→ Amend. 12, Draft 6
Public Comments
File, Draft 6

US ecology

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October 24, 2019

Via email
(blayerr@michigan.gov)

Ms. Ronda L. Blayer
Materials Management Division (MMD)
Michigan Department of Environment, Great Lakes, and Energy
PO Box 30241
Lansing, MI 48909-7741

RE: Proposed Revisions to the Hazardous Waste Program Administrative Rules (Part 111)
ORR 2018-012EQ

Dear Ms. Blayer,

Thank you for the opportunity to submit our comments on the proposed amendments to the Part 111 rules. Attached to this email you will find an electronic copy of the draft rules provided by EGLE with US Ecology's comments. We thought this would be a more efficient means of communicating our comments than a narrative in letter form that you would have to interpret and overlay on the specific sections referenced.

Thank you for your time in considering our comments. You may contact me directly via telephone at (313) 995-1134 or by email at phil.tannian@usecology.com if you would like to discuss our comments further.

Respectfully,

Philip J. Tannian

(h) "Act 300" means **the Michigan vehicle code,** 1949 PA 300, MCL 257.1 to 257.923~~, and known as the Michigan vehicle code~~.

(i) "Act 306" means **the administrative procedures act of 1969,** 1969 PA 306, MCL 24.201 to 24.328~~, and known as the administrative procedures act of 1969~~.

(j) "Act 368" means **the public health code,** 1978 PA 368, MCL 333.1101 to 333.25211~~, and known as the public health code~~.

(k) "Act 399" means **the safe drinking water act,** 1976 PA 399, MCL 325.1001 to 325.1023~~, and known as the safe drinking water act~~.

(l) "Active life" means the period from the initial receipt of hazardous waste at a facility until the director receives certification of final closure.

(m) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being, or have been, conducted after November 19, 1980, and ~~which~~ **that** is not a closed portion. (See also "closed portion" and "inactive portion")

(n) "Active range" means a military range that is currently in service and being regularly used for range activities.

(o) "Acute hazardous waste" means hazardous waste that meets the listing critiera in R 299.9209(1) and is either listed in table 203a of the rules with the assigned hazard code of (H) or is listed in table 205a of the rules.

(~~o~~p) "Administrator" means the administrator of the EPA or the administrator's designee.

(q) "Aerosol can" means an intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(r) "Aerosol can processing" means the puncturing, draining, or crushing of aerosol cans.

(s) "AES filing compliance date" means the date that the EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of CRTs for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System, ITDS, platform.

Commented [PT1]: Defined but not used in the rules addressing export.

(~~p~~t) "Agent," when used in conjunction with the term United States importer, means an employee of the United States importer or a legally recognized representative of the United States importer who has been authorized in a lawfully executed written document, such as a power of attorney, to act on the United States importer's behalf.

(~~q~~u) "Agreement state" means a state that has entered into an agreement with the NRC under ~~sub~~section 274(b) of the atomic energy act of 1954, **42 USC 2021,** as amended, to assume responsibility for regulating within its borders byproduct, source, or special nuclear material in quantities not sufficient to form a critical mass.

(~~r~~v) "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

(~~s~~w) "Ancillary equipment" means any device, including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

(~~t~~x) "Antifreeze" means a mixture containing ethylene glycol or propylene glycol for use as a heat transfer or dehydration fluid for the purposes of regulation as a universal waste under R 299.9228.

(~~u~~y) "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of groundwater to wells or springs.

(~~v~~z) "Associated organic chemical manufacturing facility" means a facility that meets all of the following requirements:

(i) The primary SIC code at the facility is 2869 but operations may also include SIC codes 2821, 2822, and 2865.

(ii) The facility is physically co-located with a petroleum refinery.

(iii) The petroleum refinery to which the oil that is being recycled is returned also provides hydrocarbon feedstocks to the facility.

(~~w~~aa) "ASTM" means the ASTM International.

(~~x~~bb) "Authorized representative" means the person who is responsible for the overall operation of a facility or an operational unit, such as the plant manager, superintendent, or person who has equivalent responsibilities.

(~~y~~cc) "Battery" means a device ~~which~~ **that** consists of 1 or more electrically connected electrochemical cells and ~~which~~ **that** is designed to receive, store, and deliver electric energy. An electrochemical cell is a system that consists of an anode, a cathode, an electrolyte, and any ~~such~~ connections that are needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(~~z~~dd) "Boiler" means an enclosed device ~~which~~ **that** uses controlled flame combustion and ~~which~~ **that** is either determined by the director to be a boiler based on the standards and procedures in 40 C.F.R. §§260.32 and 260.33, which are adopted by reference in R 299.11003, or ~~which~~ **that** ~~i~~**has** ~~following~~ **all** of the following characteristics:

(i) The unit ~~shall have~~ **has** physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(ii) The unit's combustion chamber and primary energy recovery section or sections ~~shall be~~ **are** of an integral design. To be of an integral design, the combustion chamber and the primary energy recovery section or sections, such as waterfalls and superheats, ~~shall~~ **must** be physically formed into 1 manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section or sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of an integral design:

(A) Process heaters or units that transfer energy directly to a process stream.

(B) Fluidized bed combustion units.

(iii) While in operation, the unit ~~shall~~ maintains a thermal energy recovery efficiency of not less than 60% calculated in terms of the recovered energy compared with the thermal value of the fuel.

(iv) The unit ~~shall~~ exports and utilizes not less than 75% of the recovered energy calculated on an annual basis. In this calculation, credit ~~shall~~ **must** not be given for recovered heat that is used internally in the same unit, such as for the preheating of fuel or combustion air and for the driving of induced or forced draft fans or feedwater pumps.

(~~a~~aee) "Burner" means an owner or operator of a facility that burns either used oil fuel or hazardous waste fuel.

(~~b~~bff) "By-product" means a material ~~which~~ **that** is ~~not one~~ 1 of the primary products of a production process and ~~which~~ **that** is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct ~~which~~ **that** is produced for the general public's use and ~~which~~ **that** is ordinarily used in the form in which it is produced by the process.

R 299.9102 Definitions; C, D.

Rule 102. As used in these rules:

(a) "Carbon regeneration unit" means an enclosed thermal treatment device used to regenerate spent activated carbon.

(b) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source such as a power plant, including incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

Commented [PT2]: Not all occurrences of "shall" have been converted to "must." The traditional legislative approach was to define "shall" as indicating a mandatory requirement. The partial replacement of "shall" with "must" could raise questions about the usages of "shall" that remain. We recommend a review of the remaining usages of "shall."

