the proposed amendments, it will be in violation of the delegation agreement and the EPA could withdraw this delegation pursuant to 42 U.S.C. §7412(l)(6) and enforce the standards directly (42 U.S.C. §7412(l)(7)). If the EPA enforced the standards directly, it would increase the transaction costs to the regulated community.

In addition, the EPA has approved a waiver of 40 CFR 763, Subpart E, Asbestos-Containing Materials in Schools, which gives the Department the authority to implement those requirements through Env-A 1800, pursuant to 42 U.S.C. 2651, Asbestos Hazards Emergency Response Act (AHERA). If the rules are not adopted, EPA could withdraw their agreement, resulting in the loss of approximately \$78,000 per year in federal funds to the Department as well as increased transaction costs to the regulated community.

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

Under proposed Env-A 1815.07, a license holder will be able to request a replacement that is free for the first replacement. This will decrease costs for license and certification holders because they will not have to pay for the first replacement of a license or certification. Proposed Env-A 1815.09 clarifies that all asbestos inspectors need to be certified and pay the \$200 certification fee, and not just inspectors for schools. The Department states the number of asbestos inspectors in the State who are not already certified it is unknown. Elimination of the fees for sample analysis in proposed Env-A 1804.05 will have no impact as these fees have not been used. The Department indicates elimination of the \$250 application (current Env-A 1811.09) is to remove the distinction between an initial fee and a renewal fee and will have no impact; license holders will still pay an annual amount of \$250. The changes described above will impact state revenue to the asbestos account established in RSA 141-E and costs to state citizens and to independently owned businesses that pay the fees. The overall amount of these impacts is not known.

A. To State general or State special funds:

There will be no cost or benefit to the State general fund. See #3 above regarding the increase or decrease fee revenue to the dedicated asbestos account.

B. To State citizens and political subdivisions:

See #3. There will be no cost or benefit to political subdivisions.

C. To independently owned businesses:

See #3 above.

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

Although it appears that one municipality has elected to have a licensed asbestos inspector, the rules do not require any political subdivisions to be licensed inspectors or contractors. Further, the rules allow existing licensees to allow the license to expire should they so choose. 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.