Subchapter 1: GENERAL PROVISIONS

§ 7-101 AUTHORITY

These regulations are promulgated by the Secretary of the Vermont Agency of Natural Resources pursuant to the authority granted by **3 V.S.A. § 2853(5) and 10 V.S.A. chapter 159**.

Note: The term "these regulations," when used within this document, means chapter 7 of the Vermont Environmental Protection Rules (Hazardous Waste Management Regulations).

§ 7-102 PURPOSE

These regulations are intended to protect public health and the environment by comprehensively regulating the generation, storage, collection, transport, treatment, disposal, use, reuse, and recycling of hazardous waste in Vermont.

§ 7-103 DEFINITIONS

As used in these regulations, all terms not defined herein shall have the meaning given them in **40 CFR Parts 260 through 266, 268, and 270**. Terms that are used only in **subchapter 8** (used oil management standards) or **subchapter 9** (universal waste management standards) are defined therein.

"Active life of a facility" means the period from the initial receipt of hazardous waste at the facility until the Secretary receives certification of final closure.

"Agency" means the Vermont Agency of Natural Resources.

"Board" means the solid waste and air quality variance board established by **10 V.S.A. § 553**.

"Boiler" means an enclosed device using controlled flame combustion and either:

(a) Having the following characteristics:

(1) Having physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(2) Being of integral design, in that the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) are physically formed into one manufactured or assembled unit, except that process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units are not precluded from being boilers solely because they are not of integral design. A unit in which the combustion chamber and the primary energy recovery section(s) are joined

only by ducts or connections carrying flue gas is not of integral design; however, a unit may be of integral design even though secondary energy recovery equipment (such as economizers or air preheaters) is not physically formed into the same unit as the combustion chamber and the primary energy recovery section; and

(3) Maintaining while in operation a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(4) Exporting and utilizing at least 75 percent of the recovered energy, calculated on an annual basis, not including recovered heat used internally in the same unit, such as the preheating of fuel or combustion air, the driving of induced or forced draft fans or feed-water pumps; or

(b) The device is one which the Secretary has determined, on a case-by-case basis, to be a boiler, after considering the standards in **40 CFR § 260.32**.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"CERCLA" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Certificate of need" means a certificate issued by the Secretary pursuant to **10 V.S.A. § 6606a** that must be obtained before a person may begin site preparation for or construction of a hazardous waste management facility.

"Certified hazardous waste facility" means a treatment, storage, or disposal facility which is authorized to operate under a federally approved state hazardous waste program, the federal hazardous waste program, or a foreign government.

"College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

"Completed copy" means any copy of the manifest which has been signed by the generator, designated transporter, any continuing transporters, and the designated certified hazardous waste treatment, storage, or disposal facility.

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"Container" means any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of 40 CFR (incorporated by reference in subchapter 5).

"Control" over a waste means the possession, ownership or physical control of such waste, including but not limited to the following activities: (a) generation; (b) treatment; (c) storage; (d) transportation; or (e) disposal, whether or not such activity is authorized by law.

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided **in 40 CFR §§ 268.40 through 268.49**, namely lead acid batteries, cadmium batteries, and radioactive lead solids; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by **40 CFR § 268.45** and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Designated facility" means:

(a) A hazardous waste treatment, storage, or disposal facility which:

(1) Has received a permit (or interim status) in accordance with the requirements of **40 CFR Parts 270 and 124**;

(2) Has received a permit (or interim status) from a State authorized in accordance with **40 CFR Part 271**; or

(3) Is regulated under **§ 7-606(a)** or **Subpart F of 40 CFR Part 266** (Refer to **§ 7-204(g)** / Recyclable Materials Utilized for Precious Metal Recovery); and

(4) Has been designated on the manifest by the generator pursuant to **§ 7-702**.

