

**2010 REPORT REGARDING ACT No. 56 (2010)**  
**TO:**  
**THE SENATE & HOUSE COMMITTEES ON NATURAL**  
**RESOURCES & ENERGY**  
**AND**  
**THE HOUSE COMMITTEE ON FISH, WILDLIFE & WATER**  
**RESOURCES**

**-Report on the Regulation of Salvage Yards-**

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**Department of Environmental Conservation**  
**Compliance and Enforcement Division**

**I. PURPOSE**

In 2009 the General Assembly passed, and the Governor signed into law, Act No. 56 (Act) which addresses the regulation of salvage yards. Section 23 of the Act requires the Agency of Natural Resources (ANR or Agency) to submit a report addressing a number of areas related to the oversight and regulation of salvage yards.

**II. INTRODUCTION**

For over a decade there have been discussions regarding the need to create a comprehensive program to oversee the licensing, regulation, and inspection of salvage yards located in Vermont. While Agency staff has for many years recognized the threat posed by the improper operation of salvage yards, Agency middle management had opposed the transfer of licensing from the Agency of Transportation (VTrans) and the creation of a comprehensive salvage yard program to address this business sector. The reason for the opposition to this transfer was the view that it would amount to an unfunded mandate, in essence requiring that the issue be quickly and comprehensively addressed but without the necessary resources to actually complete the task.

During the 2009 legislative session the Agency agreed that salvage yard jurisdiction should be transferred to the Agency so that a comprehensive approach to licensing, regulation and inspection could be created. This transfer came without resources of any kind (positions or funding). As required by the Act, the Agency

reassigned a single existing FTE to this project. In addition, the Director of the Compliance and Enforcement Division (CED), where the salvage yard section organizationally is located, has spent considerable time and effort working to facilitate the smooth transfer of jurisdiction to ANR. Further, the Director has re-tasked CED staff to work in this area in an effort to efficiently determine the number of existing salvage yards in the state. As a result of the efforts made over the last six months, it has become apparent that the approximately seventy (70) VTrans licensed salvage yards represent only about one quarter to one third of the actual number of salvage yards in Vermont. While the Agency has made significant efforts over the last six months, we do not believe that we have all the answers as to how to best regulate this sector. As a result, the information that is presented below represents our best thinking to date, but our views are still evolving and thus a number of our proposals may be adjusted as time and experience teaches us about better methods for confronting the challenges presented by regulation of this business sector.

## **II. DISCUSSION & RECOMMENDATIONS IN RESPONSE TO QUESTIONS PRESENTED**

### **A. Number of Salvage Yards in Vermont**

At the time of the transfer of jurisdiction from VTrans to ANR there were approximately seventy (70) licensed salvage yards in Vermont. While we still do not know the precisely how many salvage yards are currently operating in Vermont we have made significant efforts to better estimate the actual number of yards in existence. The CED approached this task in two ways.

First, we expanded our list of yards in operation to include all previously known but unlicensed salvage yards. This data was received from a number of sources, including a database developed by VT DEC over the last decade. This added approximately one hundred and forty (140) locations (yards) for a total of approximately two hundred and ten (210). The CED then distributed this list of 140 unlicensed yards to each of the six environmental enforcement officers and the one salvage yard inspector to determine, through field investigation, the baseline status of the facilities via land record search and observation.

Second, the CED created an on-line survey of Vermont salvage yards to obtain new information from citizens and municipal officials. This survey was heavily publicized via the media (television, print) as well as on the Agency and DEC home webpages. Over one hundred and thirty five (135) surveys have been received to date.

Based on an analysis of the information that has been collected we are currently aware of approximately two hundred and sixty (260) salvage yards. A more precise number cannot be given without further investigation as it is not clear how many of the locations reported in the survey will actually meet the definition of salvage yards.

## **B. Environmental Media Impacted by Salvage Yards**

Issues arising from improperly managed end-of-life vehicles (ELV) extends beyond aesthetics – the predominant policy driving original regulation. Vehicles and white goods<sup>1</sup> contain a variety of harmful pollutants, including Freon, mercury, lead-based batteries, oils, antifreeze, gasoline, and polychlorinated biphenols [“PCBs”] to name very few.<sup>2</sup> “The Agency believes that salvage yards pose at least the same level of environmental risk as other solid waste management facilities.”<sup>3</sup>

Secondary threats are created by other materials common to all automobiles, such as waste tires<sup>4</sup>, which pose threats of fire when accumulated and are attractive breeding grounds for nuisance species, such as mosquitoes. Pollutants are frequently released into the surrounding environment either during normal elemental decomposition or are exacerbated by the day-to-day operations of facilities [such as dismantling and crushing]. While some salvage yard owners and operators properly strip vehicles of pollutants, many salvage yards are poorly managed, resulting in the potential to release pollution and contamination to the environment. Salvage yards have the potential to impact every environmental media in one way or another because of the diversity of ELV’s component parts.

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<sup>1</sup> Metallic appliances; refrigerators, stoves and the like. These types of discarded materials are often accepted by salvage yards with interests in the value of scrap metal.

<sup>2</sup> Minnesota Pollution Control Agency [“MPCA”]. *Motor Vehicle Salvage Facility Environmental Compliance Manual* (revised June 2002).

<sup>3</sup> Vermont Department of Environmental Conservation. *Revised Solid Waste Management Plan*, §2 p. 37 (Vt., effective Nov. 1, 2001).

<sup>4</sup> *Ibid.* However, while some salvage yards recycle tire piles bi-annually, a pile of any size poses the risk of fire and the resulting release of toxins. Visits to salvage yards during the course of this study revealed that some facility owner/operators are unaware that burying tires violates solid waste disposal rules. Legally-accepted outlets for spent tires include use in agriculture, use in approved landscaping projects, recycling for recreation equipment, and burning of tire derived fuel [“TDF”] in high-heat furnaces offset plants’ fossil fuel costs. This method is commonly utilized by Portland Cement manufacturers, paper plants, and energy providers, in order of commonality. Cement manufacture utilizes the ferrous metals located in the belts of tires, therefore allowing these plants to burn whole tires.

### Air Impacts

ELVs have the potential to threaten air quality through the release of chlorofluorocarbons CFCs and other refrigerants.<sup>5</sup> With the advent of Freon and the use of other CFCs in air-conditioning, air pollutants released during repair, recycling, salvaging, or disposal has increased exponentially. Poorly-managed escaping refrigerants make up the largest group of air pollutants associated with salvage yards.

Air toxics, including fumes from solvents and cleaners, have a significant potential to impact the air around salvage yards due to the high levels of solvent use during parts salvaging. Aerosol spray cans, commonly utilized at salvage yards, contain ignitable, chlorinated, hazardous substances. Also, the smelting and burning of plastic-coated wires for fast-salvaging of lead, aluminum, and copper releases toxins into the air.

### Stormwater

One of the greatest potential impacts from salvage yards arises from storm water runoff discharges. When ELVs and their components are stored on improper surfaces<sup>6</sup> and exposed to the elements, various pollutants can leak onto a salvage yard and leach into the ground, contaminating the immediate soils. The most common threats include gasoline, lead from leaking batteries, chromium, copper and lead in antifreeze, and various other hazardous wastes. Hydrocarbon compounds [organic compounds] that are present in petroleum products such as oil and gasoline are not only chemically toxic to aquatic life and humans, but also deplete oxygen in surface waters due to their biodegradability, further impacting aquatic life and water quality generally.<sup>7</sup> When rain or flooding occurs, pollutants can be washed from the salvage yard and carried onto abutting properties and into rivers, streams, and lakes.

### Soil

Because most salvage yards are precisely as their moniker indicates – poorly managed salvage yards located out-of-doors [save required screening] and have

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<sup>5</sup> Though operating vehicles make up the largest source of ozone-forming pollutants via the emission of approximately 1,000 tons of compounds such as benzene and formaldehyde. Vermont DMV Licensing Manual.

<sup>6</sup> Batteries are particularly prone to leak acids if stored improperly. They should be stored out of the elements, unexposed to rain and snow, and kept above freezing. Lead-acid batteries should also be stored on impermeable surfaces, preferably asphalt, because the acids are likely to deteriorate concrete if exposed. MPCA. *Motor Vehicle Salvage Manual*, p. 67. Though the impermeability of concrete makes an ideal storage surface for certain hazardous wastes, asphalt is the most appropriate surface on which to store lead-acid batteries due to deterioration their acids can cause to concrete. The opposite is true regarding petroleum-based hazardous wastes and their ability to corrode asphalt.

<sup>7</sup> *2004 Pit Stop Fact Sheets*, Connecticut Department of Environmental Protection [a one-gallon spill can contaminate a water supply for up to 50,000 people].

limited areas of impermeable surfaces, release polluting substances onto exposed underlying soils. It is not uncommon for an inspection of a salvage yard to reveal pools of hazardous liquids on the ground surface, soil staining detectable by the human eye and the presence of petroleum odors. Depending on the physical amount and characteristics of the leaching pollutants, varying degrees of harm may result.

#### Drinking water and groundwater

When pollutants enter soils, they are prone to leach into the groundwater and can affect the drinking water supply. In a rural state, like Vermont, which relies heavily on private wells as the primary source of drinking water,<sup>8</sup> leaching can pose a significant environmental impact. Methyl tertiary-butyl ether ["MTBE"], a suspected human carcinogen, is a gasoline additive developed to increase octane levels in fuel. While recently banned from sale in Vermont, MTBE contamination of groundwater in Vermont is commonplace and remains a major concern.

#### Hazardous waste management

Though phased-out in the manufacture of automobiles, elemental mercury [Hg] is still present in many salvage yards. Mercury "switches" comprise the main source of this hazardous element. Hood and trunk light mercury switches are most often found in American-made cars.<sup>9</sup> Each mercury switch contains about one gram of the element; an amount large enough to effect aquatic life in a one-acre lake.<sup>10</sup>

Degreasing agents are cleaners often used on parts. Volatile organic compounds ["VOCs"] contained in degreasers can discharge into soils and groundwater, and when they evaporate, contribute to ground-level smog.<sup>11</sup> Trichloroethylene ["TCE"], for example, is a nonflammable, colorless chemical also used to clean greased parts. TCE is not found in a natural environment and is believed to be highly carcinogenic. This agent or a member of its family is used in the majority of part-salvaging operations.

The collection and storage of gasoline, motor oil, gear oil and lead-acid batteries are all important considerations in a well operated salvage yard. Many salvage yard inspections have revealed that the failure to collect these materials prior to vehicle crushing often results in releases to the environment. Many yards are failing to properly store these materials even when they are collected.

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<sup>8</sup> Roughly 60% of the State's population, according to Ashley Lucht, DEC Source Water Protection Specialist and Lake Champlain Protection Coordinator.

<sup>9</sup> Sweden banned mercury switches over a decade ago, causing European automobile manufacturers to cease installation of switches. *Alliance of Automobile Manufacturers v. Kirkpatrick*, 2004 W.L. 305598, (D. Maine, 2004). See p.1 n.2

<sup>10</sup> *2004 Pit Stop Fact Sheets*, Connecticut Department of Environmental Protection.

<sup>11</sup> *Ibid.*

### Land Use

The main areas of concern here are zoning and Act 250. In order for a salvage yard to be licensed by the state, it must have a Certificate of Approved Location (COAL) from the municipality in which it is located. In determining if a COAL will be issued, a municipality will review applicable zoning restrictions. As a result of Act 56, municipalities now have significantly more authority and control over salvage yards within their boundaries. Salvage yards may also need to have Act 250 approval.

### **C. Salvage Yard Regulation in Other New England States and New York**

The North East Waste Management Officials' Association (a.k.a NEWMOA) is a not-for-profit entity composed of directors of various waste management agencies in the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.<sup>12</sup> This organization provides a forum for information-sharing amongst the New England States. The following is a short synopsis of salvage yard related law in these states.

#### Connecticut

The State of Connecticut utilizes a scheme similar to Vermont's in which local governments are statutorily authorized to regulate the industry; however, Connecticut relies on best management practices<sup>13</sup> compiled by the Connecticut Department of Environmental Protection (CTDEP), and not one particular program for compliance. The licensing body in Connecticut is the local legislative body.<sup>14</sup> First, an operator must register with the Department of Motor Vehicles (CTDMV). The CTDMV, in turn must issue the registrant a certificate, which must be furnished with the application to the local legislative body.<sup>15</sup>

Connecticut law bifurcates "junk dealers," distinguishing between regulation of those who deal in motor vehicles and those who deal in junk generally. Localities may prohibit junk dealers, but only when such prohibitions are consistent with other authority. Operators are required to keep a log book describing actions and individuals with whom they have transacted business. The ledger contains a weekly

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<sup>12</sup> NEWMOA public site, available at <http://www.newmoa.org>

<sup>13</sup> See, *Auto Recycling Industry Compliance Guide*, Connecticut Department of Environmental Protection; *2004 Pit Stop Fact Sheets*, Connecticut Department of Environmental Protection.

<sup>14</sup> See 21 C.G.S.A. §10, Unlike Vermont, which relies on the AOT to license. Because Vermont has suffered from lack of enforcement in allowing municipalities to permit yards, it seems fruitless to extend licensing authority to municipalities and a limitation of local authority is even recommended.