Rule 103. As used in these rules:

(a) **"Electronic import-export reporting compliance date" means the date that the EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to the EPA using the EPA's Waste Import Export Tracking System, or its successor system.**

(~~a~~b) "Electronic manifest" or "e-manifest" means the electronic format of the hazardous waste manifest that is obtained from the EPA's national e-manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 and 8700-22A.

(~~b~~c) "Electronic manifest system" or "e-manifest system" means **the** EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(~~c~~d) "Element" means any part of a unit or any group of parts of a unit that are assembled to perform a specific function, for example, a pump seal, pump, kiln liner, or kiln thermocouple.

(~~d~~e) "Elementary neutralization unit" means a device that is following both of the following requirements:

(i) Is used for neutralizing wastes that are hazardous wastes only because they exhibit the corrosivity characteristic defined in R 299.9212 or are listed in R 299.9213 or R 299.9214 only because they exhibit the corrosivity characteristic.

(ii) Is in compliance with the definition of "tank," "tank system," "container," "transport vehicle," or "vessel" as specified in this part.

(~~e~~f) "Eligible NARM waste" means NARM waste that is eligible for the transportation and disposal conditional exemption ~~outlined in~~ **under** R 299.9823 of the rules. It is a NARM waste that contains hazardous waste, meets the waste acceptance criteria of, and is allowed by state NARM regulations to be disposed of at a low-level radioactive waste disposal facility licensed ~~pursuant to~~ **under** 10 C.F.R. part 61 or NRC agreement state equivalent regulations.

(~~f~~g) "Enforceable document" means an order, a plan, or other document issued by the department either in place of an operating license for the postclosure period, or as a source of alternative requirements for hazardous waste management units, as provided under these rules. An enforceable document may include, but is not limited to, a corrective action order under part 111 of the act, **MCL 324.11101 to 111.53**, a CERCLA remedy, or a closure or postclosure plan. An enforceable document ~~shall~~**must** be issued under an authority that has available all of the following remedies:

(i) The authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the requirements of these documents.

(ii) The authority to compel compliance with the requirements for corrective action or other emergency response measures deemed necessary to protect human health and the environment.

(iii) The authority to assess or sue to recover in court civil penalties, including fines, for violations of the requirements of these documents.

(~~g~~h) "EPA" means the United States Environmental Protection Agency.

(~~h~~i) ~~"EPA acknowledgment of consent" means the cable that is sent to the EPA from the United States Embassy in a receiving country which, that acknowledges the written consent of the receiving country to accept the hazardous waste and which, that describes the terms and conditions of the receiving country's consent to the shipment.~~

EPA Acknowledgment of Consent (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import' s consent and the country(ies) of transit' s consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

(~~i~~j) "EPA region" means the states and territories found in any of the 10 EPA regions identified in 40 C.F.R. §260.10.

Commented [PT3]: Defined but not used elsewhere in the rules.

Commented [PT4]: We suggest adding a definition for both Technologically Enhanced Naturally Occurring Radioactive Material (TENROM) as well as the terminology "Technologically enhanced." These definitions would provide additional clarity not specifically addressed by the NARM, Eligible NARM waste, exempted radioactive waste, and low-level radioactive waste definitions.

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Commented [RH5]: 40 CFR 262.81

Commented [PT6R5]: Since 2017 we have been dealing with the new regulations. We recommend adoption of this new definition per Subpart H.

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(o) "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(p) "Planned episodic event" means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory.

(pq) "Plasma arc incinerator" means any enclosed device which uses a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(qr) "Point source" means any discernible, confined, and discrete conveyance, including any of the following from which pollutants are or might be discharged:

(i) A pipe.
(ii) A ditch.
(iii) A channel.
(iv) A tunnel.
(v) A conduit.
(vi) A well.
(vii) A discrete fissure.
(viii) A container.
(ix) Rolling stock.
(x) A concentrated animal feeding operation.
(xi) A vessel or other floating craft.

"Point source" does not include return flows from irrigated agriculture.

(rs) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste pursuant to **under** R 299.93049, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

Exporter, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with § 262.83(d) or the manifest for a shipment of hazardous waste in accordance with subpart B of this part, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

(st) "Primary monitoring parameter" means indicator parameters, for example, specific conductance, total organic carbon, or total organic halogen; hazardous waste constituents; or reaction products which provide a reliable indication of the presence of hazardous constituents in groundwater and which, when specified in a facility operating license, are subject to all of the requirements of 40 C.F.R. part 264, subpart F.

(tu) "Processed scrap metal" means scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type and fines, drosses, and related materials which have been agglomerated. Shredded circuit boards being sent for recycling are not considered processed scrap and are covered under the exclusion from the definition of waste for shredded circuit boards that are being recycled in R 299.9204.

Commented [RH7]: This definition was removed from 262.51 after 2016.

Commented [RH8]: This definition is from 40 CFR 262.81. Recognized Trader is defined in R 299.9107

Commented [PT9R8]: If EGLE is adopting the post-2017 Supart H by incorporation, than this definitions should be updated.

(~~u~~v) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes all of the following:

(i) Blending used oil with virgin petroleum products.

(ii) Blending used oils to meet fuel specifications.

(iii) Filtration.

(iv) Simple distillation.

(v) Chemical or physical separation.

(vi) Re-refining.

(~~v~~w) "Prompt scrap metal" means scrap metal as generated by the metal working and fabrication industries. Prompt scrap metal, which is also known as "industrial" or "new" scrap metal, includes all of the following:

(i) Turnings.

(ii) Cuttings.

(iii) Punching.

(iv) Borings.

(~~w~~x) "Publicly owned treatment works", known as "POTW," means any device or system ~~which~~ **under** is used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature and ~~which~~ **under** is owned by a "state" or "municipality," as defined by section 502(4) of the federal clean water act, 33 USC 1362(4). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(~~x~~y) "Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completions of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

R 299.9107 Definitions; R, S.

Rule 107. As used in these rules:

(a) "RCRA" means the solid waste disposal act, as amended by the resource conservation and recovery act of 1976, as amended, 42 U.S.C. §6901 to 6992k ~~et seq~~.

(b) "Reclamation" means either processing to recover a usable product or regeneration, such as in the recovery of lead values from spent batteries and the regeneration of spent solvents. For the purpose of R 299.9204(1)(aa) and (bb), smelting, melting, and refining furnances are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste of 40 C.F.R. §266.100(d)(1)-(3), and if the residuals meet the requirements of R 299.9808.

