

Regulatory Impact Statement
Amendments to 6 NYCRR Part 370 Series
Hazardous Waste Management

1. Statutory Authority

Article 3, Title 3; Article 27, Titles 7 and 9; Article 70; and Article 71, Titles 27 and 35 of the Environmental Conservation Law (ECL) authorize this regulatory package. The New York State Department of Environmental Conservation (DEC) is authorized to promulgate regulations and standards applicable to the generation, storage, transportation, treatment and disposal of hazardous waste, as necessary to protect human health and the environment. By statute (ECL Section 27-0900), these regulations and standards must be at least as stringent as those established by the United States Environmental Protection Agency (EPA) under authority of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (42 USC Sections 6901 et seq.).

2. Legislative Objective

The Legislature intended that DEC implement and administer the comprehensive hazardous waste management program created by Chapter 639, Laws of 1978 (New York State Industrial Hazardous Waste Management Act), ECL Article 27, Title 7 (Solid Waste Management and Resource Recovery), and ECL Article 27, Title 9 (Industrial Hazardous Waste Management). Under these statutes, DEC must promulgate solid and hazardous waste management regulations necessary to protect human health and the environment. These regulations must be at least as stringent as the federal regulations. It was also the intent of the Legislature that DEC adopt new and amended federal regulations in a timely manner to maintain EPA's authorization of New York State's comprehensive hazardous waste management program. Since the last rulemaking, two additional legislative initiatives have impacted the hazardous waste program: ECL Article 27, Title 21 (Mercury Added Consumer Products) and ECL Article 27, Title 26 (Electronic Equipment Recycling and Reuse). Adoption of EPA's Mercury-Containing Equipment Rule and Cathode Ray Tube Rule is consistent with these acts, and will help to implement the two new laws.

3. Needs and Benefits

DEC's hazardous waste management regulations are contained in 6 NYCRR Parts 370, 371, 372, 373, 374, and 376.

On May 29, 1986, the EPA granted New York final base authorization to administer and enforce DEC's July 14, 1985 regulations in lieu of the equivalent federal regulations (51 FR 17737). In order to maintain this authorization, DEC must continually amend the hazardous waste regulations to be consistent with and at least as stringent as the EPA's amendments to the

federal hazardous waste management regulations pursuant to Section 3006 of RCRA and HSWA.

The amendments to the New York State (State) regulations which adopt more stringent federal requirements must be made in accordance with the time limits imposed by Title 40 of the Code of Federal Regulations (40 CFR) Part 271 (the federal "cluster rule" [51 FR 33712, 9/22/86]). These deadlines vary depending upon when the EPA regulation was promulgated and the statutory authority for the regulation. If a deadline is not met, New York risks losing EPA authorization of its hazardous waste management program, as well as substantial federal grant monies. In other cases, the federal changes are less stringent or do not impact stringency. Many of these improve the overall management of the program, but are not necessary for the State to adopt to maintain authorization.

The proposed rulemaking reflects DEC's effort to incorporate changes made within 38 federal registers, promulgated during the period September 30, 1999 through April 08, 2015, with certain conforming changes through November 28, 2016, that have not been previously addressed in a State rulemaking, into New York State regulations.

- Eleven federal registers address the standards for hazardous air pollutants for hazardous waste combustors. These changes will result in formally shifting the responsibility for permitting of these air emission sources to the DEC's Division of Air. The Division of Environmental Remediation will continue to participate in the technical review of the air emission sources. In addition, the Part 373 permit will still include the waste analysis plans, and any and all plans and requirements for the management of the waste prior to the combustion unit. State Air regulations have already incorporated these federal standards for permitting purposes. This rulemaking includes the regulatory requirements for the administrative shift of program implementation. This change will reduce a regulatory duplication for the regulated community.
- As discussed and finalized in the May 26, 1998 and October 20, 1999 Federal Registers, EPA delisted five waste streams (K064, K065, K066, K090, and K091) stating that these wastes are either no longer generated or are managed in a fashion not warranting listing. When adopting changes from these federal registers in previous rulemakings, the State chose not to delist these wastes as the State used the listing of hazardous waste for authority for cleanup of inactive hazardous waste sites as well as managing present practices. Since that time, State law has been revised to use the list of hazardous substances as well as the listing of hazardous waste for authority for cleanup of inactive hazardous waste sites. Due to the change in law, the delisting of these waste streams will not impact the department's ability to remediate inactive hazardous waste sites, and will allow the department to be consistent with EPA.
- Two parts of the May 26, 1998 Phase IV Land Disposal Restrictions rule were vacated by a federal court.
 - The first part of the vacated rule was a provision introduced in 1998 which classified mineral processing characteristic sludges and by-products being

reclaimed as solid wastes. With the new 371.1(e)(1)(xxii) provision, mineral processing characteristic spent materials will become eligible for the conditional exclusion when being reclaimed. The intent of this change is to encourage recycling by expanding recycling options. This regulation is more stringent than the EPA regulation because it includes two additional conditions:

- solid mineral processing spent material must be stored in tanks, containers, or in buildings.
- secondary containment requirements must be met for storage of liquid spent material over a sole source aquifer.

With these additional safeguards, the rule will be protective of human health and the environment while encouraging reclamation of these spent materials.

- The second part of the vacated rule resulted in manufactured gas plant (MGP) waste being exempted from the Toxicity Characteristic Leaching Procedure (TCLP), allowing it to be handled as non-hazardous solid waste. Most MGP waste is non-hazardous, but some wastes may exceed the TCLP limit for benzene. DEC addressed this issue in January 2002 through TAGM-4061, which was superseded by Division of Environmental Remediation Policy 4 (DER-4). This policy allows MGP waste that exceed the TCLP limit for benzene to be managed as a non-hazardous solid waste under the following conditions:

- It must originate from a site being remediated under department oversight;
- It must be thermally treated; and
- It cannot contain a significant percentage of sulfurous purifier waste.

The State will adopt changes to regulation that exempt MGP waste from the TCLP under these same conditions. These conditions make this more stringent than EPA regulations, but consistent with the DER-4, which has been successfully implemented in the State since 2002. With these conditions, management of MGP waste will continue to be protective of human health and the environment.

- EPA's July 24, 2002 rule established regulations governing zinc fertilizers made from recycled hazardous secondary materials. The federal regulations provide a more consistent regulatory framework for the recycling of hazardous secondary materials used to make zinc fertilizer products. Except as set forth below, State regulations will become more stringent in that our regulations currently exempt K061-derived fertilizer from regulation [374-1.3(a)(2)], and with this regulatory change, the K061 Land Disposal Restrictions ("LDR") treatment standard exemption will be deleted. This rule is already in place nationally. The State is required to remove the LDR treatment standard exemption in order to be at least as stringent as EPA and to maintain federal authorization. The environmental standards adopted in this regulation are consistent with existing standards in the Solid Waste 6 NYCRR Part 360 regulations.
- In October, 2002, EPA promulgated a Treatment Variance for Radioactively Contaminated Batteries. This rule grants a national treatability variance from the LDR standards for the treatment of radioactively contaminated cadmium, mercury & silver batteries. It also designates new waste/treatment subcategories for the safe disposal of residual radioactive contaminated materials. EPA's previous treatment standards did not

address concerns specific to the radioactive contamination and were not applicable for these waste streams. The state's current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate, because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries prior to treatment. The new standard of macroencapsulation, as discussed in the October 7, 2002 Federal Register pages, 62620 and 62621, provides an acceptable method to manage these waste streams. This rule will be consistent with EPA and will be more stringent than current State regulations. Such conditions are necessary to incorporate improved worker safety and environmental protection.

- In EPA's February 24, 2005 rule, as amended on June 16, 2005, EPA designated non-wastewaters from productions of dyes, pigments, and food, drug, and cosmetic colorants as newly listed hazardous wastes. In addition, this rule added five constituents that serve as a basis for classifying wastes as hazardous wastes and it establishes land disposal restrictions treatment standards for these wastes. Designating these wastes as hazardous will lead to management and disposal of these wastes in an environmentally responsible manner. This rule took effect nationally on August 23, 2005. Because the rule is more stringent than current State regulations, DEC must adopt these provisions in order to maintain authorization for the RCRA program.
- In EPA's June 14, 2005 Methods Innovation Rule as amended on August 1, 2005, a variety of testing and monitoring requirements are amended, in order to allow more flexibility when conducting RCRA related sampling & analysis by providing appropriate analytical methods for RCRA applications. These changes were made to update testing requirements and to make it easier and more cost effective to comply with regulations. Changes to Part 374-2, *Standards for the Management of Used Oil*, were made under a separate rulemaking.
- On August 5, 2005, EPA added Mercury-containing equipment to the list of universal wastes. Under the state's existing regulations, mercury containing equipment must be handled as fully-regulated hazardous waste. Managing mercury-containing equipment as a universal waste streamlines management requirements, and encourages recycling and helps to implement the state's Mercury-Added Consumer Product Law. While less stringent, this national change has already been effectively implemented in the State using enforcement discretion pursuant to Commissioner Policy #39.
- EPA's October 4, 2005 revision of wastewater treatment exemptions for hazardous waste mixtures ("Headworks Exemptions") adds benzene & 2 ethoxyethanol to the list of spent solvents that may be contained in wastewaters going to treatment, and the concentrations at which they may be exempted from the definition of hazardous waste under RCRA. The wastewater treatment rule exempt certain wastes, at or below certain concentrations, which are a miniscule and treatable part of the wastewaters from being handled as ordinary hazardous waste if they are handled in certain units that are capable of treating

