

## Comments and Responses

### Regulatory Impact Report for Amendments to Title 10, Division 25 of Code of State Regulations

**Comment 1:** Boeing seeks consistency in Missouri’s manifest exception reporting rules for hazardous wastes and PCB shipments. The purpose is to reduce future confusion among Missouri generators who ship both hazardous waste and PCB items.

#### **Hazardous Waste Exception Reporting**

PRESENT MISSOURI HAZARDOUS WASTE EXCEPTION REPORTING, 10 CSR 25-5.262(2)(D)2.C.:

“A generator who has not received the completed manifest with the handwritten signature of the designated facility operator within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter.”

The present Missouri hazardous waste rule requires the generator to file an exception report, even in those cases where the generator contacted the destination TSD at day 35 (as required by both Missouri and federal rules), and the TSD provided the completed manifest within a 45 day period. The result is that the generator must file an exception report, even though the generator may have a completed manifest in hand, because the TSD provided the completed manifest within 45 days.

FEDERAL HAZARDOUS WASTE EXCEPTION REPORTING, 40 CFR 262.42(a)(2), TO BE ADOPTED BY REFERENCE IN DRAFT MISSOURI REVISION:

“A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.” [The federal rule also provides a 60 day timeframe for some small quantity generators].

Under the federal rule proposed for adoption by reference, if the TSD provides a completed manifest after being contacted at day 35, but before day 45, no exception report is required.

#### **PCB Exception Reporting**

The present Missouri PCB Manifest Exception Reporting rule follows the same approach as the existing Missouri hazardous waste rule:

PRESENT MISSOURI PCB EXCEPTION REPORTING, 10 CSR 25-13.010(4)(B)3.

“An owner/operator of a Missouri PCB facility who has not received the completed manifest with the handwritten signature of the owner/operator of the designated facility within thirty-five (35) days from the date the waste was accepted by the initial transporter shall submit a completed exception report to the department within forty-five (45) days from the date the waste was accepted by the initial transporter.”

As with the existing Missouri hazardous waste exception reporting rule, the present PCB rule results in exception reports being filed, even in cases where the receiving facility provided a completed manifest between day 35 and 45. In such cases, this extra Missouri reporting has served no environmental purpose, since the PCB shipment is documented as having reached its proper destination.

#### FEDERAL PCB EXCEPTION REPORTING, 40 CFR 761.217(a)(2)

“A generator of PCB waste subject to the manifesting requirements shall submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the hand written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall be submitted to EPA no later than 45 days from the date on which the generator should have received the manifest.”

While most PCB generators in Missouri are not commercial “Missouri PCB facilities” that accept PCBs for remuneration, they look to the Missouri PCB rule for guidance on manifesting and exception reporting. The main heading of section (4)(B) states that “All shipments *destined to* or originating from a Missouri PCB facility shall use EPA’s Uniform Hazardous Waste Manifest...” and the exception reporting instructions are subsections within this heading.

If DNR has not already done so, we suggest that the Missouri Chapter 13 PCB rule be modified by striking section (4)(B) and substituting the following:

“(B) Manifests. All shipments destined to or originating from a Missouri PCB facility shall meet the requirements of 40 CFR 761.207 through 40 CFR 761.219. Any required reports shall be submitted to the department as well as to the EPA Regional Administrator.”

**Response:** Department staff have reviewed the above comment, which requests that the department consider making the Missouri rules on exception reports for PCB manifests equivalent to the federal rule, in that if a completed manifest is received within the federal timeframe of 45 days, no exception report is required. As the department has already proposed to make this same change to the Missouri rule on hazardous waste manifests, the department agrees that the same change should be made for PCB manifests so that the policy is consistent for both hazardous waste manifests and PCB manifests. A corresponding change has been made to the text of the proposed amendment of 10 CSR 25-13.010. The revised version would eliminate the Missouri rule, which requires that an exception report be completed if the completed manifest is not received within 35 days, even if the manifest is received within the 45 day federal timeframe.

