

## Notes

### NEWMOA Hazardous Waste Conference Calls February 26, 2019

#### Topic: Hazardous Waste Recycling Regulations

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**Participants:** CT DEEP (7 people); Mass DEP (3 people); NH DES (9 people); NJ DEP (2 people); NYS DEC (20 people); RI DEM (1 person); VT DEC (4 people); NEWMOA (2 people); EPA Region 1 (4 people); EPA HQs (4 people)

Call leader: Steve Simoes, VT DEC

Notes prepared by Terri Goldberg & CT DEEP

VT DEC proposed the following questions for the call:

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?
2. How are your state's HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)
3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)
4. Does your state plan to adopt either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

#### Connecticut

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?

CT incorporates most of the federal hazardous waste recycling provisions by reference, although in many cases with more stringent or broader-in-scope changes. Most notably:

- 40 CFR 261.1 definitions of terms: CT mostly incorporates these as-is, although they changed the definition of “speculative accumulation” to eliminate 75% turnover provision and require that all materials be recycled within one year.
- 40 CFR 261.2 and Table 1 (status of secondary materials that are recycled): CT incorporates this section as-is, although they add an “\*” for CCPs being speculatively accumulated. CT also requires secondary materials that are exempt from the definition of solid waste under this section to be marked so as to identify the contents and dates (to allow monitoring of compliance with CT’s speculative accumulation requirement).
- 40 CFR 261.4: CT incorporates most of these provisions without change. However, they do not pick up §261.4(a)(16) and 261.38 re comparable fuels/syngas. Also, they are intending to remove §§261.4(a)(17), 261.4(b)(5), and 261.4(b)(7) re Bevill exclusions in their current reg update. Also CT has not yet adopted §261.4(a)(20) and (21) re zinc fertilizers (looking at it for current reg update), §261.4(a)(22) re CRTs (probably adopt in next reg update), or §§261.4(a)(23) through (25) re DSW (and may never adopt DSW – see more on this below in the answer to question 4).
- 40 CFR 261.6: CT adopts this section pretty much as-is, except that they do not allow ignitable or reactive scrap metals to be managed under the scrap metal exemption (they are fully-regulated). However, see below re the stand-alone state section 101(c), which imposes additional requirements on facilities that operate under the provisions of 40 CFR 261.6(b) and (c).
- 40 CFR 266: CT incorporates most of the recycling provisions in this section by reference, although they have more stringent/broader-in-scope requirements for precious metal recyclables and lead-acid batteries.
  - Precious metal recyclables: (1) require marking of containers and tanks and with the accumulation date; and, (2) registration requirement for anyone that recycles precious metal recyclables.
  - Lead-acid batteries: (1) during storage, must not be opened, handled or stored in a manner which may rupture the battery case, cause it to leak, or produce short circuits; (2) must keep them separate from incompatible materials; (3) must be stored on an impervious surface and inspected weekly for leaks; (4) registration required for anyone storing more than 20,000 kg of batteries.
- 40 CFR 279 (used oil): CT incorporates most of Part 279 by reference, although they have numerous more stringent or broader-in-scope provisions. Most notably:
  - Prohibit the mixing of used oil and hazardous waste unless it is for legitimate recycling purposes (e.g., fuel blending).

- Definition of “used oil” includes discarded oils that have not been used.
- Prohibit the use of used oil for dust suppression in CT.
- Used oil collection centers and processors/re-refiners are required to have state permits.
- Specify test methods for total halogen and used oil fuel specification testing.
- Any use of “knowledge of process” in halogen determinations must be documented.
- Actual analytical testing (not “knowledge of process”) required for fuel specification testing.
- Codified the EPA “100 ppm” policy for the rebuttable presumption (EPA approved this in CT’s authorization).
- Used oil fuels must have a minimum heating value of 5,000 BTU/lb.
- Used oil generators and facilities must provide storage areas > 55 gallons with an impervious surface and (if outdoors) secondary containment. Also defined what “impervious” means.
- Vehicle-to-vehicle transfers of used oil by transporters and transfer facilities must be done within secondary containment.
- Transfer facilities are limited to 10-day storage of used oil (not 35).
- Used oil processors/re-refiners subject to closure timeframes.