<sup>15</sup> *Ibid.*

sworn statement to the chief of police regarding the transactions made under the license.<sup>16</sup>

“Motor vehicle recyclers” are governed separately under the motor vehicle code which utilizes a two [2] unregistered vehicle<sup>17</sup> threshold to identify businesses or other places of storage or deposit of ELVs. “Used motor vehicle parts” are defined as “major components” of vehicles; of which the statute recognizes 17 varieties.<sup>18</sup> The same title also prohibits transportation and hauling of dismantled or crushed vehicles or parts by an unlicensed, intermediate processor.<sup>19</sup>

Connecticut law requires the payment of deposits on purchases of batteries and requires a five dollar refund subsequent to the return of a used battery.<sup>20</sup>

The CTDMW has perhaps the most organized set of regulations applicable to “Motor Vehicle Junk Dealers” as well as the “Establishment and Maintenance of Motor Vehicle Junk Businesses or Motor Vehicle Junkyards.”<sup>21</sup> Under the latter regulation, “salvage,” “scrap,” and “processed automobiles” all take distinct definitions.<sup>22</sup> In addition to meeting normal licensing and permitting requirements [application and fees, location approval], Connecticut also requires operators to submit a site drawing, proof of financial responsibility, and a tax permit.<sup>23</sup>

When an ELV is acquired by a yard, its registration plates must be removed and returned to the motor vehicle department in order to assist recordkeeping measures and ensure legality.<sup>24</sup> Stringent use and location rules forbid licensed salvage yards to use more than 80 percent of the property for the storage of salvage vehicles,<sup>25</sup> and vehicles must be within 100 feet of a drive at least 12 feet wide and connected to a public road.<sup>26</sup> Vehicles may only be stacked two [2] cars high,<sup>27</sup> and unstacked vehicles are to be kept at least one foot apart.<sup>28</sup> When automobiles have had

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<sup>16</sup> 21 C.G.S.A. §11.

<sup>17</sup> Vehicles which are also “no longer intended or in condition for legal use on the public highways...” This includes compilations of parts which aggregately add up to two vehicles.

<sup>18</sup> 14 C.G.S.A. §62.

<sup>19</sup> 14 C.G.S.A. §67j [exempting scrap metal processors from the requirements].

<sup>20</sup> 22a C.G.S.A. §256h.

<sup>21</sup> CONN. AGENCIES REGS. 14-67q-3, et seq.

<sup>22</sup> CONN. AGENCIES REGS. 14-67q-3; (1) “salvage” are acquired by yards for the value of the parts contained therein, (2) “scrap” are those obtained for the purpose of processing for the scrap metals, and (3) “processed” pertains to ELVs processed for easy transportation, including disassembly or crushing.

<sup>23</sup> CONN. AGENCIES REGS. 14-67q-15.

<sup>24</sup> CONN. AGENCIES REGS. 14-67q-13.

<sup>25</sup> CONN. AGENCIES REGS. 14-67q-4.

<sup>26</sup> CONN. AGENCIES REGS. 14-67q-6.

<sup>27</sup> CONN. AGENCIES REGS. 14-67q-10.

<sup>28</sup> CONN. AGENCIES REGS. 14-67q-7.

[re]usable parts removed, the regulations require the vehicle to be moved to another part of the yard for processing;<sup>29</sup> "scrap" vehicles are also to be stored in the processing area.<sup>30</sup> Unlike in most states, fences may not be composed of natural growth barriers.<sup>31</sup>

Connecticut courts are permitted to take judicial notice of the detrimental effects of junkyards.<sup>32</sup> Connecticut's Environmental Policy Act is not likely to come into play unless the State itself initiates involvement in the operation and maintenance of yards.<sup>33</sup>

In Connecticut, all generated waste materials are tested in order to discern whether they are hazardous or non-hazardous. This burden on the operator to identify the type of waste requires great detail in recordkeeping. For example, anti-freeze can be hazardous or non-hazardous; the status must be determined by the facility and the test results are to be kept on file for three years.<sup>34</sup> Connecticut Department of Environmental Protection (CTDEP) also permits recycling of anti-freeze but requires a recycling registration be submitted 30 days prior to the recycling.<sup>35</sup> The use of MTBE as a gasoline additive is banned.<sup>36</sup>

The State manages a Hazardous Waste Trust Fund. Each year the Commissioner of the CTDEP determines the amount each hazardous waste disposal facility must pay into the Fund.<sup>37</sup> Connecticut's hazardous waste regulations are similar to those in Vermont but also include separate siting requirements<sup>38</sup> and remediation standards.<sup>39</sup> Like in Vermont, hazardous waste transporters are subject to permitting requirements.<sup>40</sup> Some recently changed rules have included the adoption of Federal exclusions for "processed," "unprocessed home, and "unprocessed prompt" scrap metals.<sup>41</sup>

Solid waste provisions require the recycling and diversion of specific material away from waste streams and into recycling streams, such as scrap metal, storage

<sup>29</sup> CONN. AGENCIES REGS. 14-67q-5.

<sup>30</sup> CONN. AGENCIES REGS. 14-67q-8.

<sup>31</sup> CONN. AGENCIES REGS. 14-67q-14.

<sup>32</sup> *Burns v. Board of Zoning Appeals of Town of Stratford*, 1993 W.L. 394478 (Conn. Super., 1993).

<sup>33</sup> See 22A C.G.S. §1 et seq., CONN. AGENCIES REGS. 22a-1a-1.

<sup>34</sup> 22a C.G.S.A. §449(c). This requirement flows from a Federal mandate at 40 C.F.R. 262.11 which does not seem to have a Vermont counterpart.

<sup>35</sup> 22a C.G.S.A. §449(c).

<sup>36</sup> CT Public Act Nos. 00-175, 03-122.

<sup>37</sup> CONN. AGENCIES REGS. 22a-116-7.

<sup>38</sup> CONN. AGENCIES REGS. 22a-116-1 – 116-10; 22a-116-B-1 – 11.

<sup>39</sup> CONN. AGENCIES REGS. 22a-133k-1, et seq.; 22a-133g-1 (land use restrictions).

<sup>40</sup> CONN. AGENCIES REGS. 22a-449(c)-11.

<sup>41</sup> See 40 C.F.R. 261.1(c)(9)-(12), 261.2(c), 261.4(a)(13,14), 261.6(a)(3)(ii).

batteries, and waste oil.<sup>42</sup> Solid waste management regulations also specify the handling, storage, and disposal requirements for tires, which are classified as special wastes.<sup>43</sup> The CTDEP condones utilizing TDF-burning facilities for disposal of tires and recommends tire-to-energy facilities such as Exeter Energy in Sterling and paper mills in Maine.

Connecticut regulations for the abatement of air pollution track the Federal model.<sup>44</sup>

CTDEP is in the process of implementing an Aquifer Protection Program, tasked with protecting major public water supply wells designated around active well fields in sand and gravel aquifers serving more than 1000 people. Results of the project are yet to be seen, however the program is aimed at prohibiting certain uses of land which are dangerous due to the use of hazardous materials.

Salvage yards and recycling facilities engaging in dismantling operations which have stormwater discharging from the site must register for coverage under general stormwater permits and implement stormwater pollution prevention plans.

When real property in which a vehicle body shop has operated at any time since 1967 or property at which a business operation generated more than 100 kilograms of hazardous waste in any given month, the person conveying the land must file disclosure forms summarizing environmental conditions pursuant to Connecticut's Property Transfer Law.<sup>45</sup>

### **Maine**

Maine relies heavily upon set statutory standards for regulation of salvage yards, and its Legislature has been vigorously attacking issues present in the salvage yard industry. Its municipal code utilizes regulatory tools such as permitting and licensing,<sup>46</sup> and also distinguishes between "graveyards" and "recycling businesses." Not included in this definition are facilities which store vehicles temporarily, or for a period not exceeding 180 days.<sup>47</sup> Regulated facilities are required to obtain permits from the municipality before operation. Permits for grave/junkyards are valid for no

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<sup>42</sup> CONN. AGENCIES REGS. 22a-241b-2.

<sup>43</sup> CONN. AGENCIES REGS. 22a-209-8(g).

<sup>44</sup> CONN. AGENCIES REGS. 22a-174-1, et seq.

<sup>45</sup> 22a C.G.S. §134. Violations are punishable by fines of up to \$25,000 per day.

<sup>46</sup> 30-A M.R.S.A. §3751, et seq.

<sup>47</sup> 30-A M.R.S.A. §3752. Permitting utilizes a three-ELV unregistered or uninspected car threshold and also pertains to areas used for dismantling, salvage, and recycling operations. Licensing denotes business premises of a dealer or recycler licensed under the motor vehicle code [29-A M.R.S.A. §§851-1112] who acquire vehicles for their resale or resale of parts.

longer than one year, whereas a permit issued for a recycling business expires after five years. Renewals must be accompanied by a sworn statement of compliance.<sup>48</sup>

Maine salvage yard requirements also specify siting restrictions: statute bars the permitting of a salvage yard within 300 feet of public buildings, playgrounds, bathing beaches, schools, churches, or cemeteries. Similarly, permits will be denied to salvage yards handling junk, scrap metal, vehicles, or solid waste within 300 feet of a well which serves public or private [exempting the principal yard and its owner or operator's residence] water supplies.<sup>49</sup> Vehicles containing fluids may not be stored or dismantled within 100 feet of a body of water or wetland, within the 100-year floodplain, or over a mapped sand or gravel aquifer.<sup>50</sup>

Those seeking permits for automobile recycling businesses must submit a detailed site plan. Plans must identify boundary lines and include descriptions of soils, locations of aquifer recharge areas, location of residences or schools [within 500 feet of storage area], location of water bodies on and around the property, boundaries of the 100-year flood plain, location of roads within 1000 feet, a plan for containment of fluids, batteries, storage and disposal of tires, and locations of draining, dismantling, and storage of vehicles.<sup>51</sup>

The Legislature in Maine has been actively pursuing the State's policy on salvage yards since passing a mercury-removal law which took effect in 2003. This law required automobile manufacturers to pay a one-dollar bounty per switch removed by a salvage yard and also created facilities for switch recycling – an effort aimed at preventing the incineration of the heavy metals during the latter phases of recycling ELVs.<sup>52</sup>

The most recent enactments amended statutory language mandating recordkeeping by requiring that a log be maintained to document dates of acquisition and handling of all vehicles, fluid and refrigerant draining, and battery and mercury switch removal. Further, all hazardous wastes must now be removed from ELVs and appliances prior to crushing or shredding.<sup>53</sup> Under the same amendments, the Maine legislature has given local authorities the distinct ability to reject applications on the

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<sup>48</sup> 30-A M.R.S.A. §3753.

<sup>49</sup> 30-A.M.R.S.A. §3754-A(3,4).

<sup>50</sup> *Id.* at (5)(B).

<sup>51</sup> 30-A M.R.S.A. §3755-A.

<sup>52</sup> 38 M.R.S.A. §1665-A; a U.S. District Court subsequently upheld the statute's constitutionality in *Alliance of Automobile Manufacturers v. Kirkpatrick*, 2004 W.L. 305598 (D.ME. 2004). This perspective could give rise to some interesting litigation led by states seeking more corporate accountability.

<sup>53</sup> 30-A M.R.S.A. §3754-A, sub-§5 (E-H)(effective Oct. 15, 2005; these provisions also require that existing vehicles on the premises be stripped of fluids, refrigerant, batteries and switches by 2007 "to the greatest extent practicable"); 30-A M.R.S.A. §3755-A, sub-§3 (dismantling standards).

basis of an applicant's failure to file a notice of intent to comply with storm water discharge permit requirements with the Maine Department of Environmental Protection ["MEDEP"],<sup>54</sup>

Maine has a ground water oil clean-up fund administered by the MEDEP, which was established in the 1980s to deal with oil discharge removal, remediation, and abatement. The revolving fund is mostly fed by a per-barrel fee charged to oil facilities and has a statutory balance ceiling of \$12,500,000.<sup>55</sup>

The MEDEP is primarily involved with salvage yards through outreach and education programs which are particularly geared toward compliance with new statutory mandates.<sup>56</sup> Maine has established a set of best management practices and publishes a newsletter for auto recyclers semi-annually.

### New Hampshire

New Hampshire's management of salvage yards has much in common with Vermont. Technically, municipalities are the predominant licensing authorities, operating licenses are granted on the local level once a certificate of location approval is obtained, and local land-use, aesthetic, and nuisance concerns are evaluated.<sup>57</sup> The motor vehicle title requires dealers of new and used vehicles to register with the State and specifies dealer and recycler licensing requirements.<sup>58</sup>

Like Vermont, New Hampshire has traditionally used waste management regulations as legal tools to reach the sector.<sup>59</sup> These regulations themselves read similarly to those utilized by VTDEC's own Waste Management Division.

New Hampshire's Department of Environmental Services ["NHDES"] is currently in the process of implementing a dual-phase project to regulate ELVs. This program has been dubbed "Green Yards" and is being implemented in two phases with funding allocated through watershed management.<sup>60</sup>

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<sup>54</sup> 30-A M.R.S.A. §3754-A, sub-§6-A.

<sup>55</sup> Groundwater Oil Clean-up Fund Report to Joint Standing Committee on Natural Resources, 120<sup>th</sup> Maine Legislature; submitted by Maine Department of Environmental Protection, December 15, 2000; pursuant to 32 M.R.S.A. §10015.

<sup>56</sup> See recent amendments, *supra*.

<sup>57</sup> N.H. REV. STAT. ANN. §236:111-129; see also N.H. REV. STAT. ANN. §236:90-110 (transportation) for State treatment of Federal highway fund requirements.

<sup>58</sup> N.H. REV. STAT. ANN. §§259, 261.

<sup>59</sup> N.H. REV. STAT. ANN. §§146-A, C (storage tanks), 147-A (hazardous), 149-M (solid).

<sup>60</sup> The Green Yards program was made possible with a \$38,000 grant procured utilizing watershed management funds available for improvement of watersheds under the CAA. Specific groundwater regulations in existence prior to the commencement of Green Yards include provisions requiring yards to obtain release detection permits in groundwater protection areas to determine whether release of

Phase one consists of educational outreach specifically designed to aid salvage yards in complying with existing law and regulation, and has been underway since 2003.<sup>61</sup> The compliance assistance offered in this phase includes free, confidential consultation, with no enforcement outcome.

