NEW YORK
STATE OF
OPPORTUNITY

Department of
Environmental
Conservation

RCRA Update

FedReg 6 General

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June 9, 2019

Agenda

- Background and General Overview
- In Depth - New Federal Rules Being Considered
- Questions and Answers
- How to Comment

During the presentation, please type questions into

Background

- DEC is authorized by USEPA to carry out the federal hazardous waste program.
- DEC **must adopt** regulation changes to conform with EPA
- Regulations must be **at least as stringent** as USEPA's, but may be broader in scope (e.g., may regulate additional wastes and activities)
- If USEPA publishes new regulations that are more stringent, **DEC has a time limit** to adopt conforming changes.
- If DEC misses the deadline, **EPA can impose their more stringent rules** in NYS until we adopt the changes.
- **Some rules go into effect** nationally regardless of whether or not the state adopts the changes.

Status of FedReg 6

Summer 2019

- June - Published outreach material on DEC website
- July - Conduct webinars and meetings
- August to December - Evaluate comments, finish drafting express terms and background documents

EPA Rules in FedReg 6: Effective Dates

- **Conditional Exclusions for Solvent Contaminated Wipes (Wipes Rule)** (78 FR 46448) – On and after July 1, 2015 EPA can enforce more stringent provisions in authorized states.

- **Conditional Exclusion for Carbon Dioxide (CO_2) Streams in Geologic Sequestration Activities** (79 FR 350) – Less stringent, so no date.

- **Hazardous Waste Electronic Manifest Rule (e-Manifest Rule)** (79 FR 7518) – electronic system went live June 30, 2018. **Proposed Revision may be published in 2020**

EPA Rules in FedReg 6: Effective Dates

- **Revisions to the Definition of Solid Waste** (73 FR 64668) *as amended by:* **Revisions to the Definition of Solid Waste (DSW Rule)** (80 FR 1694), **as amended in 2018** due to court vacatur
- ***Disposal of Coal Combustion Residuals from Electric Utilities** (2015) (Not adopting)
- **Hazardous Waste Export-Import Revisions (Export-Import Rule)** (81 FR 85696) – On January 1, 2017 EPA began enforcing nationally, some provisions will be phased in after this date.
- **Hazardous Waste Generator Improvements Rule (GIR)** (81 FR 85732) – On and after July 1, 2018, EPA can enforce more stringent provisions in authorized states.

EPA Rules in FedReg 6: Effective Dates

- **Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations** (Proposed by EPA 2018)
- **Safe Management of Recalled Airbags Rule** (2018) Interim final rule/proposed rule
- **Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine** (2019)
- **Modernizing Ignitable Liquids Determinations** (Proposed by EPA 2019)

State Initiatives

- Corrections, clarifications, updates
- Considering:
  - Meaning of “no prior storage” (“staging” period like VT)
  - Cold crushing and draining of used oil filters (VT)
  - Updating Sole Source Aquifer designations/secondary containment for storage of liquid hazardous waste

Organization of FedReg 6 by Part

General EPA-NYS Crosswalk

State Regulation (6 NYCRR)	EPA Regulation (40 CFR)	Description
Part 370	Part 260	Hazardous Waste Management System: General
Part 371	Part 261	Identification and Listing of Hazardous Waste
Subpart 372-1	Part 262	Standards Applicable to Generators of Hazardous Waste
Subpart 372-2, Part 364	Part 263	Standards Applicable to Transporters of Hazardous Waste
Subpart 373-1, Part 621, Part 624	Parts 270/124	Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements; Uniform Procedures (Part 621) and Permit Hearing Procedures (Part 624)
Subpart 373-2	Part 264	Final Status: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Subpart 373-3	Part 265	Interim Status: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Subpart 374-1	Part 266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
Subpart 374-2	Part 279	Standards for the Management of Used Oil
Subpart 374-3	Part 273	Standards for Universal Waste Management
Subpart 374-4	No Equivalent	Standards for the Management of Elemental Mercury and Dental Amalgam Wastes at Dental Facilities
Part 376	Part 268	Land Disposal Restrictions and Treatment Standards

Summary of Major Revisions by Part

Part 370

- Confidentiality can't be claimed for hazardous waste manifests (already in place because of EPA action);
- New definitions – most notable are definitions of VSQG, SQG and LQG (SQG and "acute hazardous waste" are being revised in FedReg5); central accumulation area.
- Sections 370.3 through 370.5 are being revised to follow EPA's structure more closely. Variance procedures are revised, definition of "legitimate recycling" is adopted.