CT also has a separate section of their regulations entitled “Recyclable Materials” (§ 101(c) of CT’s regulations). This section:

- Requires generators and facilities that engage in recycling of hazardous waste without a permit under 40 CFR 261.6(b) and (c) to register with DEEP.
- Requires LQGs and recycling facilities to submit a biennial report, which includes the recycled wastes.
- Also provides DEEP with the ability to impose additional requirements, up to and including a permit, on a case-by-case basis. Includes administrative procedures for such requirements, including opportunity for hearing. Decisions are subject to State appeal process.

- These provisions do not apply to recycling equipment which is “an integral part of an industrial production process,” WWTUs, or CESQGs.
2. How are your state’s HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

As noted above, most are incorporated by reference – although some with MS or BIS provisions. There is one “stand-alone” section that DEEP felt did not fit within the federal framework, so they carved out a section in the regs for it (see above re state section 101(c)).

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities (i.e., either on-site or off-site recycling)?

Yes, for at least some recycling facilities. See above re registration and case-by-case permitting of recycling facilities, and also permitting of used oil facilities. Under separate state statute (CGS Section 22a-454), CT can require a state permit for anyone engaged in the business of treating oil or chemical liquids or hazardous wastes, including recycling facilities.

4. Does your state plan to adopt either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

Not as part of CT’s current reg update effort, which will bring them current with most of the rules issued by EPA through 7/1/2008. CT may never adopt the DSW rule, because they have concerns that it may deregulate recycling too much. Although the DSW Rule provides major incentives for recycling it does not recognize many of the realities of recycling, such as the ramifications of negative material values, the likelihood of stockpiling and speculative accumulation, and because it does not recognize that the risks presented by recyclable materials is not less simply because they are recycled.

### **Massachusetts**

1. What is your state’s approach to HW recycling? Is your approach different from the federal approach? If so, how?
2. How are your state’s HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

MassDEP is different from most states in the region in that they have a hazardous waste recycling program that does not mirror the federal regulations but instead has its own section in the State’s Hazardous Waste Regulations at 310 CMR 30.200 in 310 CMR 30.000. DEP views any materials that if they were to be disposed of (or stored or treated) and would be considered to be hazardous, but instead are recycled, to be subject to the recycling regulations and needing a notification or permit application.

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)

Yes. There are three classes of Regulated Recyclable Materials, Class A, B and C, and depending on the material and whether it is recycled on site, sent offsite to a recycler or received from offsite for recycling, there are different notifications, permits and level of permits, I, II and III. The permits also have different numbers, HW21, HW12, HW25, etc.

Common scenarios for Class A On-Site Recycling Notification are for burning waste oil in a space heater and recycling solvent in a still.

A scenario for a presumptive approval Class A Level 1 permit would be for shipping ethyl alcohol offsite for reclamation.

A scenario for a Class A Level III permit would be an asphalt batch plant accepting petroleum contaminated soil.

Class B permits are for hazardous waste with economically recoverable precious metals, waste fuel oil marketed to and/or burned in furnaces and hazardous waste fuels. The permits are not very common; there are two for burning and marketing spec used oil fuel. DEP is changing the regulations to allow for spent silver recovery cartridges to be handled as Class A RRM.

Class C permits are for materials that do not fall into one of the other categories. These permits are like TSDF permits in scope. Two have been issued to fluorescent lamp recyclers.

Beginning on page 120 of the following link to the pdf of the regulations, Table 1 includes the various Class A RRM notification/permitting scenarios -

[https://www.mass.gov/files/documents/2016/08/xl/310cmr30\\_7883\\_54357.pdf](https://www.mass.gov/files/documents/2016/08/xl/310cmr30_7883_54357.pdf)

Please see the following links to the instructions of the actual notifications/permit applications for those materials needing recycling approval:

On-Site Class A Recycling Notification Form

<https://www.mass.gov/files/documents/2016/08/ux/oscarpkg.pdf>

Class A Recycling Permit (Presumptive Approval – meaning the permit is automatically approved in 21 days unless MassDEP requests more information or denies it within the 21-day period)

<https://www.mass.gov/files/documents/2018/06/13/hw21ins.pdf>

The other permits requiring public notice can be found in these instructions:

<https://www.mass.gov/files/documents/2016/08/mo/hw12-25.pdf>

All recyclers may not speculatively accumulate the RRM. They must and have records to show that they recycle 75% of the RRM they generate.