(c) "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

Commented [PT10]: This terminology should be used in R 299.9314

(~~c~~d) "Recreational property" means all lands that are predominately intended to provide outdoor recreational activities under the control and operation of a governmental agency, such as outdoor parks, preserves, campgrounds, and wildlife refuges.

(~~d~~e) "Recycle" means use, reuse, or reclamation. Material is used or reused if it is either of the following:

(3) A small quantity or large quantity generator shall not offer his or her hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received a site identification number.

(4) Applications for site identification numbers must be made on Michigan site identification form EQP5150 and signed under 40 CFR 270.11(a)(1) to (3).

(5) A small quantity generator shall re-notify the regional administrator or the regional administrator's designee starting in 2021 and every 4 years thereafter. This re-notification must be submitted by September 1 of each year in which the re-notifications are required.

(6) A large quantity generator shall re-notify the regional administrator or the regional administrator's designee by March 1 of each even-numbered year thereafter. A large quantity generator may submit this re-notification as part of its biennial report required under R 299.9312.

(7) A recognized trader shall not arrange for import or export of hazardous waste without having received a site identification number from the regional administrator or the regional administrator's designee.

R 299.9309 ~~Exports of hazardous waste~~**Manifest requirements applicable to small and large quantity generators.**

Rule 309. (1) ~~Any person who exports hazardous waste to a foreign country shall comply with 40 C.F.R. part 262, subpart E, except 40 C.F.R. §§262.54 and 262.55.~~

~~(2) A primary exporter shall comply with the manifest requirements of R 299.9304, except as follows:~~

~~(a) In place of the name, site address, and site identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee.~~

~~(b) In place of the name, site address, and site identification number of the permitted alternate facility, the primary exporter may enter the name and site address of any alternative consignee.~~

~~(c) In the international shipments block, the primary exporter shall check the export box and enter the point of exit, both city and state, from the United States.~~

~~(d) The following statement shall be added to the end of the first sentence of the certification set forth on the manifest form: "and conforms to the terms of the attached EPA acknowledgement of consent."~~

~~(e) The primary exporter shall require the consignee to confirm, in writing, the delivery of the hazardous waste to that facility and to describe any significant discrepancies, as defined in R 299.9608, between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.~~

~~(f) In place of the requirements of R 299.9304 with respect to a shipment that cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall do either of the following:~~

~~(i) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee pursuant to 40 C.F.R. §262.53(c) and obtain an EPA acknowledgement of consent before delivery.~~

~~(ii) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States and instruct the transporter to revise the manifest pursuant to the primary exporter's instructions.~~

~~(g) The primary exporter shall attach a copy of the EPA acknowledgement of consent to the shipment to the manifest which shall accompany the hazardous waste shipment. For exports by rail or bulk water shipment, the primary exporter shall provide the transporter with an EPA acknowledgement of consent which shall accompany the hazardous waste, but which need not be attached to the manifest, except that for exports by bulk water shipment, the primary exporter shall attach the copy of the EPA acknowledgement of consent to the shipping paper.~~

Commented [PT11]: EGLE removed hazardous waste exports specifics. Is this dealt with via Supart H incorporation by reference? Basic instructions were striken and not replaced.

generator or transporter shall comply with the requirements for transporters in R 299.9410 in the event of a discharge of hazardous waste on a public or private right-of-way.

(6) 40 CFR 3.10, 262.20, 262.21, 262.22, 262.23, 262.24, and 262.27 and the appendix to part 262 are adopted by reference in R 299.11003. For the purposes of adoption, the term "site identification number" replaces the term "EPA identification number," the term "R 299.9207" replaces the term "§261.7," and the term "§264.72" replaces the term "§265.72."

R 299.9310 ~~Hazardous waste imports~~Pre-transport requirements applicable to small and large quantity generators.

Commented [PT12]: EGLE removed hazardous waste imports specifics. Is this dealt with via Supart H incorporation by reference? Basic instructions were striken and not replaced.

Rule 310. (1) ~~Any person who imports hazardous waste from a foreign country into the United States shall comply with this rule.~~

~~(2) When importing hazardous waste, a person shall meet all of the requirements of R 299.9304 for the manifest, except as follows:~~

~~(a) In place of the generator's name, address, and site identification number, the name and address of the foreign generator and the United States importer's name, address, and site identification number shall be used.~~

~~(b) In place of the generator's signature on the certification statement, the United States importer, or his or her agent, shall sign and date the certification and obtain the signature of the initial transporter.~~

~~(c) In the international shipments block, the United States importer shall check the import box and enter the point of entry, both city and state, into the United States.~~

~~(3) The United States importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to the EPA.~~ Before transporting hazardous waste or offering hazardous waste for transportation off site, a small quantity or large quantity generator shall do all of the following:

(a) Package the waste in accordance with the applicable DOT regulations on packaging under 49 CFR parts 173, 178, and 179.

(b) Label each package in accordance with the applicable DOT regulations on hazardous materials under 49 CFR part 172.

(c) Mark each package of hazardous waste in accordance with the applicable DOT regulations under 49 CFR part 172.

(d) Mark each container of 119 gallons or less used in the transportation with the following words and information displayed in accordance with 49 CFR 172.304:

(i) HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(ii) Generator's Name and Address _____

(iii) Generator's Site Identification Number _____

(iv) Manifest Tracking Number _____

(v) The hazardous waste number identifying the waste.

(e) A generator may use a nationally recognized electronic system, such as bar coding, to identify the hazardous waste number, as required by subdivision (d)(v) or subdivision (f) of this subrule.

(f) Lab packs that will be incinerated in compliance with 40 CFR 268.42(c) are not required to be marked with hazardous waste numbers, except D004, D005, D006, D007, D008, D010, and D011, if applicable.

(g) Placard or offer the initial transporter the appropriate placards according to DOT regulations for hazardous materials under 49 CFR part 172, subpart F.

(2) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited. Before disposal in a hazardous waste landfill, liquids must meet additional requirements as specified in 40 CFR 264.314 and 265.314.

transferred, treated, disposed of, or transported for treatment, storage, or disposal required by the director or the director's designee.

R 299.9313 ~~Academic laboratories; alternate generate requirements~~Land disposal restrictions.

