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Options for Labeling Hazardous Waste Containers in Storage

I. Purpose

This paper outlines several alternatives that have been discussed by Hazardous Waste Forum participants for changing Missouri's requirements for labeling hazardous waste containers while in storage and summarizes the perspectives offered by various participants during these discussions. Changes to the current requirements are necessary due to the enactment of House Bill 1251 into law. This bill contained several provisions related to the hazardous waste law, which are now codified at Section 260.373 of the Revised Statutes of Missouri (RSMo). Among these provisions is the requirement to identify rules in Title 10, Missouri Code of State Regulations, Division 25, Chapters 3, 4, 5, and 7 that are inconsistent with the limitation that the law placed on the commission to not develop rules that are stricter than or implement requirements prior to 40 CFR Parts 260, 261, 262, 264, 265, 268, and 270 promulgated pursuant to Subtitle C of the Resource Conservation and Recovery Act, as amended. The law does contain an exclusion that allows the commission to retain, modify or rescind rules requiring hazardous waste generators to display hazard labels on containers and tanks during the time hazardous waste is stored onsite. This exclusion gives the commission the discretion to proceed with container labeling requirements in the manner they believe to be most appropriate for Missouri.

II. Background

The current Missouri regulations require hazardous waste containers and tanks to be packaged, marked, and labeled in compliance with federal Department of Transportation (DOT) requirements during the entire onsite storage period (hereinafter PM&L rule). The U.S. Environmental Protection Agency (EPA) requires packaging, marking and labeling of hazardous waste containers and tanks per DOT to be done only "before transporting hazardous waste or offering hazardous waste for transportation off-site." While in storage, the EPA requires containers to be marked with the words hazardous waste and with the date that accumulation first began.

During Hazardous Waste Forum meetings, stakeholders asked the Department of Natural Resources to consider changing certain hazardous waste regulations, including simplifying Missouri's PM&L rule, or making it the same as the federal regulation. In 2011, representatives of Walmart and Home Depot filed a petition with the Missouri Hazardous Waste Management Commission requesting that the department consider changes to the rules relating to hazardous waste containers in storage. In response to the petition, the department committed to continuing to work with Walmart, Home Depot, representatives of Missouri retailers, industrial hazardous waste generators, and other stakeholders in an effort to come up with a solution to the issues raised in the petition and discussed by Hazardous Waste Forum participants. Subsequently, the department and stakeholders developed proposed revisions to Missouri's requirements. The revised packaging, marking, and labeling rule language developed (revised PM&L) would allow generators the option of operating under the existing Missouri PM&L rule, or under the federal rule,

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which requires containers to be labeled with the words “Hazardous Waste” and the date of first accumulation only, provided generators utilizing this option had a system for identifying the contents of individual containers. The revised PM&L rule language gave generators the option of meeting the requirement to provide a statement or statements calling potential to the hazards of the waste by using DOT labels on the container or tank during the storage period.

After Hazardous Waste Forum participants agreed on the revised PM&L rule language, the Missouri General Assembly passed House Bill 1251 during the 2012 legislative session. The bill added a new section to the Missouri hazardous waste law at Section 260.373 RSMo, which limited the authority of the Missouri Hazardous Waste Management Commission to impose requirements stricter than those required by EPA. Because some of the requirements in the revised PM&L rule would be considered stricter than EPA rules, and because of concerns of emergency responders about the changes to the requirements for labeling containers, additional development of the revised PM&L rule was put on hold.

Section 260.373 RSMo gives the commission the authority to retain, modify or rescind rules relating to the placement of hazard labels only on containers and tanks. As this exception is only for the requirement to display hazard labels on containers and tanks, the rest of the Missouri requirements in the revised PM&L rule regarding packaging and marking would appear to be no longer allowed because of the limitation on the commission’s rulemaking authority also found in Section 260.373 RSMo.

III. Options Discussed by Forum

Option 1 – Modify existing Missouri regulation to require only the hazard labels on containers and tanks with the exception of containers with a capacity below one gallon and incorporate by reference the existing federal rule which requires containers to be marked with the words “Hazardous Waste” and the accumulation start date**

The first option is to modify existing Missouri regulation to eliminate Missouri specific requirements except for the requirement to display hazard labels on containers and tanks during the period that waste is stored onsite.

Rule language:

(C) Pretransport, Containerization, and Labeling Requirements.