4. Does your state plan to adopted either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

MassDEP has revisions to 310 CMR 30.000 out for public comment currently but they do not include the DSW rule. MassDEP does not have plans to adopt these rules in the future either. The current revisions include changing the annual reporting requirement to retaining the reports on site, adopting the CRT rule, but adding containers for the CRTs, adopting the solvent-contaminated wipes rule, and eliminating the use of drum-top of crushers by VSQGs, among other items.

### **New Hampshire**

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?

Recycling Rules in Env-Hw 800. Env-Hw 803.01 similar to 40 CFR 2161.2(c)-(e)

2. How are your state's HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

In one chapter: Env-Hw 800

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)

No, Env-Hw 802.02. A recycling process shall not be subject to regulation under the hazardous waste rules.

4. Does your state plan to adopt either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

No.

### **New Jersey**

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?

NJ incorporates the federal HW and UW rules by reference prospectively. NJ has adopted the federal rules for HSM and has TSDFs which accept hazardous secondary materials (HSM) from NJ and other states which have adopted the rules. Routine inspections at TSDFs ensure that only facilities which have properly notified ship HSM. NJ follows the federal rules for UW with a few changes, including the addition of consumer electronics and oil-based finishes as UW.

2. How are your state's HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

The rules for HW are all in one place at NJAC 7:26G, which mainly just incorporate by reference the federal rules with small changes and codify DEP's HW penalties. The rules for both solid waste recycling, used oil and UW are all at NJAC 7:26A, which again incorporate by reference the federal rules with the addition of consumer electronics and oil-based paints.

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)

Any facility conducting UW or used oil recycling activities are required to obtain a NJ Class D Recycling Center Approval unless they already have a TSDF permit. A facility managing HSM under the DSW rule that does not have a TSDF permit would be required to get a Class D Approval (but DEP doesn't currently have any of these type facilities) and LQH processing UW also requires a Class D Approval.

4. Does your state plan to adopt either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

NJ has adopted the 2015 final DSW rules by reference and will likely adopt the entire 2018 final DSW rules by reference as well.

### **New York**

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?

New York's approach is similar to EPA's but DEC's regulations are current through approximately 2005. DEC's current rulemaking package will adopt many federal changes through April 2012 but does not include the DSW rule. (DEC is waiting for approval to propose a current rulemaking package. After they propose it, there will be a public comment period, regulations will be revised and then published final.) DEC allows use of the CRT Rule exclusion through an enforcement discretion policy.

DEC requires that any party claiming exemption or exclusion must notify them in writing and describe how they will meet the exemption or exclusion (including use/reuse). Recently, DEC has been asking people who are claiming the recycling exemption to use EPA's July 28, 2015 "Documentation of Legitimate Recycling Template" -

[https://www.epa.gov/sites/production/files/2015-07/legitimacy\\_determination\\_template\\_7\\_28\\_15.doc](https://www.epa.gov/sites/production/files/2015-07/legitimacy_determination_template_7_28_15.doc). If the material is being sent to an off-site facility, they must also include the company name and address for the destination facility. DEC reviews these notifications and evaluates whether the handler can legitimately claim the exemption or exclusion. If more information is needed, they communicate with the handler on this.

2. How are your state's HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

DEC's regulations are organized similar to EPA's. EPA Region 2 looks closely at both equivalency and conformity, so DEC has historically followed EPA's organization, though their numbering is different (e.g., 40 CFR 260 is 6 NYCRR Part 370). (A general crosswalk is at <https://www.dec.ny.gov/chemical/100401.html>.) The next rulemaking, which they anticipate will cover EPA changes from 2013 to around late 2019 or early 2020, will have a significant reorganization because of the Generator Improvements Rule. (DEC's current rulemaking covers Federal changes through April 2012.) Their regulations are more stringent than EPA's.

6 NYCRR Part 371 is the counterpart to 40 CFR 261. The TSDF permit exemptions are at 6 NYCRR 373-1.1(d)(1). The exemption for recycling (with no prior storage) is at 6 NYCRR 373-1.1(d)(1)(viii). An analogous exemption is in the universal waste destination facility regulations, at 6 NYCRR 374-3.5(a)(2).

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)

Legitimate recycling is exempt from permitting, but storage prior to recycling is not. DEC doesn't define staging but are looking into VT's approach. Off-site facilities that don't require a hazardous waste permit (because of no prior storage) will usually need a state Solid Waste Facility Permit or registration.

Generators who recycle on-site must count accumulation towards generator category determination and if there's prior storage must meet applicable generator storage requirements. DEC's counting rules are similar to EPA's.

