

## Summary of Express Terms

### Amendments to 6 NYCRR Parts 370-374 and 376

#### Hazardous Waste Management Regulations

The New York State Department of Environmental Conservation's (DEC) hazardous waste management regulations are contained in 6 NYCRR Parts 370, 371, 372, 373, 374, and 376.

On May 29, 1986, the United States Environmental Protection Agency (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 Resource Conservation and Recovery Act (RCRA) as amended.

#### **Federal Rules**

The proposed rulemaking incorporates into New York State regulations changes made within 38 federal regulations, promulgated from September 30, 1999 through April 8, 2015 with certain conforming changes through November 28, 2016. In addition, about 80 typographical errors, clarifications and inconsistencies between State and federal regulations are corrected in this rulemaking, along with some modifications to areas where the State is different from federal requirements.

Eleven rules relate to National Emission Standards for Hazardous Air Pollutants for Source Categories, also known as Maximum Achievable Control Technology (MACT) rules. These include Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors and subsequent technical corrections, interim standards, and subsequent amendments; technical corrections to Hazardous Air Pollutant Standards; and national emissions standards for Surface Coating of Automobiles and Light-Duty Trucks.

Several other federal rules are discussed below. A complete list of Federal Rules and their descriptions is available on DEC's website.

#### **Deletion of Five Waste Streams**

The State proposes to revise 6 NYCRR 371.4(c) and Appendix 22 of Part 371 to delist K064, K065, K066, K090, and K091 from the listing of hazardous waste. EPA delisted these five waste streams, since the wastes are no longer generated, or are managed in a fashion that does not warrant listing.

## **Mineral Processing Spent Materials being Reclaimed as Solid Wastes and TCLP Use with MGP Waste**

Two parts of the May 26, 1998 Phase IV Land Disposal Restrictions rule were vacated by a Federal Court. The first part vacated was a provision introduced in 1998 which classified mineral processing characteristic sludges and by-products being reclaimed as solid wastes. With the new 6 NYCRR 371.1(e)(1)(xxii) provision, mineral processing characteristic spent materials will become eligible for a conditional exclusion when being reclaimed. The court also vacated a part of the rule relating to manufactured gas plant (MGP) waste; based on that ruling MGP waste may be handled as non-hazardous solid waste. Most MGP waste is non-hazardous, but some wastes may exceed the Toxicity Characteristic Leaching Procedure (TCLP) limit for benzene. The state will adopt regulations that will allow MGP waste that exceeds the TCLP limit for benzene to be managed as non-hazardous waste under conditions consistent with the Division of Environmental Remediation (DER) Program Policy, Management of Coal Tar Waste & Coal Tar Contaminated Soils from Manufactured Gas Plants (DER-4). The waste 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.

## **Zinc Fertilizers made from Recycled Hazardous Secondary Materials**

Parts 370 and 371 and subpart 374-1 are being amended to adopt the Zinc Fertilizer rule. This rule adopts EPA regulations governing new product specifications for contaminants in zinc fertilizers, and provides a more consistent regulatory framework for the recycling of hazardous secondary materials used to make zinc fertilizer products. The final pollutant standards in these regulations are consistent with the State's standards for solid waste-derived fertilizers.

## **Treatment Variance for Radioactively Contaminated Batteries**

Revisions are being made to 6 NYCRR 376.4(a), Treatment Standards for Hazardous Wastes table, to adopt a treatability variance from the Land Disposal Restrictions standards for the treatment of radioactively contaminated cadmium, mercury and silver batteries. It also designates new waste/treatment subcategories for the safe disposal of residual radioactive contaminated materials.

## **Recycled Used Oil Management Standards; Clarification**

This rule clarifies three aspects of the used oil management standards regulated by RCRA: (1) used oil contaminated with Polychlorinated Biphenyl (PCB); (2) used oil mixed with Conditionally Exempt Small Quantity Generator (CESQG) waste; and (3) the records that the initial marketer of on-specification used oil is required to keep. Changes to 6 NYCRR 374-2 were incorporated into the Petroleum Bulk Storage (PBS) rulemaking, which included amendments to 374-2, which became effective in fall, 2015.

## **Nonwastewaters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants; and Dyes and Pigments Corrections**

EPA identifies nonwastewaters generated from the production of certain dyes, pigments & FD&C colorants as hazardous. In addition, this rule adds five components that serve as a basis for classifying wastes as hazardous substances and it establishes land disposal restriction treatment standards for these wastes. Changes are being made to Parts 371 and 376 to adopt this rule.

