

RESPONSE TO COMMENTS

PROPOSED HAZARDOUS WASTE MANAGEMENT REGULATIONS

The Agency of Natural Resources (Agency) proposed for public comment revised Hazardous Waste Management Regulations (VHWMR) on August 29, 2012 (Rule 12P045). The comment period was open through October 8, 2012, and a public hearing was held in Montpelier, Vermont, on October 1, 2012. This response to comments document identifies each comment received by the Agency regarding the proposed rule (*in italics*) and the Agency's response to each comment. The only public comments received were submitted by e-mail from IBM on October 3, 2012, and the Printing Industries of New England (PINE) on October 5, 2012; no oral comments were made at the public hearing in Montpelier.

In addition to the public comments received, the Region 1 Office of the Environmental Protection Agency (EPA) submitted comments prior to the public comment period, but after the draft proposed rule had been filed with and reviewed by the Interagency Committee on Administrative Rules. EPA submitted comments for the purpose of ensuring that, upon adoption, the revised VHWMR remain "at least as stringent" as the federal Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations – a requirement for EPA authorization of state hazardous waste programs.

Finally, in addition to the public and EPA comments, the Agency identified two necessary corrections.

Comment (1) was submitted by IBM: (a copy of the IBM e-mail comment is included as **Attachment 1**):

- 1) **Section 7-702(b)(10):** *"IBM would like to comment on the proposed Vermont Hazardous Waste Management Regulation (Rule No. 12P045), specifically with regards to §7-702(b)(10) which currently reads: For each manifested shipment of hazardous waste, assure that a completed copy of each manifest is sent to the Secretary within 90 days of the date of shipment."*

We feel that 150 days would be a more reasonable time period based on the following considerations:

- *A TSDf (a permitted hazardous waste treatment, storage, or disposal facility) has up to 35 days, or 60 days for a foreign consignee, to return a manifest copy to the generator before action must be taken.*
- *The (Waste) Management Interactive Database (WMID) will be used to ensure that TSDFs have sent manifest copies to the Agency. It is our understanding that this database is typically a month or so behind. Therefore, 45 days is included in the proposed time period to account for potential lags in the database. If the WMID has a*

greater time lag (i.e., due to a technical glitch), then additional flexibility in the time period may be warranted.

- *If a manifest is found to be missing from the database, additional time may be needed (approximately 45 days) for the generator to follow up with the TSDF and instruct them to send the paperwork, then verify that the missing copy was indeed received by the Agency.*

IBM ensures that waste is properly managed up to its final disposition by complying with all manifest tracking requirements and maintaining complete records. As a large quantity generator that manages a high volume of manifests, we feel that 150 days is a reasonable time period to ensure that the Agency's records are complete per §7-702(b)(10)."

Agency Response: VHWMR § 7-702(b)(10) has been amended in the final proposed rule to remove the new language included in the proposed rule specifying a 90-day time limit for generators to "assure" that copies of completed manifests are submitted to the Agency. While it is extremely important that the Agency receive copies of all completed manifests from Vermont generators for the purpose of assessing the hazardous waste generator tax, after further consideration of the factors that influence when generators can reasonably be expected to meet the "assure" standard, the Agency decided to eliminate the proposed hard and fast time limit. Moreover, since the Agency filed the proposed rule, President Obama signed the Hazardous Waste Electronic Manifest Establishment Act (S. 710) into law; this law requires, within the next three years, establishment of an electronic system for tracking hazardous waste shipments. This electronic system will completely change how manifest data is managed and likely render the existing 7-702(b)(10) requirement moot as the information currently provided to the Agency through the submittal of "completed" manifest copies will become available electronically.