(b) A generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with **40 CFR § 264.72(f) or 40 CFR § 265.72(f)** (Refer to **§ 7-704(g)(4)**)

(c) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in **§ 7-912(d)(3)**. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Discarded" A material is discarded if it is:

(a) Abandoned by being:
  (1) Disposed of; or

  (2) Burned or incinerated; or

  (3) Accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned, or incinerated;

(b) Recycled, until the recycling process has been completed;

(c) Considered inherently waste-like as described in **40 CFR § 261.2(d)**;

(d) Applied to or placed on the land in a manner that constitutes disposal or used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land or

(e) A military munition identified as a solid waste in **40 CFR § 266.202**.

"Discharge" or **"hazardous waste discharge"** means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

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

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Economic poison" means

(a) Any substance produced, distributed or used as a plant regulator, defoliant, or desiccant;

(b) Any substance produced, distributed or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses,

except viruses on or in living man or other animals, which the Secretary of Agriculture, Food & Markets shall declare to be a pest.

"Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in **§ 7-206**, or they are listed in **§§ 7-210 through 7-215** only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Eligible academic entity" means a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

"Environmental Protection Agency" or **"EPA"** means the United States Environmental Protection Agency.

"EPA Acknowledgement of Consent" means the cable sent to EPA from the U. S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"EPCRA" means the federal Emergency Planning & Community Right to Know Act of 1986, as amended.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" means:

(a) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) For the purpose of implementing corrective action under **40 CFR § 264.101** (incorporated by reference under subchapter 5), all contiguous property under the control of the owner or operator seeking certification under subchapter 5 of these regulations. This definition also applies to facilities implementing corrective action under **RCRA § 3008(h)**.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under subchapter 5 of these regulations are no longer conducted at the facility unless subject to the requirements for hazardous waste generators in subchapter 3.

"Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes hazardous waste to become subject to regulation. This includes any person who imports hazardous waste into Vermont from a foreign country.

"Hazardous material" means all petroleum and toxic, corrosive or other chemicals and related sludge included in any of the following:

(a) Any substance defined in **CERCLA § 101(14)**;

(b) Petroleum, including crude oil or any fraction thereof; or

(c) Hazardous waste, as defined in this section.

Note: "Hazardous material" does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state and local laws and regulations and according to manufacturers' instructions. Nothing in this subsection shall affect the authority granted and the limitations imposed by **10 V. S. A. § 6608a**.

"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, as amended, codified in 42 U. S. C. § 2014, is specifically excluded from this definition.

"Hazardous waste management" means the systematic and comprehensive management of the generation, storage, transport, treatment, including recycling and recovery, or disposal of hazardous waste materials.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Household sewage" means untreated sanitary wastes from a household which pass through a sewage system to a sewage treatment plant.

"Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). Business waste generated at a household is not household waste.

"Identification number" means the location specific number assigned by either EPA or the Secretary to each generator, transporter and treatment, storage, or disposal facility.

"Impervious surface" means a surface that is sufficiently impervious to any waste material stored thereon to prevent that material from migrating to the soil, groundwater, or surface water.

"Incinerator" means any enclosed device that:

(a) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) Meets the definition of infrared incinerator or plasma arc incinerator as defined in **40 CFR § 260.10**.

"Incompatible waste" means a hazardous waste which is unsuitable for:

(a) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e. g., container inner liners or tank walls); or

(b) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See **Appendix VII** for examples of potentially incompatible waste.)

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(a) Cement kilns;

(b) Lime kilns;

(c) Aggregate kilns;

(d) Phosphate kilns;

(e) Coke ovens;

(f) Blast furnaces;

(g) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces);

(h) Titanium dioxide chloride process oxidation reactors;

(i) Methane reforming furnaces;

(j) Pulping liquor recovery furnaces;

(k) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(l) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated; and

(m) Such other devices as the Secretary may, after notice and comment, add to this list on the basis of one or more of the following factors:

(1) The design and use of the device primarily to accomplish recovery of material products;

(2) The use of the device to burn or reduce raw materials to make a material product;

(3) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(4) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(5) The use of the device in common industrial practice to produce a material product; and

(6) Other factors, as appropriate.

"Investigator" means an investigator designated and duly authorized by the Secretary pursuant to **10 V.S.A. § 8002(3)**.

"Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

"Land disposal" means placement in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, concrete vault or bunker intended for disposal purposes.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Low-level mixed waste (LLMW)" is a waste that contains both low-level radioactive waste and RCRA hazardous waste.

"Manifest" means the shipping document EPA Form 8700–22 (including, if necessary, the continuation sheet document EPA Form 8700–22A), originated and signed by the generator or

offer or in accordance with the instructions in the appendix to **40 CFR Part 262** and the applicable requirements of **40 CFR Parts 262 through 265**.

"Manifest tracking number" means the alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

"Manufacturing or mining by-product" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

"**Media**" means environmental media (e.g., soil, groundwater).

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under **40 CFR Part 146**, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration certification under **§ 7-511(c)**.

"Mixed waste" means a waste that contains both RCRA hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended.

"Notice of Intent" means the notice required in **10 V.S.A § 6606a(b)(2)**.

"Obsolete pesticide products" means concentrated pesticide products which are unusable due to damage to containers or the pesticide formulation; in damaged containers; pesticide products

whose U. S. EPA registration number has been canceled or suspended leaving no valid registered uses on the label; or unwanted registered pesticide compounds which the generator wishes to dispose of.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, is also considered on-site property.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of subchapter 5 of these regulations at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"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.

"Pesticide" means an "economic poison" as defined in this section.

"Pesticidal wastes" means unwanted pesticide dilutions, rinses, and improperly rinsed containers.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with subchapter 7 when the manifest specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, **42 U.S.C. § 6901 et seq**.

"Reclaimed" means that a hazardous waste is processed to recover the hazardous component of the waste as a usable product, or that it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

"Receiving country" means any foreign country to which hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

"Registration" means, for the purposes of **10 V.S.A. § 6608(f),** notifying the Secretary of hazardous waste activity using the Vermont Hazardous Waste Handler Site ID Form referenced in **§ 7-104(a)**, and paying the annual fee specified in **3 V.S.A. § 2822** (refer to **§ 7-708(e)**).

"Release" means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands in the state, or into waters outside the jurisdiction of the state when damage may result to the public health, lands, waters or natural resources within the jurisdiction of the state.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

"Scrap metal" is bits and pieces of metal parts (e. g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e. g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Secretary" means the Secretary of the Agency of Natural Resources or his or her duly authorized representative. When implementing the provisions of **10 V. S. A. §§ 6608a and 6608b** relating to economic poisons and low-level radioactive wastes, the term Secretary includes the Secretary of Agriculture, Food & Markets and the Commissioner of Health.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Soil" means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in **40 CFR § 268.3**.

"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 pursuant to **10 V.S.A. chapter 47**.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

"Staging" means the temporary placement of off-site generated recyclable materials within a recycling facility for a period of time no longer than three (3) days.

"Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years; in such a manner as not to constitute disposal of such wastes. Hazardous waste that is being staged at a recycling facility for no more than three (3) days is not considered to be in storage.

"Storage above ground" means the containment of hazardous waste in a discrete vessel on or above ground level, excluding surface impoundments.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" means a natural topographic depression, artificial excavation, or dike arrangement, including a pit, pond, or lagoon, whether or not it has a permeable bottom or sides allowing seepage of its contents, which is:

(a) Used primarily for the storage, treatment, or disposal of hazardous waste in liquid, semi-solid, or solid form; and

(b) Constructed on, below, or partially in the ground.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e. g., wood, concrete, steel, plastic) that provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

"Transport" or **"transportation"** means the movement of wastes by air, rail, highway, or water.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous or solid waste, so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste safer for transport, amenable for recovery, amenable for storage, or reduced in volume, or for hazardous wastes, so as to render such waste non-hazardous.

