

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Patley, Director

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December 3, 2013

Mr. Kevin Perry
Assistant Director
Regulatory Environmental Group for Missouri
238 East High Street, 2nd Floor
Jefferson City, MO 65101

RE: Response to detailed comments on "Working Draft of Proposed Rule Text – Chapters 3, 4, 5, and 7" dated June 11, 2013

Dear Mr. Perry:

We appreciate the time and effort that REGFORM has taken to thoroughly review the draft document that identifies the existing hazardous waste rules that are inconsistent with the requirements of Section 260.373 RSMo. The document was developed by the Department with input from stakeholders through the Hazardous Waste Forum, and is especially important because it will provide the foundation for the changes to the hazardous waste rules that will be proposed as a response to the requirements of the new statute.

We also appreciated the opportunity to meet with you and others from REGFORM to discuss your comments in more detail. Because this is such an important document and your comments were so thorough, the opportunity to discuss these issues with you was very helpful. As we discussed at the meeting, while we agree with some of the comments and have made the changes requested, there are other comments where we have a different interpretation of the regulations and/or statutory provisions in question. Enclosed, you will find a document that includes our responses to each of your comments. Because many of the comments are essentially the same, we have grouped our responses together and listed the comments included in each group of responses individually. We believe this is the most efficient way to explain the responses to your comments.

Please note that while we have finalized the report of our findings on the hazardous waste rules that are inconsistent with the statutes, there will be more opportunities through the formal rulemaking process to provide additional comment and input on these rule amendments as they are developed. These amendments will include additional changes beyond those required by the statute, such as incorporation of the most recent federal rule changes and cleanup of regulations

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that the Department has determined are not more stringent than federal regulations, but are no longer needed.

Again, we appreciate your input and comments throughout the process of developing this document. We hope that our responses help you better understand the process by which we determined how the statute applied to individual rules. If you have any questions about our comments, or wish to discuss the process further, feel free to contact me at P.O. Box 176, Jefferson City, MO 65101 or by phone at (573) 751-2747.

Sincerely,

HAZARDOUS WASTE PROGRAM



David J. Lamb, Director

DJL:ted

Enclosure

c: Leanne Tippett Mosby, Director, Division of Environmental Quality
Aaron Schmidt, Deputy Director, Division of Environmental Quality
Roger Walker, REGFORM

Group 1 – the Department agrees with the comment and will make the recommended change to the “Draft Determination of Rules Inconsistent with HB 1251” document.

Comment 1. – remove definition of “ASTM”. This definition is only used in sections of Chapter 7 that have already been proposed for deletion because they are inconsistent with HB 1251. Because it is only used in those sections marked for deletion, the definition itself is also proposed for deletion.

Comment 20. – remove definition of “operating disposal facility”. This definition is only used in sections of Chapter 7 that have already been proposed for deletion because they are inconsistent with HB 1251. Because it is only used in those sections marked for deletion, the definition itself is also proposed for deletion.

Comment 78 – health profile requirements. Because the health profile requirement in the statute was rescinded, this regulation will also be proposed for rescission.

Group 2 – use of term owner/operator. The Department proposes to evaluate the use of the term owner/operator on a case-by-case basis and determine how the term is used in the corresponding federal regulations that relate to each state regulation where the term is used. The use of the term in the state regulations will be modified to be equivalent to the federal regulations and consistent with applicable state statutes, which in some cases apply to both the owner and the operator.

Comment 21. – definition of owner/operator is not found in 40 CFR 260.10 and should be removed.

Comment 42. – The use of the term owner/operator in this instance is related to resource recovery, which is not addressed in the federal regulations subject to this review. Therefore, the use of this term is not inconsistent with the requirements of section 260.373.

Comment 47. – The use of the term owner/operator in this instance is related to the registration requirements for generators of hazardous waste. Generator requirements are addressed in part 262 of the Code of Federal Regulations, so this requirement is subject to this review. However, one of the exclusions provided in the statute is applicable to registration requirements. Therefore, the use of this term is not inconsistent with the requirements of section 260.373.

