

REGFORM

REGULATORY ENVIRONMENTAL
GROUP FOR MISSOURI

June 23, 2015

Mr. Tim Eiken
Rules Coordinator
Hazardous Waste Program, and
Missouri Hazardous Waste Management Commission
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Subject: Comments on Proposed Amendments to 10 CSR 25-3.260, 10 CSR 25-4.261, 10 CSR 25-5.262, 10 CSR 25-6.263, 10 CSR 25-7.264, 10 CSR 25-7.265, 10 CSR 25-7.266, 10 CSR 25-7.268, 10 CSR 25-7.270, 10 CSR 25-8.124, 10 CSR 25-3.260, 10 CSR 25-9.020, 10 CSR 25-11.279, and 10 CSR 25-13.010 published on pages 626-670 in the *Missouri Register* May 15, 2015

Dear Mr. Eiken & Commissioners:

Please find herein comments offered on the above-referenced Proposed Amendments to Missouri Hazardous Waste regulations, which were published in the May 15, 2015 edition of the *Missouri Register*.

These comments are offered by REGFORM on behalf of its member companies and educational institutions, which are subject to the regulations for which these amendments have been proposed.

Thank you for considering these comments. Please do not hesitate to contact me if you have any questions.

Support

REGFORM supports the Proposed Amendments and requests that the Hazardous Waste Management Commission (HWMC) vote to adopt them.

These proposed amendments are the culmination of many years of deliberation, negotiation, and legislation aimed at bringing Missouri regulations into closer alignment with Federal hazardous waste regulations, while continuing and enhancing protections to human health and the environment.

Importantly, the adoption of this proposed package of rule amendments will accomplish the following, each of which is a benefit to Missourians and Missouri hazardous waste generators, transporters, and/or treatment/storage/disposal (TSD) facilities:

1. **Reduced confusion.** Federal hazardous waste standards and requirements are widely understood by environmental professionals throughout Missouri and beyond our State's borders. Missouri regulations that clash with Federal hazardous waste regulations cause confusion and result in unintended non-compliance. Adoption of this proposed rule amendment package will eliminate significant confusion.
2. **Reduced risk of harm.** Where Missouri regulations differ from Federal hazardous waste, confusion between the two increases the likelihood of negative outcomes associated with hazardous waste management. When generators and others can avoid delay and act confidently, without second-guessing themselves on fine distinctions between Missouri and Federal regulations, operations improve and risk is diminished. This rule package, if adopted will reduce risk.
3. **More level playing field.** When Missouri hazardous waste regulations are stricter than Federal hazardous waste regulations, it puts Missouri businesses and educational institutions at a financial disadvantage in relation to entities in surrounding or nearby states whose hazardous waste regulations are essentially equivalent to Federal hazardous waste requirements. By adopting these rule amendments, we level the playing field on cost to comply, while continuing to protect human health and the environment. The change would also remove a stigma that Missouri has unique and burdensome regulations for businesses to comply with compared to its neighboring States.
4. **Missouri regulations consistent with recently promulgated Federal hazardous waste regulations.** If adopted, this rule package will put recent Federal rule updates into effect in Missouri. Once again, this puts Missouri in better harmony with the Federal standards and our neighboring states.

Notably, the Federal Solvent Wipes rule would also come into effect in Missouri with this adoption.¹ This gives generators more flexibility in handling wipes.

The updates also de-list saccharin and correct discrepancies in the academic lab standards, among other things. Importantly, adopting these Federal updates keeps Missouri on a regular

¹ 78 FR 46448 (July 31, 2013)

schedule of implementing Federal rules, which if not attended to regularly, can result in significant discrepancies over time.

5. **Busy work eliminated.** The Department is to be highly commended for bringing Health Profile and Frequent Violator Reporting requirements to the attention of legislators. Significant staffing resources were being siphoned away from other work, but producing no environmental benefit. Generators and TSDs were spending thousands of dollars and hundreds of hours producing reports that benefitted no one. With the adoption of this rule package, this make-work will no longer be required.
6. **Human health and environment protected.** Without deeper consideration, one might conclude that eliminating regulations in Missouri would result in fewer protections for human health and the environment. This is not the case. Other states are using regulatory approaches that are nearly identical to Federal hazardous waste regulations. These states are not experiencing problems. Real-world experience shows that the Federal hazardous waste regulations are protective.

These rules have been thoroughly vetted at the Federal level. They have been subject to extensive technical and policy review. They have been the subject of thousands of public comments.

7. **Nullified regulations avoided.** Adoption of this proposed amendment package accomplishes one obvious outcome: the removal from the CSR of rules that, because they are stricter than Federal, will be nullified on December 31, 2015. This nullification happens automatically by law, regardless of whether the rules are stricken from the rule book.