Phase two then requires salvage yards to self-certify their compliance with the regulatory scheme. This process is expected to be done utilizing a checklist and workbook provided by the NHDES. Salvage yards which cannot certify compliance must submit a plan for achieving compliance.<sup>62</sup>

The current process includes 31 salvage yards that agreed to sign on to the program voluntarily.<sup>63</sup> Instead of mailing out complete volumes of best management practices ["BMPs"], NHDES sent three-ring binders to all the salvage yards with several illustrated and laminated pages of various practices in monthly installments.<sup>64</sup>

New Hampshire's Brownfields program provides the resources to handle problems associated with salvage yard properties of owners who have either abandoned their interest or died.

### **Massachusetts**

The Commonwealth of Massachusetts controls junk (salvage) yards from a perspective which includes "automobile graveyards," garbage dumps, and sanitary fills.<sup>65</sup> Licensing of junk dealers is done through by-law or ordinance;<sup>66</sup> operation under this license authorizes inspections at any time under a later section.<sup>67</sup>

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contaminants has occurred; some sites may require groundwater-monitoring permits. N.H. REV. STAT. ANN. §485-C;

<sup>61</sup> The original idea was to have the Agency write rules as Phase-one of the program was underway. Due to staffing issues and other complications New Hampshire officials have since decided to enlarge the time frame allotted for outreach and assistance, waiting to promulgate new regulations until after this is complete. This tactic will supposedly ease compliance with the existing scheme without confusing matters, and the delay in moving to the next phase has allowed for more technical assistance and a building of trust. Telephone interview with Pam Sprague, NHDES (Sept. 2, 2005).

<sup>62</sup> There is an understanding that those facilities which have not voluntarily undertaken the program, yet fitting the Green Yards' definition of a "salvage yard" will be prioritized for compliance inspections once policing begins. Punitive measures will not be pursued unless a violating salvage yard continues without reasonable efforts to comply.

<sup>63</sup> Likewise with this study, NHDES has found literacy of owner/operators of salvage yards to be among communication concerns. Educational materials were drafted with literacy in mind, utilizing videos shared by others to cut costs. Pam Sprague believes that distributing the BMPs in segments increases readership generally.

<sup>64</sup> MASS. GEN. LAWS ANN. ch. 140B §1.

<sup>65</sup> MASS. GEN. LAWS ANN. ch. 140 §54.

<sup>66</sup> MASS. GEN. LAWS ANN. ch. 140B §7.

Location requirements lend encouragement to the establishment of salvage yards in areas zoned "industrial," though the language is merely suggestive.<sup>68</sup> If the location of a salvage yard is topographically infeasible, the Massachusetts Department of Highways may take the property by eminent domain and must pay relocation costs if it deems the action in the best interests of the Commonwealth.<sup>69</sup>

In addition to general "junkyard" screening law,<sup>70</sup> Massachusetts' municipal law requires fences to be erected and detailed provisions, which require compliance.<sup>71</sup>

### New York

Automobile "junk yards" are regulated under New York municipal law, which requires a license and certificate of approval from the governing board of the municipality in which the junk (salvage) yard is proposed. The law provides for a hearing prior to the issuance of a license to operate a junk yard and provides strict location requirements which prohibit the establishment of a salvage yard near certain types of surrounding properties, such as schools, and churches.<sup>72</sup>

State law requires dismantlers and other individuals involved in transfer or disposal of 1973 or newer ELVs to obtain registration from the New York Department of Motor Vehicles (NYDMV).<sup>73</sup> The validity of many salvage yards' operation is, by default, contingent on their registration.

State law prohibits the discharge of matter that causes or contributes to conditions contravening established water quality standards.<sup>74</sup> Pursuant to this prohibition, the State permits certain discharges of wastewater.<sup>75</sup> Because all states are regulated by Federal law regarding general storm water permits,<sup>76</sup> New York overlays a point-source permitting scheme for storm water discharged during the course of industrial activity. This general permit is conditional on facilities' development and implementation of individualized, site-specific pollution prevention plans.<sup>77</sup>

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<sup>68</sup> MASS. GEN. LAWS ANN. ch. 140B §2 (this section also adopts the Federal 1000-foot setback and screening provisions).

<sup>69</sup> MASS. GEN. LAWS ANN. ch. 140B §4.

<sup>70</sup> MASS. GEN. LAWS ANN. ch. 140B §§2,3,4.

<sup>71</sup> MASS. GEN. LAWS ANN. ch. 49 §1 et seq.

<sup>72</sup> N.Y. Municipal Law §136 (McKinney 2005).

<sup>73</sup> N.Y. Vehicle and Traffic Law §415-a (McKinney 2005) (water quality standards are set forth in 6 N.Y. COMP. CODES R. & REGS. tit. 6 §700-705).

<sup>74</sup> N.Y. Conservation Law §17-0501 (McKinney 2005).

<sup>75</sup> N.Y. Conservation Law §17-801 et seq. (McKinney 2005).

<sup>76</sup> See supra, page 9.

<sup>77</sup> NYGP-98-03 (such existing conditions lend support to site-specific planning schemes and self-certification processes).

New York's hazardous substances control is outlined by various statutes. There are also provisions which criminalize improper disposal of substances.<sup>78</sup>

New York's regulations supplementing salvage yard law include its Department of Environmental Conservation ["NYDEC"] regulations that require salvage yard operators to provide detailed reports on methods of handling and disposal of waste fluids. This documentation places a burden on the facility to identify fluids, volume, transporters, and the recipients of the materials.<sup>79</sup> Solid waste provisions require materials having no recyclable value to be disposed of at permitted solid waste management facilities,<sup>80</sup> and also prohibit unpermitted storage of 1000 or more waste tires.<sup>81</sup>

State rules regulate direct discharges of waste water into surface and ground water supplies.<sup>82</sup>

Though currently under revision, regulations also require the registration of all used oil storage tanks, with the imposition of fees at the universal 1,100 gallon threshold.<sup>83</sup> It is necessary for salvage yard operators to ensure that spent lead-acid batteries are stored properly as hazardous wastes.<sup>84</sup> Burning of rubbish during the salvaging process is prohibited by regulation,<sup>85</sup> however, burning of certain types of waste oils is permissible when consistent with applicable Federal and state laws.<sup>86</sup> Degreasers are regulated, though some exemptions apply to those mechanisms which meet certain size criteria.<sup>87</sup>

#### **D. How to Regulate Salvage Yards in Vermont**

The present law defines salvage yards as any property with four or more unregistered motor vehicles.<sup>88</sup> The Agency would divide salvage yards into four categories or Tiers. Each will be discussed below in order of threat of harm to human health and the environment. The Agency also proposes to base license fees on this classification system. (See Section E below).

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<sup>78</sup> N.Y. Conservation Law §§27-2710, 27-2711, 27-2713, 27-2714 (McKinney 2005)(common materials enumerated include petroleum products, ethylene glycol, battery fluids, and degreasers).

<sup>79</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §360-12 (NYDEC solid waste rule applicable to automobile dismantlers, recyclers, junk yards).

<sup>80</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §360-1.5(a)(disposal by burial and incineration is prohibited).

<sup>81</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §360-13.1(b).

<sup>82</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §§750-758.

<sup>83</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §360-14. For tanks over 1,100 gallons, see §612.2.

<sup>84</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §374-1.7.

<sup>85</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §215.

<sup>86</sup> N.Y. COMP. CODES R. & REGS. tit. 6, §225-2.

<sup>87</sup> N.Y. COMP. CODES R. & REGS. tit.

<sup>88</sup> 24 V.S.A. §2241(7)



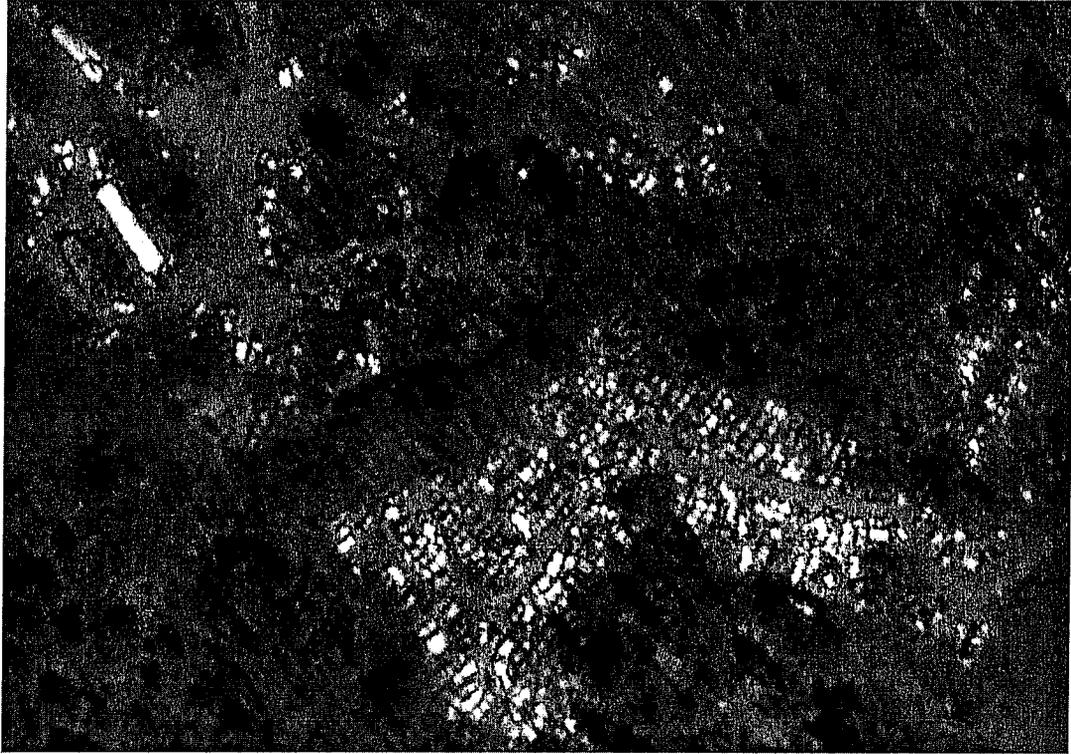
Tier I

The salvage yards that pose the greatest risk of harm to human health and the environment (Tier I) are those where there is ongoing and regular crushing/shredding of ELVs. At some of these commercial yards ELVs are crushed daily. As a result of the volume of ELVs that pass through this type of facility it is the Agency's intention to focus the greatest regulatory effort on the operations conducted here. An additional concern at this type facility is large tire piles. The draft rule contained in Appendix "A" limits the size of these piles. A significant emphasis will be placed on operators drawing down these piles so that they can come into compliance.



Tier I or II

The second type of salvage yards (Tier I or Tier II) are repair and towing operations where damaged cars are often stored for extended periods of time until they are either repaired or crushed. As a result of damage sustained in accidents, these vehicles may be leaking hazardous fluids when they arrive at the facility. As it may not be immediately clear if the vehicles will be repaired or crushed, the fluids may not be removed while the vehicles await further examination. In addition, once these facilities accumulate a sufficient number of ELVs, an unregulated mobile crusher may be called in to "crush out" the yard. Because these facilities may not see themselves as being in the salvage yard business, fluids, batteries, and mercury switches may not be removed prior to crushing. These facilities may not have a Certificate of Approved Location (COAL), a salvage yard license, or fencing to screen them from view.



Tier III

A third type is the "auto grave yard" (Tier III). These are locations where large numbers of ELVs are "stored" but which may not be commercial and may not "crush out." Eventually, the fluids in these vehicles may leak out and release into the environment.



The fourth type is the so-called “messy yard.” (Tier IV). These are characterized as properties where unregistered vehicles and other materials are simply left about the property. While these may pose a small risk of harm, most often they represent an aesthetic concern for the neighbors or a municipality.

As noted earlier, a survey was conducted asking citizens for help in identifying salvage yards. In talking to the media, a concerted effort was made not to raise expectations that the Agency would be able to address every type of salvage yard. The Agency strongly recommends that its jurisdiction be adjusted to cover commercial operations or where there are fifteen or more unregistered motor vehicles stored outdoors on the property. The Agency will also use rule making to provide limited exemptions in appropriate circumstances where there is little to no threat to the environment or human health (ex – car collector with vehicles stores indoors has been raised). The four unregistered motor vehicle threshold should remain in place as the jurisdictional threshold for municipalities.

The Agency intends to put rules into effect to prescribe how a salvage yard must be operated to minimize the risk of environmental harm. The rules will include siting, operational, and license requirements as well as the regulation of crushers and mobile crushers. There are a number of different regulatory paths the Agency could take in

approaching salvage yard regulation from a multimedia standpoint. All of these will require the development of regulatory standards in the form of an administrative rule. What form that rule would take in its implementation is still in the early stages of consideration. In an effort to move the discussion forward, a draft rule, attached as appendix "A", sets out the Agency's general thinking for regulating salvage yards. The Agency intends to begin the process of moving a version of these rules through the formal rule making process in the next sixty days.

#### **E. Funding and Staffing of a Salvage Yard Regulatory Program**

As noted in the beginning of this report, the major obstacle to adequately address the environmental challenges posed by salvage yards is lack of adequate resources and staffing to educate, inspect and sanction. As required by Act 56, the Agency will provide a detailed breakdown of the projected staffing needs which will include the fully weighted cost of each FTE (Salary/Benefits/Operation). This will be followed by a listing of possible funding sources.

In order to educate, inspect, sanction, and simply respond to citizen's concerns effectively, it is imperative that the CED have an adequate field presence. Currently CED has a single staff member, classified as an Environmental Analyst, working in this area. In addition to the activities set out above, new field staff would work with municipalities, draft rules, provide technical assistance, and review license applications. Based on the number of facilities in the state, two (2) additional analysts would be needed, for a total of three (3). To process license applications, receive citizen's complaints, work with salvage yards and municipalities on compliance, and provide administrative support to the field staff, one new administrative assistant would be needed. Without additional staff the CED will be unable to fulfill its regulatory mandate.