Rule 313. (1) ~~This rule provides alternative requirements for hazardous waste determinations and accumulation of hazardous waste in laboratories owned by eligible academic entities.~~

~~(2) Persons with laboratories owned by eligible academic entities may elect to comply with the requirements of 40 C.F.R. part 262, subpart K, except §§262.201 and 262.202, in lieu of the requirements of R 299.9205 and R 299.9306, as applicable.~~

~~(3) The provisions of 40 C.F.R. part 262, subpart K, except §§262.201 and 262.202 and the references to performance track members, are adopted by reference in R 299.11003. For the purposes of this adoption, the word "director" shall replace "EPA regional administrator", the words "site identification number" shall replace "EPA identification number", the words "operating license" shall replace "RCRA Part B permit", the words "hazardous waste numbers" shall replace "hazardous waste codes", the words "Michigan site identification form, form EQP5150" shall replace "RCRA Subtitle C Site Identification Form (EPA Form 8700-12)", the reference "R 299.9101 (x)" shall replace "§260.11", the reference "R 299.9212" shall replace "40 CFR part 261, subpart C", the references "R 299.9213 and R 299.9214" shall replace "40 CFR part 261, subpart D", the reference "R 299.9202" shall replace "§261.2", the reference "R 299.9203" shall replace "§261.3", the reference "R 299.9205" shall replace references to "§261.5", the reference "R 299.9214" shall replace "§261.33 (e)", the reference "Part 3 of the rules" shall replace "40 CFR part 262", the reference "R 299.9302" shall replace "§262.11", and "R 299.9306" shall replace references to "§262.34."~~Generators of hazardous waste shall comply with the applicable requirements and restrictions of 40 CFR part 268.

(2) 40 CFR part 268 is adopted by reference in R 299.11003. For the purposes of adoption, the term"director" replaces the terms "administrator" and "assistant administrator," the term "R 299.9305, R 299.9306, and R 299.9307" replaces the term "§§262.15, 262.16, and 262.17," the term "part 6 of these rules" replaces the term "parts 264 and 265 of this chapter," and the term "part 2 of these rules" replaces the term "subparts C and D of part 261 of this chapter," except in 40 CFR 268.5, 268.6, 268.40(b), 268.42(b), and 268.44(a) to (g) and (i) to (o).

R 299.9314 Transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development.

- Rule 314. (1) Persons who import or export wastes that are considered hazardous under the U.S. national procedures and that are destined for recovery operations shall comply with 40 CFR part 262, subpart H, except 262.80. A waste is considered hazardous under the U.S. national procedures if it meets the federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the manifesting requirements of part 3 of these rules, the universal waste provisions of R 299.9228, or the export requirements in the spent lead-acid battery management standards of R 299.9804.

(2) Any person subject to this rule, including a notifier, consignee, or recovery facility operator, who mixes 2 or more hazardous or solid wastes or otherwise subjects 2 or more hazardous or solid wastes to physical or chemical transformation operations, and thereby creates a new hazardous waste, shall comply with the following requirements:

(a) The person shall be considered the generator of the waste and comply with the requirements of part 3 of these rules.

(b) The applicable notifier requirements of 40 CFR part 262, subpart H.

(3) 40 CFR part 262, subpart H, except 262.80, is adopted by reference in R 299.11003.

R 299.9315 Academic laboratories; alternate generator requirements.

Commented [RH13]: The title in 299.9314 is similar to the Subpart H reference prior to 2017. It doesn't address disposal as noted in 262 Subpart H. The current subpart H is adopted by reference in 299.11003, but it seems that this may be an oversight as disposal for import and export was addressed previously, and has now been removed.

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal
Source: 81 FR 85715, Nov. 28, 2016, unless otherwise noted.

Commented [PT14R13]: Are the rules intended to adopt the 2017 version of Supart H by incorporation? Import/Export of hazardous waste has been striken from Part 111 sections above. R 299.9107 defines a "Recognized trader" as one that facilitates "transboundary movements" which is consistent with Subpart H nomenclature, but R 299.9314 uses the term "Transfrontier" shipments which does not appear in Subpart H.

Within 30 days of changes in information included in the original notification a subsequent notification is required. The notification ~~shall~~ **must** include all of the following information:

(i) The transporter name and site identification number.

(ii) The transporter mailing address.

(iii) The transporter telephone number.

(iv) The owner of the facility.

(v) If other than the generator site, the location of the facility and the telephone number where commingling activity is performed.

(vi) The description of the commingling activity performed at each facility location.

(c) Prepare a new manifest as a generator in accordance with part 3 of these rules.

(d) On the new manifest in the special handling instructions and additional information section, describe the commingled load by ~~and~~ adding the hazardous waste number followed by the ~~letterstern~~ "CD" ~~to the end of the hazardous waste number or numbers used on the manifest.~~

(e) Ensure that the transporter-initiated manifest and the generator manifests accompany the shipment to the designated facility. The transporter-initiated manifest ~~shall~~ **must** satisfy DOT shipping paper requirements and be segregated from the generator manifests. All generator and transporter manifests ~~shall~~ **must** be signed by an authorized representative of the designated facility upon receipt of the waste.

~~(f) Ensure that the generator adds the term "CD" to the end of the hazardous waste number or numbers used on the manifest, prepared as required in subdivision (c) of this subrule.~~

~~(g)~~ (f) Comply with part 3 of these rules relating to the wastes, except for R 299.9307**11**(4) and R 299.9308**12**(1) and (2) and the accumulation time limits specified in R 299.9404(1)(b).

~~(h)~~ (g) Ensure that, where a commingled load is rejected by the designated facility, all other generators contributing to the load are contacted to jointly, with the transporter, designate an alternate facility and that the rejected commingled wastes are not returned to any single generator. The transporter, under this part, shares generator responsibility.

Commented [PT15]: Based on the administrative burden of trying to do this in retail, and the issues with e-manifesting, we suggest adding the statement in section 14 denoting that the material was a consolidated shipment per the addition of the language below to rule 299.9405

(4) A small quantity or large quantity generator who authorizes a transporter to commingle his or her hazardous waste pursuant to R299.9405(2) or (3) shall place in the special handling instructions and additional information section of the manifest, either the term "Commingled Same (CS)" as specified in R299.9405(2), or "Commingled Different (CD)" as specified in R299.9405(3), and associated manifest line item.

The major suggested change to the language is that instead of reprinting all of the waste codes in Section 14, we would print just the phrase "Commingled Same / Different" with the associated line item.

R 299.9409 Transporter manifest and recordkeeping requirements.

