Summary of Assessment of Public Comment

6 NYCRR Part 370 Through Part 374 and Part 376, Hazardous Waste Management

The New York State Department of Environmental Conservation (DEC) proposed revisions of the State’s hazardous waste management regulations and published notice of this rulemaking on June 12, 2019. A public hearing, public availability session, and webinars were held to inform the public about the proposed rules and to answer questions from both the regulated community and the general public. DEC received five sets of formal written comments and approximately 350 form emails during the public comment period, as well as several additional comments during the public hearing. Many of the formal written comments submitted to DEC raised distinct individualized issues, while the form emails addressed the same set of concerns. DEC grouped comments by regulatory section since many of the submissions included multiple comments on different aspects of the proposed rules. This summary provides an overview of the comments and DEC’s response while the full Assessment of Public Comment provides a response to each individual comment received during the public comment period.

Proposed Part 370 contains the definitions used throughout proposed Parts 370 to Part 374 and Part 376. Comments received on this section were minor and included support for a regulatory change included in the rulemaking package and a suggestion to update some reference documents for test methods to include Updates IV and V of SW-846. DEC will not be incorporating those updates to SW-846 because they constitute only official guidance. The regulated community is not required by federal regulation to use the methods in Updates IV and V, as they are with the test methods in SW-846 Updates I through IIIB. SW-846 is a compendium of test methods published by the United States Environmental Protection Agency.

Proposed Part 371 covers the regulations for the identification and listing of hazardous waste. This Part also includes exemptions and exclusions for certain materials from regulation as hazardous waste. Hundreds of commenters objected to the exclusion in 6 NYCRR Part 371 for drill cuttings or other drilling and production waste from oil and natural gas well development that categorically excludes those wastes from the definition of hazardous waste. This exclusion will be addressed as part of a separate regulatory initiative because the removal of that provision was not evaluated as a part of
this rulemaking. DEC also received comments requesting clarification regarding the documentation requirements for C7 notifications. DEC provided the criteria that is used to evaluate C7 notifications and described what type of documentation would be acceptable for those notifications. C7 notifications are forms that hazardous waste generators are required to complete and, in most cases, submit to DEC to notify that they are utilizing certain exclusions from the hazardous waste regulations. As a part of this rulemaking, C7 notifications for certain activities related to e-waste, dental amalgam, precious metals, and lead acid batteries must be completed by the generator and retained on-site, but do not have to be submitted to DEC.

Proposed Part 372 contains the hazardous waste management standards for generators and transporters, and the regulations that govern hazardous waste manifesting. Most comments about this Part were requests to make conforming changes to match language in the e-Manifesting Rules that have been enacted by EPA. DEC did not include those rules in the scope of this rulemaking but does plan to include those rules in a future rulemaking. The federal regulations promulgated under those rules also pre-empt existing DEC regulations in some cases. DEC published an enforcement discretion letter in 2018 to resolve potential conflicts between federal and New York State requirements until such time as DEC adopts those rules. DEC also received numerous comments requesting clarification of several provisions from the Academic Labs Rule. Those comments were largely technical and interpretive in nature and did not require amendment of the proposed revisions. DEC also received a comment requesting modification to an existing exemption for the consolidation of PCB waste by public utilities to include contractors working for the utility. DEC will consider changing that exemption in a future rulemaking.

Proposed Subpart 373-1 is comprised of the requirements for hazardous waste treatment, storage and disposal facility (TSDF) permitting. DEC only received one comment supporting a change in the treatment of federal Class 2 permit modifications under DEC’s minor/major permit modification structure. DEC has determined that these changes would conflict with the Uniform Procedures regulations in 6 NYCRR 621. DEC will remove these revisions from in this rulemaking and revisit these provisions in a future rulemaking.

Proposed Subpart 373-2 covers the regulation of final status TSDFs. The majority of the comments that DEC received about this Subpart concerned conforming changes from the e-Manifest Rules and the Burden Reduction Rule. DEC received several comments about potential conflicts between federal rules governing the e-Manifest system and existing New York State requirements. DEC published an enforcement discretion letter in 2018 to resolve potential conflicts between federal and
New York State requirements until such time the DEC adopts those rules. DEC plans to include the provisions e-Manifest Rules in a future rulemaking. Regarding the Burden Reduction Rule provisions, DEC agreed with two of the changes suggested by commenters and revised those provisions accordingly. Several comments requested changes that could be considered less stringent than federal regulations. DEC cannot enact regulations that are less stringent than federal regulations and will not be making those changes. DEC will consider other burden reduction measures as part of a future rulemaking.

Proposed Part 374 contains the requirements for the management of specific hazardous waste categories, including used oil and universal waste. DEC received one comment that supported the use of cold crushing of used oil filters that DEC is proposing to include in a future rulemaking. DEC also received a comment requesting clarification about the regulatory status of waste light emitting diode (LED) lamps. DEC confirmed that the regulated community can manage LED lamps as universal waste but acknowledged that more effort, either in the form of guidance or revised regulations, could be made to make this clear to the regulated community.