

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation ("DEC" or "Department") will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Parts 371 and 372 concerning vehicle airbags. The DEC will exercise this authority regarding the provisions outlined below in lieu of full compliance with 6 NYCRR Parts 372 through 374 and 376 for vehicle airbags waste. All other provisions of the Part 370 Series remain in effect and will be enforced.

Undeployed airbags that have been removed from vehicles are regulated hazardous wastes. An estimated 65 to 70 million airbag inflators were affected by a recall of airbags manufactured by Takata Corporation ("Takata airbags"), while several million airbags remain to be collected. Due to the expiration of a U.S. Department of Transportation (DOT) preservation order, dealers are left to remove and dispose of the airbags at their own expense.

On November 30, 2018, the United States Environmental Protection Agency (EPA) issued an interim final rule to facilitate collection and disposal of the remaining Takata airbags, and to set standards for airbags that may be recalled in the future, as well as airbags not subject to recall. The management standards published in 83 FR 61552-61563 ("Airbags Rule") amend the hazardous waste regulations to allow "airbag waste collection facilities" to receive airbag wastes from handlers, such as repair shops and auto recyclers, without the need for the collection facilities to obtain a RCRA Treatment, Storage and Disposal Facility Permit. The EPA interim regulations will not be effective in New York State unless and until adopted by the State. EPA is also taking comments on the rule, with the intention of finalizing regulations for airbags.

Many of the recalled airbags may still be installed in vehicles that are at vehicle dismantling facilities regulated under the solid waste provisions of 6 NYCRR Part 361. Until the airbags have been safely removed and disposed, they pose a safety issue to anyone who enters the vehicles. The airbags are expected to further degrade over time and become more unstable. There is a strong association between increased instability of the recalled airbags and exposure to conditions of high heat and humidity, as well as the age of the airbags. EPA stated in the Airbags Rule that since recalled Takata airbags cannot be safely reused, nor safely deployed, used recalled airbags that have been removed from vehicles must be managed as hazardous waste when discarded.

Definitions:

Airbag waste means any hazardous waste airbag modules or hazardous waste airbag inflators.

Airbag waste collection facility means a facility that collects and stores airbag waste for more than ten days and is under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a DOT recall.

Airbag waste handler means any person, by site, who generates airbag waste (e.g., auto dealers, salvage yards).

Designated facility means a RCRA facility permitted by EPA or the authorized state to accept airbag waste for treatment, disposal or recycling.

Salvage Yard means a vehicle dismantling facility that is subject to 6 NYCRR Part 361 and stores, decommissions, dismantles, and recycles end of life vehicles.

Procedure:

Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under 6 NYCRR parts 372 through 374 and 376, and is not subject to the notification requirements of section 3010 of RCRA as a permitted hazardous waste treatment, storage or disposal facility, provided that:

1. The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;
2. The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste – Do Not Reuse;"
3. The airbag waste is sent directly to either:
 - a. an airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative; or
 - b. under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration; or
 - c. a designated facility as defined in 40 CFR 260.10;
4. The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 during transit;
5. The airbag waste handler maintains at the handler facility for no less than three (3) years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records

- (e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);
6. Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of 6 NYCRR Part 372;
 7. Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under 40 CFR 261.2(g).

In addition to the federal requirements outlined above, the following additional conditions must be met:

1. Airbag waste handlers (e.g., auto dealers, vehicle dismantling facilities, etc.) must keep records to prove that the airbags are sent to an airbag waste collection facility that is authorized to receive them;
2. Airbag waste collection facilities must notify NYSDEC in writing on a form provided by the Department prior to commencing collection of airbags;
3. Airbag waste handlers and airbag waste collection facilities must comply with applicable provisions of 6 NYCRR Part 364 Waste Transporter requirements;
4. NYSDMV Law (NY VAT § 415-C) prohibits reuse or sale of vehicle airbags unless the airbags have been shown to be certified in accordance with standards approved by the NYSDMV (at present, there are no certifying standards). This law applies to both defective and non-defective airbags.
5. The NYS Vehicle Dismantling Law, and the regulations in 6 NYCRR 361-7.4 require that vehicle airbags be removed or deployed before junk vehicles go for crushing and/or shredding.

This enforcement discretion will be effective for eligible vehicle airbags managed within the borders of New York State, for as long as these materials remain within New York State. This enforcement discretion in no way affects the hazardous waste management standards of other states which may regulate vehicle airbags under other standards.

Unless modified or rescinded sooner, this enforcement discretion shall automatically terminate on the effective date of DEC amendments to its Hazardous Waste Management regulations adopting EPA regulations in whole or in part as they pertain to the Airbags Rule.

Sincerely,



Thomas S. Berkman
Deputy Commissioner, General Counsel