Rule 409. (1) Hazardous waste transporters shall only transport hazardous waste using a manifest signed in accordance with 40 C.F.R. §262.23, or an electronic manifest that is obtained, completed, and transmitted in accordance with 40 C.F.R. §262.20(a)(3), and signed with in accordance with R 299.93049(2). Hazardous waste transporters shall comply with 40 C.F.R. part 263, subpart B, regarding the manifest system, compliance with the manifest, and recordkeeping.

(2) If the hazardous waste cannot be delivered pursuant to the manifest and 40 C.F.R. §263.21(a), and if the transporter revises the manifest pursuant to 40 C.F.R. §263.21(b)(1), the transporter shall legibly note on the manifest the name and phone number of the person representing the generator from whom instructions have been obtained.

(3) A transporter whose manifested shipment results in a ~~significant~~ manifest discrepancy, as specified in R 299.9608, and a total or partial rejected shipment ~~shall~~ **must** comply with 40 C.F.R. §263.21(b)(2). Before accepting for transportation the rejected portion of the original shipment, the transporter shall confirm that the generator has prepared a new manifest ~~pursuant to~~ **under** part 3 of these rules.

(4) A transporter shall retain all records, logs, or documents required ~~pursuant to~~ **under** this part for a period of 3 years and make the records, logs, and documents readily available for inspection by the director or his or her designee, upon request. The retention period ~~shall~~ is be extended during ~~the course of~~ any unresolved enforcement action regarding the regulated activity or as otherwise required by the department.

(5) ~~The provisions of~~ 40 C.F.R. part 263, subpart B, ~~are~~ is adopted by reference in R 299.11003. For the purposes of ~~this~~ adoption, the term "R 299.9207" ~~shall~~ replaces the term "~~40 CFR~~ §261.7."

40 C.F.R. §124.10(c)(1)(x).

(2) The requirements of subrule (1) of this rule do not apply to any of the following:

(a) A renewal operating license application ~~which~~ **that** does not propose any significant changes in facility operations. ~~For the purposes of~~ **As used in** this subdivision, "significant changes" ~~shall~~ means any changes that would qualify as a major modification under ~~the provisions of~~ R 299.9519.

(b) An operating license application ~~which~~ **that** is submitted solely to address postclosure requirements or postclosure and corrective action requirements.

(c) An operating license modification submitted in accordance with ~~the provisions of~~ R 299.9519.

(d) An operating license application submitted before the effective date of these rules.

(3) Except as provided for in subrule (4) of this rule, the director shall comply with all of the following requirements upon receipt of an operating license application ~~pursuant to~~ **under** the act or these rules:

(a) Within a reasonable period of time after the application is received, provide the facility mailing list and appropriate units of state and local government with notice in accordance with ~~the provisions of~~ 40 C.F.R. §124.10(c)(1)(ix) and (x) that the application has been submitted to the department and is available for review. The notice ~~shall~~ **must** include all of the following information:

(i) The name, address, and telephone number of the applicant's contact person.

(ii) The name, address, and telephone number of the department's contact.

(iii) The mailing address to which information, comments, and inquiries may be submitted to the department throughout the application review process.

(iv) The address to which persons may write to be placed on the facility mailing list.

(v) The location where a copy of the application and any supporting documents may be viewed and copied.

(vi) A brief description of the facility and proposed operations, including, the facility address or a map of the facility location, on the front page of the notice.

(vii) The date that the application was received by the department.

(b) Concurrent with the notice provided in subdivision (a) of this subrule, place the application and any supporting documents in a location accessible to the public in the vicinity of the facility or at an appropriate department office.

(4) The requirements of subrule (3) of this rule do not apply to either of the following:

(a) An operating license application ~~which~~ **that** is submitted solely to address postclosure requirements or postclosure and corrective action requirements.

(b) A minor operating license modification as specified in ~~the provisions of~~ R 299.9519(5) and (9).

(5) The director shall comply with all of the following requirements upon receipt of an operating license application ~~pursuant to~~ **under** the act or these rules:

(a) Assess the need, on a case-by-case basis, for an information repository based on the following information:

(i) The level of public interest.

(ii) The type of facility.

(iii) The presence of an existing repository.

(iv) The proximity of the facility to the nearest copy of the administrative record.

(b) If it is determined that an information repository is needed at any time after submittal of the application, notify the applicant that he or she shall shall establish and maintain an information repository in compliance with the following requirements:

Commented [PT16]: Double shall. Convert to one "must"?

(i) The information repository ~~shall~~ **must** include all documents, reports, data, and information ~~deemed~~ **considered** necessary by the director to fulfill the purposes for which the repository is established. The director shall have the discretion to limit the contents of the information repository.

(ii) The information repository ~~shall~~ **must** be located and maintained at a site selected by the applicant. However, if the director finds that the site selected by the applicant is unsuitable for the purposes or persons for which the information repository is established, due to problems with the

location, hours of availability, access, or other relevant considerations, the director shall specify a more appropriate site for the information repository.

Commented [PT17]: Change to a "may" and give the director the option of having the applicant select a more appropriate location instead or requiring the director to specify.

(iii) The information repository ~~shall~~ **must** be maintained and updated by the applicant for the time period specified by the director.

(c) Specify the requirements for informing the public about the information repository. At a minimum, the director shall require the applicant to provide a written notice about the information repository to all individuals on the facility mailing list.

(d) Based on the factors outlined in subdivision (a) of this subrule, make decisions regarding the appropriateness of closing the information repository and notify the applicant accordingly.

(6) For applications for incinerators, boilers, or industrial furnaces, the director shall provide notice to all persons on the facility mailing list and to the appropriate units of state and local government in accordance with ~~the provisions of~~ 40 C.F.R. §124.10(c)(1)(ix) and (x) announcing the following:

(a) The scheduled commencement and completion dates for the trial burn. The notice ~~shall~~ **must** be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the department. The notice, which ~~shall~~ **must** be issued before the applicant may commence the trial burn, ~~shall~~ **must** contain all of the following information:

(i) The name, address, and telephone number of the applicant's contact person.

(ii) The name, address, and telephone number of the department's contact person.

(iii) The location where the approved trial burn plan and any supporting documents may be reviewed and copied.

(iv) The expected time period for commencement and completion of the trial burn.

(b) The department's intention to approve the trial burn plan in accordance with the timing and distribution requirements of 40 C.F.R. §§270.62(b)(6) and 270.66(d)(3) as applicable. The notice ~~shall~~ **must** contain all of the following information:

(i) The name, address, and telephone number of the facility contact person.

(ii) The name, address, and telephone number of the department's contact person.

