



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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May 23, 2003

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James W. Hunt, Assistant Secretary  
Executive Office of Environmental Affairs  
251 Causeway Street, 9<sup>th</sup> Floor  
Boston, MA 02114

Dear Mr. Hunt:

As follow-up to your conversation with James Miller of my staff, the Department of Environmental Protection ("DEP") hereby requests a determination on whether the MEPA regulations at 301 CMR 11.00 require an Environmental Notification Form ("ENF") for DEP's proposed hazardous waste regulatory revisions. DEP's preliminary analysis indicates that the proposed changes do not meet the MEPA criteria described at 301 CMR 11.03(12)(b) that would trigger an ENF submittal.

DEP has drafted proposed amendments to the hazardous waste regulations at 310 CMR 30.000. This regulatory package, which revises approximately 200 pages of existing regulations, is the first phase of DEP's ongoing authorization initiative under the federal Resource Conservation and Recovery Act (RCRA). The scope of this proposal is limited to revisions to 310 CMR 30.000-30.399, which cover hazardous waste definitions, identification and listing, recycling and generator requirements. The remaining portions of the hazardous waste program (30.400-30.1000) will be addressed at a later date. Once promulgated, these rules will expand DEP's authority to implement the RCRA program in Massachusetts.

**This regulatory package will not significantly reduce standards for environmental protection - 301 CMR 11.03(12)(b)1.**

The primary purposes of this proposal are to streamline, to correct rules that the U.S. EPA ("EPA") believes are not directly analogous to those rules required by the federal program, to make 310 CMR 30.000 more consistent with analogous EPA requirements, and to improve the overall readability, organization and clarity of the state's hazardous waste regulations. An exhaustive multi-year, line-by-line analysis by DEP and EPA of the state rules as they relate to corresponding federal regulations has been conducted to ensure that DEP's goals have been achieved while maintaining the level of environmental protection required by EPA.

A majority of these proposed changes are insignificant. For example, most of the existing definitions in 310 CMR 30.010 are *equivalent* but not *identical* to analogous federal definitions at 40 CFR 260.10. Most of these State definitions are being amended slightly in order to make them identical to the federal definitions. Similarly, minor revisions are also being proposed for DEP's hazardous waste codes and characteristic regulations to make them identical, where practicable, to the corresponding federal rules.

This information is available in alternate format. Call April McCabe, ADA Coordinator at 1-617-556-1171. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>

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In addition to amendments that address rules EPA does not consider to be directly analogous, DEP is also proposing to update certain state-only rules, which no longer reflect current industry practices. Such changes were made based on significant input from interested parties such as the Hazardous Waste Advisory Committee and its Regulations Subcommittee in particular. Notable among these updates are revisions pertaining to the contingency plan requirements for large quantity generators (LQGs) of hazardous waste. These revisions clarify that more extensive contingency plan requirements only apply to commercial hazardous waste facilities (known as Treatment, Storage and Disposal Facilities), and that LQGs are only subject to a subset of those requirements, which are itemized in regulation for the first time.

DEP is also proposing to streamline its recycling program by replacing recycling permits with performance standards for all Class A materials recycled at the site of generation. Under this proposal, on-site Class A recyclers who do not have a current permit (as of the effective date of these regulations) would be required to file a one-time notification to the DEP. In addition, those who generate very small quantity generator (VSQG) amounts of Class A regulated recyclable material and send it offsite for recycling will be able to comply with performance standards in lieu of permits; similarly, only those without a current permit will be required to file a one-time notification to the DEP. Substituting performance standards and one-time notifications for permits will reduce Department and business resource requirements, while maintaining an appropriate level of environmental protection. Further resource savings will be achieved by eliminating annual reporting requirements for on-site Class A recyclers.

In March 2003, EPA approved this regulatory proposal and determined that it is no less stringent than standards required under RCRA. This approval followed an extensive, line-by-line review that stretched out over several years as part of EPA's ongoing review of the Massachusetts hazardous waste program. EPA's oversight and authorization review process ensures that the essential hazardous waste program standards are in place. In determining whether to grant a State "authorization," EPA applies a standard of review requiring the State program to be no less stringent than, or inconsistent with, the federal program. Massachusetts received "Base Program" authorization in 1985. DEP is now seeking authorization for subsequent revisions to the hazardous waste program.

The proposed regulatory package contains all of the basic and necessary hazardous waste program requirements, and in fact the Massachusetts program exceeds federal standards in both protectiveness and types of wastes regulated.

**Opportunities for public participation in permitting or other review processes will not be significantly reduced by the proposed revisions - 301 CMR 11.03(12)(b)2.**

The proposed regulations do not have any effect on public participation. The Massachusetts Hazardous Waste Management Act (M.G.L. c.21C) specifies that the hazardous waste program conduct six public hearings when amending its regulations. These hearings are held in all parts of the state and provide a forum for stakeholders to provide input and public comment. These hearings are widely advertised in state newspapers. Prior to the public hearings, DEP is required by Executive Order to offer state agencies and municipalities opportunity to comment on the draft rules. In addition, DEP worked closely with the regulated community and affected interested parties through the Hazardous Waste Advisory Committee on all significant changes proposed. The Committee was established by M.G.L. c. 21C with membership mandated to include the full spectrum of stakeholders in hazardous waste management issues. The Committee's 15 members are appointed by the Governor and represent a balance of interests from the business community, environmental and public health organizations, and municipal and regional officials. While this regulatory package proposes to eliminate the requirement for on-site recyclers to obtain a Class A permit, the amendments do not alter any public participation or review opportunities as there are currently no direct public participation provisions for Class A recycling permits.

**The proposed revisions will not significantly reduce public access to information generated or provided in accordance with the regulations - 301 CMR 11.03(12)(b)3.**

This regulatory package does not significantly reduce public information opportunities. Rather, replacing Class A recycling permits with performance standards will change the type of information that DEP keeps on file for such facilities. While DEP will no longer require and retain Class A permits or annual reports by on-site recyclers, regulated entities will still need to file a one-time notification. DEP believes that elimination of the permit and annual reporting requirement is more than offset by the environmental benefits that will come with the new performance standards, which clarify the requirements that apply to specific recycling activities.

For the above stated reasons, DEP requests that a determination be made that the hazardous waste revisions do not meet the review threshold category under 301 CMR 11.03(12) Regulations, for a project that is likely to cause damage to the environment. Should you have any questions regarding the proposed revisions or if you would like more detailed information, please contact Jim Miller at (617) 292-5574.

Sincerely,

A handwritten signature in black ink that reads "James C. Colman". The signature is written in a cursive style with a long horizontal flourish at the end.

James C. Colman  
Assistant Commissioner  
Bureau of Waste Prevention