Comment 54. – The use of the term owner/operator in this instance is a blanket substitution for references in 7.264 to owner and operator or owner or operator. The Department agrees that the use of the term in this situation is inconsistent with the statute and should be deleted.

Comment 55. – The use of the term owner/operator in this instance is to state that owners and operators must comply with the requirements in 7.264 in addition to the regulations of 40 CFR Part 264. The Department agrees that the use of the term in this situation is inconsistent and should be changed to be consistent with the federal regulations.

Comment 57. – The use of the term owner/operator in this instance is to provide additional clarification on situations where a permit is or is not required. This situation is addressed in 40 CFR part 264 so the requirement is subject to this review. The Department agrees that the use of the term in this situation is inconsistent and should be changed to be consistent with federal regulations.

Comment 59. – The use of the term owner/operator relates to reporting of hazardous waste activities. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to the reporting of hazardous waste activities applies and therefore the rule is not inconsistent and may be retained.

Comment 60. – The use of the term owner/operator relates to reporting of hazardous waste activities. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to the reporting of hazardous waste activities applies and therefore the rule is not inconsistent and may be retained.

Comment 61. – The use of the term owner/operator relates to reporting of hazardous waste activities. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to the reporting of hazardous waste activities applies and therefore the rule is not inconsistent and may be retained.

Comment 62. – The use of the term owner/operator relates to hazardous waste fees. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to hazardous waste fees applies and therefore the rule is not inconsistent and may be retained.

Comment 63. – The use of the term owner/operator relates to hazardous waste fees. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to hazardous waste fees applies and therefore the rule is not inconsistent and may be retained.

Comment 64. – The use of the term owner/operator relates to hazardous waste fees. Although these requirements are addressed in the federal regulations, and therefore this requirement is subject to this review, the exclusion for rules related to hazardous waste fees applies and therefore the rule is not inconsistent and may be retained.

Comment 66. – There are multiple uses of the term owner/operator that are addressed in this comment. In lines 1638 and 1646, the term owner/operator provides additional information on situations addressed in the corresponding federal rules. The Department agrees that the use of the term in these situations is inconsistent and should be changed to be consistent with federal regulations. In line 1649, the term owner/operator is used in reference to the resource recovery requirements. There is no federal counterpart to resource recovery, so this portion of the state regulations is outside the scope of the review and may be retained. In lines 1655 and 1657, the

term is used in relation to requirements for interim status facilities. As interim status facilities are addressed in the corresponding federal rules, the Department agrees that the use of the term in these situations is inconsistent and should be changed to be consistent with federal regulations.

Comment 67. – There are multiple uses of the term owner/operator that are addressed in this comment. Each use of the term referenced in this comment relates to either hazardous waste reporting or hazardous waste fees. Based on the exclusion for rules relating to the reporting of hazardous waste activities, or for rules necessary for hazardous waste fees, the use of the term in these situations may be retained.

Comment 69. – The use of the term owner/operator in this instance is to provide additional clarification on persons who have to comply with the requirements for land disposal restrictions. This situation is addressed in 40 CFR Part 268 so the requirement is subject to this review. The Department agrees that the use of the term in this situation is inconsistent and should be changed to be consistent with federal regulations.

Comment 74. – There are multiple uses of the term owner/operator that are addressed in this comment. In lines 2069 and 2071, as with responses to previous comments, the state requirement corresponds to a federal regulation against which the state rule is to be evaluated. Because the requirements discussed on these lines are addressed in the federal rules, the Department agrees that the use of the term in these situations is inconsistent and should be changed to be consistent with federal regulations.

Comment 76. – The use of the term owner/operator in this instance relates to the requirement to obtain a USEPA identification number. While identification numbers are included in the federal regulations against which the state rules are to be compared, there is an exclusion to the statute for rules related to the reporting of hazardous waste activities. Identification numbers are used by the Department to keep track of generators and permitted facilities and their reported hazardous waste activities, so based on the statutory exclusion, the use of the term is not inconsistent and may be retained.