(iii) The location where the approved trial burn plan and any supporting documents may be reviewed and copied.

(iv) A schedule of the activities that are required as part of an operating license for a new facility or the expansion, enlargement, or alteration of an existing facility, or for existing facilities, ~~prior to~~ **before** license issuance, including the anticipated time for department approval of the trial burn plan and the time period during which the trial burn will be conducted.

(7) Before making a final decision on a major license modification or operating license application, the director or his or her designee shall, when authorized ~~pursuant to the provisions of~~ **under** 40 C.F.R. part 271, do the following:

(a) Prepare either a draft major license modification, operating license, or a notice of intent to deny.

(b) For major facilities, prepare a fact sheet ~~pursuant to the provisions of~~ **under** R 299.9512 that briefly sets forth the significant factual, methodological, and policy questions considered in preparing the draft major license modification, operating license, or notice of intent to deny and send this fact sheet to the applicant and, upon request, any other person.

(c) Publish a public notice that a draft operating license, or notice of intent to deny has been prepared and allow not less than 45 days for public comment.

(d) Publish a public notice that a draft major license modification has been prepared and allow not less than 60 days for public comment.

(e) Provide public notice of any public hearing scheduled pursuant to ~~the provisions of~~ R 299.9514 not less than 30 days before the hearing date.

(f) Prepare and make available to the public a response to comments on the draft major license modification, operating license, or notice of intent to deny, which ~~shall~~ **must** do all of the following:

(i) Specify which provisions of the draft major license modification or operating license have been

changed, if any, and the reasons for the changes.

(ii) Briefly describe and respond to all significant comments raised during the public comment period or any hearing.

(iii) Indicate whether the comment period is to be reopened or extended.

(iv) For notices of intent to deny, the reasons for denial.

(8) If the director decides to prepare a draft operating license, he or she shall prepare a license that contains the information specified ~~in the provisions of~~ R 299.9521.

(9) Draft major license modifications and licenses that are prepared by the director pursuant to ~~the provisions of~~ this rule ~~shall~~ **must** be accompanied by a fact sheet pursuant to ~~the provisions of~~ R 299.9512, publicly noticed pursuant to ~~the provisions of~~ R 299.9513, and made available for public comment. The director shall give notice of the opportunity for a public hearing pursuant to ~~the provisions of~~ R 299.9514, issue a final decision, and respond to comments pursuant to ~~the provisions of~~ R 299.9515.

R 299.9513 Public notices.

Rule 513. (1) Public notices of draft operating licenses, notices of intent to deny, and public hearings ~~shall~~ **must** be given by the following methods after the director is authorized under ~~the provisions of~~ 40 C.F.R. part 271 to enforce and administer part 111 of the act, **MCL324.11101 to 324.11153**, and these rules **instead** ~~lieu~~ of the federal program:

(a) By mailing a copy of the notice, fact sheet, operating license application, and draft operating license to all of the following entities:

(i) The applicant.

(ii) Any other agency ~~which~~ **that** the director knows has issued or is required to issue an environmental permit for the same facility.

(iii) Federal and state agencies with jurisdiction over any of the following:

(A) Fish, shellfish, and wildlife resources.

(B) Coastal zone management plans.

(C) The advisory council on historic preservation.

(D) State historic preservation officers.

(E) Other appropriate government authorities, including any affected states.

(iv) Any unit of local government having jurisdiction over the area where the facility is proposed to be located.

(v) Each state agency having any authority under state law with respect to the construction or operation of ~~such~~ **the** facility.

(b) By mailing a copy of the notice to persons on a facility mailing list developed pursuant to subrule (3) of this rule.

(c) By any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) By publication of a notice in a daily or weekly major local newspaper of general circulation and by broadcasting over local radio stations. **The director may replace the radio broadcast with another medium that provides equivalent notification.**

(e) By posting the notice at the principal office of the department and any other locations considered appropriate by the director.

(2) All public notices required by this rule ~~shall~~ **must** contain all of the following information:

(a) Name and address of the office processing the operating license.

(b) Name and address of the applicant and the facility at issue.

(c) A brief description of the business conducted at the facility or activity described in the application or draft license.

(d) Name, address, and telephone number of a person or agency from whom interested persons may

Commented [PT18]: The language of the rule should address what would trigger the use of this authority by the director and whether this authority must be exercised before the traditional radio broadcast requirement is complied with. The language should also address how the director would determine that an alternate medium would "provide equivalent notification" since it seems the intent of this authority would be to permit the director to use a medium she/he feels would be *more effective* at providing notice rather than "equivalent" to a radio broadcast. Does the term "equivalent" involve the cost of the alternative medium as well as the effectiveness of the alternative to provide notice?

(5) The requirements of this part apply to the owner or operator of a publicly owned treatment works that treats, stores, or disposes of hazardous waste only to the extent that these requirements are included in R 299.9503(3)(b).

(6) The standards in this part do not apply to those persons who are listed in R 299.9503(1) and (2), except as otherwise specified by those subrules.

(7) Except as noted in this subrule, part 6 of the rules does not apply to owners and operators of hazardous waste incinerator facilities identified in subrule (2) of this rule if the owner or operator demonstrates compliance with the maximum achievable control technology standards of 40 C.F.R. part 63, subpart EEE by conducting a comprehensive performance test and submitting to the director a notification of compliance under 40 C.F.R. §§63.1207(j) and 63.1210(b) ~~which~~ **that** documents compliance with the requirements of 40 C.F.R. part 63, subpart EEE. The maximum achievable control technology standards of 40 C.F.R. part 63, subpart EEE do not supersede the requirements of R 299.9608 to R 299.9610 and part 7 of these rules, and 40 C.F.R. part 265, subparts A to D, F, G, BB, and CC.

(8) Notwithstanding any other provisions of these rules, enforcement actions may be brought pursuant to section 11148 of ~~part 111 of~~ the act, MCL 324.11148.

