

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 Part 372, Subparts 373-2, 373-3 and 374-1 of the Part 370 Series hazardous waste regulations related to the hazardous waste manifest system.

The DEC will exercise this authority regarding the above provisions until amendment of the present regulations is promulgated, or until this enforcement discretion is modified or rescinded. All other provisions of the Part 370 Series remain in effect and will be enforced.

1. Federal Pre-emption

The United States Environmental Protection Agency (EPA) launched an electronic hazardous waste management system (e-Manifest system) in June, 2018. Under the e-Manifest system, certain state requirements will be pre-empted. Currently, there is a paper-based national uniform hazardous waste manifest system. During the transition, there will be paper manifests and hybrid paper/electronic manifests, but it is expected that ultimately manifests will be all electronic from pick-up at the generator's site through arrival at the final destination facility.

6 NYCRR 372.2(b)(3) requires the generator to retain one copy of the manifest, and mail one copy of the manifest form to the generator state, and one copy to the destination state (if different from the generator state). Collection of generator manifest copies is necessary for fee and annual report purposes.

With respect to all-electronic transactions, the state is pre-empted from requiring the generator to submit one copy to the state, as currently required in 6 NYCRR 372.2(b)(3). DEC will therefore exercise enforcement authority with respect to generators participating in the all-electronic option of the e-Manifest regulations. Generators whose manifests originate under the hybrid or paper options will continue to be required to comply with 6 NYCRR 372.2(b)(3), and submit a copy of the manifest to the state. Additionally, generators located in New York State must continue to mail a copy of the manifest to DEC if the waste will be exported.

DEC will evaluate the requirements of 6 NYCRR 372.2(b)(3) with respect to paper and hybrid methods in subsequent calendar years, to determine if the e-Manifest system generates sufficient and timely data.

2. Receiving facility submission of signed manifests

With the launch of the e-Manifest system, receiving facilities will now submit manifests to EPA. DEC is therefore exercising enforcement discretion and waiving the requirements of 373-2.5(b)(1)(i)(b)(5) and 373-3.5(b)(1)(i)(b)(5) for receiving facilities to submit copies of the manifest to the generator state and destination state (if different). Receiving facilities must now comply with the applicable requirements of 40 CFR 264.71 or 40 CFR 265.71.

3. In-transit changes to transporters

One provision in EPA's 2018 User Fee Rule, 40 CFR 263.21(b), addresses in route changes to transporters. Revised 40 CFR 263.21(b) allows generators to delegate to their transporter the authority to make in-transit decisions to use an alternate transporter. The generator maintains liability, but the transporter can transfer the waste without prior approval from the generator. The transporters are bound by the hazardous waste regulations. All hazardous waste transporters must also meet any applicable requirements of 6 NYCRR Part 364.

DEC will exercise enforcement authority with respect to generators and transporters operating in compliance with the conditions of 40 CFR 263.21(b), provided that all applicable requirements of 6 NYCRR Part 364 are also met.

3. Additional Clarifications

Certain, more stringent, state requirements continue to be required, including:

- New York State regulates certain PCB-containing wastes as hazardous wastes. These are listed in 6 NYCRR 371.4(e). Generators and receiving facilities will be required to continue to be subject to the requirements of Parts 370-374 and 376, and to record these waste codes on their hazardous waste manifests.
- 6 NYCRR 372.2(b)(2)(ii) contains a requirement that the ultimate disposal code must be listed on the manifest.

Thank you for your cooperation in this matter. If you have any questions, please call Tom Killeen of the Division of Materials Management at (518) 402-8651.

Sincerely,



Thomas S. Berkman
Deputy Commissioner
& General Counsel