Part 371

- Revising “accumulated speculatively” – require label or other appropriate method indicating first date the material began accumulating in the storage unit.
- “Sham recycling” is defined.
- *Modernizing Ignitable Liquids rule*
- Revising the Definition of P075; sewer ban for HW pharmaceuticals
- DSW Rule exclusions- generator-controlled exclusion; verified recycler exclusion; high-value solvents exclusion; new sections are added to 371 and numbering corresponds with DSW related sections of 40 CFR 261.
- Wipes Rule exclusion(s)
- CO_2 streams injected for geological sequestration are conditionally excluded
- Conditional exclusion for airbag waste

Part 372

- Part 372 will be repealed since it needs to be completely reorganized. Replaced and renumbered as 372-1 (analogous to 40 CFR 262) and 372-2 (analogous to 40 CFR 263)
- Subpart 372-1: e-Manifest, Generator Improvements Rule are the most notable revisions (most of the export-import revisions rule provisions also in this Subpart).
- Subpart 372-2 will correspond to 40 CFR 263.

Subpart 372-1

Section 372-1.1—General

(a) Terms used in this part.

(b) Purpose, scope, and applicability.

(c) Hazardous waste determination and recordkeeping.

(d) Reserved.

(e) Generator category determination.

(f) Conditions for exemption for VSQGs

(g) Satellite accumulation area regulations for SQGs and LQGs

(h) Conditions for exemption for SQG that accumulates hazardous waste.

(i) Conditions for exemption for LQG that accumulates hazardous waste.

(j) EPA identification numbers and re-notification for SQGs and LQGs

372-1 continued

Section 372-1.2—The Manifest

Section 372-1.3—Pre-Transport Requirements

Section 372-1.4—Recordkeeping and Reporting

Section 372-1.7—Farmers

Section 372-1.8—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

Section 372-1.11—Academic Labs

Section 372-1.12—Episodic Generation

Section 372-1.13—Preparedness, Prevention, and Emergency Procedures for LQGs

Part 373

Subpart 373-1

- Revisions due to Generator Rule – need to change cross-references
- SSA provisions – to reflect new LQG closure requirements

Subparts 373-2 and 373-3

- Most of the revisions are due to changes in cross-references and terminology; e-Manifest Rule provisions

Part 374

Subpart 374-1 (Management of Specific Hazardous Waste)

- Add Subpart P – most of the provisions of the Pharmaceuticals Rule will be here

Subpart 374-2 (Used Oil)

- Change cross references and terminology

Subpart 374-3 (Universal Waste)

- If timing works out, add aerosol cans to universal waste rule;
- Considering addition of paint waste to universal waste rule.

Part 376 – Land Disposal Restrictions

- Conforming changes

Wipes Rule

Wipes Rule

- “Once a listed waste, always a listed waste”
- Date- Effective in states that aren’t EPA authorized
- July 1, 2015 – enforceable in authorized states
- Some provisions are more stringent than current DEC Policy

Wipes Rule: Disposal Exemption

- Should we consider exempting wipes directed for disposal?
- Possible extra controls:
  - Never any free liquids
  - Notify DEC
  - Retain shipping papers
  - Directly to disposal facility (no transfer facilities)
  - Limit disposal options – waste to energy, incinerations (ban landfill)?

Disposal Option – Issues

- Risk assessment didn't consider transfer facilities;
- containers – compression can cause liquids to be released;
- once generator closes container, no way to know if they met the "no free liquids" performance standard

Carbon Dioxide (CO_2) Sequestration

- Carbon dioxide capture and storage is a process that aims to reduce CO_2 emissions from power plants and other industrial sources.
- Some CO_2 streams may be hazardous wastes.
- New York State is a member state of the Midwest Regional Carbon Sequestration Partnership.

E-Manifest Rule

- EPA's February 7, 2014 **Hazardous Waste Electronic Manifest (e-Manifest) Rule**.
- DEC would continue to collect certain information:
  - State waste codes for PCB-Contaminated wastes;
  - Disposal method codes for fee purposes.
- DEC currently requires, per 372.2(b)(3)(iii), that the generator mail one copy of the manifest form to the generator state, and one copy to the destination state.