Comment 77. – The use of the term owner/operator in this instance relates to the responsibility of an owner or operator to comply with applicable state laws and rules in addition to complying with federal laws and regulations. As this topic is addressed in the federal regulations, this requirement is subject to this review. The Department agrees that the use of the term in this situation is inconsistent and should be changed to be consistent with federal regulations.

Comment 80. – There are multiple uses of the term owner/operator that are addressed in this comment. The first two comments, on lines 2268 and 2294, relate to portions of the state regulations that have been identified as being inconsistent and are to be rescinded. The use of the term on lines 2308 and 2313 relate to requirements for interim status facilities. Because interim status facilities are addressed in 40 CFR Part 270 of the federal regulations, the

Department agrees that the use of the term in this situation is inconsistent and should be changed to be consistent with federal regulations.

Group 3 – While the comments point to these rules as being more stringent, the Department does not believe that they require anything that is more stringent than the federal rules. Therefore, the rules in this group may be retained because they are not inconsistent with the requirements of section 260.373 RSMo. However, even though the Department does not believe these rules to be inconsistent, the Department agrees that some of the changes suggested should be made in order to rescind regulations that are no longer necessary. The response to each comment indicates whether the Department agrees to include the change in the proposed rulemaking.

Comment 4 – remove definition of “CFR”. This is a definition of a commonly used acronym and is not inconsistent with section 260.373 because it does not prescribe a standard that is more stringent. The Department believes this definition should be retained.

Comment 5 – remove definition of “CSR”. This is a definition of a commonly used acronym and is not inconsistent with section 260.373 because it does not prescribe a standard that is more stringent. The Department believes this definition should be retained.

Comment 6. – remove definition of “compliance procedure”. Definition is not used in the hazardous waste regulations so there is no need for it to be retained.

Comment 8. – remove definition of “extended reporting period”. This definition is not used anywhere in the hazardous waste regulations and therefore there is no need for it to be retained.

Comment 9. – remove definition of “farmer”. The Department considers this to be a “gap filler” in that it attempts to provide a definition of a term used in both federal and state rules, but which is not defined by EPA in the federal hazardous waste rules. The definition is almost identical to the definition used by DOT and is actually tied to requirements that exempt farmers from most hazardous waste regulations.

Comment 11. – remove definition of “HSWA”. This acronym is only used once and the meaning of the acronym is spelled out in the rule itself. As a result, this definition is not necessary and there is no need for it to be retained.

Comment 12 – remove definition of “hazardous constituent”. The term is used in the federal regulations, although it is not defined in the federal regulations. To be consistent with the lack of a definition in the federal regulations and to avoid confusion about the effect of having a state-specific definition, the Department agrees that this definition should be removed.

Comment 16. – remove definition of “identification number”. This definition is a clarification of a term used to refer to the unique number assigned to a generator by Missouri or by the USEPA. There are no requirements associated with this definition so it does not appear to be more

stringent and should not be considered to be inconsistent with section 260.373 and therefore will be retained.

Comment 18. – remove the definition of Missouri hazardous waste mileage. The term “Missouri mileage” is used in Chapter 12 of the regulations as part of the calculation to establish the license fee paid by a transporter of hazardous waste in Missouri. While the definition is slightly different from how the term is used in Chapter 12 in that it includes the words “hazardous waste”, this is something that can be fixed as part of the changes to be made to the hazardous waste regulations. Because it is part of the license fee calculation, the definition is still needed and is proposed to be retained.

Comment 22. – remove the definition of “professional engineer”. This term is used in the requirements in Chapter 7 that allow storage of ignitable or reactive waste less than fifty feet from a facility’s property boundary in certain situations. Because this regulation provides an option to complying with the federal regulations, the Department does not agree that it is more stringent than the federal regulations and therefore, may be retained. This definition is needed for that option to be maintained.

Comment 24. – remove definition of “preceding year”. Definition is not used in the hazardous waste regulations so there is no need for it to be retained.