these wastes. The concentration levels allowed by the EPA are consistent with concentrations of the allowable levels of these constituents entering a wastewater treatment system when the constituents are from other sources. In addition, the rule allows generators to directly measure solvent chemical levels at wastewater treatment systems in lieu of performing mass balance calculations. It also extends the eligibility for the de minimis exemption to other hazardous wastes and to non-manufacturing facilities. Federal and State Clean Air Act regulations and Federal Clean Water Act and State SPDES (State Pollution Discharge Elimination System) permits provide sufficient regulatory oversight for wastewaters which contain these solvents. While less stringent, these wastes will be managed effectively under the SPDES program. No environmental impact should be seen by this change; however, significant cost savings will be recognized by the regulated community.

- The federal RCRA Burden Reduction rule of April 4, 2006 changes certain regulatory requirements to reduce the paperwork burden to states, EPA & the regulated community. It will streamline the information collection requirements of the RCRA program. Certain parts of the federal rule, related to certain State notification and documentation requirements, and the State requirement for independent professional engineer certification, will not be adopted. Certain retention times will be maintained, for documents already required in facility operating records, but records may be retained in electronic format. Retaining these records will ensure that information on past operations and releases is available at closure to guide any final cleanup of the sites. The term “operating day or day of operation,” which is used in areas of the regulations that are being amended by the Burden Reduction Rule, is being defined to clarify its meaning. Adoption of provisions of this rule will make State regulations less stringent than current regulations. However the information that is needed and used to implement the RCRA program will continue to be collected, while protection of human health and the environment will be maintained.
- EPA’s July 28, 2006 amendments to address cathode ray tubes (CRTs) are intended to encourage recycling and reuse of used CRTs and CRT glass. A CRT is the glass video display component of an electronic device (usually a computer or television monitor). This rule streamlines the management requirements for recycling of used CRTs and glass removed from CRTs. The amendments exclude these materials from the RCRA definition of solid waste if certain conditions are met. This management option has already been implemented in the State using enforcement discretion pursuant to Commissioner Policy #57, and is consistent with the Electronic Equipment Recycling and Reuse Act. While less stringent, adoption of this rule in New York State will encourage environmentally sound recycling of CRTs, for which there is currently limited treatment capacity. Despite the fact that CRTs are no longer being produced or sold in the United States, they continue to be discarded.
- On June 4, 2008, EPA amended the scope of the hazardous waste listing for F019 (wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process) to exempt wastewater treatment sludges generated

from zinc phosphating processes, when such phosphating is used in the motor vehicle manufacturing process, provided that the wastes are not placed outside on the land prior to shipment to a landfill for disposal, and the wastes are placed in landfill units that are subject to or meet the specified landfill design criteria. Amending the F019 hazardous waste listing will facilitate the use of aluminum in vehicles, to produce lighter vehicles capable of increased gas mileage and decreased exhaust air emissions, including a reduction in the emission of greenhouse gases. This rule is less stringent than current State requirements. However, the conditions of the exclusion would protect human health and the environment.