Comment (2) was submitted by PINE: (a copy of the PINE e-mail comment is included as **Attachment 2**):

- 2) **Sections 7-104 and 7-708:** *"...PINE supports most of the amendments to the Hazardous Waste Management Regulations including the revision of "small quantity generator" emergency response standards, and the clarification of the used oil management standards. However, PINE respectfully disagrees with the proposed amendments to sections §7-104 Notification Requirements and §7-708 Annual and Biennial Reports.*

The proposed changes include amendments to §7-104 Notification Requirements that state the following:

§ 7-104 NOTIFICATION REQUIREMENTS

*(a) Except for persons who have been issued a temporary identification number pursuant to **subsection (d) of this section**, any person who generates or transports hazardous waste or who owns or operates a transfer facility or a facility for the treatment, storage, use, disposal, or recycling of hazardous waste shall notify the*

Secretary of such activity. In addition, persons managing waste under the provisions of either the used oil management standards of subchapter 8, or the universal waste management standards of subchapter 9, shall notify the Secretary of such activity as required under those subchapters. Notification shall be made by accurately and completely filling out the **Vermont Hazardous Waste Handler Site ID Form** (provided by the Secretary) in accordance with the form's instructions.

(b) Notification is required upon transfer of ownership of an entity that was required to notify the Secretary under **subsection (a) of this section**.

(c) Persons subject to the requirements of this section shall maintain an up-to-date **Vermont Hazardous Waste Handler Site ID Form** filed with the Secretary that accurately describes current waste activity and waste generation. A generator may notify the Secretary of a change in generator status by marking the appropriate status level on the **Hazardous Waste Generator Registration Fee Assessment** form that is sent generators each year pursuant to § 7-708(e).

(d) The Secretary may issue a temporary identification number to persons who have generated hazardous waste only from an episodic event.

And the proposed changes include changing the language of § 7-708 (e) that state the following:

(e) All generators of hazardous waste, shall register with the Secretary, renew the registration annually, and pay the hazardous waste generator registration fee specified in 3 V.S.A. § 2822. Initial registration shall be made by submitting a completed **Vermont Hazardous Waste Handler Site ID Form** (see § 7- 104(a)). Subsequent updates may be made by completing the form provided annually by the Secretary.

These proposed changes will subject not only large and small quantity generators of hazardous waste to notification and annual reporting and fee requirements, but also conditionally exempt small quantity generators. These requirements are much more stringent than USEPA's requirements for generators, and they impose an unacceptable administrative burden on small and very small businesses. There is no environmental benefit from these proposed changes, as they do not enhance environmental protection, but will increase the costs associated with compliance on a segment of manufacturing that is not in a position to absorb these costs. Since most printing operations are either conditionally exempt generators or small quantity generators, these changes will have a direct negative impact on their operations.

As many of the proposed changes to the Hazardous Waste Management Regulations were made to clarify the requirements and to align with Federal RCRA requirements, we recommend revising the proposed changes to make them consistent with the current USEPA requirements by eliminating the requirement for all generators to submit a Vermont Hazardous Waste Handler Site ID Form annually and pay the annual hazardous waste generator registration fee. This will eliminate an overly burdensome administrative

challenge for an industry comprised mainly of small businesses and will align with the Federal requirements.

To further align with Federal requirements, PINE recommends that the regulation be amended to remove § 7-708 (e) as it exceeds the reporting requirements for generators put forth by USEPA, and causes sources, which are already subject to reporting requirements, to meet additional administrative requirements that provide no protection to natural resources or benefit to communities.

Agency Response: Comment noted; no change resulting. Under the current and proposed VHWMR, all generators (i.e., conditionally exempt, small quantity, and large quantity generators) are subject to the VHWMR § 7-104(a) “notification” requirement which states: “Any person who generates or transports hazardous waste or who owns or operates a transfer facility or a facility for the treatment, storage, use, disposal, or recycling of hazardous waste shall notify the (Agency) Secretary of such activity.” Since notification typically results in the issuance of a “permanent EPA identification number” (see VHWMR § 7-304), the changes proposed in VHWMR §§ 7-104(a) and (d), as well as in § 7-304, clarify only that a “temporary identification number” may be issued in lieu of a permanent EPA identification number for “episodic” – or one-time – hazardous waste generation events, and that “episodic generators” are not subject to the notification requirement. The changes proposed in this section do not subject conditionally exempt, small or large quantity generators to any additional annual reporting requirements.

The changes proposed in VHWMR § 7-708(e) clarify that, pursuant to an amendment made to 3 V.S.A. § 2822 during the last legislative session, all generators, including conditionally exempt generators, are subject to the annual hazardous waste generator registration and registration fee requirements.