A necessary component to the education and inspection efforts is the ability to obtain compliance when voluntary compliance is not forthcoming. It is anticipated that during the first three to five years of this program, there will be a significant number of actions brought to the environmental court to obtain compliance. For that reason, there is a need for a Staff Attorney II/III to handle those cases. In addition to pursuing court actions, this attorney will work closely with the inspectors to provide guidance on how best to proceed under different circumstances. The Agency's recent experiences dealing with salvage yard operators in violation makes this a crucial position to fill in order to ensure enforceable outcome in situations where such a result is warranted. A table summarizing staffing needs and estimated fully weighted cost is below:

Salvage Yard Program Staff		Costs			
		Salary	Benefits	Operation	Subtotal
Administrative assistant	PS 18	\$40,000	\$12,000	\$9,000	\$61,000
Environmental analyst 3	PS 23	\$52,000	\$16,000	\$15,000	\$83,000
Environmental analyst 2	PS 22	\$48,000	\$14,000	\$15,000	\$77,000
Environmental analyst 2	PS 22	\$48,000	\$14,000	\$15,000	\$77,000
Staff Attorney II/III	EXP	\$60,000	\$18,000	\$10,000	\$98,000
Division Director 25% Time (Salary & Benefits)					\$24,000
<b>Total Estimated Personnel &amp; Equipment Costs</b>					<b>\$420,000</b>

It must be noted that these cost estimates are for the first year of the program only and do not project the costs to run the program into future years.

### Funding Sources

In considering appropriate funding sources, the Agency has focused on the source of the material which must now be regulated as the appropriate source for funds.

#### Licensing Fees

Each year salvage yards must be relicensed. The Agency has proposed a three tiered risk based fee structure for these licenses. Tier I would apply to any salvage yard where vehicle crushing is conducted on-site, and would pay a fee of \$1500. Tier II would apply to salvage yards that take in vehicles but do not crush on-site, and would pay a fee of \$750. Tier III would apply to salvage operations that do not accept motor vehicles, and would pay a fee of \$250. It is conservatively estimated that these new fees would generate \$77,500 in the first full year of the program.

A number of other possible sources of revenue have been considered which include \$10 added to the present DMV registration fee the first time a vehicle is registered in Vermont. It is anticipated that this fee would raise \$350,000. It is estimated that a \$0.50 tax on vehicle tires would generate approximately \$300,000 per year. This money could also be used to pay for the removal of abandoned tire piles in Vermont. It is possible that the number of these piles could increase if salvage yards are unable to meet enhanced permitting requirements and instead cease operation. Another proposal is to add to the solid waste franchise tax rate. The amount of money generated via this tax would be dependent on how much the tax rate is increased. A proposal has been previously discussed that would place an additional percentage rate

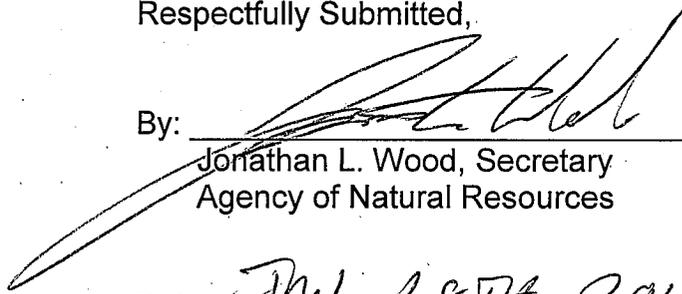
on the vehicle sales tax. One of the benefits of this proposal is that it is a progressive tax. The amount of money raised would be dependent on the rate of increase.

#### IV. CONCLUSION

With the transfer of the licensing of salvage yards from VTrans to ANR, jurisdiction over salvage yards has finally been consolidated into one regulatory authority. This consolidation is the first step in a process which may ultimately lead to the creation of a multi-media salvage yard program that can ensure that best management practices are put into place.

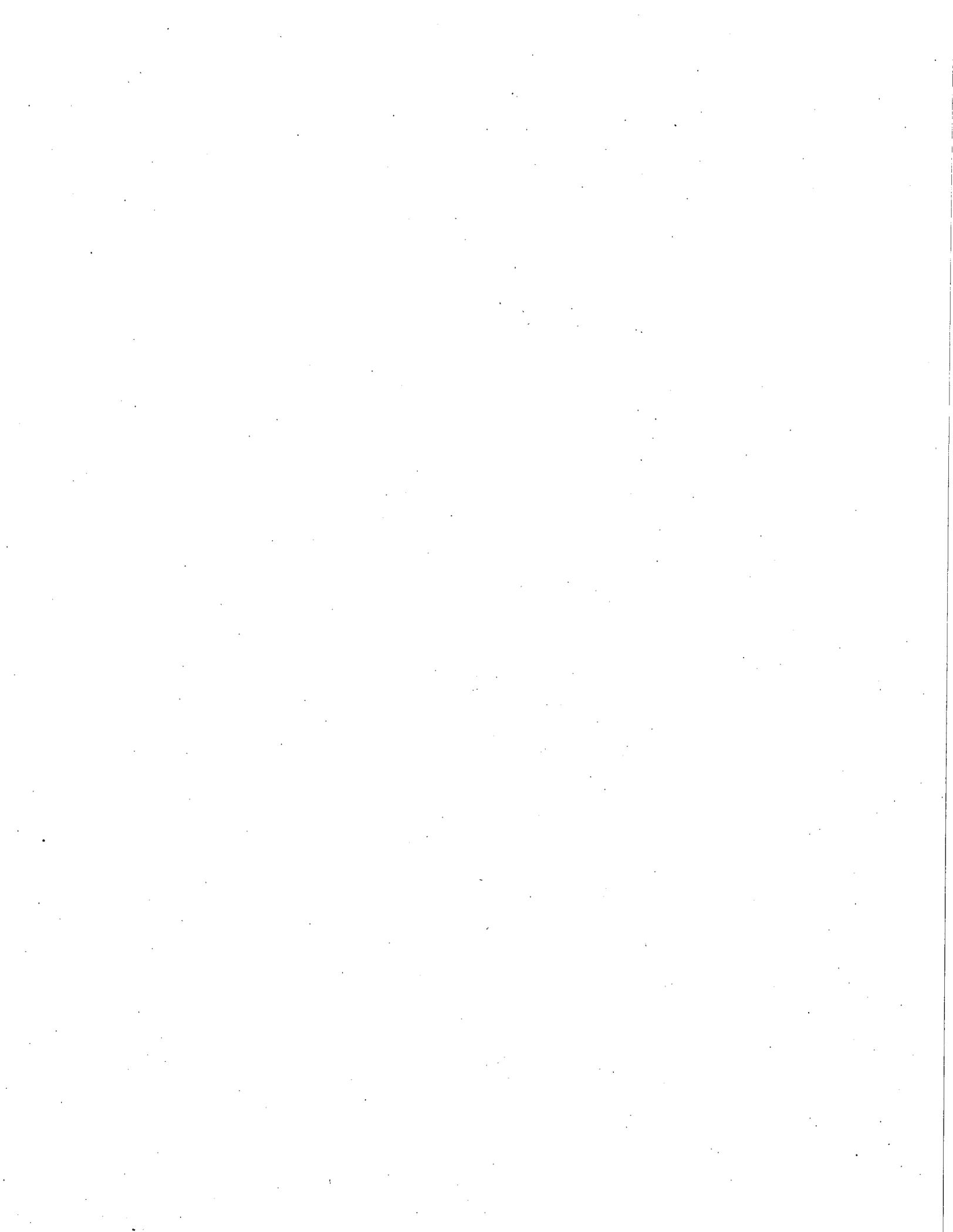
The Agency recognizes that this is a very difficult time to be laying out the need for additional resources, but if this program is to succeed in addressing the challenges in the way the legislature has requested, the legislature will have to consider the best way to allocate those scarce resources. The Agency will work with the legislature, salvage yard owners, and the many interested citizens and public interest environmental groups to address the environmental challenges in the salvage yard sector.

Respectfully Submitted,

By: 

Jonathan L. Wood, Secretary  
Agency of Natural Resources

Date: JAN 28<sup>TH</sup> 2010



**STATE OF VERMONT  
AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**SALVAGE YARD RULE**

**Compliance & Enforcement Division  
103 South Main Street  
Waterbury, Vermont 05671-0401  
(802) 241-3820**

**Rule Number: \_\_\_\_\_ Effective Date: \_\_\_\_\_**

**Rules & Procedures: [www.anr.state.vt.us/dec/\\_\\_\\_\\_\\_/\\_\\_\\_\\_\\_/home.htm](http://www.anr.state.vt.us/dec/_____/_____/home.htm)  
Salvage Yard Permit Information: [www.anr.state.vt.us/dec/permits.htm](http://www.anr.state.vt.us/dec/permits.htm)**

**Subchapter 1 -- PURPOSE**

**22-101 Authority**

This rule is adopted under the authority of 24 V.S.A. Chapter 61, Salvage Yards. The Secretary has the power to adopt, amend and repeal rules pursuant to 3 V.S.A. Chapter 25.

Related statutes include: 3 V.S.A. §2822(j) regarding fees; 24 V.S.A. Chapter 61; 32 V.S.A. Chapter 151, Subchapter 13 regarding franchise tax on waste facilities.

**6-102 Declaration of Purpose**

These rules establish procedures and standards to protect public health and the environment by ensuring the safe, proper, and sustainable operation of salvage yards in Vermont.

**6-103 Severability**

The provisions of any section of these rules are severable. If any provision of these rules is invalid or if any application of these rules to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Subchapter 2 -- DEFINITIONS**

**22-201 Definitions**

As used in this chapter all terms not defined herein shall have the meaning given them in 24 V.S.A. § 2241 unless a different meaning clearly appears from the context.

- (1) "Abandoned" means a motor vehicle as defined in 23 V.S.A. § 2151.
- (2) "Board" means the state transportation board, or its duly delegated representative.
- (3) "Crusher" means a mechanical device which crushes and compacts scrap metal and salvage motor vehicles and motor vehicle parts in preparation for more efficient on-site storage or transport to processing facilities.
- (4) "Highway" means any highway as defined in section 1 of Title 19.

- (5) "Interstate or primary highway" means any highway, including access roads, ramps and connecting links, which have been designated by the state with the approval of the Federal Highway Administration, Department of Transportation, as part of the National System of Interstate and Defense Highways, or as a part of the national system of primary highways.
- (6) "Junk" means old or scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.
- (6) "Junk motor vehicle" or "End of life vehicle" means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to remain unregistered for a period of ninety days from the date of discovery.
- (8) "Salvage yard" means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any place of outdoor storage or deposit, not in connection with a business which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway or navigable water, as that term is defined in section 1422 of Title 10. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.
- (9) "Legislative body" means the city council of a city, the board of selectmen of a town or the board of trustees of a village.
- (10) "Main traveled way" means the portion of a highway designed for the movement of motor vehicles, shoulders, auxiliary lanes, and roadside picnic, parking, rest, and observation areas and other areas immediately adjacent and contiguous to the traveled portion of the highway and designated by the transportation board as a roadside area for the use of highway users and generally but not necessarily located within the highway right-of-way.
- (11) "Mobile Crusher" means a mechanical device which crushes and compacts scrap metal and salvage motor vehicles and motor vehicle parts in preparation for more efficient on-site storage or transport to processing facilities that is transported to and from various salvage yard facility locations.
- (12) "Motor vehicle" means any vehicle propelled or drawn by power other than muscular power, including trailers.
- (13) "Roadworthy vehicle" means a motor vehicle which meets all requirements necessary to pass a Vermont state motor vehicle inspection.
- (14) "Notice" means by certified mail with return receipt requested.

(15) "Scrap metal processing facility" means a manufacturing business which purchases sundry types of scrap metal from various sources including the following: industrial plants, fabricators, manufacturing companies, railroads, junkyards, auto wreckers, salvage dealers, building wreckers, and plant dismantlers and sells the scrap metal in wholesale shipments directly to foundries, ductile foundries and steel foundries where the scrap metal is melted down and utilized in their manufacturing process.

(16) "Secretary" means the secretary of natural resources or the secretary's designee. (Added 1969, No. 98, § 1; amended 1971, No. 36, § 1, eff. April 1, 1971; 1973, No. 164 (Adj. Sess.), § 2, eff. July 1, 1974; 1983, No. 185 (Adj. Sess.), § 1; 2003, No. 101 (Adj. Sess.), § 2; 2009, No. 56, § 4.)

(17) "Sweat furnace" means a "secondary aluminum production plant" which is a furnace in which combustion takes place, the primary purpose of which is to recover aluminum from scrap such as beverage cans, foundry returns, other aluminum scrap and dross.

(18) "Agency" means Agency of Natural Resources.

(19) "Closure" means the set of activities and requirements that a salvage yard facility must complete, as prescribed by the facility's certificate of registration or the Secretary. The timing of closure is either set forth in the facility certificate of registration or will be determined by the Secretary.

(20) "Contact person" means a person, designated by the Permittee(s), who has the authority to make and implement decisions regarding operating conditions at the solid waste management facility.

(21) "Discharge" means the placing, depositing or emission of a waste directly or indirectly into or on any land or water or into the air.

(22) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any ground or surface waters.

(23) "Salvage yard Facility" means all contiguous land, structures, other appurtenances, and improvements on the land, used for the collection, processing or storing of salvage motor vehicles and scrap.

(24) "Floodplain" means the land area adjacent to a surface water body that is below the one hundred (100) year flood elevation.