**Comment 2:** The RIR refers to a set of proposed rule amendments, the most current version of which is titled “Final Draft of Proposed Rule Text – Chapters 3, 4, 5, and 7,” dated January 10, 2014. The RIR in several instances refers to the proposed rule giving Missouri generators an

option for compliance. Specifically, facilities that accept waste for treatment have two options for handling deliveries of hazardous waste in rail cars. Similarly, generators with greater than 6000 Kg of reactive or ignitable waste have an option for storing wastes within 50 feet of the property line.

We would like Missouri generators to have the option regarding Satellite Accumulation Areas to comply with the existing Federal guidance (which does not allow accumulation of multiple waste streams each up to 55 gallons) or the existing Missouri interpretation (which, if the generator will mark the container with the accumulation start date and keep the container no longer than one year, allows accumulation of multiple waste streams each up to 55 gallons). This Missouri interpretation, which has never before been codified in regulation, is protective, as demonstrated by its long track record of effectiveness in Missouri.

Further, determining whether a generator is complying with the Missouri or Federal approach to managing SAAs is simple and direct. If an inspector identifies a dated container, the generator is complying with the State approach and multiple waste streams with each container not exceeding 55 gallons would be in compliance. If an inspector identifies an undated container, the Federal rule is in effect and all of the waste streams together could not exceed 55 gallons.

We request that the Department include in the proposed rule the option for Missouri generators to comply with the existing Missouri interpretation on SAAs or the Federal approach.

**Response:** The proposed rule language has been modified to provide generators with an option to continue under the Missouri interpretation of the requirements for satellite accumulation areas. The revised rule language can be found in 10 CSR 25-5.262(2)(C)3. of the proposed rule.

**Comment 3:** There are multiple references in the RIR to hazard labels on tanks or tanks that have been properly labeled. Lines 586 through 591 of “Final Draft of Proposed Rule Text – Chapters 3, 4, 5, and 7” require someone with a hazardous waste tank to comply with the 2012 edition of NFPA 704. Section 4.3 of NFPA 704 standard addresses where square-on-point “signs” (commonly referred to as diamonds) are located. They are required on two exterior walls that have a means of access to the hazard, on each access to a room or area, and on each principal means of access to an exterior storage area. There is no requirement to affix the NFPA 704 diamond directly on the tank. Use of this language is potentially confusing and could lead to non-compliance. We request that the Department correct and discontinue uses of language that imply that NFPA 704 requires a label directly on a tank. Rather, those who own and operate hazardous waste tanks should be employing the system of markings that identify hazards in accordance with NFPA 704.

**Response:** The department agrees that the proposed rules do not require hazard labels to be on tanks. As stated in the comment, the rules only require someone with a hazardous waste tank to comply with NFPA 704, which does not require that the labels be affixed directly on the tank. Because some of the language in the RIR refers to labels being “on” tanks or to “tanks that have been properly labeled” this might lead some to assume that the required label must be affixed to the tank. In order to clarify that this is not the case, changes have been made to the text of the RIR.

- The heading “Labeling of containers and tanks of hazardous waste” was replaced with a heading of “Labeling requirements for containers and tanks of hazardous waste” to clarify that it is not required that the tank itself be labeled
- On page 6 of the RIR the phrase “requirements for labeling hazardous waste containers and tanks” was replaced with the phrase “labeling requirements for hazardous waste containers and tanks”
- On page 10 of the RIR, revisions were made to the first paragraph on the page to more accurately represent the proposed labeling requirements for hazardous waste tanks and containers
- On page 12 of the RIR, revisions were made to the first sentence on the page to clarify that the standard on which the labeling requirements for tanks is based does not require placement of labels on the tank
- On page 12 of the RIR in the third paragraph, revisions were made to clarify that the NFPA standard does not require that the labels be on the tank itself
- On page 12 under Question 10, minor revisions were made to clarify that the NFPA standard does not require that the labels be on the tank itself

**Comment 4:** Under Question 8 on page 10, in reference to labeling of containers and tanks, the RIR says “The method proposed in the draft language for this rule gives generators the option of continuing to comply with the current rule, or labeling the container with words that identify the contents of the container.” This sentence is not true for tanks. The current DOT labeling requirement for containers has never been in place in Missouri for tanks. Generators do not have the option under the proposed rule of complying with the current rule for tanks. They must comply with NFPA 704. This is a new requirement. We request that this passage be clarified in the RIR.