- On December 1, 2008, EPA promulgated the “Academic Labs Rule.” The rule is an alternative set of regulations which allows eligible academic entities the flexibility to make hazardous waste determinations in the laboratory; at an on-site central accumulation area; or at an on-site treatment, storage, or disposal facility (TSDF). Also, this rule provides incentives for eligible academic entities to clean-out old and expired chemicals that may pose unnecessary risk. Further, this rule requires the development of a Laboratory Management Plan (LMP) which is expected to result in safer laboratory practices and increased awareness of hazardous waste management. Eligible academic entities may also choose to remain subject to the pre-existing hazardous waste generator requirements. Eligible academic entities are colleges and universities, and teaching hospitals and nonprofit research institutes that are either owned by or formally affiliated with a college or university. EPA views these changes as neither more nor less stringent than the current standards. Even if the rule is considered less stringent, the rule is protective of human health and the environment. It is expected to increase the ability of eligible academic entities to comply with the hazardous waste generator regulations which would likely lead to greater environmental protection. Academic entities that opt to use the rule and comply with its provisions would more frequently evaluate the chemicals in use at the laboratory to determine which ones are still useful, and would use standardized labeling and dating practices. Revisions that were made to the Academic Labs Rule by EPA on November 28, 2016 are also included. On November 28, 2016 EPA promulgated the “Generator Improvements Rule,” which revised several provisions of the Academic Labs Rule. EPA extended the accumulation time period for reactive acutely hazardous unwanted materials from six months to twelve months. EPA made this change to encourage smaller eligible academic entities to utilize the alternate set of requirements established by the Academic Labs Rule. Under the original Academic Labs Rule many smaller eligible academic entities did not opt to use the rule because they did not generate enough unwanted material in the given accumulation time period for the rule to benefit them. EPA noted that eligible academic entities that have chosen to operate under satellite accumulation area regulations already have no set accumulation time limit; EPA therefore, does not view this change as being less stringent than the current regulations. EPA also revised the accumulation quantity limit for reactive acutely hazardous unwanted materials to specify a limit of one quart for liquid materials and one kilogram for solid materials. This revision was made to provide a more practical means of measuring solid reactive acutely hazardous unwanted material.

- On January 8, 2010, EPA revised federal regulations to implement changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), regarding spent lead-acid batteries intended for reclamation in a foreign country. Authority to implement import and export requirements rests with the federal government. However, State regulations reference OECD requirements and these references are revised. The changes to State regulation are administrative in nature and consistent with the federal changes.
- On December 17, 2010, EPA removed Saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. The wastes are also removed from the list of hazardous substances pursuant to CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act). EPA review and assessment demonstrates that saccharin and its salts do not meet the criteria in the hazardous waste regulations for remaining on the list of hazardous constituents, hazardous wastes, and hazardous substances. Although the rule is less stringent, because of their small quantities and the newly available toxicological information, management of these wastes as non-hazardous solid waste is appropriate.
- On June 13, 2011, EPA revised the LDR treatment standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. Currently, under the State LDR program, most carbamate wastes must meet numeric concentration limits before they can be land disposed. However, the lack of readily available analytical standards makes it difficult to measure whether the numeric LDR concentration limits have been met. Therefore, this rule provides as an alternative standard the use of the best demonstrated available technologies (BDAT) for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards. Some of the provisions of the rule are considered to be less stringent than the current standards, in that the rule may be seen as allowing more carbamate wastes to be land disposed. However, the rule provides a mechanism for improved implementation of existing requirements by allowing alternate treatment technologies that are as effective as current management. Some provisions of the rule, including the alternate treatment standards and the land disposal restrictions, are already effective in all states.
- On April 8, 2016, EPA revised the hazardous waste regulations to withdraw the Comparable Fuels and Gasification Rules. These revisions implement vacatur ordered by the US Court of Appeals on June 27, 2014. State regulations are being revised to remove the vacated provisions. No facilities in New York are affected by the revisions.
- Five of the federal registers address corrections or clarifications to regulations.

In addition, about 80 typographical errors, clarifications and inconsistencies between State and federal regulations are corrected along with some modifications to areas where the State is different from federal requirements. State initiatives address clarifications and improvements to the regulations. Three particular proposed changes which clarify regulatory intent are discussed below.

- The definition of “small quantity generator” in 370.2(b) is being revised to clarify the meaning, and to conform with the revised definition published in the November 28, 2016 Federal Register..
- Regulation text at clause 373-1.5(a)(2)(viii)(‘a’) is modified to clarify that permit application documents address prevention of hazards for loading as well as unloading areas, and expanding the examples of hazards to include spills in addition to physical hazards. This will increase stringency but will help to prevent the occurrence of releases during these activities.
- Regulation text at clause 373-1.7(c)(15)(ii)(‘b’) is modified to specifically address federal Class 2 permit modifications in relation to the State major/minor categories for permit modifications. Some of the federal Class 2 modifications can be considered minor changes to the permit, however the difference between a federal Class 2 and a State minor modification process is that the federal requirements include additional public outreach. This change allows, if a federal Class 2 modification meets the criteria for a minor modification, processing that change as a minor modification. This will streamline some administrative processes while maintaining the State major/minor permit modification process.