4. Does your state plan to adopted either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

DEC is evaluating the rule but expects to adopt regulations more like the 2015 rule. There are state statutory issues that must be explored.

### **Rhode Island**

The following table (which was provided after the call) contains a brief summary of the main differences between the Federal Regulations for hazardous waste recycling and Rhode Island's Hazardous Waste Regulations. In general, Rhode Island's regulations incorporate by reference 40 CFR Part 261, 266 and 273 with the following additions/revisions. Rhode Island's regulations do not adopt 40 CFR 279, rather the state regulations have a stand-alone rule for used oil recycling/management found in Title 250 RICR Chapter 140 Subchapter 10 Part 1.16.1. In 2018 Rhode Island's Secretary of State re-codified all state regulations changing the citations to one uniform format entitled the *Rhode Island Code of Regulations* (RICR). Rhode Island's Used Oil recycling rule contains all of the requirements found in 40 CFR 279 except as noted in the table below.

<b><u>Item</u></b>	<b><u>Federal Citation</u></b>	<b><u>RI HW Regulation</u></b>	<b><u>Description</u></b>
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1.	261.2(a)(2)(ii)	Part 1.4.C.16	RI has not adopted the DSW Rule.
2.	261.4(a)(14)	Part 1.4.C.19	RI requires handlers to notify RIDEM of circuit board recycling activities.
3.	261.4(a)(23)-(25)	Part 1.4.C.16	RI has not adopted the DSW Rule.
4.	261.4(a)(26)	Part 1.4.C.21	RI adopted the conditional exclusion for solvent contaminated wipes but does not allow alternative test methods and requires wipes to be laundered at a permitted facility in RI or in another state that has adopted this Rule.
5.	261.4(b)(18)	Part 1.4.C.22	RI has not adopted the conditional exclusion for solvent contaminated wipes that are disposed.
6.	261.4(a)(22), 261.39, 261.40, 261.41	Part 1.4.C.27	RI as not adopted the CRT exclusion.
7.	261.9	Part 1.4.C.28	RI's regulations add a category for Used Electronics and for Silver Photo Fixing Solution to the UW Rule.
8.	261 Subpart H	Part 1.4.C.30	RI has not adopted the DSW Rule.
9.	261.6(a)(4)	Part 1.16	RI has promulgated its own used oil recycling Rule.
10.	261.6(a)(5)		RI is not authorized to enforce 262 Subpart H.
11.	261.9 & 273	Parts 1.5.A.82.a(5) & 1.14	RI has adopted sections of 273 and added additional wastes as noted above. RI's regulations also include a state code for "mercury containing wastes" (R009) which do not meet the federal definition of hazardous waste (D009). The state code applies to discarded "mercury-added products" and there is no concentration threshold for this listing. Such material may be managed as UW or HW.
12.	266 Subpart H	Part 1.4.G	RI adopted all of 40 CFR Part 266 except for Subpart H.
13.	279.10(b)(ii)	Part 1.16.1.A.2.a	Rhode Island's regulation expands the rebuttable presumption to include a requirement to provide analytical data demonstrating the concentration of certain

			halogenated hazardous waste constituents (F001, F002) is below 100ppm.
14.	279.10(b)(3)	Part 1.16	RI regulations do not allow VSQG to mix HW with used oil and then manage the mixture as used oil.
15.	279.10(g)	Part 1.16	RI regulations do not contain this provision which addresses the addition of used oil to crude oil pipelines.
16.		Part 1.16.1.A.5	RI regulations include a provision which allows used oil generators to cold drain used oil filters provided the filter is mechanically processed (crushed) and all captured used oil is managed in accordance with Part 1.16.
17.	279.10(i)	Part 1.16.1.a.11	RI regulates used oil containing PCBs at concentrations of 50ppm and greater as HW.
18.	297.12	Part 1.16.2	RI regulations prohibit the following additional activities: use of used oil for dust suppression, burning used oil for firefighting activities, burning off-spec used oil (except by generators onsite in <500k BTU equipment) and disposal of used oil to the land or waters of the State.
19.	279.22	Part 1.16.4.A.1	RI regulations require UO Generators storing >1,320 gallons of UO in containers to: prepare a contingency plan, ship UO in excess of the 1,320-gallon limit offsite within 180 days of accumulation and to mark the excess containers with an accumulation start date. UO Generators must also keep containers closed except when adding or removing UO. If a UO generator stores UO outdoors in containers, it must place the containers on an impervious surface under a roofed structure.
20.	279.22	Part 1.16.4.A.3	RI regulations require UO Generators that store UO in USTs to comply with RI's UST Regulations.
21.	279.22(d)	Part 1.16.4.A.4	RI regulations require UO Generators to notify RIDEM of a release and comply with RI's Oil Pollution Control Regulations relating to cleanup activities.
22.	279.24	Part 1.16.4.A.7.c	RI regulations require UO Generators to track offsite shipments of used oil to Burners