To not act to remove these stricter regulations would create a tangle of virtually unsolvable complexity. The CSR would be full of written regulations that have no force or effect.

8. **Compliance options authorized.** This amendment package features several provisions that recognize the wide variety of operations and approaches to doing business that are present among Missouri generators and TSDs. Regulated entities in Missouri need flexibility to implement best practices in their individual facilities (or parts of facilities) that best meet their specific industry type, manufacturing sector, waste accumulation/generation rate, and waste hauling/disposal needs.

The proposed amendments give generators the option of complying with the Federal 50-foot setback rule, or a more restrictive set of provisions that allows storage within the 50-foot buffer.

The proposed amendments give TSDs the option of addressing hazardous waste containing railcars within the Federal time limit. Or, TSDs can comply with a more restrictive set of provisions, which includes a railcar plan, to gain a bigger window for processing railcars.

The proposed amendments give generators the option of complying with "old" Missouri DOT hazard labeling requirements while storing hazardous waste prior to offering for transport. Or, generators can comply with a new Missouri-specific labeling approach that for many may be less onerous or minimize confusion with complicated DOT labeling requirements.

The proposed amendment gives generators the option of complying with the Federal interpretation on quantities and container numbers in Satellite Accumulation Areas, or complying with the State interpretation that imposes the use of an accumulation start date (and one year limit), but allows greater than 55 gallons of waste to accumulate in certain instances where there is more than one waste stream.

These options are valuable, protective, and recognize the diversity of operations that are in our State. Adopting this amendment package will codify these options and improve compliance in Missouri.

For these and other reasons, we support the above-referenced proposed amendments and we encourage and request their adoption by the HWMC.

Restrictions on Options for Satellite Accumulation Areas

The proposed amendments regarding Satellite Accumulation Areas (SAAs) are good. They give Missouri generators the option to comply with what has been referred to as the Missouri Interpretation or the Federal Interpretation. Please see our comments above about the variety of generator operations that are present in the State, and in some instances, under the same roof.

We request the Commission adopt these provisions regarding SAAs.

This proposed rule can be improved to provide further flexibility needed by generators.

As proposed, this rule, if adopted, would require a generator to employ only one approach to compliance, *i.e.*, either Federal or Missouri interpretation, at his or her facility, and that this approach be declared in a notice to the Department.

The Hazardous Waste Program has indicated that these two provisions are needed because inspectors would not know which option the generator had employed at each SAA.

We assert that determining which system is in use, and therefore which actions or failures to take action constitute a violation under that system, is simple and direct.

If an inspector sees containers in a SAA with accumulation start dates, the State interpretation is in effect. The generator would be in violation if:

1. More than one container is in use for any waste stream,
2. Any waste stream exceeds 55 gal. of waste beyond the 72 hour full date,
3. Any waste is accumulated 1 year beyond the accumulation start date, or
4. A full container lacks a full date.

If an inspector sees containers in a SAA without an accumulation start date, the Federal interpretation is in effect. The generator would be in violation if:

1. The total quantity of waste from all waste streams combined exceeds 55 gal. 72 hours beyond full date,
2. A full container lacks a full date.

We request that the Commission propose and adopt an amendment to the proposed rule that deletes 10 CSR 25-5.262(2)(C)3.A. If adopted, this change to the Missouri regulations would allow a generator to comply with either the Federal interpretation or the State interpretation at any SAA in his or her facility without restriction and without notification to MDNR.

The HWMC is not required to adopt the proposed amendment in 10 CSR 25-5.262(2)(C)3.A. Because generators have the option to comply with the Federal interpretation, the SAA provisions in this proposed amendment, taken together, are not stricter than Federal. Therefore, they are not prohibited by RSMo 260.373.

If the Commission chooses not to eliminate these proposed SAA restrictions, we request that the Commission propose and adopt language that allows the use of both interpretations at any single facility as long as the generator notifies the Department in a narrative fashion which types of SAA (e.g., paint booth waste) will use each interpretation.

If the Commission chooses not to offer that flexibility, we request that the Commission adopt the proposed rule amendment as is.

Hazard Labeling Before Transport

For decades, Missouri regulations have required generators to affix a DOT label on hazardous waste containers in storage before the containers are offered for transport. This is not a Federal requirement. A DOT label on a hazardous waste container is only required under Federal regulations at the time the container is offered for off-site transport.

Some generators don't transport all or any of their waste. This results in Missouri facilities having storage rooms with hazardous waste containers that are labeled for transportation that will never be transported. Because hazardous waste containers are typically not static (generators are adding to containers and repackaging waste in other containers), generators must remove and replace old labels regularly.

The Department has viewed this provision as a needed hazard alert mechanism that cautions people who are near the containers, most notably first responders, that there is a potential hazard, and provides a general idea of what that hazard is.