Definition of Solid Waste (DSW) Rule

Definition of Solid Waste Rule

The idea of the definition of solid waste rule is to

- identify and set standards for materials that would be hazardous waste if disposed but can instead be legitimately recycled, and when recycled are indistinguishable from comparable raw materials or manufacturing intermediates.
- The goal is to put the materials to higher value recycling, to make better use of the resources (example: IPA going for distillation instead of fuel blending)
- Set of court rulings stretching back to the beginning of RCRA-C
- States are not required to adopt the exclusions

More stringent provisions include

- Prohibition of sham recycling
- New recordkeeping to demonstrate that the material is not accumulated speculatively

Less stringent provisions include

- Generator-Controlled Exclusion – variance for material recycled under control of the generator
- Transfer-based exclusion (was called verified recycler exclusion)
- Remanufacturing exclusion (high value solvents exclusion)

Legitimate Recycling – Four Factors

1. Hazardous Secondary Material (HSM) provides a useful contribution
2. Product or manufacturing intermediate made from the HSM is valuable
3. HSM is managed as a valuable commodity
4. Recycling product is comparable to a legitimate product or intermediate – no Toxics Along for the Ride (TARs)

Legitimacy criteria – impacts of court ruling

- 2008 rule - 4 Legitimacy factors; factors 3 and 4 were optional.
- 2015 rule – all four factors were mandatory; provision to appeal factor 4.
- 2018 rule (resulting from court vacatur) – factor 4 is optional

We expect to follow 2015 rule – factor 4 has been considered mandatory in NY for many years.

(Factor 3 – Managed as a valuable material)

(Factor 4 – No Toxics Along for the Ride (TARs))

DSW Conditional Exclusions

- Generator-Controlled Exclusion
- Transfer-Based Exclusion
- Remanufacturing Exclusion

- Describes when hazardous secondary materials are excluded from regulation.

DEC considerations

Generator-controlled exclusion:

- Adopt exclusions for recycling on-site and off-site under control of the same generator; not adopt the tolling arrangement provisions

Remanufacturing Exclusion

- Adopt but may be more stringent than EPA

2008 Transfer-Based Exclusion

"Materials transferred for recycling are not solid waste if…."

- Recyclers notify but don't need approval
- Off-site recyclers need financial assurance for closure
- Onus on the generator to ensure that they send their hazardous secondary material to a recycler who will legitimately recycle it

- Lacked key protections – Environmental Justice, preparedness & prevention, containment

- Legitimate recycling definition – 4 factors; factors 3 and 4 were optional

DSW Rule 2015 and 2018 Revisions

- 2015 Rule added a variance procedure to the transfer-based exclusion, and added remanufacturing exclusion

- Most of verified recycler provisions were vacated, EPA returned to 2008+ exclusion (retained preparedness & prevention and)

- Factor 4 in definition of Legitimate Recycling (no toxics along for the ride) also vacated.

DSW Rule: TSDF "Verified Recycler Variance"

- EPA's 2015 DSW Rule allowed verified recyclers and intermediate facilities to operate under a verified recycler variance in lieu of a TSDF permit.
- Court overturned this but kept some of the requirements in place; returned to EPA's 2008 Transfer-Based exemption

NYS Options – Transfer-Based Exclusion

- Not adopt
- Receiving facilities must be TSDFs
- “Verified Recycler” type variance
- Permit conditions set in HW regulations, issued under Part 360 authority
- 2008+ transfer based exemption

Coal Combustion Residuals Rule

- Expands the exclusion to exempt certain materials that are commonly co-disposed with CCRs.
- To our knowledge, there are currently 2 operating coal fired power plants, operating on an intermittent basis to meet backup or seasonal peak needs.

- DEC does not plan to expand the current exclusion.

Generator Improvements Rule

Some Key Provisions

- Reorganizes the regulations – less cross-referencing
- Hazardous waste determinations – more explicit, adds recordkeeping for SQGs and LQGs
- Generator Categories – can't be different categories for acute vs non-acute hazardous waste
- Labeling – hazards of the waste
- Preparedness and Prevention
- LQG Quick Reference Guide to the Contingency Plan

Generator Improvements Rule

More stringent Provisions Include:

- SQGs and LQGs must re-notify.
- SGQs and LQGs must indicate the hazards of the contents when labeling containers and tanks.
- LQG contingency plan quick reference guide.
- LQG that cannot “clean close” their facility or accumulation unit, must close the unit or facility as a landfill.