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1. During the entire time hazardous waste is accumulated in storage on-site, generators shall [*package, mark, and*] label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR part 262 subpart C, as incorporated and modified within these regulations. The requirement to label hazardous waste containers during accumulation in storage on-site does not apply to individual containers that have a capacity of less than one gallon. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.

MDNR's perspectives: This option is consistent with the statutory exclusion of 260.373 RSMo which allows the commission to retain existing rules on the display of hazard labels. Hazard labels provide immediately visible information on the hazards of container contents, help increase employee knowledge, safer onsite management of the waste, and to prevent mixing of incompatible wastes and harm to human health and the environment this can create. As DOT labeling is currently required by Missouri regulation during storage, is widely known and understood and already required for transportation of hazardous wastes, it would be the most logical choice for hazard labeling. It would not be overly difficult or expensive as no more than two primary hazard labels are required. This rule however would provide less information about container contents than Missouri's existing packaging, marking and labeling regulations.

Hazardous Waste Forum participant's perspectives: The requirement of placing hazard labels on containers is an additional cost, and additional burden to comply with, since labels would have to be changed if additional wastes were placed in the container. This rule is more complicated than the federal regulations and requires employees to have specific knowledge of chemical properties of the waste. The labels may not reflect the hazard in all cases (e.g., when a "corrosive" – acid or base may have either a very low or very high pH respectively). The statutory exclusion does not specify DOT labeling as the standard, but only lists as an example, so if hazard labeling is required, other labeling requirements other than DOT labeling could be developed. The rule is not consistent with requirements in most other states.

First responders' perspective: As the exception in the law allowing the commission to retain, modify, or rescind existing rules requiring the display of hazard labels was included in response to concerns expressed by first responders to the legislature, it is assumed that they would support this option. Labeling provides immediately visible, additional information on the hazards in individual containers and tanks.

****Note:** the 1 gallon exemption has not been discussed by the Forum participants, but the department is adding here as a potential modification of option 4 in an attempt to address some of the concerns raised by participants.

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Option 2 – eliminate Missouri requirements entirely and go with federal requirements only

Eliminate the Missouri requirements for packaging, marking and labeling containers entirely and go with the federal rule only, which requires that containers be labeled only with the words “Hazardous Waste” and the date on which waste is first placed in the container. Consequently, the DOT regulations for packaging, marking, and labeling would apply at the point where the waste is offered for transportation.

Rule language:

(C) Pretransport, Containerization, and Labeling Requirements.

[1. During the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.]

Federal rule language

40 CFR 262.34 Accumulation time.

- (a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or having interim status, provided that:*
- (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;*
- (3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, “Hazardous Waste”;*

MDNR perspectives: The federal rule provides the least information about container contents for employees and others who manage the waste. There would be greater safety concerns and potential for employees to mix incompatible wastes that can cause damage to human health and the environment. Inspections will be longer as inspectors must be able to determine contents to assess compliance with other onsite storage and waste management regulations (i.e. incompatibles not being stored together or ignitable wastes not being stored too close to the property line). The fact that this piece was specifically exempted from the no stricter than provision indicates legislators’ sensitivity to the concerns raised by first responders in the legislative process for HB 1251.

Hazardous Waste Forum participants’ perspectives: The federal rule is the easiest for generators to comply with and the least costly. It is consistent with HB 1251 provision allowing the Commission to retain, modify, or rescind regulations related to hazard labels and is more consistent with other states.

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First responders' perspectives: As first responders were involved in getting the exception added to 260.373 RSMo which allows the commission to retain existing rules requiring the display of hazard labels, it is assumed that they would not support an option that does not include this requirement.

Option 3 – Proceed with revised PM&L rule (as agreed to by Hazardous Waste Forum participants in December 2011)

Proceed with the revised PM&L rule that was agreed to by Hazardous Waste Forum participants in December 2011 and that is currently on hold. The revised PM&L rule would allow generators the option of following the existing Missouri PM&L rule, or the federal rule, which requires containers to be labeled with the words “Hazardous Waste” and the date of first accumulation only, provided generators utilizing this option had a system for identifying the contents of individual containers. The revised PM&L rule gave generators the option of meeting the requirement to provide a statement or statements calling potential to the hazards of the waste by using a DOT label on the container or tank during the storage period.

Rule language:

(C) Pretransport, Containerization, and Labeling Requirements.