"TSCA" means the Toxic Substances Control Act of 1976, as amended, **15 U.S.C. 2601 et seq.**

"Universal waste" means any of the following hazardous wastes that are subject to the universal waste requirements of **subchapter 9**:

(a) Batteries as described in **§ 7-902**;

(b) Pesticides as described in **§ 7-903**;

(c) Thermostats as described in **§ 7-904**;

(d) PCB-containing fluorescent light ballasts as described in **§ 7-905**;

(e) Lamps as described in **§ 7-906**;

(f) Mercury-containing devices as described in **§ 7-907**; and

(g) Cathode ray tubes (CRTs) as described in **§ 7-908**.

"Used" or **"reused"** means that a hazardous waste is either:

(a) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a hazardous waste will not satisfy this condition if distinct components of the waste are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(b) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"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 (F). Used oil includes oils used as lubricants, heat transfer fluids, hydraulic fluids, and for other similar uses, but does not include materials derived from crude or synthetic oils that are used as fuels (e.g., gasoline, jet fuel and diesel fuel), cleaning agents or solvents (e.g., naphtha or mineral spirits). These materials are subject to regulation under subchapters 1 through 7, as applicable.

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

"Wastewater evaporation unit" means a tank or tank system that:

(a) Heats wastewater to intentionally evaporate water to reduce the volume of the wastewater;

(b) Receives and treats or stores an influent wastewater that is a hazardous waste as described in **§ 7-202(a)**, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as described in **§ 7-202(a)**, or treats or stores a wastewater treatment sludge which is a hazardous waste as described in **§ 7-202(a)**; and

(c) Is not used to dispose of hazardous waste.

Wastewater evaporation unit does not mean a sludge dryer.

"Wastewater treatment unit" means a device which:

(a) Is part of a wastewater treatment facility that is subject to regulation under either **§§ 402 or 307(b) of the Clean Water Act**;

(b) Receives and treats or stores an influent wastewater that is a hazardous waste as described in **§ 7-202(a)**, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as described in **§ 7-202(a)**, or treats or stores a wastewater treatment sludge which is a hazardous waste as described in **§ 7-202(a)**;

(c) Meets the definition of tank or tank system; and

(d) Is not a wastewater evaporation unit.

§ 7-104 NOTIFICATION REQUIREMENTS

(a) Except for persons who have been issued a temporary identification number pursuant to **subsection (d) of this section**, any person who generates or transports hazardous waste or who owns or operates a transfer facility or a facility for the treatment, storage, use, disposal, or recycling of hazardous waste shall notify the Secretary of such activity. In addition, persons managing waste under the provisions of either the used oil management standards of subchapter 8, or the universal waste management standards of subchapter 9, shall notify the Secretary of such activity as required under those subchapters. Notification shall be made by accurately and completely filling out the **Vermont Hazardous Waste Handler Site ID Form** (provided by the Secretary) in accordance with the form's instructions.

(b) Notification is required upon transferal of ownership of an entity that was required to notify the Secretary under **subsection (a) of this section**.

(c) Persons subject to the requirements of this section shall maintain an up-to-date **Vermont Hazardous Waste Handler Site ID Form** filed with the Secretary that accurately describes current waste activity and waste generation. A generator may notify the Secretary of a change in generator status by marking the appropriate status level on the **Hazardous Waste Generator Registration Fee Assessment** form that is sent to generators each year pursuant to **§ 7-708(e)**.

(d) The Secretary may issue a temporary identification number to persons who have generated hazardous waste only from an episodic event.

§ 7-105 EMERGENCY AND CORRECTIVE ACTIONS

(a) Emergency actions

(1) In the event of a discharge of hazardous waste or a release of a hazardous material, the person in control of such waste or material shall:

(A) Take all appropriate immediate actions to protect human health and the environment including, but not limited to, emergency containment measures and notification as described below; and

(B) Take any further clean-up actions as may be required and approved by federal, state, or local officials, or corrective actions as specified under **subsection (b) of this section** so that the discharged waste or released material and related contaminated materials no longer present a hazard to human health or the environment.