The proposed rulemaking includes amendments to 6 NYCRR Parts 370, 371, 372, 373, 374, and 376. A general description of the amendments can be found in the Summary of Express Terms.

There are several reasons why maintaining RCRA and HSWA authorization and keeping current with the federal regulations is beneficial to the State and the regulated community:

- a. New York would continue to have primary responsibility for management of the federal hazardous waste management program and any related compliance and enforcement activities.
- b. Less confusion occurs when the regulated community can follow one set of regulations (i.e., New York’s). Adopting the proposed amendments will minimize the time period during which the regulated community must comply with DEC’s regulations for certain activities and EPA’s regulations for newly regulated activities. This will eliminate dual regulation and the need for the regulated community to obtain two permits. New York State retains sole permitting authority.

- c. Where EPA has promulgated amended HSWA regulations that are more stringent than existing State regulations, the regulated community may have to meet two different regulatory standards for the same regulated activity. For federal regulatory changes made pursuant to HSWA, the changes are effective immediately in all states regardless of authorization status. This results in federal regulations mandating one set of standards and the State regulations mandating a different set for the same activity.
- d. The State's management of the hazardous waste regulatory program is more sensitive to local conditions, concerns and needs.
- e. The State would continue to obtain maximum grant support from the EPA.
- f. Limited state, federal and private resources can be more effectively used to protect human health and the environment.
- g. The State would maintain a comprehensive set of regulations regarding air, water, and solid and hazardous waste programs, managing all environmental aspects of industrial and commercial facilities.

The federal registers referenced in the Summary of Express Terms provide greater detail on the environmental benefits resulting from the federally based proposed changes. The federal registers also provide further discussion on areas where revised standards will simplify waste management or encourage recycling while still being protective of human health and the environment.

The proposed change to clarify that permit application documents addresses prevention of hazards for loading as well as unloading areas, and expands the examples of hazards to include spills in addition to physical hazards will increase environmental protection.

4. Costs

a. Costs to the Regulated Community

DEC is adopting the vast majority of EPA's updated regulations without substantive changes. The adoption of these proposed amendments should not result in substantial additional costs to the regulated community or other branches of local or State Government. In some instances, the cost of regulatory conformance will decrease. In all cases, these changes will increase consistency between New York State regulations and federal regulations.

There were no cost increases to the regulated community noted in the federal registers that DEC is proposing to adopt. In 6 federal registers proposed for adoption, the EPA identifies national cost savings:

The Mercury-Containing Equipment rule: EPA has estimated annual savings nationwide of about \$273,000, of which \$200,000 would be savings to generators. About \$73,000 in savings

are expected to retorters and waste brokers. Based on information on waste generation in the “National Biennial RCRA Hazardous Waste Report (2009),” in which New York State is said to represent 7.3 percent of the total waste generators in the United States and 3.4 percent of the receiving facilities, the cost savings in New York is estimated to be \$17 thousand annually.

The revisions to the “Headworks Exemption:” EPA has estimated annual savings nationwide of \$11.4 million to \$48.6 million, affecting over 10,000 facilities nationally. Based on information on waste generation in the “National Biennial RCRA Hazardous Waste Report (2009),” in which New York State is said to represent 7.3 percent of the total waste generators in the United States; New York entities could realize savings of \$830 thousand to \$3.5 million annually.

The federal Burden Reduction rule: EPA has estimated that the annual savings nationwide will range from 22,000 to 37,500 in work hours and \$2 million to \$3 million in cost. The vast majority of these changes impact receiving facilities. According to the “National Biennial RCRA Hazardous Waste Report (2009)” data, 3.4 percent of the receiving facilities in the country are located in New York State. While not all of the federal changes were adopted, based on this percentage, New York facilities could realize an annual savings of up to 748 to 1,258 in work-hours and \$68,000 to \$102,000 in cost.

The Cathode Ray Tubes Rule: EPA estimates savings of approximately \$5 million nationally for all entities compared with handling CRTs as fully-regulated hazardous wastes. Based on New York State’s percentage of generators of about 7.3% in the “National Biennial RCRA Hazardous Waste Report (2009),” this would result in a net savings for all entities in New York State of about \$365,000 in 2005 dollars.