			and/or Processors and maintain records for three years.
23.	279.31	Part 1.16.6	RI regulations require UO Collection Centers to notify RIDEM and obtain an EPA Id Number
24.	279.40	Part 1.16.7	RI regulations require transporters to obtain a permit, maintain liability insurance with coverage of \$1,000,000 per incident and to immediately address spills and releases and notify RIDEM of the same.
25.	279.45	Part 1.16.7.H	RI regulations require owner/operators of UO Temporary Storage Facilities to obtain a Letter of Authorization from RIDEM, pay a \$6,000 initial fee, maintain liability coverage of \$1,000,000 per incident, prepare a closure plan w/cost estimate and financial assurance mechanism, prepare a waste analysis plan and for exterior storage of UO prevent the accumulation of precipitation in the storage area or obtain a stormwater permit from RIDEM.
26.	279.50	Part 1.16.8	RI regulations require UO Processor/Re-Refiners to obtain a permit, pay a \$10,000 fee w/\$5,000 renewal fees, maintain liability insurance of \$1,000,000 per incident, prepare a closure plan w/cost estimate and financial assurance mechanism, prepare a waste analysis plan and for exterior storage of UO prevent the accumulation of precipitation in the storage area or obtain a stormwater permit from RIDEM.
27.	279.60	Parts 1.16.2 & 1.16.3	Prohibit the burning of off-specification UO, except at a generator's facility as noted above. RI regulations also require Used Oil Burners that use burning equipment with a capacity of >500k BTU and < 1,000,000 BTUs to notify RIDEM's Office of Air Resources. The regulations require UO Burners using equipment with a capacity of >1,000,000 to obtain a permit from the Office of Air Resources.

## **Vermont:**

1. What is your state's approach to HW recycling? Is your approach different from the federal approach? If so, how?

Vermont has a different approach to HW recycling from that of RCRA Subtitle C. Under the Vermont HW Management Regulations (VHWMR), all "waste" (defined) is subject to HW determination. VT's HW determination process is similar to the federal approach, and the first step in that process is to determine if the waste is exempt (Vermont does not distinguish between "exemptions" and "exclusions"). The VHWMR include two categories of exemptions: "Conditional Exemptions" (Section 7-203) and "Recycling Exemptions" (7-204). In addition to waste-specific exemptions (e.g., antifreeze, scrap metal, circuit boards), the recycling exemptions include a general exemption that requires that general recycling conditions be met (soon to be revised to reference the VHWMR Subchapter 6 HW recycling provisions). The VHWMR do not include a process by which one first determines if a waste is "solid waste" before determining if it is HW.

Vermont also considers reclamation activities to be treatment (e.g., treatment) and requires generators treating on-site to meet the conditional requirements of the VHWMR 7-502(o) "generator treatment in containers/tanks" permitting exemption.

2. How are your state's HW recycling regulations organized within your state HW regulations (e.g., Consolidated in one place? Peppered throughout - like VT?)

As suggested above, Vermont's recycling requirements are dispersed throughout the VHWMR. Definitions are included in Subchapter 1 (7-103), recycling exemptions are included in Subchapter 2 (7-204), the "generator treatment in containers/tanks" permitting exemption is in Subchapter 5 (7-502(o)), and general HW recycling requirements are included in Subchapter 6.

3. Does your state require that a facility obtain a permit (or some other form of state approval) for recycling activities? (i.e., either on-site or off-site recycling)

While approval is not currently required, Vermont is planning to propose a revision to the "generator treatment in containers/tanks" exemption to require written approval by the Secretary.

4. Does your state plan to adopt either the 2015 or 2018 final DSW rules? If so, do you plan to adopt the entire rule or just the mandatory parts?

Vermont is evaluating the 2018 rule to determine which requirements to adopt. Vermont does plan to adopt the legitimacy criteria.