(2) Reporting

(A) All discharges and/or releases that meet any of the following criteria shall be immediately reported to the Secretary by the person or persons exercising control over such waste by calling the Waste Management & Prevention Division at (802) 828-1138, Monday through Friday, 7:45 a.m. to 4:30 p.m. or the Department of Public Safety, Emergency Management Division at (800) 641-5005, 24 hours/day:

(i) A discharge of hazardous waste, or release of hazardous material that exceeds 2 gallons;

(ii) A discharge of hazardous waste, or release of hazardous material that is less than or equal to 2 gallons and poses a potential or actual threat to human health or the environment; or

(iii) A discharge of hazardous waste, or release of hazardous material that equals or exceeds its corresponding reportable quantity under CERCLA as specified under **40 CFR § 302.4**.

Note: Under the Federal Water Pollution Control Act, certain spills of "oil" and/or "hazardous substances" are prohibited and must be reported pursuant to the requirements of **40 CFR Part 110** / Discharge of Oil. Certain spills of hazardous substances must also be reported pursuant to CERCLA. In both cases, the National Response Center must be notified at (800) 424-8802. Finally, in addition to federal and state spill reporting, EPCRA requires that spills are also reported to local authorities.

(B) A written report shall be submitted to the Secretary within ten (10) days following any discharge or release subject to **subsection (a)(1) of this section**. The report should be sent to: The Vermont Department of Environmental Conservation, Waste Management & Prevention Division, 1 National Life Drive – Davis 1, Montpelier, VT 05620-3704. The person responsible for submitting the written report may request that it not be submitted for small discharges and/or releases that were reported pursuant to **subsection (a)(2)(A) of this section,** and that have been entirely remediated within the ten (10) day period immediately following the discharge and/or release.

(3) If the discharge or release occurred during transportation, the transporter shall, in addition to notifying the Secretary:

(A) Notify the National Response Center at (800) 424-8802 or (202) 426-2675, if required by **49 CFR § 171.15**; and

(B) Report in writing to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, if required by **49 CFR § 171.16**; and

(C) A water (bulk shipment) transporter who has discharged hazardous wastes must give the same notice as required by **33 CFR § 153.203** for oil and hazardous substances.

(4) If a discharge or release occurs and the Secretary determines that immediate removal of the waste is necessary to protect human health or the environment, the Secretary may authorize its removal by unpermitted transporters without the preparation of a manifest. Such hazardous waste may be transported to a site authorized by the Secretary under the emergency certification provisions of **§ 7-503** to temporarily accept hazardous waste generated during an emergency clean-up of a discharge or release.

(5) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers or hold Vermont hazardous waste transportation permits and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(6) All clean-up debris and residues that are hazardous waste must be stored in leak-proof containers that are covered so as to prevent contact of the waste with precipitation or run-on from precipitation.

(7) All clean-up debris and residues that are hazardous waste must be transported ultimately to:

(A) A designated facility;

(B) A person authorized by the Secretary to use such waste if the waste has been delisted pursuant to **§ 7-218**;

(C) Some other location specified and authorized by the Secretary to receive clean up debris and residues if the waste has been delisted pursuant to **§ 7-218**; or

(D) For hazardous waste not defined as hazardous in 40 CFR Part 261 (i.e., waste regulated as hazardous by Vermont), to a facility, that is not a designated

facility, located in a state other than Vermont provided the facility can receive such waste under applicable state and local laws, regulations and ordinances.

(b) Corrective actions

(1) If a discharge of hazardous waste, or a release of hazardous material has not been adequately addressed under **subsection (a)(1)(A) of this section** the Secretary shall require that the person or persons responsible pursuant to **10 V.S.A. § 6615** complete the following:

(A) Engage the services of an environmental consultant experienced in the investigation and remediation of hazardous waste-contaminated sites; and

(B) Within thirty (30) days from either the date of the discharge/release or the date that the release was discovered if the date of discharge/release is not known, or within a period of time established by an alternative schedule approved by the Secretary, submit for approval by the Secretary a work plan for an investigation of the contaminated site (i.e., site investigation) prepared by the environmental consultant. The site investigation shall define the nature, degree and extent of the contamination; and shall assess potential impacts to human health and the environment (refer to **Chapter 2** of the Agency's "**Investigation and Remediation of Contaminated Properties Procedure"** which is available from the Secretary upon request); and