Comment 25. – remove definition of “RCRA”. Definition is a commonly used acronym and is not inconsistent with section 260.373 because it does not prescribe a standard that is more stringent. The Department believes this definition should be retained.

Comment 29. – remove definition of “standby trust fund”. Definition is not used in the hazardous waste regulations so there is no need for it to be retained.

Comment 35. – remove definition of “USGS”. This definition is not used in the hazardous waste regulations so there is no need for it to be retained

Comment 36. – remove definition of “U.S. importer”. The term used in Chapter 5 is actually “United States Importer” so the Department intends to modify this definition to “United States importer” and retain it in order to be consistent with its use in the regulations.

Comment 37. – remove definition of “vapor recovery system”. Definition is not used in the hazardous waste regulations so there is no need for it to be retained.

Comment 53. – remove requirements related to record retention. This requirement is essentially identical to the federal regulation. Therefore, there is no need for it to be retained.

Comment 65. – all requirements for railcars are stricter than federal and should be removed. Although the federal rules do not have a specific time limit on the length of time allowed for hazardous waste to be processed once it arrives at a facility before it is placed into a permitted storage area, EPA guidance limits this length of time to 24 hours. As an option to complying with the federal rule which imposes the 24 hour time limit by guidance, the Missouri rule allows temporary staging of hazardous waste for a period of up to ten days as long as the conditions in

the rule are met. Because this is an optional rule and facilities may comply with the federal rule if they choose, the Department determined that the railcar rule is not inconsistent and may be retained. The Department will consider revisions to this language to clarify that it is an optional requirement.

Comment 68. – all requirements for railcars are stricter than federal and should be removed. Although the federal rules do not have a specific time limit on the length of time allowed for hazardous waste to be processed once it arrives at a facility before it is placed into a permitted storage area, EPA guidance limits this length of time to 24 hours. As an option to complying with the federal rule which imposes the 24 hour time limit by guidance, the Missouri rule allows temporary staging of hazardous waste for a period of up to ten days as long as the conditions in the rule are met. Because this is an optional rule and facilities may comply with the federal rule if they choose, the Department determined that the railcar rule is not inconsistent and may be retained. The Department will consider revisions to this language to clarify that it is an optional requirement.

Comment 75. – the permitting requirements on lines 2076-2095 are stricter than 40 CFR 270 and should be removed. The requirements in question relate to subpart A of part 270 of the Code of Federal Regulations. The requirement that both the owner and operator sign the permit application, and that the permit shall be issued to both, is based on section 260.375(12) which states that the Department shall require each hazardous waste facility owner and operator to obtain a permit. Because it is based on a state statute that expressly prescribes that both the owner and operator obtain a permit, the requirement is not inconsistent and may be retained. The rest of the requirements in this portion of the regulation do not appear to establish requirements that are stricter than federal and therefore may be retained.

Comment 79. - all requirements for railcars are stricter than federal and should be removed. Although the federal rules do not have a specific time limit on the length of time allowed for hazardous waste to be processed once it arrives at a facility before it is placed into a permitted storage area, EPA guidance limits this length of time to 24 hours. As an option to complying with the federal rule which imposes the 24 hour time limit by guidance, the Missouri rule allows temporary staging of hazardous waste for a period of up to ten days as long as the conditions in the rule are met. Because this is an optional rule and facilities may comply with the federal rule if they choose, the Department determined that the railcar rule is not inconsistent and may be retained. The Department will consider revisions to this language to clarify that it is an optional requirement.

Group 4– The basis for this group of comments is that certain definitions should be removed because they are not found in 40 CFR 260.10 and are therefore inconsistent with HB 1251, or that certain regulations are more stringent and are therefore inconsistent. However, the bill only applies to certain chapters of the regulations and some of the definitions are needed for chapters that are not affected by the limitation on the commission’s rulemaking authority. These

rules are proposed to be retained based on the fact that they are used in chapters that are outside the scope of those affected by the limitation on rulemaking authority in section 260.373. In addition, HB 1251 includes exceptions to the requirement that rules may not be more stringent for rules that relate to specific topics. Some of the comments request the removal of regulations which are based on one of these exclusions.