(9) ~~The provisions of~~ 40 C.F.R. §260.4, 260.5, and 270.10 and 40 C.F.R. part 265, except subparts ~~E,~~ H, O, and DD, and 40 C.F.R. §§265.70, 265.73 to 265.77, 265.112(d)(1), 265.115, and 265.120, are adopted by reference in R 299.11003. Where ~~provisions of~~ 40 C.F.R. parts 264, 265, and 270 are referenced in this part, the ~~word~~ **term** "director" ~~shall~~ replaces the term "regional administrator" and the ~~words~~ **term** "operating license" ~~shall~~ replaces the ~~word~~ **term** "permit." For the purposes of ~~this~~ adoption, **the term "site identification number" replaces the term "EPA identification number,"** the ~~word~~ **term** "R 299.9629" ~~shall~~ replaces the ~~word~~ **term** "~~40 C.F.R.~~ §264.101(a)," the ~~words~~ **term** "part 5 of these rules" ~~shall~~ replaces the ~~word~~ **term** "~~40 C.F.R.~~ §270.1(c)(7)," and the ~~words~~ **term** "R 299.9703(8) and R 299.9710(17)" ~~shall~~ replaces the ~~word~~ **term** "~~40 C.F.R.~~ §265.140(d)," and the ~~words~~ **term** "R 299.9612 and R 299.9629" ~~shall~~ replaces the ~~words~~ **term** "~~40 C.F.R.~~ §§264.91 through 264.100."

R 299.9608 Use of manifest system.

Rule 608. (1) If a facility receives hazardous waste accompanied by a manifest, then the owner or operator, or his or her agent, shall comply with 40 C.F.R. §264.71(a) ~~and return a legible copy of the manifest to the director or his or her designee within a period of 10 days after the end of the month in which the waste was received. If the generator state and the destination state are the same, the owner or operator, or his or her agent, shall only submit 1 copy of the manifest to the director or his or her designee. If the facility receives hazardous waste from a conditionally exempt small quantity generator that is accompanied by a manifest, the facility is not required to submit a copy of that manifest to the director or his or her designee~~.

(2) If a facility receives a bulk shipment of hazardous waste from a rail or water transporter ~~which~~ **that** is accompanied by a shipping paper containing all the information required on the manifest, excluding the site identification numbers, generator's certification, and signatures, then the owner or operator, or the owner or operator's agent, shall comply with 40 C.F.R. §264.71(b) and return a legible copy of the manifest to the director or his or her designee within a period of 10 days after the end of the month in which the waste was received. If the generator state and the destination state are the same, the owner or operator, or his or her agent, shall only submit 1 copy of the manifest to the director or his or her designee.

(3) If a shipment of hazardous waste is initiated from a facility, then the owner or operator of that facility shall comply with the requirements of part 3 of these rules.

(4) Within 3 working days of the receipt of a shipment subject to R 299.9312, the owner or operator shall provide a copy of the tracking document bearing all required signatures to the exporter, ~~to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International~~

Commented [PT19]: 299.9608(4) addresses the "tracking document" which is not a manifest. Will this cause confusion since all other sections deal with manifests.

Commented [RH20]: The 3-working day requirement doesn't apply to US manifests, it applies to the OECD movement document in 40 CFR 265.12(a)(2) or 40 CFR 262.84(d)(2)(xv). The US manifests for import are covered under e-manifest.

Commented [PT21]: Supart H uses the term "movement document." Will use of the term tracking document cause confusion between the movement document and a manifest?

~~Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington DC 20460, and~~ to competent authorities of the ~~all other concerned~~ countries of export and transit that control the shipment as an export and transit of hazardous, respectively, and to the EPA electronically using WIETS, or its successor system. The owner or operator shall maintain the original copy of the tracking document at the facility for not less than 3 years from the date of signature. The owner or operator may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on WIETS or its successor program, if copies are readily available for viewing and production if requested by the EPA or authorized state inspector. The owner or operator may not be held liable for the inability to produce the documents for inspection under this subrule if the inability to produce the document is due exclusively to technical difficulty with WIETS, or its successor system, for which the owner or operator bears no responsibility.

(5) The owner or operator shall determine if the consignment state for a shipment regulates any additional wastes, beyond those regulated federally, as hazardous wastes under its state hazardous waste program. The owner or operator shall also determine if the consignment state or the generator state requires the owner or operator to submit any copies of the manifests to these states.

(6) Electronic manifests that are obtained, completed, and transmitted in accordance with 40 ~~C.F.R.~~ §262.20(a)(3) and used in accordance with this rule instead ~~lieu~~ of paper manifests are the legal equivalent of paper manifests bearing handwritten signatures, and ~~shall~~ satisfy any requirement in these rules to obtain, complete, sign, provide, use, or retain a manifest as outlined in 40 ~~C.F.R.~~ §264.71(f) and (k).

(7) An owner or operator may participate in the electronic manifest system either by accessing the system from the owner or operator's electronic equipment, or from portable equipment brought to the facility by the transporter who delivers the hazardous waste shipment, and by complying with 40 ~~C.F.R.~~ §264.71(i).

(8) If an owner or operator receives a hazardous waste shipment that is accompanied by a paper replacement manifest for a manifest that originated electronically, the owner or operator shall comply with 40 ~~C.F.R.~~ §264.71(h).

(9) An owner or operator who is a user of the electronic manifest system format may be assessed a user fee by the EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by the EPA for the collection and processing of paper manifest copies that owners or operators are required to submit in accordance with 40 ~~C.F.R.~~ §264.71(a)(2)(v). The EPA shall establish, publish, maintain, and update the user fees in accordance with 40 ~~C.F.R.~~ §264.71(j).

(10) Electronic manifest signatures must meet the criteria described in 40 CFR 262.25.

(11) After an owner or operator has certified to the receipt of a hazardous waste by signing Item 20 of the manifest, any post-receipt data corrections most be made in accordance with 40 CFR 264.71(i).

(~~10~~2) Upon discovering a ~~significant~~ manifest discrepancy, as defined in 40 ~~C.F.R.~~ §264.72(a), including a significant difference as defined in 40 CFR 264.72 ~~and~~ (b), the owner or operator shall comply with 40 ~~C.F.R.~~ §264.72(c) to (g) and distribute copies of the manifest pursuant to subrules (1) and (2) of this rule.

(~~11~~3) The requirements of this rule do not apply to owners or operators of off-site facilities with respect to waste military munitions exempted from manifesting requirements under R 299.9818.

(14) Owners and operators shall comply with the manifest and fee requirements for the electronic hazardous waste manifest program that are established and administered by the EPA in accordance with 40 CFR 260.4 and 260.5 and part 264, subpart FF.

(~~12~~5) ~~The provisions of~~ 40 ~~C.F.R.~~ §§260.4, 260.5, 264.71(a), (b), (f), and (h) to (~~k~~l), and 264.72 are adopted by reference in R 299.11003. For the purposes of ~~these~~ adoptions, the ~~words~~ term "site identification number" ~~shall~~ replaces the ~~words~~ term "EPA identification number," the term

Commented [PT22]: Is there a word missing here after harzardous?