Generator Improvements Rule

Less stringent Provisions:

- VSQG allowed to send waste to LQG if both are under control of the same person.
- VSQGs and SQGs are allowed to conduct episodic events, provided that certain conditions are met.
- LQGs are allowed to seek a waiver from the 50-foot setback requirement for ignitable or reactive hazardous waste.

Hazardous Waste Counting

TABLE 1 to 40 CFR § 262.13—Generator Categories Based on Quantity of Waste Generated In A Calendar Month (Source: USEPA)

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator Category
> 1 kg	Any amount	Any amount	**LQG**
Any amount	≥ 1,000 kg	Any amount	**LQG**
Any amount	Any amount	> 100 kg	**LQG**
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	**SQG**
≤ 1 kg	≤ 100 kg	≤ 100 kg	**VSQG (CESQG)**

New Labeling Requirements (GIR)

Generator Improvements Rule requires that generators mark or label with an indication of the hazards of the contents.

Options include, but aren't limited to:

- Hazardous waste characteristic(s)
- DOT hazard communication consistent with 49 CFR 172 Subpart E or F
- OSHA Hazard Communication Standard consistent with 29 CFR 1910.1200

Includes containers in Satellite Accumulation Areas

Closure Notifications (GIR)

- **Waste Accumulation Units** – must place notice in operating record within 30 days of closure or meet applicable closure performance standards and notify EPA Region 2.
- **Facilities**
  - Must notify EPA Region 2 using Form 8700-12 at least 30 days prior to closure.
  - Must notify EPA Region 2 using Form 8700-12 within 90 days of closure; must clean close or has to close as landfill

Generator Rule: Storage of Liquid HW Over Sole Source Aquifer

Generator rule adds more explicit closure requirements, including notification, for LQGs

- NYS has special protections for storage of liquid HW over sole source aquifers. List needs updating. Expand list of sole source aquifers and or clarify boundaries (hydraulic or EPA boundaries)?
- LQG closure – two tier? (generator rule vs sole source aquifer)
- Secondary containment – continue just sole source aquifer protections, or extend throughout the state? Phase in time – by location, or volume, or combination?

Closure Requirements

	DEC SSA	EPA
Notification	45 days (final closure – what about unit closure?)	EPA (unit – operating record or notification to EPA within 30 days of closing the unit; facility – 30 days)
Public Notice	**Yes**	No
Certification	w/in 60 days of partial or final closure, **PE Cert**	EPA 90 days (is this just full closure?) – Site ID form
Date on which they expect to begin closure	within 30 days; or 1 year if reasonable expectation of receiving more waste	Seems to say within 30 days
Date to remove final volume of hazardous waste	Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (4) and (5) of this subdivision, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later	Seems to say within 90 days; the request for extension of time language seems to match ours
Closure performance standard	same	Same; If can't close clean, must close as a landfill
Written closure plan	**Maintained onsite, furnished upon request**	No

Consolidating Waste (GIR)

When consolidating the contents of two or more containers of the **same hazardous waste** or **two different hazardous wastes that are compatible** into a new container, Transporters must mark the containers of 119 gallons or less with the words “Hazardous Waste” and the applicable hazardous waste codes

Annual Reporting (GIR)

- Facilities that do not store prior to recycling are required to file an Annual Report – 40 CFR 261.6(c)(2)(iv)

Less Stringent Provisions

- LQG consolidation of VSQG waste;
- Variance from 50’ setback for ignitable and reactive hazardous waste
- Episodic Generation provisions

LQG Consolidation

Topic	GIR requirements
Who is exempt from TSDF permitting?	LQGs under control of the same "person"
Part 360 requirements	Meet 360 as well
Notification	File Notification of Hazardous Waste Activity with EPA
Labeling - CESQG	CESQGs label the waste as "hazardous waste" and indication of hazards.
Recordkeeping	maintains records of shipments received from the CESQGs for three years
Accumulation Time Limit	90 day clock for the CESQG waste begins when waste is received from the CESQG
Other	Comply with all LQG requirements for that waste and their own generated HW, even if they would otherwise be a CESQG or LQG

Generator Rule: Episodic Generation: Summary

- Notification: 30 days before planned, within 72 hrs. of unplanned.
- One per year. Can petition for second of the other type.
- Duration: all waste must be gone within 60 days of the start
- Labeling “Episodic Hazardous Waste,” date that the event started, identify the hazard for the waste.
- Records retention: 3 years.