Comment 2. – remove definition of “abandoned and uncontrolled”. This definition is used in Chapter 10, Division 25 of the Code of State Regulations. This chapter is not affected by the requirements of HB 1251 and may be retained.

Comment 3. – remove definition of “attenuation”. This definition is used in Division 25, Chapter 18 of the Code of State Regulations. This chapter is not affected by the requirements of HB1251 and may be retained.

Comment 10. – remove definition of “generation”. This definition is used in Chapter 9, Resource Recovery Processes and that chapter is not affected by the requirements of HB1251 and may be retained.

Comment 14. – remove definition of “hazardous waste transporter”. This term is used in both Chapter 6 and Chapter 12 as part of the licensing requirements for hazardous waste transporters. Neither chapter is affected by the requirements of section 260.373, so this definition is not inconsistent and may be retained.

Comment 17. – remove definition of “International Registration Plan”. This definition is used in Chapter 12 which establishes the license fees paid by transporters of hazardous waste. Because both hazardous waste transporters and fees are in chapters not affected by the requirements of section 260.373, this definition may be retained.

Comment 19. – remove the definition of “motor vehicle”. This term is used in Chapter 6, Rules Applicable to Transporters of Hazardous Waste. Chapter 6 is not affected by the requirements of section 260.373 so this definition is not inconsistent and may be retained.

Comment 23. – remove the definition of “power unit”. This term is used in both Chapter 6 and Chapter 12 as part of the licensing requirements for hazardous waste transporters. Neither chapter is affected by the requirements of section 260.373, so this definition is not inconsistent and may be retained.

Comment 26. – remove the definition of “remedial action”. This term is used in multiple chapters of the hazardous waste regulations that are not affected by the requirements of section 260.373 including Chapter 10, Chapter 15, and Chapter 18. Because none of these chapters is affected, the definition is not inconsistent and may be retained.

Comment 27. – remove the definition of “responsible party”. This term is used in Chapter 10, State Registry of Abandoned and Uncontrolled Hazardous Waste Disposal Sites. Because this chapter is not affected, the definition is not inconsistent and may be retained.

Comment 28. – remove the definition of “site”. This term is used in multiple chapters of the hazardous waste regulations that are not affected by the requirements of section 260.373

including Chapter 10, Chapter 15, and Chapter 18. Because none of these chapters is affected, the definition is not inconsistent and may be retained.

Comment 30. – remove the definition of “substantial change”. This term is used in Chapter 10, State Registry of Abandoned and Uncontrolled Hazardous Waste Disposal Sites. Because this chapter is not affected, the definition is not inconsistent and may be retained.

Comment 31. – remove definition of “training”. This definition is only used in Chapter 6, relating to hazardous waste transporters, and Chapter 12, relating to hazardous waste fees, and is not used in any of the chapters subject to the statutory review process. Because this definition is only used in chapters that are not included in the review process, the definition is not inconsistent and may be retained.

Comment 32. – remove definition of “transporter”. This term is used in both Chapter 6 and Chapter 12 as part of the licensing requirements for hazardous waste transporters. Neither chapter is affected by the requirements of section 260.373, so this definition is not inconsistent and may be retained.

Comment 33. – remove definition of “universal waste”. This term is used in Chapter 16, Standards for Universal Waste Management. That chapter is not affected by section 260.373, so this definition is not inconsistent and may be retained.

Comment 34. – remove definition of “used oil”. This term is used in Chapter 11, Recycled Used Oil Management Standards. That chapter is not affected by section 260.373, so this definition is not inconsistent and may be retained.

Comment 38. – remove definition of “vehicle”. This term is used in both Chapter 6 and Chapter 12 as part of the licensing requirements for hazardous waste transporters. Neither chapter is affected by the requirements of section 260.373, so this definition is not inconsistent and may be retained.

Group 5 – These rules could be considered to be inconsistent as they are in the affected chapters, but may be retained based on one of the applicable statutory exclusions.