1. In 40 CFR 262.30, 262.32, and 262.33, the phrase “Before transporting hazardous waste or offering hazardous waste for transportation off-site”, and in 40 CFR 262.31 and 262.32, the phrase “Before transporting or offering hazardous waste for transportation off-site” are not incorporated by reference. The generator shall meet all other requirements of these regulations during the entire time hazardous waste is accumulated on site, except that the manifest document number need not be marked on the container until it is prepared for off-site shipment. As an alternative to packaging, marking, and labeling hazardous waste during the entire time hazardous waste is accumulated on site, generators may comply with the following requirements:

A. Clearly mark each container in storage with the date upon which accumulation begins, visible for inspection, and mark each container and tank clearly with the words “Hazardous Waste”; and

B. Clearly mark each container in storage with the generator’s name and address or clearly mark this information on the outermost container when multiple containers are stored in a larger closed container. The outermost container shall be kept closed unless adding or removing the smaller containers from it. The generator’s name and address is not required on containers smaller than one gallon; and

C. Have a method to identify the contents of each hazardous waste container in storage and the associated hazards. The method shall include the following information and must be accessible to facility personnel upon their request for their own purposes, to inspectors prior to or during an inspection, and to emergency responders upon their request:

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- (I) Description of contents, which may include product trade names, chemical names, or hazardous waste codes pursuant to 40 CFR part 261 Subpart C and Subpart D; and
- (II) Statement or statements which call attention to the particular hazardous properties of the waste (e.g., ignitable, reactive, corrosive, and toxic). As an option to meet this requirement, the generator may place applicable U.S. Department of Transportation label(s) on the container or tank during the storage period to identify these properties.

MDNR perspectives: This rule language would provide flexibility to generators by allowing them the option of complying with Missouri's current requirements or with the federal requirements as modified by the language. The rule would ensure that generators can identify contents of individual containers, but as written, it appears to have language that would be inconsistent with the exclusion provided in 260.373 RSMo, as both options for compliance have requirements that are more stringent than federal regulations and would not fall under the exclusion for hazard labeling.

Hazardous Waste Forum participants' perspectives: This rule is more costly and complicated than complying with the federal rule; however, many forum participants support this compromise language.

First responders' perspectives: As first responders were opposed to these proposed revisions, and expressed their opposition to the commission, it is assumed that they would not support this option.

Option 4 – retain existing Missouri regulation with no modifications

The final option is to propose no changes to the current Missouri regulation, which requires containers to be packaged, marked, and labeled in accordance with DOT regulations during the entire onsite storage period. As their names imply, packaging requirements set the standards for the container used to hold the hazardous waste, marking requirements denote the chemical names that must describe the contents of the container accurately, and labeling requirements specify the placement of hazard labels on containers that describe the chemical properties of the waste (ignitable, flammable, corrosive, etc.). Prior to shipping hazardous waste, generators must ensure that containers destined for shipment are in compliance with these requirements, but Missouri requires compliance with these requirements while the container is in storage, and not just in preparation for shipment.

Rule language:

(C) Pretransport, Containerization, and Labeling Requirements.

1. During the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.

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MDNR perspectives: This option would require no modification of the regulations and would be the most familiar to Missouri generators. Many of the stakeholders responding to a department survey indicated that this requirement was not overly burdensome. This option would provide the most detailed information about contents of containers in storage and would help to ensure materials are stored in compatible packaging. It may also help assure that the hazardous waste generator can avoid other violations when the information on the drum or tank contents is clearly identified on the drum or tank. This rule option, however, is not consistent with the exclusion of 260.373 RSMo, which appears to limit the commission's authority to modify, rescind, or retain regulations in regard to packaging, marking, and labeling to just hazard labeling.

Hazardous Waste Forum participants' perspectives: This option would clearly be in conflict with the 260.373 RSMo limitations on the commission's authority and be inconsistent with the efforts of the Hazardous Waste Forum in the past several years to develop revised language to change the current requirement. This would be the most costly to generators and the most burdensome to comply with. One stakeholder thought the department's survey results were questionable because of the way the questions were asked.

Emergency Responder perspectives: This option would provide the most detailed information about the contents of containers, and help to ensure hazardous waste is stored in compliant packaging. It would require the same information as containers in transport, so consistent information would be provided throughout the storage, transportation, and disposal process.