

Summary of 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 statutory authority for DEC to amend Parts 370-374 and 376 is found in Chapter 639, Laws of 1978, ECL Article 27, Title 7, and ECL Article 27, Title 9, and is consistent with ECL Article 27, Title 21 and ECL Article 27, Title 26. The full Regulatory Impact Statement summarizes each of these statutory sections.

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 proposed rulemaking incorporates changes made within 38 federal registers, promulgated from September 30, 1999 through April 8, 2015, with certain conforming changes through November 28, 2016, into New York State regulations. These changes will reduce regulatory duplication for the regulated community and improve consistency with EPA. The rule will be protective of human health and the environment, while encouraging environmentally sound recycling and reclamation. Adoption of some provisions is necessary to incorporate improved worker safety and environmental protection. Because some of the federal provisions are more stringent, DEC must adopt these provisions in order to maintain authorization for the RCRA program. For several of the rules, significant cost savings and paperwork reductions will

be recognized by the regulated community while protection of human health and the environment will be maintained. Some changes to state regulation are administrative, others 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 state requirements are different from federal requirements. While some of the state initiatives may be seen as more, or less, stringent than existing regulation, any decrease in stringency is administrative in nature, and the regulations continue to be at least as stringent as analogous federal requirements.

The proposed rulemaking reflects what is presently effective at the federal level. 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.

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). This will eliminate dual regulation and the need for the regulated community to obtain two permits. New York State would be the sole permitting authority upon delegation.
- c. Where EPA has promulgated amended HSWA regulations that are more stringent than existing state regulations, the regulated community must meet two different regulatory standards for the same regulated activity. The resulting confusion is resolved when the state adopts the new federal standards and matches the revised federal regulations.
- d. The state's management of the hazardous waste regulatory program is more sensitive to local conditions, concerns and needs.
- e. The state would 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 address prevention of hazards for loading as well as unloading areas, and expand 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 majority of EPA's updated regulations without substantive change. 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. These changes will also 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 six federal registers proposed for adoption, the EPA identifies national cost savings:

The Mercury-Containing Equipment rule: The cost savings in New York is estimated to be about \$17 thousand annually.

The revisions to the "Headworks Exemption:" New York entities could realize savings of \$830 thousand to \$3.5 million annually.

The federal Burden Reduction rule: While not all of the federal changes were adopted, 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: A net savings of about \$365,000 in 2005 dollars could be realized.

The Academic Labs Rule: Annual savings of around \$30,000 in 2008 dollars could be realized 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.

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 of about 27 hours.
- Adoption of the CRT Rule will result in additional workload to DEC because the rule encourages more entities to recycle CRTs.
- Adoption of the Academic Labs Rule will require 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 by decreasing duplication of effort 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 rulemaking will allow the state to also enforce these rules and, once authorized, 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. 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. 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. Some of proposed changes to state regulations will result in rules that exceed a federal minimum standard.

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. The rulemaking takes effect 60 days after publication by the Department of State. The regulated community will be able to meet this compliance schedule.