(25) "Floodway" means the area of land and water necessary to convey the one hundred (100) year flood without cumulatively increasing the water surface elevation more than one (1) foot.

(26) "Groundwater" means water below the land surface, but does not include surface waters within the meaning of 10 V.S.A. § 1251(13).

(27) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including but not limited to those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state. All special nuclear source, or by-product material, as defined by the Atomic Energy Act of 1954, is specifically excluded from this definition.

(28) "Mercury-Added Consumer Product" means a device or material into which elemental mercury or mercury compounds are intentionally added during its formulation or manufacture and in which the continued presence of mercury is desired to provide a specific characteristic, appearance, or quality, or to perform a specific function. For the purposes of this Chapter "mercury-added consumer products" shall be those mercury containing products required to be labeled by 10 V.S.A. §6621d (a), namely:

- (a) A thermostat or thermometer.
- (b) A switch, individually or as part of another product.
- (c) A medical or scientific instrument.
- (d) An electric relay or other electrical device.
- (e) A lamp.
- (f) A battery, sold to the public, other than a button battery.

(29) "Mobile Salvage Collection Operation" means the operation of a vehicle or trailer, or a container on or attached to such vehicle or trailer, used for collecting salvage or scrap.

(30) "Municipal Solid Waste" means combined household, commercial, and industrial waste materials generated in a given area.

(31) "Open Burning" means the burning of solid wastes in the open where the products of combustion are emitted directly into the atmosphere without passing through a stack, chimney, or other enclosure.

(32) "Permitted Hazardous Waste Transporter" means a commercial hauler or transporter permitted to transport hazardous waste, pursuant to the Vermont Hazardous Waste Management Regulations.

(33) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

(34) "Post closure" means the time period following closure to remediate a contaminated salvage yard program to standards established by the Secretary ANR and Vermont and federal law.

(35) "Recycle" means the process of utilizing solid waste for the production of materials or products, but shall not include processing solid waste to produce energy or fuel products.

(36) "Recycling Facility" means a facility which is not a salvage yard or scrap collection facility that accepts, aggregates, stores or processes recyclable materials that are regulated as solid waste under 10 V.S.A. Chapter 159.

(37) "Solid Waste" means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, 10 V.S.A. Chapter 47. For the purposes of these rules, solid waste that is also hazardous waste is subject to further regulation under the Vermont Hazardous Waste Management Regulations.

(38) "Used Oil" means any petroleum product that has been refined from crude oil (in whole or in part) or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. Used oil is a free-flowing liquid at standard temperature and pressure and has a flash point of greater than 100 degrees (Fahrenheit).

(39) "Waste" means a material that is discarded or is being accumulated, stored, or physically, chemically or biologically treated prior to being discarded or that has served its originally intended use and is normally discarded or that is a manufacturing or mining by-product and is normally discarded.

(40) "Water Table" means the upper surface of the zone of saturation.

(41) "Waters" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the state or any portion of it.

**Subchapter 3 -- APPLICABILITY AND ADMINISTRATION**

**22-301 General Applicability**

- (a) These rules apply to persons operating a commercial salvage yard facility, except as provided in Section 22-301(b). Such salvage yard facilities, include, but are not limited to: storage, dismantling, crushing, smelting, recycling, sorting or other processing or treatment as defined under. These rules also apply to persons involved in non-commercial storage or maintenance of 5 or more salvage vehicles viewable from a public road or a navigable water as defined in 10 V.S.A. §1422.
- (b) The following are exempt from the provisions of these rules (confirm all statutory exemptions are included in the list below):
  - (1) A garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.
  - (2) Solid waste management facilities certified consistent with 10 V.S.A. Chapter 159 which for the purposes of recyclables collection and processing only manage municipal waste stream derived recyclables.
  - (3) Mobile Salvage Collection Operations which are the commercial collection and temporary storage (less than 90 days) of recyclable scrap materials in containers at customer for the ultimate transfer to a salvage yard holding a certificate of registration.
  - (4) Unregistered vehicles not associated with a salvage or scrap business, numbering 3 or less which are stored within view from public highways.
  - (4) Unregistered vehicles not associated with a salvage or scrap business, numbering 4 or greater which are stored inside a roofed building which is screened from view from public highways.
  - (5) Unregistered, roadworthy, used vehicles stored or displayed for resale by a private person, repair shop or automotive dealership.
  - (6) \_\_\_\_\_
  - (7) Mobile Crusher/ Bailer Operations provided that:
    - (A) the crusher /bailer vehicle or trailer is licensed, inspected and insured as required to operate on Vermont state roads;

- (B) the crusher/bailer is operated on a fully intact concrete containment pad (sealed with no fissures or exit drains) which provides at minimum , a 2 feet perimeter beyond the base dimensions of the crusher. The containment pad shall be sloped from all sides inward at a consistent minimum 3% pitch from level grade;
  - (C) the crusher/bailer is equipped to collect and prevent the release of all hazardous and non-hazardous liquids emanating from the salvage materials and vehicles being crushed or otherwise processed;
  - (D) the crusher/bailer hydraulic, fuel, and other fluid containing systems are fully intact and not leaking to the ground or containment pad; and
  - (E) the crusher/bailer is operated at a salvage yard holding a valid certificate of registration or other approval issued by the Secretary in cases of emergency cleanup and removal operations.
- (8) Collection and utilization of used oil and used oil filters provided that the collection is in compliance with all applicable used oil provisions of the Vermont Hazardous Waste Management Regulations, as may be amended, adopted pursuant to 10 V.S.A. Chapter 159.

**22-302 Prohibitions**

The following are prohibited:

- (a) Construction, operation, alteration, or expansion of a salvage yard without prior receipt of both:
  - (1) a certificate of approval (certificate of approved location) for the location of the salvage yard which meets the minimum requirements of 24 V.S.A. Chapter 61; and
  - (2) a certificate of registration issued by the Secretary of the Agency of Natural Resources for the salvage yard facility.
- (b) Operation of a smelter or other heating, smelting or combustion device or other combustion operation unless the device or operation meets all requirements of the Air Pollution Control Regulations and these Rules.

- (c) Uncertified collection, storage, disposal or open burning of solid waste (including vehicle tires) at a salvage yard facility without first receiving a solid waste facility certification issued under 10 V.S.A. Chapter 159.
- (d) Collection of waste tires at a salvage yard facility other than those obtained incidental to the collection and processing of salvage motor vehicles without a Solid Waste Management Facility Certification as provided under 10 V.S.A. Chapter 159.
- (e) Collection, storage and processing of mercury added consumer products without first receiving a solid waste facility certification issued under 10 V.S.A. Chapter 159.
- (f) Operation of a salvage yard without a certificate of approved location or outside of the terms of its certificate of approved location, certificate of registration or the requirements for maintenance of a financial responsibility instrument as provided under Section 22-701 of these rules.
- (g) The establishment, operation or maintenance of a salvage yard within 1,000 feet of the nearest edge of the right-of-way of the interstate or primary highway systems and visible from the main traveled way thereof at any season of the year.
- (h) On or after July 1, 2009, no person shall establish or initiate operation of a new salvage yard within 100 feet of the nearest edge of the right-of-way of a state or town road or within 100 feet of a navigable water, as that term is defined in section 1422 of Title 10.
- (i) Notwithstanding subsection (f) of this section, salvage yards and scrap metal processing facilities may be operated within 1,000 feet of the nearest edge of the right-of-way of the interstate and primary highway system or within 100 feet of the nearest edge of the right-of-way of a state or town road, provided that the area in which the salvage yard is located is zoned industrial under authority of state law, or if not zoned industrial under authority of state law, is used for industrial activities as determined by the board with the approval of the United States Secretary of Transportation.

**22-303 Certificate of Registration**

- (a) Any person wishing to establish, construct, substantially alter or operate a salvage yard as identified in Section 22-301 of these rules shall file for and a certificate of registration in the manner set forth in Section 22-304.
- (b) A certificate of registration shall be issued for a term not to exceed 1 year.
- (c) The Secretary may not certify a salvage yard unless it is in compliance with the Groundwater Protection Rule and Strategy, as may be amended, adopted pursuant to 10

V.S.A. Chapter 48, Groundwater Protection; Vermont Water Quality Standards, as may be amended, adopted pursuant to 10 V.S.A. Chapter 47; and the laws of Vermont.

**22-304 Application for a Certificate of Registration**

- (a) Any person required to obtain a certificate of registration under Section 22-303 shall fully complete, sign and submit an application along with the appropriate fee, to the Secretary.
- (b) An application submitted by a corporation shall be signed by a principal executive officer of at least the level of vice-president or a duly authorized representative who is responsible for the operation of the facility. An application submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. An application submitted by a municipality, state, or other public entity shall be signed by a principal executive officer, ranking elected official or other duly authorized employee.
- (c) The Secretary shall not begin the processing of a certificate of registration until the applicant has fully complied with the application requirements, as identified by the Secretary, for the specific type of facility involved, including submittal of appropriate fees.
- (d) All applications filed for the July 1, 2010 – June 30, 2011 term and thereafter shall contain evidence of having in place a Stormwater Improvement Plan (SWIP) approved by the Secretary or evidence of having filed a complete SWIP for review the Secretary. Certificates of Registration shall not be issued to salvage yard facilities after January 1, 2012 until coverage under *10 VSA §1250-1283 & Multi-Sector General Permit #3-9003* is applied for and approved and /or the stormwater permit(s) required for the salvage yard facility operation seeking a certificate of registration have been issued. Failure to meet these requirements by January 1, 2012 shall require the complete shutdown of the salvage yard facility operations until these requirements are met.
- (e) All applications shall contain a certificate of approved location as required under 24 V.S.A. Chapter 61.
- (f) Each application for certification shall be made on a form provided for this purpose by the Secretary and shall include, at a minimum, the following information:
  - (1) siting, design and operations information sufficient to show compliance with Subchapters 5, 6 and 7 of these rules;
  - (2) (A) the name, mailing address, and phone number of the facility, and the name, signature, mailing address, and phone number of the owner of the facility, the operator of the facility, and the owner of the land on which the facility is located.

- (B) If the operator does not own the land on which the facility is to be located, the owner of the land must sign the application for certification as a co-applicant and agree to be bound by the terms of the certification;
- (3) the name, mailing address, and phone number(s) of the primary and any secondary contact persons;
  - (4) the name, signature, mailing address and phone number of the person preparing the application;
  - (5) the type of salvage yard facility including all operational units;  
(develop an application form with boxes to check off)
  - (6) the location of the facility, using the Vermont plane coordination system on the appropriate Vermont orthophoto tax map, or through the use of a ground position system (GPS);
  - (7) a description of the proposed operation and future development of the facility in accordance with the engineering plans;
  - (8) the amounts and types of materials to be managed at the facility (e.g. automobiles, transformers, general scrap iron, precious metals such as lead, copper, brass, etc, hazardous fluids);
  - (9) information sufficient, as defined by the Secretary pursuant to 10 V.S.A. Chapter 48, to show that the property on which the facility is located is classified as a Class III or Class IV groundwater area;
  - (10) evidence of compliance with the financial responsibility requirements of Subchapter 22-701 of these rules where applicable;
  - (11) a closure plan along with cost estimates;
  - (12) evidence of fee simple title to or a lease agreement consistent with subsection (e)(2)(B) of this section;
  - (13) evidence of compliance with the disclosure requirements of the waste management personnel background review, pursuant to 10 V.S.A. 6605f (do we want to get salvage yards added to the bad actor statute 6605f?);
  - (14) a list of the names and mailing addresses of persons and entities that have received notice and a copy of the certification application in accordance with 10 V.S.A. § 6605(f).???????

- (15) When issuing a final certificate of registration, the Secretary may impose any conditions, requirements or restrictions as deemed necessary to assure compliance with statutes, rules or to protect public health and safety and the environment.

### 22-305 Amendment or Revocation of Certificate of Registration

Any certificate of registration issued pursuant to these rules may be amended, suspended or revoked, in whole or in part, during its term for cause, including but not limited to the causes set forth in subsection (1) of this section.

- (1) The Secretary may amend any certificate of registration upon his or her own motion or upon a written request by the certificate of registration holder, containing facts and reasons supporting the request. If the Secretary determines that amendment is appropriate, only the conditions subject to amendment shall be reopened. All amendments under this section shall be performed in accordance with the current certificate of approved location issued for the facility and with the requirements of these rules. Until amendments are granted or denied in whole or in part, all terms and conditions of the original certificate of registration shall remain in full force and effect. Amendments to a certificate of registration may be made for cause, including:
- (A) material and substantial additions or alterations to the facility or the facility's activities or any other change in conditions, that occurred after certificate of registration which justify the application of conditions different or absent from the existing certification;
  - (B) the receipt of information that was not available when the certificate of registration was issued which justifies the application of conditions different or absent from the existing certificate of registration;
  - (C) the statutes, standards or rules, on which the certificate of registration was based, were revised by adoption or judicial decision after the certificate of registration was issued and those revisions justify the application of conditions different or absent from the existing certificate of registration;
  - (D) the determination by the Secretary that other good cause exists for amendment, necessary to protect the public health and safety and the environment;
- (2) A certificate of registration may be suspended or revoked, in whole or in part, during its term for cause upon a motion by the Secretary or upon a written request

containing facts and reasons supporting the request. The certificate of registration holder shall be given written notice at least fourteen (14) days before suspension or revocation takes effect. Written notice shall include a statement of the reasons for suspension or revocation and notice of the certificate of registration holder's right to request a hearing or otherwise present information on the suspension or revocation issues. If the certificate of registration holder submits a written request for a hearing within fourteen (14) days of the date such notice is issued, the Secretary shall provide an opportunity to be heard. If the Secretary determines that only immediate suspension or revocation of a certificate of registration can alleviate an immediate and substantial hazard to public health and safety or the environment, suspension or revocation shall become effective upon receipt of the written notice by the applicant. In such cases, the certificate of registration holder may still request a hearing, although the suspension or revocation will be in effect until the hearing has been completed and a decision has issued. The Secretary shall hear the matter at the earliest possible time. Cause for suspension or revocation includes:

- (A) non-compliance with the requirements of governing state environmental laws and regulations, 24 V.S.A. Chapter 61, these rules, or any condition of certificate of registration;
- (B) failure to disclose all relevant facts during the certificate of registration process that were known or should have been known, at that time;
- (C) misrepresentation of any relevant fact at any time; or
- (D) a determination by the Secretary that only the suspension or revocation of a certificate of registration can alleviate an actual or potential hazard to public health or the environment.