Episodic Generation – Issues

- Notification – to DEC as well as EPA; when for unplanned
- Distinguishing between normal and episodic generation
- Clarifying what happens if event lasts longer than 60 days
- Outreach – non-traditional generators may not even know they have hazardous waste
- Additional Issues:
  - Documentation needed for fees/annual reports
  - Sole-source aquifer considerations

Airbags Rule

Effective Dates

- EPA published the Airbags rule as an “Interim Final Rule – effective in non-authorized states immediately upon publication, with a 60 day comment period;
- EPA may revise the rule;
- Interpretations – more stringent effective immediately;
- More stringent regulations – enforceable July 1, 2020?
- Less stringent provisions and interpretations – when adopted or authorized by NYS

DEC Enforcement Discretion - Signed July 5, 2019 provides enforcement discretion to operate under EPA’s Interim Final Rule with certain conditions.

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Regulation of Used Airbags under RCRA

- Gas-generating airbag systems (both Takata and non-Takata) contain an explosive propellant that causes airbag waste (i.e., discarded airbag inflators and airbag modules) to exhibit the hazardous waste characteristics of ignitability and reactivity. D001 and D003
- A number of different RCRA exemptions and exclusions can apply, depending on how the airbag waste is managed.
- However, because the recalled airbags can not be safely reused, nor safely deployed, used Takata airbags that have been removed from vehicles must be managed as hazardous waste when discarded.

(Contents of this slide courtesy of USEPA)

Recalled Airbags

Recalled Airbags (such as recalled Takata airbags) removed from vehicles:

- Cannot be safely reused or deployed outside of the vehicle*;
- Do not qualify for exemptions and exclusions *;
- Conditional exemption is intended to help accelerate the removal of recalled airbags from vehicles and the safe management of undeployed airbags that are removed from vehicles

*more stringent interpretations, effective immediately – published in July 19, 2018 EPA Memo and affirmed in November 30, 2018 Interim Final Rule

Conditional Exemption

- Reduced requirements for airbags sent for safe disposal.
- Airbags managed under the special exemption won't be counted towards generator status.
- Airbags may be deployed while still installed in a vehicle that will be recycled for scrap metal value – deploying installed airbags in vehicles that will go for scrap metal recycling is considered exempt treatment.
- Generator can electronically deploy non-defective airbag modules outside of the vehicle and direct the metal for recycling under the hazardous scrap metal exemption; CESQGs can electronically deploy non-defective airbags.

Concerns

- Would like to have EPA include a specific exemption to allow dealers or scrap yards who choose to deploy non-recalled airbags outside of vehicles if following manufacturer recommendations (some have very little metal so exemption shouldn't rely on scrap metal exemption);
- Include seatbelt pretensioners;
- Require generators to keep records to show that they are sending airbags to an authorized consolidation facility;
- EPA should modify form 8700-12 to include a field to identify a facility as an airbag collector;
- Define a "container designed to address the risk posed by the waste." Vehicle dismantling facilities do not have replacement part shipping containers.

New York State – Special Issues

- Can't currently offer undeployed airbags for sale – even across state lines;
- Airbags must be deployed or removed from vehicles before vehicle crushing or shredding;
- Potentially subject to Part 364 waste transporter regulations.

DEC Enforcement Discretion signed July 5, 2019; includes state notification requirement.

