

**Assessment of Public Comment  
6 NYCRR Parts 370-374 and 376 – Hazardous Waste Management**

**For Draft for Public Consideration and Early Public Outreach**

**Introduction**

On February 2015, the New York State Department of Environmental Conservation (DEC) published a Draft for Public Consideration to revise regulations (Parts 370-374 and 376 in Title 6 of the New York Codes, Rules and Regulations (NYCRR)) to. This assessment of public comments addresses comments received regarding the draft revisions and other regulatory initiatives. Comments were also received on other general issues. Sixteen comment submittals were received by DEC on the regulatory initiatives. Similar comments were combined and are addressed below. The promulgation of this regulation by DEC is authorized and required by Article 27, Title 9 of the Environmental Conservation Law (herein referred to as the “law”).

**Background**

Very few comments were received on the Draft for Public Consideration. Most of the comments concerned the early public outreach for the “FedReg 6” rulemaking. One of the most frequent comments received during the initial public comment period was in support of full adoption of the Solvent-Contaminated Wipes Rules. Comments were received from trade associations and disposable wipes manufacturers. DEC did not receive any comments addressing the issues that DEC highlighted as concerns during early public outreach, so it will be necessary to more fully evaluate these concerns.

**Comments and Responses on Revisions to the Draft for Public Consideration**

1. Several commenters found the revised definition of “Small Quantity Generator” confusing. Commenters stated their opinion that the use of cross-references within the definition should be eliminated. Commenters also stated that the change in definition won’t accomplish the goal of clarifying the status of generators that handle both acute and non-acute hazardous waste, because there would be internal inconsistencies between the definition and the regulatory requirements. It was further noted that EPA is expected to propose a substantial revision to the generator standards and definitions in the near future.

Response: DEC will adopt EPA’s revised definition of “Small Quantity Generator,” which EPA is currently using in the 2015 Annual Report. EPA’s revised definition is consistent with current state interpretations and EPA interpretations of the issues. Use of EPA’s revised definition will also facilitate adoption of the Academic Labs Rule.

2. One commenter stated that DEC should remove the requirement for a generator to obtain written communication from the TSDf that the facility is authorized to handle the particular waste described on the manifest prior to shipment (6 NYCRR 372.2(b)(2)(i)). This comment is related to the RCRA Burden Reduction Rule (71 FR 16861, April 4, 2006). The commenter noted that there is no such requirement in the federal manifest regulations, and that generators submit waste profiles to TSDf’s and obtain approval and pricing prior to

preparing manifests for off-site shipment. The commenter also noted that this requirement will become more redundant when electronic manifesting is available. The commenter also noted that DEC and EPA both have a requirement that the TSDF must inform the generator that they will accept the waste that the generator is shipping.

Response: This revision will be considered concurrent with DEC's adoption of the e-Manifest Rule.

3. One commenter commented on the requirement in (373-2.5(c)(2) and (2)(vii) for TSDFs to maintain, in their operating record, copies of notices to generators that the TSDF will accept the waste. Under the federal Burden Reduction Rule, the TSDFs are only required to maintain copies of these waste stream approval notices for three years. Currently, DEC requires that these notices be maintained for until closure of the facility. The commenter asked whether DEC intended to reduce the retention time requirement for this, and any other items in 373-2.5(c).

Response: This revision will be considered concurrent with DEC's adoption of the e-Manifest Rule.

4. One commenter requested that the regulations should recognize that all or portions of the facility's Operating Record may be archived and stored off-site in a secure repository, or archived in electronic format.

Response: DEC currently allows records to be stored and maintained in electronic format, as long as the records can be retrieved in the case of need, and in the case of inspection by DEC or EPA representatives. Pursuant to 372 and 373-2, "readily available" means five days. Certain records should be maintained on-site (for instance, the past three years' records), but off-site or electronic storage of older records is allowed provided that the records are readily available.

5. One commenter was opposed to DEC's draft definition of "TEQ," and requested that DEC adopt the EPA definition. EPA's definition does not include a reference to specific test methods or procedures, and DEC's draft definition references a 2010 guidance document. The commenter was concerned that DEC may rely on a guidance document that may quickly become outdated. The commenter provided reference to recent publications that call into question some of the basis for the 2005 values. The commenter is also concerned that DEC will be applied more broadly, rather than solely for the Zinc Fertilizer Rule.

Response: EPA definition will be adopted.

6. EPA commented that the definition of "Transit Country" must be maintained because the plural, "Transit Countries," is used in state and federal regulations.

Response: Definition of Transit Country" will be maintained.

7. Several commenters opposed adding benzene to the list of solvents whose mixtures with wastewaters are exempt from RCRA. Commenters were concerned about the carcinogenicity of benzene, and thought that the provisions would allow hydraulic fracturing wastes containing benzene to be introduced into wastewater treatment plants. The commenters called into question the risk assessment done by EPA in 2002 for political reasons. Commenters also cited SEQRLaw, stating their belief that an unlimited amount of hydraulic

fracturing wastes could be introduced into wastewater, and that this would be a significant action under 617.7(c)(1)(i)(c).

Response: This rule, if adopted, would only apply to solvent-containing wastes, and would not apply to hydraulic fracturing wastewaters. The allowable level for mixtures of listed hazardous waste solvent containing benzene is consistent with limits for benzene allowed under the Clean Water Act for benzene wastes from other sources. A facility that uses benzene as a solvent and that claims this exemption will be required to use a aerated biological waste water treatment system and to use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment process. The concentration limits and treatment requirements in the regulations were set based on a comprehensive risk assessment by EPA (see Risk Assessment to Support the Wastewater Treatment Exemptions (Headworks Exemptions) Proposed Rule, January, 2003, ID number EPA-HQ-RCRA-2002-0028-0136 (<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2002-0028-0136>)).

8. Comment: Because of court Vacatur of EPA SynGas and Comparable Fuels Rules, equivalent provisions in DEC's regulations need to be removed.

Response: Regulatory language withdrawn by EPA will also be removed by DEC.

9. Comment: EPA's consultants made us aware of several corrections needed to cross-references and other typographical errors.

Response: Corrections were made.