(C) Perform the site investigation within either ninety (90) days of receiving written approval of the work plan by the Secretary, or a period of time established by an alternative schedule approved by the Secretary. A report detailing the findings of the site investigation shall be sent to the Secretary for review; and

(D) Within either thirty (30) days from the date of final acceptance of the site investigation report by the Secretary, or a period of time established by an alternative schedule approved by the Secretary, submit a corrective action plan prepared by the environmental consultant (refer to **Chapter 4** of the Agency's "**Investigation and Remediation of Contaminated Properties Procedure"** which is available from the Secretary upon request); and

(E) Implement the corrective action plan within either ninety (90) days of receiving written approval of the plan by the Secretary, or a period of time established by an alternative schedule approved by the Secretary. The corrective action activity shall continue until the contamination is remediated to levels approved by the Secretary; and

(F) Submit to the Secretary all investigative, corrective action and monitoring reports, and all analytical results related to **subsections (b)(1)(C) through (E) of this section**, as they become available.

(2) A used or fired military munition is a waste and is potentially subject to corrective action authorities pursuant to **10 V.S.A. § 6615**, and the process described by **subsection (b)(1) of this section** if the munition lands off-range and is not promptly rendered safe or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

§ 7-106 LAND DISPOSAL RESTRICTIONS

(a) Certain hazardous wastes shall not be disposed of in or on the land. **40 CFR Part 268**, which is hereby incorporated by reference, except for **40 CFR §§ 268.5, 268.6, and 268.42(b)**, identifies those wastes which shall not be land disposed and describes the limited circumstances under which an otherwise prohibited waste may continue to be land disposed. The authority for implementing the CFR sections not incorporated by reference remains with the EPA.

Note: A copy of 40 CFR Part 268 (the Land Disposal Restrictions rule), as incorporated by these regulations, is available from the Secretary upon request.

(b) In addition to the prohibitions of **40 CFR Part 268**, the Secretary may restrict the land disposal of any hazardous waste in the State of Vermont:

(1) Which may present an undue risk to human health or the environment, immediately or over a period of time; or

(2) Which would be incompatible with the **groundwater protection rule and strategy** of chapter 12 of the environmental protection rules.

(c) Dilution of hazardous waste subject to the land disposal restrictions of 40 CFR Part 268 is prohibited pursuant to **40 CFR § 268.3**.

§ 7-107 ENFORCEMENT

(a) Information that the generation, transportation, treatment, storage or disposal of hazardous waste may present an actual or potential threat to human health or the environment, or is a violation of the **10 V.S.A. chapter 159**, or these regulations, or any term or condition of certification, order, or assurance, may serve as grounds for an enforcement action by the Secretary, including, but not limited to:

(1) After notice and opportunity for hearing, issuing an order directing any person to take such steps as are necessary to:

(A) Immediately cease and desist any operation or practice;

(B) Correct or prevent environmental damage likely to result from any deficiency in operation or practice;

(C) Suspend or revoke any certification and require temporary or permanent cessation of the operation of such facility;

(2) A request that the Attorney General or appropriate State's Attorney commence an action for injunctive relief, the imposition of penalties and fines provided in **10 V.S.A. § 6612** and other relief as may be appropriate.

(3) An order for reimbursement to any agency of federal, state, or local government from any person whose act caused governmental expenditures under **10 V.S.A § 1283**.

(4) All other powers of enforcement available to the Secretary through **10 V.S.A., chapter 201**.

(b) The hearing by the Secretary identified under **subsection (a)(1) of this section** shall be conducted as a contested case. Pursuant to **10 V.S.A. § 6610(b)**, the Secretary may issue an emergency order without a prior hearing when an ongoing violation presents an immediate threat of substantial harm to the environment or an immediate threat to public health. An emergency order shall be effective upon actual notice to the person against whom the order is issued. Any person to whom an emergency order is issued shall be given the opportunity for a hearing within five (5) business days of the date the order is issued.