Hazardous Waste Pharmaceuticals Rule

Pharmaceuticals (Pharms) Rule

The are 3 major components to this rule:

- Sewering Ban – effective August 21, 2019
- Amendment of Nicotine Listing
- Subpart P pharmaceutical management provisions

Pharms Rule: Nicotine Listing

Listing has been amended to exclude FDA-approved over-the-counter nicotine replacement therapies (OTC NRTs)

Nicotine P075 Listing	
No Longer Part of Listing	**Still Included in Listing**
• Nicotine Patches • Nicotine Gums • Nicotine Lozenges	• E-liquids/e-juices in e-cigarettes, cartridges, or vials • Prescription nicotine (e.g., nasal spray, inhaler) • Legacy pesticides containing nicotine • Nicotine used in research and manufacturing • Other unused formulations

Pharms Rule: Applicability

Step 1: Count all HW waste **including** HW pharms

Non-Acute	Acute	Category	Applicability
Less than or equal to 100 kg/mo	Less than or equal to 1 kg/mo	True VSQG	Subpart P optional, can opt in if desired
More than 100 kg/mo, but less than 1000 kg/mo	Less than or equal to 1 kg/mo	—	Required to manage HW pharms under Subpart P
Greater than or equal to 1000 kg/mo	Greater than 1 kg/mo	—	Required to manage HW pharms under Subpart P

Pharms Rule: Applicability

Step 2: Count all HW **excluding** HW pharms

Non-Acute	Acute	Category	Applicability
Less than or equal to 100 kg/mo	Less than or equal to 1 kg/mo	Subpart P VSQG	Required to manage HW pharms under Subpart P, All other HW as VSQG
More than 100 kg/mo, but less than 1000 kg/mo	Less than or equal to 1 kg/mo	Subpart P SQG	Required to manage HW pharms under Subpart P, All other HW as SQG
Greater than or equal to 1000 kg/mo	Greater than 1 kg/mo	Subpart P LQG	Required to manage HW pharms under Subpart P, All other HW as LQG

Pharms Rule: Prescription Pharms

There are 3 types of HW pharmaceuticals

1. **Non-Creditable**

   Broken or leaking; repackaged; dispensed; expired >1 year; investigational new drugs; contaminated PPE; floor sweepings; clean-up material

2. **Potentially Creditable**

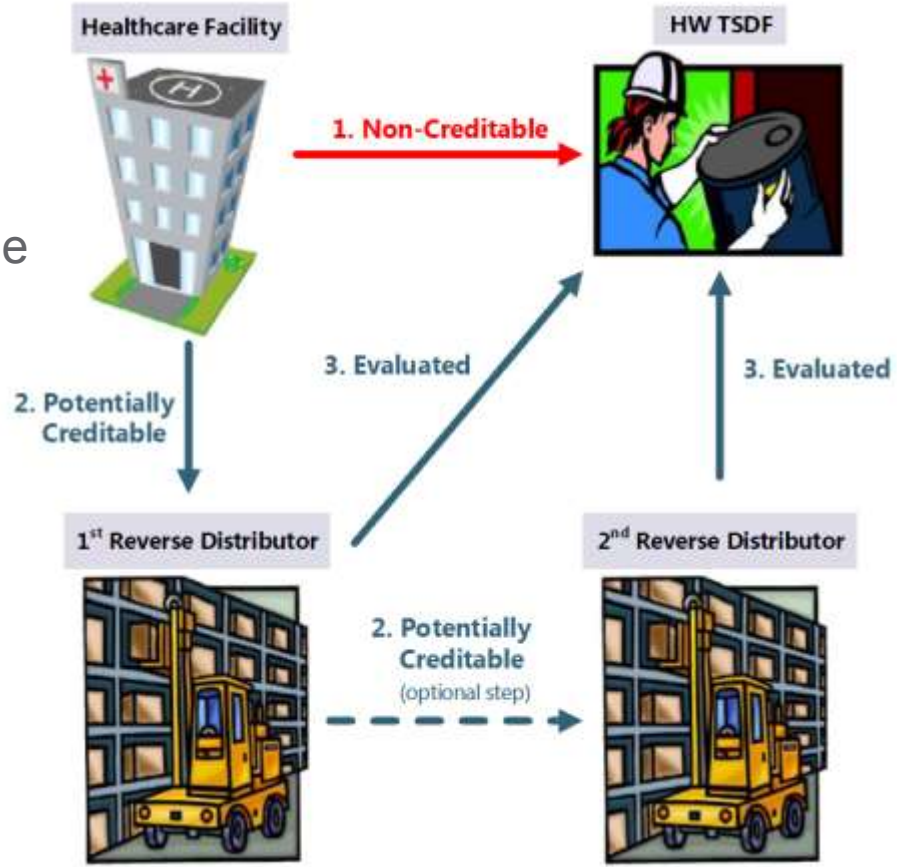
   Still in original manufacturer packaging (recalled pharmaceuticals don't need to be in original packaging); Undispensed; Unexpired or <1 year past expiration date

3. **Evaluated**

   No further evaluation or verification of manufacturer credit is necessary

Pharms Rule: Prescription Pharms

Potentially Creditable vs. Non-Creditable



Reverse Logistics

Preamble to the Rule: EPA uses the preamble to the pharmacy rule to define their interpretation of Reverse Logistics.

