

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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## RE: Conditionally Exempt Small Quantity Generator Provisions – Authorized Destination Facilities and Regulatory Flexibility for Collection of Postconsumer Paint

To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (“DEC” or “Department”) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Parts 360, 362, and 371. The Department will exercise this authority regarding the provisions outlined below until three years from the date of issuance of this letter or amendments to the Part 360 Series and Part 370 Series are promulgated, whichever is earlier. All other provisions of the Part 360 Series and Part 370 Series remain in effect and will be enforced.

### Conditionally Exempt Small Quantity Generator Provisions: Authorized Destination Facilities

The Department will exercise enforcement discretion with respect to 6 NYCRR Part 371 to allow Conditionally Exempt Small Quantity Generator (CESQG) wastes to be shipped to facilities registered or licensed under the 6 NYCRR Part 360 series and specifically allowed to receive CESQG waste under those registrations or licenses.

CESQGs are regulated pursuant to 6 NYCRR Subdivision 371.1(f). The provisions in this subdivision specify which types of facilities this class of hazardous waste generator may send their hazardous waste. The ability of a CESQG to send its hazardous waste to a facility regulated under the Part 360 series is specifically found in clause 371.1(f)(6)(iii)(e) for acute hazardous waste and clause 371.1(f)(7)(iii)(e) for non-acute hazardous waste.

The 2017 revisions to the Part 360 series which allow events, such as household hazardous waste collection events, to operate under registrations have inadvertently created a gap in the types of facilities to which CESQGs may send their hazardous waste in New York State, since the language in clauses 371.1(f)(6)(iii)(e) and 371.1(f)(7)(iii)(e) only allows delivery to Part 360 facilities that have a DEC permit. Although the revised Part 360 regulations allow for the receipt of hazardous waste from CESQGs to certain types of registered facilities, the regulations in Subdivision 371.1(f) do not allow the CESQGs to send hazardous waste to this type of facility. In addition,



proposed regulatory changes associated with the Part 360 series to support the implementation of Environmental Conservation Law (ECL) Article 27, Title 20 — Postconsumer Paint Collection Program, will allow locations to collect and manage architectural paint from CESQGs registered under a Department-approved postconsumer paint collection program.

### **Regulatory Flexibility for Collection of Postconsumer Paint**

With the adoption of Environmental Conservation Law (ECL) Article 27, Title 20 — Postconsumer Paint Collection Program law (eff. Dec. 2019), producers of architectural paint are required to implement a Postconsumer Paint Collection Program (PPCP) in accordance with a plan approved by the Department. Article 27, Title 20 of the ECL explicitly requires a PPCP to minimize public sector involvement in paint collection and envisions that retailers who sell architectural paint, as well as reuse stores, may voluntarily collect postconsumer paint at their retail locations.

The collection and transfer of source-separated, non-hazardous postconsumer paint is exempt from the 6 NYCRR Part 360 registration and permitting requirements in 6 NYCRR Subpart 361-1. However, some postconsumer paint meets the definition of household hazardous waste or conditionally exempt small quantity generator (CESQG) waste. Current regulations require facilities that accept household hazardous wastes from households and/or CESQGs to comply with the applicable registration and permitting requirements in 6 NYCRR Subpart 362-4.

In recognition of these circumstances, and to help foster the collection and recycling of all unwanted postconsumer paint, the Department will utilize enforcement discretion with respect to 6 NYCRR Subpart 362-4 and Part 371 for paint collection sites that collect and manage only household hazardous waste or CESQG waste generated from architectural paint and have submitted a certification on a Department-approved form for postconsumer paint collection sites under the requirements of a Department-approved PPCP plan. Under this enforcement discretion, a site that is certified under the Department-approved PPCP plan is a registered facility under 6 NYCRR Part 360 and Part 362. A Department-approved PPCP plan must include the following information, at a minimum: (1) specific collection site locations; (2) verification from collection sites, through written contracts, that the collection site operator is aware of the PPCP plan requirements and licensing requirements; (3) proper storage methods and holding times; (4) waste labeling and spill prevention measures; (5) reporting requirements; and (6) destination facilities of collected paint.

Sincerely,



Thomas S. Berkman  
Deputy Commissioner  
and General Counsel