(3) The Secretary may make *de minimis* modifications to a certificate of registration without following the procedures set forth in these rules where the Secretary finds that the modifications pose no threat to public health and safety or to the environment and will not create a nuisance, as determined by the Secretary.

### 22-306 Renewal - Certificate of Registration

- (a) A facility certificate of registration may be renewed upon following all application requirements according to the provisions of the latest certificate of registration and these rules.
- (b) Notwithstanding subsection (a) above, a person may apply for renewal of a facility certificate of registration in accordance with the following:

- (1) Upon review of the information currently on file with the Agency, the person shall identify the application it is seeking renewal of in and that there has been no change since the last certificate of registration application; or
- (2) The person submits all documentation reflecting a change in the design, management or operation of the facility, including but not limited to information that must be updated under Sections 22-304 of these rules.

**22-307 Environmental Impairment**

- (a) If the operation of a salvage yard facility, which is otherwise in compliance with its certificate of registration results in an emission or discharge that poses a threat to public health and safety or the environment, the Secretary may, under the authority of 10 V.S.A. §6610a or 10 V.S.A. Chapter 20, require the operator to perform certain activities including, but not limited to:
  - (1) Additional monitoring of the surface water, groundwater, soils, or air;
  - (2) Other investigations of the site necessary to determine the nature and extent of the emission or discharge and any contamination resulting from the emission or discharge; or
  - (3) Removal and remedial actions necessary to prevent further contamination, to address the existing contamination, and to meet applicable environmental quality and public health standards.
- (b) In situations where the Secretary determines that only the cessation of operations can alleviate the hazard posed by a facility, certificate of registration suspension or revocation proceedings under § 22-305(2) may be initiated. The Secretary may also pursue such other and/or additional remedies authorized under Vermont law.

**22-308 Facility Access and Inspection**

The Secretary may access and inspect a salvage yard at any time in order to determine compliance with the requirements of these rules, the salvage yard's municipal certificate of approved location issued under this 24 V.S.A. Chapter 61, its certificate of registration and any laws and regulations which may govern that are administered by the Secretary. A municipality may request that the secretary initiate an enforcement action against a salvage yard for violation of the requirements of 24 V.S.A. Chapter 61 or statute or regulation within the Secretary's authority.

**Subchapter 4 -- SITING****22-401 General**

The requirements of this Subchapter apply to salvage yards receiving certificates of registration under Sections 22-303 through 22-306 of these rules. These standards only apply to new salvage yard facilities, except as otherwise noted. For the purposes of this Rule, new salvage yard facilities are those which have not held a state junkyard license for the facility and its operations current as of July 1, 2008.

**22-402 Prohibited Areas**

- (a) Facilities are prohibited from being sited in the following designated areas:
- (1) In the case of discrete disposal facilities, in the Green Mountain National Forest except for a one half (0.5) mile corridor drawn from the center line of the right of way of each Federal and secondary highway or as approved by the National Forest Service. This prohibition does not apply to diffuse disposal facilities;
  - (2) Class I and Class II Groundwater Areas;
  - (3) Class I and Class II wetlands and their associated buffer zones, as defined in the Vermont Wetlands Rules, unless a Conditional Use Determination has been issued by the Agency;
  - (4) Class III wetlands, as defined by the Vermont Wetlands Rules, unless a Water Quality Certification has been issued pursuant to 40 CFR Part 401, or has been waived by the Agency;
  - (5) A National Wildlife Refuge as designated by the United States Fish and Wildlife Service;
  - (6) A wildlife management area as designated by the Agency;
  - (7) A threatened or endangered species habitat area as designated by the Agency, except for diffuse disposal facilities;
  - (8) A watershed for a Class A Waters, as designated by the Vermont Water Resources Board or the Natural Resources Board;
  - (9) In the case of new facilities, within the 100 year floodway or within the one hundred (100) year flood plain;

- (10) Within five hundred (500) feet of an Outstanding Resource Waters as designated by the Vermont Water Resources Board or the Natural Resources Board. This criterion does not apply to previously licensed salvage yard facilities holding state junkyard licenses current as of July 1, 2008 or newer, where there is no expansion of the facility beyond the previously licensed operations boundary, which may be the inside fenced perimeter or other inside perimeter of an approved screening device other than a fence;
- (11) No salvage yard facilities shall be located:
  - (A) within the Source Protection Area of a public water system using a groundwater source.
  - (B) within zone 1 or zone 2 of a Source Protection Area for a public water system using a surface water source.
  - (C) within 200 feet of a pre-school, school or hospital.
  - (D) within 200 feet of a childcare/daycare, elder care or nursing home facility.
  - (E) \_\_\_\_\_
- (12) A salvage yard established or initiated prior to July 1, 2009 shall be setback 100 feet from the nearest edge of a right-of-way of a state or town road and 100 feet from a navigable water as that term is defined in Section 1422 of Title 10, unless a legally pre-existing salvage yard is regulated as a non-conforming use through a municipal nonconformity bylaw adopted under 24 V.S.A. Section 4412, provided that there is no enlargement or further encroachment within the 100 foot setback.

**22-403 Siting Standards**

- (a) General Performance Standard

Facilities shall be located such that an emission or discharge from the facility will not unduly harm the public health and will have the least possible reasonable impact on the environment.

- (b) In order to meet the general performance standard of subsection (a) of Section 22-403, the operator must satisfactorily demonstrate the following:

- (1) that the isolation distances from the high seasonal water table, bedrock, and waters are sufficient to assure that an emission or discharge from the facility will meet all applicable environmental quality and public health standards and rules;
  - (2) that the isolation distance to public and private drinking water sources is sufficient to assure that an emission or discharge from the facility will not adversely affect drinking water;
  - (3) that the isolation distances to property lines, or any of the following not owned by the applicant: residences, schools, day care facilities, hospitals, and nursing homes, are sufficient to assure that the facility will not:
    - (A) result in objectionable odors off site of the facility;
    - (B) result in an unreasonable visual impact off site of the facility;
    - (C) unreasonably increase the level of noise detectable off site of the facility; or
    - (D) otherwise adversely affect public health.
  - (4) That the minimum isolation distances for the facility or activity listed in Table A are met, or sufficiently increased, to make the demonstration under subdivisions (1), (2), and (3) of this subsection.
  - (5) that the facility is not located in areas that have serious development limitations, such as highly erodible soils, steep slopes, or do not have the physical capability to support the facility;
  - (6) that the facility is accessible from a state or federal highway or a Class III or better town highway; and
- (c) The Secretary may request any additional information necessary to determine if a proposed facility meets the standards contained in this section.

Table A- Required Minimum Isolation Distances

CATEGORY	Processing, Draining & Crushing Areas	Hazardous Waste Storage Areas	Smelter Operations	Tire Storage Areas
Minimum Vertical Separation from High Seasonal Water Table <sup>1</sup>	3'	3'	3'	3'
Minimum vertical separation to bedrock <sup>1</sup>	6'	3'	3'	3'
Minimum distance to waters from the materials management area boundary	50'	100'	100'	100'
Minimum distance from materials management area boundary to drinking water source not owned by the applicant <sup>1</sup> .	200'	300'	300'	100'
Minimum distance to property line from materials management area boundary	25'	100'	100'	50'
Minimum distance from materials management area boundary to residences, schools, daycare facilities, hospitals, and nursing homes, not owned by the applicant <sup>1</sup>	200'	300'	300'	200'

<sup>1</sup>These criteria apply only to legal salvage yard facilities operations commencing after July 1, 2010 or to modifications after July 1, 2009 of existing facilities and to existing salvage yard facilities not holding a valid VT Department of Motor Vehicle Junkyard license as of September 1, 2009.

**Subchapter 5-- DESIGN STANDARDS**

**22-501 General**

- (a) Design of all salvage yard facilities shall be addressed in a facility management plan that contains a basis of design and an operating plan for all facility components. The plan shall contain sufficient information to permit the Secretary to determine whether the facility conforms to the provisions of these rules. Sections 6-504 through 6-506 provide the criteria which must be specifically addressed for each component of a solid waste management facility.

- (b) The requirements of this subchapter shall not apply to facilities that meet the requirements for categorical certification pursuant to:

**22-502 Submittals**

- (a) The management plan documentation shall be prepared under the direction of an engineer, licensed in the State of Vermont, unless the Secretary specifically waives the requirement that an engineer be involved.
- (b) The engineer shall make appropriate use of available expertise for evaluating geology and hydrogeology, soils science, air pollution control and impacts, and other areas of specialized knowledge which may be required to assemble a management plan.

**22-503 Site Characterization & Stormwater Control**

A facility management plan document must be developed by the applicant. This document shall include information necessary to fully characterize the site and the facility operation. Such site characterization shall be adequate to determine all mechanisms of emission or discharge to the environment and to allow modeling of contaminant transport with a level of resolution sufficient to determine compliance with applicable environmental quality standards (e.g., drinking water, surface water or groundwater quality, or air quality standards). At a minimum, the site characterization must address, unless deemed non-applicable by the Secretary:

- (a) soils and surficial geology;
- (b) bedrock geology;
- (c) integrated groundwater geology and geochemistry;
- (d) topography;
- (e) surface water;
- (f) groundwater location and flow direction; and
- (g) stormwater management ; apply for coverage under *10 VSA §1250-1283 & Multi-Sector General Permit #3-9003* and /or the stormwater permit required for the salvage yard facility operation seeking a certificate of registration.

**22-504 Screening**

- (a) All salvage yards shall be screened by a fence or vegetation which effectively screens it from public view year round and complies with the requirements of these rules. The screening fence shall have a gate which shall be closed after business hours.
- (b) Fences and artificial means used for screening purposes shall be maintained neatly and in good repair. They shall not be used for advertising signs or other displays which are visible from the main traveled way of a highway or state or town road.
- (c) All junk managed, stored or deposited in a salvage yard, including while being loaded or off-loaded for transport, shall be kept within the enclosure, except while being transported to or from the salvage yard. All wrecking, processing or other work on the junk shall be accomplished fully within the enclosure.
- (d) Where the topography, natural growth of timber, or other natural barrier screens the salvage yard from view in part and where approved in the certificate of approved location issued by the legislative body of the governing municipality, a salvage yard is required to screen only those parts of the salvage yard not fully screened year-round.

**22-505 Sweat Furnaces**

Where applicable, the sweat furnace section of a salvage yard management plan document shall:

- (a) identify the amounts and types of materials to be treated by the sweat furnace;
- (b) identify the air pollution control devices to be used, including any state or federal air pollution control requirements to be met or permits or authorizations that have been obtained;
- (c) include plans for the proper storage and handling of residues from the sweat furnace process;
- (d) include plans for the disposal of wastes and residues (dross) from the seat furnace process;
- (e) insure that all residue capable of producing airborne dust is properly wetted or contained to prevent dust emissions or discharges during on-site

storage, loading, transport, and unloading. Stored residue must be kept in watertight containers until properly disposed of.

**Subchapter 6 -- OPERATION STANDARDS**

**22-601 General Standards Applicable to Salvage Yard Facilities**

Operational requirements are provided below for all salvage yard management facilities:

- (a) Adequate and qualified personnel must be retained to operate salvage yard facilities in compliance with established standards.
- (b) Owners and operators of a salvage yard facility shall adhere to all conditions of the facility certificate of registration and these rules.
- (c) At least one contact person identified in the certificate of registration application shall be on site during all hours of operation, unless specifically waived by the Secretary, in which case a contact person must nevertheless be able to be contacted at all times.
- (d) The owner and operator shall take all steps necessary to prevent and/or control spills, nuisance dust and noise, windblown debris, and odors.
- (e) The owner and operator shall take all practicable steps to prevent the inclusion of hazardous wastes, as defined and regulated by Vermont's Hazardous Waste Management Regulations, into the materials stream being managed for resale by the facility.
- (f) Access to the facility shall be controlled, as appropriate, in a manner approved by the Secretary. At minimum, all main vehicular entry's shall be gated, with gates closed when entry is not in active use and at the end of the operational day.
- (g) The operational areas and vehicle and materials storage areas of the facility shall be fully screened from view from public highways and navigable waters.
- (h) A qualified operator familiar with procedures and the salvage yard facility management plan shall be on site during all hours of operation.
- (i) Properly maintained and calibrated scales should be used to measure the weight of salvage vehicles and scrap received at the facility.
- (j) Boundaries of the operational area shall be clearly defined and demarcated either with a perimeter screening fence or other permanent marker as stated in the approved application for certificate of registration.

- (k) Established drainages and sediment collection ponds as described in the salvage yard facility Storm Water Improvement Plan (SWIP) shall be maintained and protected from damage by facility operations. Any damage to these stormwater management systems shall be immediately repaired consistent with approved facility stormwater management plans (SWIP). Erosion control measures shall be installed and maintained until the repair is complete and the site is fully stabilized to prevent the unpermitted discharge of sediment and waste to waters of the state.