Reverse Logistics in not a part of Subpart P nor this rulemaking and will not be addressed in this discussion.

Controlled Substances

- Conditional exemptions for hazardous wastes that are also controlled substances;
- Avoids dual regulation;
- Destroyed by a method approved by DEA in writing to meet their non-retrievable standard; or in one of 5 types of permitted combustion units;
- These wastes don't count towards generator category.

Pharmaceuticals Still Used in Healthcare that Are DEA Controlled Substances & RCRA Hazardous Wastes

Name of Drug	Other Name(s)	Medical Uses	RCRA HW Code	DEA CS Schedule	Comment
Chloral; chloral hydrate	Acetaldehyde, trichloro-; Aquachloral, Noctec, Somnote, Supprettes	Sedative	U034 toxic	IV	Used in hospital pediatric units; common ingredient in vet anesthetics
Fentanyl sublingual spray	Subsys	Analgesic	D001 ignitable	II	Ignitable due to alcohol content
Phenobarbital	Bellergal-S, Donnatal, Luminal,	Anticonvulsant	D001 ignitable	IV	Ignitable due to alcohol content
Testosterone gels	Androgel,Axiron, Fortesta, Testim	Hormone	D001 ignitable	III	Ignitable due to gel base
Valium injectable	Diazepam, Diastat	Anti-anxiety	D001 ignitable	IV	Ignitable due to alcohol content

DEA Controlled Substances & RCRA Hazardous Wastes Pharmaceuticals that Are Not in Common Use

Name of Drug	Other Name(s)	Medical Uses	RCRA HW Code	DEA CS Schedule	Comment
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-; Paral	Anticonvulsant	U182 toxic	IV	No longer in common use
Paregoric	camphorated tincture of opium	Analgesic, expectorant, antidiarrheal	D001 ignitable	III	No longer in common use
Opium Tincture	Laudanam	Analgesic, antidiarrheal	D001 ignitable	II	No longer in common use

Empty Containers

- New empty container standards apply to
  - Containers with hazardous waste pharmaceuticals –acute & non-acute
  - Healthcare facilities and reverse distributors subject to Part 266 Subpart P and
  - Anyone else with containers of hazardous waste pharmaceuticals

- Residues remaining in “RCRA empty” containers are not regulated as hazardous waste
- Can be used to determine whether a healthcare facility is subject to Part 266 Subpart P
- Four different standards for different types of containers found in a healthcare setting
- Triple rinsing of containers with acute hazardous waste pharmaceuticals is not required/allowed anymore

Aerosol Cans – EPA Proposed Rule

Aerosol Cans Proposed Rule

- Aerosol cans may be hazardous waste due to content or due to the propellant (such as propane or butane);
- They are managed by a wide variety of establishments generating and managing aerosol cans, including the retail sector;
- When aerosol cans are mismanaged, particularly when exposed to excessive heat, the resulting increase in internal pressure can reach a point beyond the design strength of the can, thereby causing it to burst and release its contents.
- Management standards would be compatible with FIFRA section 2(ee)(6)

More Background

- Six already regulate aerosol containers under UWR;
- Some of these states have management standards for puncturing and draining; CA requires a permit for off-site commercial processors;
- DEC is taking public comment so that if EPA finalizes their rule during our rulemaking period we may be prepared to include it.

DEC Concerns

- Additional requirements should be adopted for shipping and accumulation to minimize potential mixing of incompatible wastes and reduce potential for causing a reaction in its final rule. For instance, ***require*** separation of incompatible wastes;
- Require that storage areas to meet temperature requirements to reduce the likelihood of a strong reaction.