(c) Inspections, investigations, and property access (**10 V.S.A. § 8005**)

(1) Inspections and investigations

(A) An investigator may perform routine inspections to determine compliance.

(B) An investigator may investigate upon receipt or discovery of information that an activity is being or has been conducted that may constitute or cause a violation.

(C) An investigator, upon presentation of credentials, may seek permission to inspect or investigate any portion of the property, fixtures, or other appurtenances belonging to or used by a person whose activity is required to be in compliance. The investigator shall state the purpose of the inspection or investigation. An inspection or investigation may include monitoring, sampling, testing, and copying of any records, reports, or other documents relating to the purposes to be served by compliance.

(D) If permission for an inspection or investigation is refused, the investigator may seek an access order from the district or superior court in whose jurisdiction the

property is located enabling the investigator to perform the inspection or investigation.

(2) Access orders

(A) If access has been refused, an access order may be sought pursuant to either **10 V.S.A. § 8005 or 10 V.S.A. § 6609**.

(B) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the office of the attorney general or a state's attorney.

(d) In an action to enforce these regulations, anyone raising a claim that a certain material is not a hazardous waste, or is exempt from regulation as hazardous waste, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. Appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation, must be provided. Owners and operators of facilities claiming that they are actually recycling materials must show that they have the necessary equipment to do so.

§ 7-108 SIGNATORIES TO CERTIFICATION APPLICATIONS AND REPORTS

(a) Certification applications and information required by **subsection (b) of this section** shall be signed as follows:

(1) For a corporation, by a responsible corporate officer. A responsible corporate officer means:

(A) A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(B) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having a gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes:

(A) The chief executive officer of the agency; or

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b) All reports required by certifications and other information requested or required by the Secretary shall be signed by a person described in **subsection (a) of this section** or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in **subsection (a) of this section**;

(2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Secretary.

(c) If an authorization described in **subsection (b) of this section** is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirement of **subsection (b) of this section** must be submitted to the Secretary prior to or together with any documents signed by an authorized representative.

(d) Certification. Any person signing a document pursuant to **subsections (a)** or **(b) of this section** shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(e) The certification described in **subsection (d) of this section** need not appear on a manifest completed in accordance with subchapter 7 of these regulations.

§ 7-109 INCORPORATIONS BY REFERENCE

(a) When reference is made to CFR titles, their parts, subparts, or sections, the reference is to titles of the Code of Federal Regulations as they existed on July 1, 2011.

(b) The following federal regulations are incorporated by reference:

(1) Hazardous waste that is burned or processed in a boiler or industrial furnace (as defined in **§ 7-103**) shall be managed pursuant to **40 CFR §§ 266.100 through 266.107 and 266.109 through 266.112**. Any person in control of hazardous waste subject to this subsection also shall comply with all applicable provisions of the Vermont Air Pollution Control Regulations. The Secretary may, on a case-by-case basis, grant a variance from classification as a boiler. The standards and criteria used for this variance and the procedures followed can be no less stringent than those in **40 CFR §§ 260.32 and 260.33**.

(2) The Mixed Waste Rule of **40 CFR §§ 266.210 through 266.360 (Subpart N)** except:

(A) When the terms "we" or "us" are used within incorporated material, those terms mean the Secretary.

(B) When incorporated materials reference "261.3" the reference shall mean subchapter 2 of these regulations.

(C) When incorporated materials reference "parts 260 – 270" as a phrase, it means subchapters 1 through 7 of these regulations.

(3) The **40 CFR § 262.21** requirements for manifest tracking numbers, manifest printing, and obtaining manifests.

(4) The Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities of **40 CFR §§ 262.200 through 262.216 (Subpart K)** except:

(A) When the term "EPA Regional Administrator" is used within incorporated material, that term means the Secretary.

(B) The Laboratory Management Plan, and all amendments to the procedures required by **40 CFR § 262.214(a)** and **subsection (C) of this section**, must be reviewed and approved by the Secretary.