The DOT labeling requirements and the new optional Missouri-specific hazard labeling requirements in the proposed amendments are not needed. The imposition of these labeling requirements detracts from the actual concern: a significant number of generators are failing to comply with the Federal and State requirements to familiarize local first responders with their facilities.

If generators are complying with existing regulations, untrained employees will not be moving through hazardous waste storage areas unaware of the hazards. If generators are complying with existing Federal regulations, each container will be clearly marked "Hazardous Waste." If generators are complying with existing Federal regulations, first responders will not need to enter the hazardous waste storage area and visualize a label to know what is in those hazardous waste containers. They will know because they've been familiarized with the facility and its contents before they even arrive.

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First responders who participated in stakeholder meetings made it clear that these familiarization visits are not occurring.

This issue calls for a compliance and enforcement effort aimed at ensuring that generators are notifying first responders and bringing them out to their sites to make them aware of their operations, the location of their hazardous waste containers, and their contents.

It does not call for labeling on containers.

We request that the Commission propose and adopt an amendment to the proposed rule that deletes 10 CSR 25-5.262(2)(C)1 and its sub-paragraphs A. and B. If adopted, this change to the Missouri regulations would leave in place the Federal requirement to label each container with "Hazardous Waste" and affix a DOT label only at the time it is being offered for transport.

The HWMC is not required to adopt the proposed amendments in 10 CSR 25-5.262(2)(C)1. RSMo 260.373 says that "the commission may retain, modify, or repeal any current rules pertaining to... (d) Rules requiring hazardous waste generators to display hazard labels...."

If the Commission chooses not to eliminate these proposed hazard labeling requirements, we request that the Commission adopt the proposed rule amendment as is.

New Tanks Labeling

Missouri has never had a hazardous waste tank hazard labeling regulation, other than the requirement that it be labeled "Hazardous Waste." This is true of Federal hazardous waste regulations as well.

This proposed amendment requiring hazard labeling on tanks is a completely new provision. Our greater than 30-year track record in Missouri with no problems or issues in this area makes clear that no additional regulation is needed at this time.

Adding new hazard labeling for tanks creates additional burden, additional costs, and, once again, introduces a discrepancy between Federal and State rules that causes confusion.

We request that the Commission propose and adopt an amendment to the proposed rule that deletes 10 CSR 25-5.262(2)(C)2. If the rule package is adopted absent 10 CSR 25-5.262(2)(C)2, the result would be no change to the current Missouri regulations pertaining to hazard labeling on hazardous waste tanks.

The HWMC is not required to adopt the proposed amendments in 10 CSR 25-5.262(2)(C)2. RSMo 260.373 says that "the commission may retain, modify, or repeal any current rules pertaining to... (d) Rules requiring hazardous waste generators to display hazard labels...."

If the Commission chooses not to eliminate the proposed new hazard labeling requirements for tanks, we request that the Commission adopt the proposed rule amendment as is.

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NFPA Compliance

In the Fiscal Note for the proposed amendments and in the Regulatory Impact Report for this rule package, the Department communicates either directly or by inference that generators who have hazardous waste tanks must affix a hazard label on the tank to comply with 10 CSR 25-5.262(2)(C)2. This is not accurate. It creates confusion, and it could lead to non-compliance.

The proposed 10 CSR 25-5.262(2)(C)2 requires tank owners to comply with NFP 704. NFP 704 Section 4.3 requires the square-on-point signs (also known as diamonds) to be placed on two exterior walls, each access to a room or area, and on each principal means of access to an exterior storage area.

While affixing the NFPA diamond onto a tank may be in compliance with NFPA 704, failing to do so, while complying with the clear requirements in Section 4.3 is not a violation.

Directly communicating a requirement to affix the diamond on a tank, or inferring it, creates once again a novel Missouri-specific twist on a well-understood and widely complied with national standard.

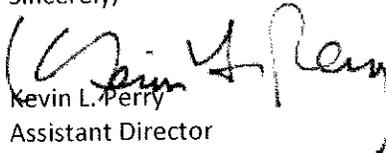
We request that the Department discontinue this type of communication and correct the record so generators with tanks will not be caught between two competing systems, and so inspectors will be correctly trained on the requirements of NFPA 704, should the proposed 10 CSR 25-5.262(2)(C)2 be adopted as regulation in Missouri.

Closing

Thank you for considering our comments and requests.

We look forward to continuing to work with the Department on the process of implementing 260.373 RSMo by rule. Please contact me at (573) 680-5069, or via email at kperry@regform.org, if you have any questions.

Sincerely,


Kevin L. Perry
Assistant Director

c: D. Lamb, HWP
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REGFORM Members