The Academic Labs Rule: Participation by eligible academic entities is voluntary. EPA estimated that participating Large Quantity Generators would realize annual savings of about \$12,200 in 2008 dollars; and participating Small Quantity Generators would realize annual savings of about \$1000 in 2008 dollars. In New York State, this is expected to result in annual savings of around \$30,000 in 2008 dollars if two entities that are large quantity generators and six entities that are small quantity generators participate in the Academic Labs Rule.

The removal of saccharin and its salts from the list of hazardous constituents is expected to result in net savings and reduction in paperwork to regulated entities. EPA did not estimate costs. Approximately 3.89 tons of these wastes were generated or shipped as hazardous waste in New York State from 2007-2012.

The EPA did not identify cost increases in any federal registers proposed for adoption.

b. Costs to DEC, State, and Local Government

The actual costs to DEC for implementing these changes should not be substantial. The proposed regulations require no additional statutory authority, do not create new regulatory

programs, do not expand existing regulatory programs, and do not increase the universe of the regulated community beyond that which is already required by the federal regulations.

- Adoption of the “Headworks Exemptions” will require additional staff time to evaluate one-time notifications, resulting in a paperwork burden of about 27 hours.
- Adoption of the CRT Rule will result in additional workload to DEC to process permits and registrations and to inspect facilities because the rule encourages more entities to recycle CRTs.
- Adoption of the Academic Labs Rule will require staff time to train inspectors, and for inspectors to prepare for inspections since each participating university may be following a unique lab management plan. Based on EPA’s cost analysis, the increase to DEC to train inspectors and for the extra time involved to conduct inspections at participating universities is estimated to be approximately 3 hours of additional staff time per participating entity.

Other costs to DEC should be minimal. Conformance with these amendments should not result in substantial additional costs to other branches of local or state governments.

Cost savings to DEC will result from DEC’s adoption of the federal rules addressing the standards for hazardous air pollutants. Adoption of these rules will decrease duplication of State efforts in the permitting process. Cost savings to DEC will also result from eliminating the requirement for generators of certain recyclable materials to submit notifications to DEC, called “c7” notifications.

The costs involved for DEC to complete this rulemaking process are those associated with printing the amendments, notifying the regulated community, procuring reference documents, conducting the public hearings, and staff time.

Failure to promulgate any of these proposed regulations would result in revocation of New York’s authorization to administer its hazardous waste program by the EPA, thereby leading to a reduction in EPA grant monies and confusion in the regulated community. It will also result in New York State regulations being less stringent than their federal counterpart.

The federal registers proposing and adopting these changes to federal regulation provided cost/benefit analysis. For those federal rules promulgated under HSWA authority which increase stringency, these rules are already in effect pursuant to federal law. There is no additional cost to the regulated community for the State to adopt them. The effect of the rulemaking is to allow the State to also enforce these rules and, once authorized, for the State to enforce the rules in lieu of EPA.

Federal rules promulgated under RCRA which increase stringency do not become effective in authorized states until the State adopts them. New York State is mandated by statute to adopt these changes. Additional analysis beyond what has been presented here for these rulemaking changes can be found in the Federal Register. This federal analysis also addresses environmental benefit. The proposed rules are either mandated by statute and/or will decrease

costs to the regulated community. A listing of all the federal rules proposed for adoption is included in the Summary of Express Terms.

c. Basis of Cost Estimates

EPA completed full cost analysis for each federal rule and the cost information from these federal analyses were used as the basis for the development of the cost estimates included in the discussion above. Data from the "National Biennial RCRA Hazardous Waste Report (2009)" and from DEC's computer data systems were used to assist in determining New York State's component of national costs.

5. Local Government Mandates

No additional record keeping, reporting, or other requirements will be imposed just on local governments by this rulemaking.

6. Paperwork

Some of the proposed regulations may result in added paperwork. Some of the changes will make existing regulations less stringent and reduce paperwork requirements. In most cases, paperwork may now be submitted and maintained in electronic format.

7. Duplication

The proposed amendments will not result in a duplication of State regulations. Instead, by adopting the recent federal regulations, New York will not only retain authorization, but also reduce duplicative State and federal regulation of hazardous waste in New York State.