(C) The Laboratory Management Plan must, in addition to the elements required by **40 CFR § 262.214(a)**, include procedures for:

(i) Inspecting at a specified frequency all laboratories covered by the requirements of the Laboratory Management Plan to assess conformance with the requirements of the Laboratory Management Plan; and

(ii) The identification of Laboratory Management Plan non-compliance, and the assignment of responsibility, timelines and corrective actions to prevent their reoccurrence.

(D) Each academic entity must maintain records that identify those laboratories covered by the requirements of the Laboratory Management Plan.

§ 7-110 IMPLEMENTATION

The Secretary shall consult with other agencies of state government if he or she has reason to conclude that any action or decision hereunder may conflict with any statute or regulation within the authority of such other agency.

§ 7-111 ACCESS TO PUBLIC RECORDS

(a) Purpose, scope, applicability

(1) All public records relating to these regulations shall be available to the public unless they are exempt pursuant to **subsection (b) of this section**.

(2) This section describes requirements for the availability of public information concerning facilities and sites where hazardous wastes are generated, handled, treated, stored, recycled, or disposed, or where wastes are managed pursuant to either the used oil management standards of subchapter 8 or the universal waste management standards of subchapter 9.

(3) As specified in **1 V.S.A. § 316(k)**, information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, **42 U.S.C. section 82, subchapter 3**, and the Federal Freedom of Information Act, **5 U.S.C.** section **552 et seq**. In the event that there is a conflict between state requirements for access to public records under **1 V.S.A. chapter 5,** subchapter 3 and the cited federal laws, federal law shall govern.

(4) For the purposes of this section, the term "public record" or "public document" means all papers, documents, machine readable materials or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of Agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(b) Exemption categories

No request for the review or a copy of an existing public record in the Secretary's possession shall be denied unless the public record contains material that is exempt from disclosure under **1 V.S.A. § 317(c)**.

(c) Procedural requirements

(1) In responding to requests for public records, the Secretary shall use the procedures established by **1 V.S.A. § 318** and this section.

(2) If a request for a public record is denied by the Secretary, the requestor may appeal to the Secretary as specified in **1 V.S.A. § 318**.

(3) If the Secretary denies an appeal, or if the Secretary fails to comply with the applicable time limit provisions of **1 V.S.A. § 318**, the requestor may appeal to the appropriate superior court as specified in **1 V.S.A. § 319**.

(d) Public review of files

(1) The public may review files in possession of the Secretary, except those exempted under **subsection (b) of this section**, after having set up an appointment with the documents control officer for the Division in which the documents are located. The documents control officer may waive the requirement for an appointment if they determine that a waiver is appropriate. Factors to be considered in making such a determination include the time involved to locate and make available requested files, other duties or responsibilities at the time of the request, and whether the files have been reviewed to assure that no records exempted under **subsection (b) of this section** are present.

(2) In responding to requests for appointments to review files, the Secretary shall use the procedures established in **1 V.S.A. § 318**.

(3) When reviewing files, the public may not remove any records from the files, nor may the public remove any of the files from the area designated by the Secretary for file review. If copies are desired, the appropriate records shall be tagged or otherwise designated and presented to the document control officer for copying.

(e) Reserved

(f) Confidential business information

(1) As is specified by **subsection (b) of this section**, certain confidential business information may be exempted from public disclosure. Any such information shall be determined by the Secretary to be confidential if it is determined to be confidential business information under **1 V.S.A. § 316(k)** or **§ 317(c)**.

(2) If a business does not assert a claim of business confidentiality at the first opportunity provided by the Secretary, the information will be released upon request without further notice to the business. In addition, for any information submitted in connection with an application for certification pursuant to **§ 7-505**, any business confidentiality claim must be asserted at the time of submission of the information to the Secretary.

(3) Claims of confidentiality for the name and address of any applicant for certification or certified facility shall be denied.

§ 7-112 RESERVED

§ 7-113 SEVERABILITY

The provisions of any section of these regulations are severable. If any provision of these regulations is invalid or if any application of these regulations 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.

§ 7-114 VARIANCES

A person may seek a variance from these regulations in accordance with **10 V.S.A. § 6613**.