**22-602 Standards for Vehicle and Scrap Processing Facilities**

- (a) Vehicle processing and storage
  - (1) Junk or salvage/end of life motor vehicles shall have all fluid containing systems fully drained of fluids within 2 weeks of receipt at the salvage yard facility. Records of day of receipt of salvage motor vehicles shall be maintained for a period not less than 7 years and shall include a copy of the vehicle registration or title together with a bill of sale, signed title or registration, or other written and signed statement of relinquishment by the last vehicle owner in the chain of title.
  - (2) No motor vehicle shall be accepted by a salvage yard without being provided a copy of an original vehicle title showing proof of ownership by the last owner of the vehicle. End of life vehicle titles shall be kept on file for a period of not less than 7 years.
  - (3) A waiver to the requirement for provision of a title and statement of relinquishment may be issued by the Vermont Commissioner of Motor Vehicles whereupon a motor vehicle is found to have been abandoned and prior ownership is unable to be determined.
  - (4) All fluids drained from vehicles shall be drained into separate containers and stored in accordance with the Vermont Hazardous Waste Management Rules. All salvage yards shall apply for and maintain an EPA Waste Generator ID number as required under the VT HWMRs.
  - (5) All end of life vehicles containing mercury switch devices and refrigerants shall have the mercury switches and refrigerants removed and recovered prior to crushing or bailing. Refrigerants shall only be removed by an EPA certified refrigerant reclaimer prior to crushing, bailing or dismantling where refrigerant may be released to the environment. Where end of life vehicle storage are to be stored at the salvage yard facility, all refrigerants and mercury containing switches shall be removed within 6 months of receipt by the salvage yard facility.

(b) Vehicle Draining and Dismantling Areas

- (1) Effective July 1, 2010, all new or currently unlicensed (uncertified) salvage yards seeking certification, or salvage yards which expand operations by greater by 10% or greater on a weight or volume basis, shall provide for the draining of vehicles on a concrete or other approved surface which shall contain no subsurface floor drains by no later than September 1, 2010. Such concrete surface shall be located under a roofed structure. The roofed structure and concrete pad assembly shall be designed to prevent run-on of precipitation or melt water and prevent run-off of spilled fluids. Grading of the dismantling area perimeter shall be performed to the site to direct precipitation and melt water away from the dismantling pad surface.
- (2) Effective July 1, 2012, no salvage yard shall receive a certificate of registration for operation unless it meets the vehicle draining and dismantling area standards established in paragraph (1) above.

(c) Vehicle Crushing – Crusher Design and Operational Standards

- (1) Only vehicles, electrical transformers, generators, engines, and other fluid containing vessels which have had fluids previously drained from all systems may be crushed.
- (2) Crushers shall be designed to recover all residual fluids which may drain from crushed vehicles. All crushers purchased or placed into use after July 1, 2010, shall in addition provide for a minimum on-board combined fluid storage capacity of 200 gallons.
- (3) Crushing of any items or vessels which may contain residual hazardous fluids, or may at one time have contained hazardous fluids shall only be performed in a crusher with fluids collection as provided in paragraph (2) above or in a leak-proof, sealed container.

**22-603 Reporting**

- (a) The salvage yard operator, including operators of wastewater treatment plants, shall make reports to the Secretary on forms developed by the Secretary. The operator shall file a report with the Secretary either annually or as specified in the facility certification. Such reports shall include, but are not limited to, information on:
  - (1) the tonnage salvage and scrap, by metal type, accepted by the facility;
  - (2) the tonnage salvage and scrap, by metal type, processed and sold by the facility; and
  - (3) the quantity of tires (by number or tonnage) processed and shipped for recycling or disposal together with their end destination.

- (b) The operator shall submit a report to the Secretary within five (5) working days of the receipt of any information indicating non-compliance with any term or condition of certification or other operating authority.
- (c) Any discharge or emission from a facility which poses a threat to public health and safety, a threat to the environment or the creation of a nuisance must be reported within twenty four (24) hours to the State of Vermont Department of Environmental Conservation, the local health officer, and the selectpersons of the affected municipalities. A written report shall be submitted to the parties to whom the event was reported within seven (7) days of the discharge or emission. The report shall identify the discharge or emission that occurred, the type, quantity, and quality of waste, and the actions taken to correct the problem.
- (d) The operator shall make any other reports that may be reasonably required by the Secretary in the facility certificate of registration.

**22-604 Record Keeping**

The following records must be kept in a dry and secure location by the owner and/or operator of the facility for a period of not less than 7 years:

- (1) All end of life vehicle titles;
- (2) Copies of the annual report forms that have been submitted to the Secretary as a requirement of certificate of registration; and
- (3) Copies of any reports, records, data or other information required to be submitted to the Secretary as a requirement of certificate of registration.

**Subchapter 7 -- FINANCIAL RESPONSIBILITY**

**22-701 Financial Responsibility**

- (a) The requirements for financial responsibility for salvage yard facilities as contained in this section shall apply to all existing and future private facilities listed in section (c) below. Publically owned facilities holding a salvage yard certificate of registration under section 22-303 are exempt from the provisions of this subchapter.
- (b) This section establishes requirements and procedures for applicants for salvage yard certificates or registration to show evidence of financial responsibility for closure and, as appropriate, post-closure care. Financial responsibility is provided so that upon

abandonment, cessation, or interruption of the operation of a facility, all appropriate measures can be taken to prevent present and future damage to the public health and safety and to the environment.

- (c) Operations requiring establishment and maintenance of a financial responsibility instrument:
  - (1) Salvage yards which store greater than 1200 tires;
  - (2) Salvage yards engaged in a remedial action effort required by the Secretary for cleanup of on-site and off-site contamination caused by salvage yard operations;
  - (3) Salvage yards which store or process greater than the equivalent of 100 55-gallon drums of hazardous fluids per year;
  - (4) ?????? ANY OTHERS TO ADD TO THIS LIST?????
- (d) Evidence of financial responsibility shall be in one or a combination of the following forms:
  - (1) a trust fund maintained by the applicant for the benefit of the Agency with a surety bond guaranteeing full payment into the fund;
  - (2) a surety bond guaranteeing performance of closure or post-closure care;
  - (3) an irrevocable standby letter of credit;
  - (4) a deposit of acceptable collateral, as determined by the Secretary;
  - (5) a financial test and corporate guarantee, as determined appropriate by the Secretary; or
  - (6) other financial responsibility instruments that the Secretary may deem appropriate.
- (e) The content of any particular financial responsibility instrument must meet the standards and requirements specified in Appendix A.
- (f) Financial responsibility instruments shall be submitted on a form prepared for this purpose or otherwise approved by the Secretary.
- (g) Financial responsibility instruments shall be in the amount of the cost estimate for closure and post-closure care, as calculated using the procedures set forth in Subchapter 8.
- (h) The certificate of registration holder must maintain financial responsibility equal to or greater than the required cost estimates at all times except as provided in this subsection.

The certificate of registration holder has ninety (90) days to increase the total amount of financial responsibility so as to equal the required cost estimates after any of the following:

- (1) an increase in the required cost estimates;
  - (2) a decrease in the value of a trust fund;
  - (3) a determination by the Secretary that the certificate of registration holder no longer meets the gross revenue or financial test; or
  - (4) notification by the certificate of registration holder that he or she intends to substitute alternative financial responsibility for self-insurance.
- (i) Use of Financial Responsibility Instruments
- (1) An applicant may satisfy the requirements of this section by establishing more than one financial responsibility instrument per facility. These instruments are limited to trust funds, surety bonds, letters of credit and deposits of acceptable collateral. The instruments must be as specified in Appendix A, except that it is the combination of instruments, rather than the single instrument, that must provide financial responsibility for an amount at least equal to the closure or post-closure care cost estimate.
  - (2) The Secretary may draw on any or all of the instruments to provide for closure or post-closure care at the facility.
- (j) Use of a Financial Responsibility Instrument for Multiple Facilities
- (1) An applicant may satisfy the requirements of this section by using a single financial responsibility instrument for more than one facility. Evidence for financial responsibility submitted to the Agency must include a list showing, for each facility, the name, address, and the amount of funds assured by the instrument must be no less than the sum of funds that would be available if a separate instrument had been established and maintained for each facility.
  - (2) In directing funds available through the instrument for closure or post-closure care for any of the facilities covered by the instrument, the Secretary may direct only the amount of funds designated for that facility, unless the applicant agrees to the use of additional funds available under the instrument.
- (k) Use of a Financial Responsibility Instrument for Both Closure and Post-Closure Care

An applicant may satisfy the requirements of this section for both closure and post-closure care for one or more facilities by using one of the instruments specified in this section. The amount of funds available through the instrument must be no less than the sum of the funds that would be available if a separate instrument had been established and maintained for closure and post-closure care.

(1) Release from Financial Responsibility Requirements

Upon satisfactory demonstration by the certificate of registration holder to the Secretary that the requirements of a closure or post-closure care plan have been satisfied, the Secretary will notify the certificate of registration holder in writing, within sixty (60) days, that he or she is no longer required to maintain financial responsibility for closure or post-closure care.

**Subchapter 8 -- CLOSURE AND POST-CLOSURE**

**22-801 Closure Performance Standard**

All facilities subject to closure requirements must be closed in a manner that:

- (a) Minimizes the need for further maintenance related to the salvage yard facility; and
- (b) Controls, minimizes, or eliminates, to the extent necessary to prevent threats to public health and safety and the environment, including post-closure emission or discharge of waste, waste constituents, leachate, contaminated runoff, and/or waste decomposition products to the groundwater or surface waters or the atmosphere.

**22-802 Closure Plan**

- (a) A closure plan is required for all salvage yard facilities operating on the effective date of these rules that are required to hold a financial responsibility instrument under Section 22-701 of these rules.
- (b) The closure plan must identify steps necessary to close the facility completely at any point during its intended life. The closure plan must include, at least:
  - (1) A description of the steps necessary to close the facility;
  - (2) A listing of labor, materials, and testing necessary to close the facility;

- (3) A schedule for final closure including, at a minimum, the total time required to close the salvage yard facility and the time required for the various steps or phases in the closure process;
  - (4) A cost estimate for facility closure that satisfies the requirements of Section 22-806;
  - (6) A description of the methods for compliance with the closure requirements; and
  - (7) Any remedial action necessary prior to closure, if required by the Secretary.
- (c) The approved closure plan will become a condition of any certificate of registration or other operating authority issued by the Secretary.
- (d) An approved closure plan may be amended, subject to the approval of the Secretary, at any time during the active life of the facility.
- (e) An amended closure plan must be submitted for approval to the Secretary whenever:
- (1) Changes in the operating plan or facility design affect the closure plan; or
  - (2) There is a change in the remedial action plan for the salvage yard facility.
- (f) When a certificate of registration modification is requested to authorize a change in the operating plans or facility design, a closure plan amendment must be requested at the same time. If a certificate of registration modification is not needed to authorize the change in operating plans or facility design, the request for a closure plan amendment must be made within sixty (60) days after the change in plans or design occurs.
- (g) **Notice of Closure:** A certificate of registration holder shall send to the Secretary a notice of closure within thirty (30) days after the date the final volume of salvage or scrap material is received at the facility.
- (h) **Certification of Closure:** As part of the final closure of a facility, the following must be submitted to the Agency:
- (1) Certification by the certificate of registration holder of the salvage yard facility and by a professional engineer licensed in the State of Vermont that the facility has been closed in accordance with the specifications of the approved closure plan; and
  - (3) Verification that the owner of the property on which the salvage yard facility is located has recorded a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify

any potential purchaser of the property that the land has been used as a salvage yard facility.

**22-803 Closure Cost Estimates**

- (a) All salvage yard facilities required under section 22-701 to prepare a closure plan must have a written estimate of the cost of closing the facility in accordance with the closure plan.
- (b) The closure cost estimate shall be based on the work required for a third party contractor to effect proper closure at the point in the life of the facility when closure would be most expensive.
- (c) The certificate of registration holder may revise the closure cost estimate at any time during the active life of the facility if a change in the closure plan decreases the closure cost estimate.
- (d) The certificate of registration holder must revise the closure cost estimate whenever a change in the closure plan increases the closure cost estimate.

**22-806 Revision to Closure Cost Estimates**

- (a) The certificate of registration holder must revise the closure and post-closure care cost estimates at least once every five (5) years. The revised cost estimates must be filed on or before the fifth anniversary of the filing or last revision of the current cost estimates.
- (b) The certificate of registration holder must review the closure and post-closure care plans prior to filing revised cost estimates in order to determine whether they are consistent with current operations and regulations. The certificate of registration holder must either certify that the plans are consistent, or must file an application for certification modification reflecting new plans.
- (c) The certificate of registration holder must prepare new closure cost estimates reflecting current prices for the items included in the estimates. The certificate of registration holder must submit a report to the Secretary showing the necessary calculations and indicating either what the new cost estimates are or that there are no changes.

## Appendix A

## Specific Requirement for Financial Responsibility Instruments

A-1 Trust Fund with Surety

- (a) An applicant may satisfy the financial responsibility requirements of Subchapter 7 by establishing a trust fund for the benefit of the Agency according to the requirements of this section and subsections A-2 (b), (c), (f), (g), (h), (i), (k), and (l). The surety bond must guarantee full payment into the trust fund of the cost estimate for closure or post-closure plan submitted with the certification application. The trustee for the trust fund must be a bank or financial institution which has the authority to act as a trustee and whose operations are regulated and examined by the State of Vermont. The surety for the bond must be a surety company licensed to operate as a surety in the State of Vermont and must be approved by the secretary.
- (b) The trust agreement and surety bond shall be executed in the form provided for such purposes by the secretary.
- (c) Payments to the trust fund must be made annually by the certificate of registration holder over the term of the state certification issued for such facility or over the life of the facility if such facility life is shorter than the term of the state permit. Payments must be made as follows:
- (1) The first payment shall be made when the trust is established and shall be at least equal to the cost estimated divided by the number of years in the term of the permit or life of the facility, whichever is the shorter.
  - (2) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be the cost estimate minus the current value of the trust fund, divided by the number of years remaining in the term of the certification or the remaining number of years in the life of the facility, whichever is the shorter.
- (d) The certificate of registration holder may accelerate payments into the trust fund or he may deposit the full amount of the cost estimate at the time the fund is established. However, the value of the fund must be maintained at no less than the value would have been if annual payments were made as specified in paragraphs a and c of this subsection.