Comments (3 through 18) were submitted by EPA: (copies of the EPA e-mail comments are provided as **Attachments 3 through 6**):

- 3) **General:** *“The Region supports Vermont's efforts to improve its generator treatment in containers and tanks regulations, and also its plan to allow generator evaporator treatment under protective treatment in tank standards, rather than either exempting such units as wastewater treatment units, or requiring full RCRA permits for such units.”* (See **Attachment 3**)

Agency Response: Comment noted, no change resulting.

- 4) **Section 7-502(o)(4):** *“In order to meet federal requirements, subsection [7-502](o)(4) needs to be edited to specify that the subchapter 3 generator standards apply during treatment as well as to any storage prior to treatment. For example, this will ensure that any tanks used for treatment meet tank requirements such as secondary containment.”* (See **Attachment 3**)

Agency Response: VHWMR § 7-502(o)(4) has been amended in the final proposed rule to read as follows:

(4) ~~Prior to~~ During treatment, and during any storage prior to treatment, hazardous waste is:

(A) Counted for the purpose of determining generator status under § 7-305; and

(B) Managed in accordance with the applicable requirements of **subchapter 3**.

- 5) **Section 7-502(o)(8)(A):** *“As currently written, the proposed regulations appear to require that evaporator systems meet the RCRA AA, BB and CC rule requirements for all generators operating evaporators. While your regulations say AA, BB and CC rules apply “as applicable”, whether this means that they apply only to large quantity generators is not clear. At the federal level, these requirements apply only to large quantity generators. I suggest that Vermont consider amending proposed 7-502(o)(8)(A) to make clear that these requirements are only for large quantity generators - see my markup. Alternatively, if Vermont does want to be more stringent, I suggest making this intent more clear by specifying that these regulations in Vermont are applicable to all levels of generators.”* (See **Attachment 3**)

Agency Response: VHWMR § 7-502(o)(8)(A) has been amended in the final proposed rule to read as follows (*italics = new language*):

(8) If a generator is treating wastewater using a wastewater evaporation unit, the generator must:

(A) Ensure that treatment in the evaporation unit shall result in the concentration of hazardous waste constituents for proper recycling or disposal, and not allow evaporation of the hazardous waste constituents into the air. Air emissions of hazardous constituents shall be controlled through compliance with all applicable air emission control requirements under the Clean Air Act, U.S. Code, Title 42, c. 85 as administered by USEPA, the emission thresholds established under § 5-261 (control of hazardous air contaminants) of the Vermont Air Pollution Control Regulations and, for large quantity generators, with the air emission control requirements in 40 CFR part 265, subparts AA, BB and CC as applicable; and

- 6) **Section 7-502(o)(8):** *“ I recommend that the provision that the generator may not use an evaporator to dispose of waste be included in 7-502(o) as an affirmative requirement. Currently, it is instead included in the definition of “wastewater evaporation unit” in 7-103, which is not as effective. I suggest the provision be deleted from the definition if it is included instead as a requirement. Also note that by including the provision in the definition, you could create some confusion about whether an evaporator used to dispose of hazardous waste is still a “wastewater treatment unit” since you (otherwise correctly) say that ‘wastewater treatment unit’ does not include any units meeting the definition of a ‘wastewater evaporation unit.’”* (See **Attachment 3**)

Agency Response: Comment noted, no change resulting. As stated in the note included under § 7-502(o)(8) of the proposed rule, disposal of hazardous waste by evaporation is prohibited pursuant to VHWMR § 7-302(a).

- 7) **Section 7-502(o):** *“I also have some other editorial comments shown in the attached markup.”* (See **Attachments 3 and 4**)

Agency Response: VHWMR § 7-502(o) has been amended in the final proposed rule to incorporate most of the editorial changes suggested by EPA.