Modernizing Ignitable Liquids Determinations – EPA Proposed Rule

Ignitable Liquids Proposed Rule

Proposed April 2, 2019

Proposed rule would:

- Update the flash point test methods required for determining if a liquid waste is an ignitable hazardous waste.
- Codify existing guidance regarding the regulatory exclusion in the ignitable characteristic for aqueous liquids containing alcohols.
- Codify existing sampling guidance regarding waste mixtures having multiple phases when determining whether a waste exhibits the ignitability characteristic.
- Update cross references to Department of Transportation regulations and to remove obsolete information.
- Provide alternatives to the use of mercury thermometers in the air sampling and stack emissions methods in *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods* (SW-846).

State Initiatives

State Initiatives

- Corrections, clarifications, updates
- Considering:
  - Meaning of “no prior storage” (“staging” period of 3 days like VT)
  - Cold crushing and draining of used oil filters (VT)

State Initiatives

- Define “Staging”

Vermont’s definitions of “staging” and “storage”: “Staging” means the temporary placement of off-site generated recyclable materials within a

recycling facility for a period of time no longer than three (3) days.

“Storage” means the actual or intended containment of wastes, either on a temporary basis or for a period of years; in such a manner as not to constitute disposal of such wastes. Hazardous waste that is being staged at a recycling facility for no more than three (3) days is not considered to be

in storage.

Cold Crushing of Used Oil Filters

Our current exemption (wastes that are solid wastes but are not hazardous wastes):

371.1(e)(2)(xi) if they are not mixed with listed wastes and they have been gravity hot-drained using one of the following methods:

- Puncturing and crushing;
- Hot-draining and crushing;
- Dismantling and hot-draining; or
- Any other equivalent hot-draining method that will remove used oil.

Cold Crushing of Used Oil Filters

Other states have an exemption that does not require used oil filters to be hot-drained.

Other state allows:

“Draining and crushing using a mechanical, pneumatic, or hydraulic device designed for the purpose of crushing oil filters and effectively removing the oil;”

DEC is considering adopting this option.

How to Comment

Submit **written** comments:

- Email: HWregs@dec.ny.gov (Include "Comments on Regulatory Initiatives" in the subject line of the email) or
- Mail: Michelle Ching; Division of Materials Management; NYSDEC; 625 Broadway, Albany, NY 12233-7256

Further Assistance

- Email: HWRegs@dec.ny.gov
- Phone: (518) 402-8651

On DEC's website:

https://www.dec.ny.gov/regulations/117108.html

Appendix

Factor 1 – Useful Contribution

How does the HSM provides a useful contribution:

__ Contributes valuable ingredients to a product or intermediate

__ Replaces a catalyst or carrier in the recycling process

__ Is the source of a valuable constituent recovered in the recycling process

__ Is recovered or regenerated by the recycling process

__ Is used as an effective substitute for a commercial product

Factor 2 - Product or Intermediate is Valuable

Describe how the product or intermediate made from the HSM is valuable:

__ Sold to a 3rd party

__ Used by the recycler or generator as an effective substitute

Factor 3 - HSM Managed as Valuable Commodity

Describe how the HSM is managed as a valuable commodity:

__ There is an analogous raw material and the HSM is managed, at a minimum, in a manner consistent with the raw material, or in an equally protective manner

__ There is no analogous raw material and the HSM is contained per 40 CFR 260.10

__ The HSM is managed in a unit in compliance with 373-2 or 373-3

Factor 4 – No Toxics Along for the Ride (TARS)

Explain how the product of the recycling process is comparable to a legitimate product or intermediate:

__There is an analogous product or intermediate:

__ The product of the recycling process does not exhibit a hazardous characteristic (as defined in 6 NYCRR section 371.3) that analogous products do not exhibit; AND

__ The concentrations of any hazardous constituents found in appendix 23 of part 371 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products OR

__ At levels that meet widely-recognized commodity standards and specifications (where the commodity standards and specifications include levels that specifically address those hazardous constituents).

Factor 4 – TARs (Continued)

There is no analogous product:

__ The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications, OR

__The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused.

__ The product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate as outlined above but the recycling is still legitimate.

Special Note About TARs

Even if there are TARs, the recycling might still be legitimate. The recycling can be shown to be legitimate based on:

- lack of exposure from toxics in the product,
- lack of the bioavailability of the toxics in the product, or
- other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk; ***and***
- certification statement that the recycling is legitimate