8. Alternatives

For the federal changes which increase stringency, amending the existing Part 370 series regulations is the only viable regulatory alternative available for maintaining DEC's regulations as stringent as EPA's. Similarly, there are no viable non-regulatory options.

The "no-action" alternative would result in the state's loss of authorization. If this were to occur, the regulated community would have to satisfy two sets of regulations (i.e., federal and pre-existing state) and DEC would suffer a loss of federal grant monies for the State program which amounts to approximately \$5 million annually. However, DEC may choose the "no-action" alternative for those federal changes which are less stringent than existing State regulation and adopt only those amendments necessary to maintain authorization. This would impose different standards on the regulated community than those mandated by EPA, with negligible anticipated environmental benefit. As many surrounding states have or are already adopting the less stringent standards, New York's failure to implement this rulemaking would cause confusion and regulatory implementation difficulties for interstate activities as the regulated community tries to determine which regulatory requirements apply and at what point.

9. Federal Standards

The proposed changes will increase consistency between State and federal regulations. Certain federal changes that increase stringency must be adopted to maintain authorization for DEC. Other amendments are adopted to more closely parallel federal regulations. As noted below, the proposed changes to State regulations will result in rules that exceed the federal minimum standard.

Notification under 6 NYCRR 371.1(c)(7), commonly referred to as “c7 notification,” will no longer be required for five hazardous waste streams. The new exemptions are for materials that have a high recycling rate, readily-available recycling outlets, and in most instances, disposal prohibitions. Notifications will continue to be required from other entities claiming exemptions or exclusions. A provision is also being added clarifying that documentation must also be maintained on-site. C7 notification has enabled the department to evaluate participants' eligibility, and has served to prevent sham recycling.

Solid mineral processing spent material will not be considered to be a solid waste provided that it is stored in tanks, containers, or buildings. EPA allows the use of drip pads. The department believes that the more protective requirement is appropriate.

DEC is choosing to regulate TCLP testing of MGP wastes more stringently than EPA by requiring that certain conditions be met. These conditions have been required by DEC since 2002 under DER-4. These conditions encourage the permanent treatment of typical MGP-related wastes that only exhibit a hazardous characteristic for benzene toxicity, in an environmentally sound manner. Materials that are hazardous due to ignitability or reactivity represent a greater risk to workers and transporters, and these are still required to be handled as hazardous waste. If the waste contains chemicals at hazardous levels that are not typical of MGP waste, then this exemption is not applicable, and the material must be handled as hazardous waste.

Secondary materials used to make zinc fertilizers must be stored in a way that prevents releases due to flooding; and storage of liquid hazardous materials used to make zinc fertilizers over a sole source aquifer must meet secondary containment requirements. DEC will continue to require secondary containment for storage of liquid hazardous wastes over sole source aquifers.

DEC is choosing to continue to require longer retention times for document retention compared with some of the retention times in the EPA Burden Reduction rulemaking. The longer retention times for documentation is necessary so that historical records of operating practices and potential contamination will be available at facility closure, so that any potential contamination will be addressed. Since the documents must already be created, and may be retained in electronic format, this will not result in a significant paperwork burden.

In the Academic Labs Rule, which is a voluntary program, DEC proposes more stringent provisions than EPA for eligible academic entities that choose to participate:

- In addition to training employees, employees must also be notified of the availability of the lab management plan (EPA regulations require training; and that the academic entity supply the plan to workers, students and others if requested).
- Upon determining that the unwanted material is a hazardous waste, the entity must label the container with the words “hazardous waste.” EPA’s regulations can be construed to provide up to 4 days for labelling after making the determination that the unwanted material is hazardous waste.
- Lab management plans must be updated as needed, but in no case less than every five years. EPA’s rule does not set a time requirement, but just contains the “as needed” criteria.

Language is added to require that hazardous waste permit applications contains language about prevention of hazards during loading operations (description of procedures, structures or equipment used to prevent hazards during unloading operations is already required). Examples of the hazards to be prevented are expanded to discuss spills in addition to physical hazards.

10. Compliance Schedule

As the proposed regulations are currently existing federal regulations, regulated persons must comply with those that are more stringent than existing State regulations. Existing federal regulations being adopted here that are more stringent than current State regulations are already in effect. Regulatory changes that decrease the regulatory burden do not require any substantive changes by the regulated community, and therefore the regulated community presently meets the standards. The rulemaking takes effect 60 days after publication by the Department of State. The regulated community will be able to meet this compliance schedule.