- 8) **Section 7-602(c):** *“This will confirm conversations I have had with you (Steve Simoes of the Vermont Hazardous Waste Program) and with your (Agency) attorney Matt Chapman. EPA is recommending that Vermont not include codified legitimacy criteria in your current update of your RCRA regulations, but rather plan to do this the next time you update your regulations. As you know, EPA has proposed to adopt codified legitimacy criteria as part of the proposed changes to the Definition of Solid Waste Rule. The draft State changes are based on the proposed EPA changes. However, EPA received extensive comments on its proposal, and it is possible that the final EPA rule will be different from the EPA proposed rule. The final EPA rule will not be issued until December, and thus the State will not have the benefit of being able to review the final EPA rule in time for this round of State rulemaking. If the State goes ahead now, it is possible that it will end up having regulations that are less stringent than any final federal regulations, in which case the State would need to change the regulations again.*

I also have raised some concerns about how the proposed legitimacy criteria will relate to the different approach that Vermont takes to what is 'discarded' material than the EPA does at the federal level, and whether any of the underlying Vermont regulations need to be clarified. I also note that the federal proposal involves adopting a definition of "contained" to ensure legitimate recycling, and that this was not included in the current draft State proposal. I suggest we have more extensive conversations in the future over these and other issues before Vermont proceeds to adopt codified legitimacy criteria.” (See **Attachment 5**)

Agency Response: The legitimacy criteria included as § 7-602(c) of the proposed rule were not included in the final proposed rule.

- 9) **Subchapter 1:** *“I suggest changing the incorporation by reference of the EPA regulations in 7-109(a) to July 1, 2012, to make this fully current.”* (See **Attachment 6**)

Agency Response: Comment noted, no change resulting. The Agency chose to not change the proposed incorporation by reference date for the Code of Federal Regulations (CFR) because the Agency has not had an opportunity to review (and are not currently adopting) any federal RCRA Subtitle C program revisions made after July 1, 2011. In addition, at the beginning of the rulemaking process (i.e., when the proposed rule was filed with the Vermont Secretary of State’s office in late August 2012), only the CFR revised as of July 1, 2011, was available for submittal to the Vermont Secretary of State’s office, and public review during the comment period.

- 10) **Section 7-109(b)(4):** *“In 7-109(b)(4), the State is proposing more stringent requirements for inspections of academic labs. The inspections must be in accordance with the Laboratory Management Plan. I suggest that the State consider specifying that the Plan*

also must specify the frequency of inspections and/or specifying that there must be at least annual inspections.” (See **Attachment 6**)

Agency Response: VHWMR § 7-109(b)(4) has been amended in the final proposed rule to read as follows (italics = new language):

(4) The Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities of 40 CFR §§ 262.200 through 262.216 (Subpart K) except:

* * * * *

(C) The Laboratory Management Plan must, in addition to the elements required by 40 CFR § 262.214(a), include procedures for:

(i) Inspecting at a specified frequency all laboratories covered by the requirements of the Laboratory Management Plan to assess conformance with the requirements of the Laboratory Management Plan;

- 11) **Section 7-202(d):** *“In 7-202(d), I suggest deleting the word “any” to make clearer the State’s intent that there must be written records created showing the basis for any hazardous waste determination.”* (See **Attachment 6**)

Agency Response: VHWMR § 7-202(d) of the final proposed rule has been revised as suggested.

- 12) **Section 7-204(h):** *“I am concurring that including intact shredded circuit boards being recycled under the State’s conditional exclusion in 7-204(h) is functionally equivalent to the federal shredded circuit boards and/or scrap metal exemptions.”* (See **Attachment 6**)

Agency Response: Comment noted, no change resulting.

- 13) **Section 7-217(c):** *“I suggest simply referring to determinations by the “EPA” rather than either the “EPA Administrator” or “EPA Regional Administrator” since that will cover any future situations whether EPA delisting determinations are made at the regional level (as currently) or the national level.”* (See **Attachment 6**)

Agency Response: Comment noted, no change resulting. Since the term “Administrator” is defined in 40 CFR § 260.10 (incorporated by reference under VHWMR § 7-103) to mean the Administrator of the Environmental Protection Agency, or his designee”, and the federal regulations which correspond to VHWMR § 7-217(c) use the term “Administrator,” the Agency does not believe the suggested change is necessary.

- 14) **Sections 7-307 and 7-308:** *“I am concurring that requiring (in 7-307 and 7-308)) the posting of emergency information in the immediate vicinity of short-term storage areas is functionally equivalent to the (possibly outdated) federal requirement that the information be posted next to a land-line telephone. Also, substituting references to cellular phones for the federal references to land-lines is fine.”* (See **Attachment 6**)

Agency Response: Comment noted, no change resulting.