## **Methods Innovation Rule and SW-846 Final Update IIIB and Subsequent Correction**

EPA amended a variety of testing and monitoring requirements in the RCRA hazardous and nonhazardous regulations and in certain Clean Air Act regulations that relate to hazardous waste combustors, in order to allow more flexibility when conducting RCRA-related sampling & analysis. (State language will not specifically list all methods in SW846 in the incorporation by reference section.) Changes to 6 NYCRR 374-2 are being incorporated into the PBS rulemaking, which includes amendments to 374-2.

## **Universal Waste: Mercury Containing Equipment and Subsequent Correction**

This rule adds mercury-containing equipment to the federal list of universal wastes regulated under the RCRA hazardous waste regulations. EPA has concluded that this change will lead to better management of this equipment and facilitate compliance with hazardous waste requirements. The rule is already implemented in the State using enforcement discretion pursuant to Commissioner Policy-39, Use of Enforcement Discretion for Discarded Mercury-Containing Equipment. Once provisions for this rule are adopted into the hazardous waste management regulations, CP-39 will be formally rescinded by DEC.

## **Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions")**

6 NYCRR 371.1(d)(1)(ii) is being amended to add benzene and 2 ethoxyethanol to the list of spent solvents that may be contained in wastewaters when going to treatment, and the concentrations at which they may be exempted from the definition of hazardous waste under RCRA. In addition, this subparagraph is being amended to allow generators to directly measure solvent chemical levels at wastewater treatment systems. It also extends the eligibility for the de minimis exemption in 6 NYCRR 371.1(d)(ii) to other hazardous wastes and to non-manufacturing facilities.

## **RCRA Burden Reduction Incentive**

This rule promotes changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden to states, EPA and the regulated community. EPA has

estimated the annual savings will range from 22,000 to 37,500 in man hours and \$2 million to \$3 million in cost. It will streamline the information collection requirements of the RCRA program. Certain state notification and documentation requirements will be retained throughout the hazardous waste management regulations, and the State requirement for independent professional engineer certification will be retained.

### **Cathode Ray Tubes (CRTs), and Revisions**

This rule streamlines the management requirements for recycling of used CRTs and glass removed from CRTs. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass. The rule is already implemented in the State using enforcement discretion pursuant to CP-57, Use of Enforcement Discretion for Cathode Ray Tube (CRT) Glass. Once provisions for this rule are adopted into the hazardous waste management regulations, CP-57 will be formally rescinded by DEC. EPA's 2014 revisions, which allow EPA to better track exports, will also be adopted.

### **Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019**

The scope of hazardous waste code F019 is amended in 6 NYCRR 371.4(b) to conditionally exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process.

### **Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities**

New 6 NYCRR 372.2(e) is adopted to provide an alternative set of regulations which allow 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). This rule also 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). Eligible academic entities may 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.

### **Delisting of Saccharin and Its Salts (U202)**

Saccharin and its salts are removed from the lists of hazardous wastes and hazardous constituents in Parts 371 and 376.

## **Revision of Treatment Standards for Carbamate Wastes**

This rule revises the Land Disposal Restrictions (LDR) treatment standards in 6 NYCRR 376.4(a), Treatment Standards for Hazardous Wastes table, and in 6 NYCRR 376.4(j), Universal Treatment Standards table. This is 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. The rule allows the use of the best demonstrated available technologies (BDAT) as an alternate standard for treating these wastes. In addition, this action removes carbamate regulated constituents from the Universal Treatment Standards table.

## **Response to Vacatur of the Comparable Fuels Rule and the Gasification Rule)**

This rule revises regulations associated with the comparable fuels exclusion and the gasification exclusion. These revisions implement vacatur ordered by the US Court of Appeals on June 27, 2014.

## **State Initiatives**

Most of the 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 to EPA’s revised definition, published in the Federal Register on November 28, 2016.

Clause 373-1.5(a)(2)(viii)(‘a’) is modified to clarify that permit applications address prevention of hazards for loading as well as unloading areas, and including spills in addition to physical hazards.

Clause 373-1.7(c)(15)(ii)(‘b’) is modified to specifically address federal Class 2 permit modifications. This change allows federal Class 2 modifications which meet the criteria for a state minor modification to be processed as a minor modification.

In summary, the proposed amendment to 6 NYCRR Parts 370-374 and 376 will: (1) update several provisions that are required for compatibility with federal regulations; and (2) simplify, clarify and update language.