Comment 7. – remove definition of “DOT”. Because the labeling requirements for hazardous waste containers are proposed to be retained based on the statutory exclusion allowing the retention of rules that relate to the display of hazard labels on containers, and those requirements reference DOT requirements, it is necessary to retain this definition. The term is also defined in the DOT regulations that are referenced so it is consistent with the use of the term in the federal regulations.

Comment 40. – record keeping requirements are stricter and should be removed. These record keeping requirements relate to the hazardous waste summary report. Because this report deals with reporting of hazardous waste activities and is used to calculate hazardous waste fees, either the exclusion which allows the commission to retain rules that relate to the reporting of hazardous waste activities or the exclusion for rules related to hazardous waste fees would seem to apply. Therefore, this requirement is not inconsistent and may be retained.

Comment 48. – additional manifesting requirements are not exempted and should be removed. The Department considers the manifest to be a form of “reporting of hazardous waste activities”, which section 260.373.1(3)(c) allows to be retained. Therefore, this requirement may be retained based on the statutory exclusion.

Comment 51. – requirements to record total weight or specific gravity are not in CFR and should be removed. Total weight and specific gravity are used by Department staff to calculate the hazardous waste fees owed by generators and TSDs. Section 260.373.1(2) allows the commission to retain rules necessary to implement statutes to collect fees. Based on this exclusion, this requirement may be retained.

Comment 52. - The Department considers the manifest to be a form of “reporting of hazardous waste activities”, which section 260.373.1(3)(c) allows to be retained. Therefore, this requirement may be retained based on the statutory exclusion.

Comment 56. – Meaning of “In the case of contradictory or conflicting requirements, the more stringent shall control.” Because some state regulations that are more stringent than federal will be retained based on the statutory exclusions to the requirements of section 260.373, this sentence continues to serve a purpose of clarifying that the more stringent requirement shall be followed. Any state regulation more stringent than federal that remains in the state regulations should be based on one of the statutory exclusions so this statement clarifies that the state rule shall be followed rather than the federal rule if there is a conflict.

Comment 58. – additional manifesting requirements. The Department considers the manifest to be a form of “reporting of hazardous waste activities”, which section 260.373.1(3)(c) allows to be retained. Therefore, this requirement may be retained based on the statutory exclusion.

Group 6 – rules based on the HWMC’s authority to adopt regulations to determine what types of material are considered hazardous waste. This group of comments requests that certain state rules be rescinded because section 260.373 requires that a statute “expressly prescribe” standards if that statute is to be used as the authority to retain a rule that is more stringent than federal. At this time, the Department has determined that additional review is needed to determine whether the following rules impose requirements that are stricter than the corresponding federal requirements. The Department continues to evaluate the question of whether the additional state requirements are permissible based on one of the statutory exclusions in Section 260.373. The Department also continues to evaluate, apart from statutory permissibility, whether the additional state requirements are needed based on the current state of hazardous waste management activities in the state. To the extent that portions of these rules are determined to be inconsistent with the requirements of Section 260.373 or are no longer needed based on practical considerations, changes to the rules would be proposed as part of the proposed rulemaking that will be developed after the rules have been identified by the Department.

Comment 13. – definition of hazardous waste

Comment 15. – definition of household hazardous waste

Comment 39. – definition of “waste”

Comment 41. – added restrictions on used oil. This state regulation requires used oil released into the environment to be managed as hazardous waste.

Comment 43. – landfill ban on disposal of CRTs

Comment 44. – Missouri modifications to F listed trichlorophenol language

Comment 45. – Missouri waste code for certain materials

Comment 46. – Missouri waste code for certain materials

Comment 49. – manifesting and reporting requirements for Missouri waste codes for dioxin

Comment 50. – manifesting and reporting requirements for Missouri waste codes for used oil

Comment 70. – land disposal restrictions for wastes with Missouri waste codes

Comment 71. – land disposal restrictions for Missouri waste codes

Comment 72. – land disposal restrictions for Missouri waste codes

Comment 73. – land disposal restrictions for Missouri waste codes