- 15) **Sections 7-502(k) and (o), and Section 7-912(b) and (d):** *“In my markup attached to my 8/16 email, I suggested clarifying the language in 7-502(o) regarding drum top crushing being considered a treatment rather than a recycling activity. Please note that there are other places in the Subchapter 5 regulations, and one place in the Subchapter 9 regulations, where I suggest you make the same changes.”* (See **Attachment 6**)

Agency Response: The note included under VHWMR §§ 7-502(k) and (o), and 7-912(b) and (d) of the final proposed rule has been amended to read as follows:

Note: Owners or operators of facilities that treat mercury-containing lamps using drum-top crushing equipment are subject to certification under the requirements of this subchapter. Drum-top crushing of mercury-containing lamps is considered a treatment activity rather than a recycling activity.

- 16) **Section 7-504(g):** *“In 7-504(g), you need to add a provision equivalent to 40 C.F.R. 270.50(d), or to incorporate that provision by reference, in order to be as stringent as the federal regulations. The federal regulations allow 10 year permits, but only if there are 5 year reviews of land disposal facility permits. While there currently are no land disposal facilities in Vermont, fully tracking federal requirements even with respect to future potential situations is generally the best approach.”* (See **Attachment 6**)

Agency Response: VHWMR § 7-504(g) of the final proposed rule has been amended to read as follows:

- (g) Certification shall be for a period not to exceed ten (10) five (5)-years. Each certification for a land disposal facility shall be reviewed by the Secretary five years after the date of certification issuance or reissuance and shall be modified, if necessary, as provided in § 7-507.

- 17) **Section 7-608(a):** *“In 7-608, I suggest keeping the material proposed to be deleted by you on the assumption that it was going to be covered by the codified legitimacy criteria, since I understand you are accepting my recommendation to defer adopting codified legitimacy criteria.”* (See **Attachment 6**)

Agency Response: Since the recycling legitimacy criteria included as § 7-602(c) of the proposed rule were not included in the final proposed rule (See Comment 8), VHWMR § 7-608(a) of the final proposed rule has been revised as suggested.

- 18) **Section 7-608(c):** *“In 7-608(c), I agree that using the term “person” would be more comprehensive than saying “generator or facility.”* (See **Attachment 6**)

Agency Response: Comment noted, no change resulting.

Comments (19 and 20) from within the Agency of Natural Resources:

- 19) **“Note” following section 7-211 VT02 listing:** *For consistency with revisions proposed in the VHWMR § 7-203(p) exemption for petroleum contaminated soil, revise the note under the VT02 listing to specify “soil” instead of “media and debris.”*

Agency Response: The note following the VHWMR § 7-211 VT02 listing has been amended in the final proposed rule to read as follows:

Note: Exemptions are provided for: used oil under § 7-203(n); oil filters under § 7-203(o); and petroleum contaminated ~~media and debris soil~~ under § 7-203(p).

- 20) **Sections 7-804(g) and 7-812(c)(3):** *To correct errors in the proposed VHWMR § 7-804(g) exemption and corresponding language in VHWMR § 7-812(c)(3).*

Agency Response: VHWMR § 7-804(g) has been revised in the final proposed rule to read as follows:

(g) Used oil that is to be burned for energy recovery (i.e., “used oil fuel”) in small fuel burning equipment provided:

- (1) The requirements of § 7-812(a) are met, and the used oil has been shown to meet the **Table 1** specifications in accordance with §§ 7-812(c)(1) through (3);
- (2) The person making that showing complies with any applicable marketer requirements of § 7-809; and
- (3) The used oil is managed in accordance with the general used oil management standards of § 7-806.

Also, the note following the definitions of “specification used oil” and “used oil fuel” in § 7-802 of the proposed rule were not included in the final proposed rule, and VHWMR § 7-812(c)(3) has been revised in the final proposed rule to read as follows:

- (3) As specified in § 7-804(g), ~~One-time~~ used oil fuel that meets the requirements of § 7-812(a) is to be burned for energy recovery has been shown to meet the **Table 1** specifications in accordance with the applicable requirements of subsections (1) through (3) of this section, and the person making that showing complies with the applicable marketer requirements of § 7-809, the used oil (i.e., used oil fuel) is only subject to the general used oil management standards of § 7-806.