- (e) Whenever the cost estimate changes after the pay-in period is completed, the certificate of registration holder shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the certificate of registration holder must, within 90 days of the change in the cost estimate, deposit a sufficient amount into the fund so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in Subchapter 7 to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the certificate of registration holder may submit a written request to the secretary for release of the amount which is in excess of the cost estimate.
- (f) If the certificate of registration holder substituted other financial responsibility as specified in Subchapter 7 for all or part of the trust fund, he may submit a written request to the secretary for release of the amount which is greater than the amount required as a result of the substitution.
- (g) Within 60 days after receiving a request from the certificate of registration holder for release of funds specified in paragraphs e and f of this subsection, the secretary will instruct the trustee to release to the certificate of registration holder such funds as the secretary specifies in writing.
- (h) After beginning final closure or during the period of post-closure care, a certificate of registration holder or any other person authorized to conduct closure, may request reimbursement for closure or post-closure expenditures respectively by submitting itemized bills to the secretary within 60 days after receiving bills for closure or post-closure activities. The secretary shall instruct the trustees to make reimbursement in those amounts as the secretary determines are in accordance with the closure or post-closure plan or are otherwise justified.
- (i) The secretary shall agree to terminate the trust when:
- (1) The certificate of registration holder substitutes alternate financial responsibility as specified in Subchapter 7; or
  - (2) The secretary notifies the certificate of registration holder that he is no longer required by Subchapter 7 to maintain financial responsibility for the closure or post-closure of the facility.
- (j) The term of the surety bond shall be for the pay in period of the trust fund.
- (k) The bond must guarantee that the certificate of registration holder will:
- (1) Fund the trust in the amount of the cost estimate by the end of the pay-in period; or

- (2) During the pay-in period, fund the trust in the amount of the cost estimate within 15 days after an order to begin closure or post-closure care by the secretary or by a court, or following issuance of a notice of revocation of the certification; or
- (3) Provide alternative assurance within 90 days after receipt by the secretary of a notice of cancellation of the bond by the surety.

#### A-2 Surety Bonds

- (a) An applicant may satisfy the financial responsibility requirements of Subchapter 7 by obtaining a surety bond according to the requirements of this section and by submitting the original copy of the bond with the facility closure or post-closure plans with the certification application. Only bonds issued by surety companies licensed to operate as sureties in the State of Vermont and approved by the secretary will satisfy the requirements of this section.
- (b) A surety bond form supplied by the secretary shall be used by the applicant and the surety.
- (c) The surety bond must name the applicant as the principal and name the State of Vermont as the obligee.
- (d) The term of the bond shall be for the life of the facility for which a certification is applied by the applicant through the closure period. A bond used for post-closure responsibility shall extend through the post-closure period.
- (e) The bond must guarantee that the certificate of registration holder will:
  - (1) Perform final closure or post-closure care in accordance with the closure or post-closure plan and other requirements in the certification for the facility; or
  - (2) Perform final closure or post-closure care following an order to begin closure or post-closure care issued by the secretary or by a court, or following issuance of a notice of revocation of the certification; or
  - (3) Provide alternate financial assurance as specified in this section within 90 days after receipt by the secretary of a notice of cancellation of the bond from the surety.

- (f) The surety will become liable on the bond obligation when the certificate of registration holder fails to perform as guaranteed by the bond.

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- (g) The penal sum of the bond must be in an amount at least equal to the amount of the closure or post-closure cost estimate.
- (h) Whenever the cost estimate increases to an amount greater than the amount of the penal sum of the bond, the certificate of registration holder shall, within 90 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in Subchapter 7, to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the secretary. Notice of an increase or decrease in the penal sum must be sent to the secretary by certified mail within 90 days after the change.
- (i) the bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the certificate of registration holder and to the secretary. Cancellation can not occur, however:
  - (1) During the 120 days beginning on the date of receipt of the notice of cancellation by the secretary as shown on the signed return receipt; or
  - (2) While a compliance action or enforcement action is pending.
- (j) following a determination that the certificate of registration holder has failed to perform final closure or post-closure care in accordance with the approved plan and other certification requirements when required to do so, the surety shall perform final closure or post-closure care in accordance with the terms of the bond, approved plan and other certification requirements or closure order. As an alternative to performing final closure or post-closure care the surety may forfeit the full amount of the penal sum to the State.
- (k) The certificate of registration holder may cancel the bond if the secretary has given prior written consent based on receipt of evidence of alternative financial assurance as specified in Subchapter 7.
  - (l) The secretary will notify the surety if the certificate of registration holder provides alternate financial assurance as specified in Subchapter 7.
- (m) The surety will not be liable for deficiencies in the performance of closure by the certificate of registration holder after the certificate of registration holder has been notified by the secretary that the certificate of registration holder is no longer required by Subchapter 7 to maintain financial assurance for closure or post-closure care of the facility.

- (n) As performed either by the certificate of registration holder or the surety, proper closure of post-closure care shall be deemed to have occurred only when the secretary so determines according to these rules.

A-3 Letters of Credit

- (a) An applicant may satisfy the requirements of Subchapter 7 by obtaining an irrevocable standby letter of credit according to the requirements of this section and by submitting the original copy of the letter of credit attached to the facility closure or post-closure plan along with the certification application. For new facilities, the letter of credit must be effective before the initial receipt of waste at the facility for which it is issued. The issuing institution must be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the State of Vermont.
- (b) The wording of the letter of credit must be approved by the secretary.
- (c) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it must, at least 120 days before the date, notify both the certificate of registration holder and the secretary by certified mail of that decision. The 120 day period will begin on the date of receipt by the secretary as shown on the signed return receipt. Expiration can not occur, however, while a compliance or enforcement action is pending.
- (d) The letter of credit must be issued for at least the amount of the closure or post-closure cost estimate.
- (e) Whenever the cost estimate increases to an amount greater than the amount of credit, the certificate of registration holder shall, within 90 days of the increase, cause the amount of credit to be increased to an amount at least responsibility as specified in Subchapter 7 to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of new estimate following written approval by the secretary. Notice of an increase or decrease in the amount of the credit shall be sent to the secretary by certified mail within 90 days of the change.
- (f) Following a determination that the certificate of registration holder has failed to perform closure or post-closure care in accordance with the approved plan or other certification requirement, the secretary will draw on the letter of credit.

- (g) the certificate of registration holder must establish alternate financial responsibility as specified in Subchapter 7 and obtain written approval from the secretary within 90 days after receipt by both the certificate of registration holder and the secretary of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date. If the certificate of registration holder does not establish such alternative financial responsibility within the 90 days, the secretary will draw on the letter of credit. If the issuing institution grants an extension of the term of credit, the secretary may do the drawing during the last 30 days of credit if the operator has failed to provide alternative financial responsibility as specified in Subchapter 7 and obtain written approval of such responsibility from the secretary.
- (h) The secretary shall return the original letter of credit to the issuing institution for termination when:
  - (1) the certificate of registration holder substitutes alternate financial responsibility for closure or post-closure as specified in Subchapter 7; or
  - (2) The secretary notifies the certificate of registration holder, in accordance with section 6-701(d) of these rules, that he is no longer required to maintain financial responsibility for closure or post-closure of the facility.

A-4 Deposits of Acceptable Collateral

- (a) An applicant may satisfy the requirements of Subchapter 7, wholly or in part, by filing with the secretary a collateral bond payable to the State of Vermont, conditioned so that the applicant shall comply with the closure or post-closure plan filed for the facility. The amount of the bond shall be at least equal to the estimated closure or post-closure cost of the facility, for which the certificate of registration application has been filed or any part thereof not covered by other financial responsibility instruments. Such bond shall be executed by the applicant after depositing with the secretary acceptable collateral, the market value of which shall be at least equal to the total estimated closure or post-closure cost or any part thereof not covered by other financial responsibility instruments.
- (b) Acceptable collateral may include certificates of deposit, negotiable bonds of the United States Government, the State of Vermont or any of its agencies, any government authority within the State of Vermont, or any county, municipality or other local bond issuing authority within the State of Vermont approved as acceptable for financial responsibility purposes by the secretary.

- (c) The secretary shall, upon receipt of such collateral, place the instrument(s) with the state treasurer to be held in the name of the state of Vermont in trust, for the purposes for which such deposit is made.
- (d) The certificate of registration holder shall be entitled to demand, receive and recover the interest and income from said instrument(s) as it becomes due and payable as long as the market value of the instrument(s) plus any other mechanisms used continue to be at least equal the closure or post-closure cost estimate.
- (e) the certificate of registration holder shall also be permitted to replace the collateral instruments with other like instruments of at least equal market value upon proper notification to the secretary and the state treasurer.
- (f) In the event of failure of the certificate of registration holder to comply with the final closure or post-closure plan, the secretary shall declare said collateral forfeited and shall request the state treasurer to convert said collateral into cash and transfer such funds to the secretary to be used for final closure or post-closure purposes.
- (g) The term of a collateral bond shall be for the life of the facility through the closure or post-closure period, as appropriate.
- (h) The secretary shall return collateral instruments to the certificate of registration holder when:
  - (1) the certificate of registration holder substitutes alternate financial responsibility for closure or post-closure as specified in Subchapter 7; or
  - (2) the secretary notifies the certificate of registration holder, in accordance with these rules, that he is no longer required to maintain financial responsibility for closure or post-closure of the facility.

A-5 Financial Test and Corporate Guarantee

(a) An applicant may satisfy the Subchapter 7 requirements for financial responsibility by demonstrating that he passes a financial test as specified in this section. To pass this test the applicant must meet the criteria of either subsection (a)(1) or (a)(2).

(1) The applicant must have:

(A) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) new working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(C) tangible net worth of at least \$10 million; and

(D) assets in the United States amounting to at least 90% of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(2) The applicant must have:

(A) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(C) net worth of at least \$10 million; and

(D) assets located in the United States amounting to at least 90% of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(b) To demonstrate that he meets this test, the applicant shall submit the following items to the secretary:

- (1) A letter signed by the applicant's chief financial officer and worded as specified by the secretary.
- (2) A copy of the independent certified public accountant's report on examination of the applicant's financial statement for the latest completed fiscal year; and
- (3) a special report from the applicant's independent certified accountant to the applicant stating that:
  - (A) He has compared the data which the letter from the chief financial officer specifies as having been derived from an independently audited, year-end financial statement for the latest fiscal year with the amounts in such financial statements; and
  - (B) In connection with that procedure, no matters come to his attention which caused him to believe that the specified data should be adjusted.
- (c) For a new facility, the applicant shall submit the items specified to the secretary at least 60 days before the date on which solid waste is first received for treatment, storage, or disposal.
- (d) After the initial submission of items specified in subsection (b), the certificate of registration holder shall send updated information to the secretary within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (b).
- (e) If the certificate of registration holder no longer meets the requirements of subsection (a), he shall send notice to the secretary of intent to establish alternate financial responsibility as specified in Subchapter 7. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the certificate of registration holder no longer meets the requirements. The certificate of registration holder shall provide the alternate financial responsibility within 120 days after the end of such fiscal year.
- (f) The secretary may, based on a reasonable belief that the certificate of registration holder may no longer meet the requirements of subsection (a), require reports of financial condition at any time from the operator in addition to those specified in subsection (b). If the secretary finds, on the basis of such reports or other information, that the certificate of registration holder no longer meets the requirements of subsection (a), the certificate of registration holder shall provide

alternate financial responsibility as specified in subchapter 7 within 30 days after notification of such a finding.

- (g) The secretary may disallow use of this test on the basis of qualification in the opinion expressed by the independent certified public accountant in his report on examination of the applicant's or certificate of registration holder's financial statements (see subsection (b)(2)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The secretary will evaluate other qualifications on an individual basis. The certificate of registration holder shall provide alternate financial responsibility as specified in Subchapter 7 within 30 days after notification of the disallowance.
- (h) During the period of post-closure care, the secretary may approve a decrease in the current post-closure cost estimate for which this test demonstrated financial responsibility if the certificate of registration holder demonstrates to the secretary that the amount of the cost estimate exceeds the remaining costs of the post-closure care.
- (i) the certificate of registration holder is no longer required to submit the items specified in subsection (b) when:
  - (1) a certificate of registration holder substitutes financial responsibility as specified in Subchapter 7 or
  - (2) the secretary releases the certificate of registration holder from the requirements of this section as specified in section 22-702(1) of these rules.
- (j) A certificate of registration holder may meet the requirements of this subsection by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the parent corporation of the certificate of registration holder. The guarantor shall meet the requirements for applicant or certificate of registration holder in subsections (a) through (g) and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be specified by the secretary. The corporate guarantee shall accompany the items sent to the secretary as specified in subsection (b). The terms of the corporate guarantee shall provide that:
  - (1) If the certificate of registration holder fails to perform final closure or post-closure of a facility covered by the corporate guarantee in accordance with the closure plan or post-closure plan, the guarantor will do so or establish a trust fund in the name of the certificate of registration holder as specified in these rules.

- (2) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the certificate of registration holder and to the secretary. The cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the certificate of registration holder and the secretary as evidenced by the return receipts.
  
- (3) If the certificate of registration holder fails to provide alternate financial responsibility as specified in Subchapter 7 and obtain the written approval of such alternate responsibility from the secretary within 90 days after the receipt by both the certificate of registration holder and the secretary of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial responsibility in the name of the certificate of registration holder.

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