**Response:** The following sentence was added to Question 8 on page 10, “*For hazardous waste tanks, the requirement to comply with NFPA 704 is a new requirement that has not previously been required for hazardous waste tanks.*” With the addition of this sentence, it is clearly stated in the response for this question that the NFPA labeling requirement for tanks is a new requirement.

**Comment 5:** Question 13 requires the identification of significant countervailing risks caused by the proposed rule. As we have commented before, we believe that maintaining two sets of regulations, one Federal and one State that are not consistent with one another creates confusion among those charged with the responsibility for complying. That confusion increases risk. We request that the RIR be amended to reflect this risk.

Forum participants also discussed increase risk associated with first responders needing to rely on labels on containers to indicate the type of hazard. Under certain circumstances, getting close enough to see the label presents more risk than what is required in typical first response situations. First responders should know about the hazards in containers because they’ve been made familiar with the facility (as required by other regulations) and because they are communicating with the generator’s responsible officials long before they get close enough to read a label.

We request that this risk be identified under Question 13 of the RIR.

**Response:** Additions were made to Question 13 of the RIR to discuss the risks identified in this comment.

**Comment 6:** Question 14 in the RIR requires that options to the regulatory approach be identified. The Department indicates that options, where available, are listed in questions 7 and 8.

Regarding labeling of containers and tanks, the RIR fails to identify one option that was discussed at length in stakeholder meetings: increased enforcement and compliance with existing Federal and State regulations that require generators to familiarize first responders with their facilities and areas where hazardous waste are generated/contained. Discussions with first responders made it clear that generators are not complying with this requirement. If they were, extra Missouri-specific labeling requirements intended to protect first responders would not be needed.

We request that the RIR be amended to offer consideration of this option.

The RIR on page 10 indicates that “this approach would not achieve what the Department intends—to ensure that tanks or containers holding hazardous wastes are clearly labeled as such and display information about their specific contents.” This was not the intention that was discussed at Forum meetings. The intention was to protect first responders. First responders can be protected without adding new regulations. Rather generators need to comply with existing regulations.

**Response:** Question 14 was revised to include discussion about an increased effort to enforce existing requirements about providing information about hazardous wastes stored on site to emergency responders in lieu of establishing new requirements for signs or labels to provide this information during an incident.

**Comment 7:** In Questions 1, 8, and 9, the RIR refers to an EPA time limit of 24 hours (in guidance) that requires a facility, once it has received a shipment of hazardous waste, to move the railcar containing hazardous waste to a permitted storage area or to have the railcar shipped off-site. REGFORM is not aware of an EPA guidance document that imposes this limit. Rather, we believe the prescribed timeframe is 72 hours.

We request that the RIR be amended to communicate a citation for this guidance or, if the 24 hour limit is an error, correct the RIR with the accurate time limit and the citation supporting it. This change could improve the understanding of the regulatory impact that the RIR is designed to provide regulated entities and decision-makers who have the authority to promulgate rules.

**Response:** The 24 hour policy interpretation dates to a letter to the department from Region VII of the Environmental Protection Agency in 1989. In that letter, the EPA RCRA Branch Chief at the time states that “It is Region VII’s policy that the transfer of hazardous waste must occur within 24 hours of the time the waste arrives on site for the transport vehicle to be exempt from

the RCRA storage requirements. Missouri's railcar rule provides additional time to unload railcars for permitted facilities that have an approved railcar management plan. No changes were made to the RIR in response to this comment as the reference is to the EPA policy specified in the letter from Region VII staff.