Commented [RH23]: This will occur after the EPA compliance date which has not been announced. It is not for the US manifest, it is for the movement document. Should the header for R 299.9608 include more than just the word "manifest" to avoid confusion because it addresses shipping papers and movement documents?

As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

Commented [PT24R23]: WIETS is not set up to do this yet and Part 111 is missing the highlighted sentence that makes it clear that we do not have to do this yet until after the compliance date. R 299.9103 define the term "electronic import-export reporting compliance date" but the rules do not make reference to that here as a trigger date for the electronic WIETS submission.

installation and well decommissioning procedures in ASTM standards D5092-04 and D5299-14, or a plan approved by the director.

(c) The director may require sampling and analysis for secondary monitoring parameters at frequencies specified in the facility operating license. If the owner or operator determines that there is a statistically significant increase in 1 or more secondary monitoring parameters, then he or she shall do all of the following:

(i) Notify the director or his or her designee of the finding immediately.

(ii) Conduct verification sampling ~~Sample~~ for both primary and secondary monitoring parameters, taking ~~not less than 4~~ replicate measurements on each sample at each well exhibiting a statistically significant increase in accordance with a plan approved by the director.

Commented [PT25]: This additional language clarifies that "all wells" refers to "all wells that had a statistically significant increase" in one or more secondary parameters not "all wells in the monitoring well network." This reflects EGLE's current practice in these circumstances.

(iii) Redetermine if a statistically significant increase has occurred in either primary or secondary monitoring parameters and immediately notify the director or his or her designee of the results.

(d) The concentration limit of a hazardous constituent established ~~pursuant to the provisions of~~ **under** 40 C.F.R. §264.94(a) ~~shall~~ **must** not exceed the background level of that constituent in groundwater, unless a concentration limit which is not less stringent than that allowed ~~pursuant to the provisions of~~ **under** RCRA has been established **under** ~~pursuant to the provisions of~~ part 31 ~~of the act~~ or ~~part~~ 201 of the act, **MCL 324.3101 to 324.3134 and 324.20101 to 20142.**

(e) To determine whether background values or concentration limits have been exceeded pursuant to ~~the provisions of~~ 40 C.F.R. §264.97(h), the owner or operator shall use a statistical test approved by the director in the facility operating license and shall determine if the difference between the mean of the constituent at each well, using all replicates taken, and either of the following is significant:

(i) The background value of the constituent as defined in the operating license.

(ii) The mean value of 1 year's initial sampling for the well itself where the 1-year period is specified by the director in the facility operating license.

(f) The director may require compliance monitoring and corrective action ~~pursuant to the provisions of~~ **under** 40 C.F.R. §264.99, R 299.9629, part 31 of the act, **MCL 324.3101 to 324.3134,** and part 201 of the act, **MCL 324.20101 to 324.20142,** to be conducted **under** ~~pursuant to~~ a consent agreement or other legally binding agreement rather than **under** ~~pursuant to~~ an operating license.

(g) Nothing in ~~the provisions of~~ 40 C.F.R. part 264, subpart F, or this rule ~~shall~~ **must** restrict the director from taking action pursuant to ~~the provisions of~~ section **11148** or **11151** ~~of part 111~~ of the act, **MCL 324.11148 and 324.11151.**

(h) The owner or operator has been granted a waiver by the director ~~pursuant to~~ **under** ~~the provisions of~~ R 299.9611(3).

(2) ~~The provisions of~~ 40 C.F.R. part 264, subpart F and 40 C.F.R. part 264, appendix IX, excluding ~~the provisions of~~ §§264.94(a)(2) and (3), 264.94(b) and (c), 264.100, and 264.101, are adopted by reference in R 299.11003. For the purposes of ~~this~~ adoption, the ~~word~~ **term** "director" ~~shall~~ replaces the terms "regional administrator" or "administrator," the ~~word~~ **term** "department" ~~shall~~ replaces the ~~word~~ **term** "agency," the ~~words~~ **term** "part 1 of these rules" ~~shall~~ replaces the ~~word~~ **term** ~~40 C.F.R.~~ §270.1(c)(7)," the ~~words~~ **term** "R 299.9612 and R 299.9629" ~~shall~~ replaces the ~~words~~ **term** ~~40 C.F.R.~~ §§264.91 through 264.100," and the ~~words~~ **term** "operating license" ~~shall~~ replaces the ~~word~~ **term** "permit."

R 299.9627 Land disposal restrictions.

Rule 627. (1) The owner or operator of a treatment, storage, or disposal facility shall comply with the restrictions on land disposal contained in ~~the provisions of~~ 40 C.F.R. part 268.

(2) ~~The provisions of~~ 40 C.F.R. part 268 ~~are~~ **is** are adopted by reference in R 299.11003. For purposes of ~~this~~ adoption, the ~~word~~ **term** "director" ~~shall~~ replaces the ~~words~~ **terms** "administrator" and "assistant administrator," the term "R 299.9305, R 299.9306, and R 299.9307" replaces the term "§§262.15, 262.16, and 262.17," the term "part 6 of these rules" replaces the term "parts 264 and 265 of this chapter," and the term "part 2 of these rules" replaces the term "subparts

Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedures" (2009) are adopted by reference in these rules. The publications are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France, at cost. The publications are available for inspection and distribution at the Lansing office of the department.

R 299.11003 Adoption by reference of federal regulations.

Rule 1003. (1) The following federal regulations in 40 C.F.R. are adopted by reference in these rules:

(a) 40 C.F.R. §3.10.

(b) 40 C.F.R. part 60, appendices A and B.

(c) 40 C.F.R. part 63, subparts EEE and LLL.

(d) 40 C.F.R. part 124.

(e) 40 C.F.R. part 144.

(f) 40 C.F.R. part 145.

(g) 40 C.F.R. part 146.

(h) 40 C.F.R. part 147.

(i) 40 C.F.R. ~~§§~~260.4, 260.5, 260.20, 260.21, 260.22, 260.31, 260.32, 260.33, 260.34, and 260.42.

(j) 40 C.F.R. ~~§§~~261.4(h)(4)(i)-(ii), 261.10, 261.11, 261.21(a)(3), 261.32(a), for K181 listing only, (c), and (d), 261.35(b)(2)~~(b)~~(iii), ~~261.38(b),~~ 261.39(a)(5), and 261.41, and subparts I, J, M, AA, BB, and CC.

(k) 40 C.F.R. part 261, appendix I, appendix VII, and appendix VIII.

(l) 40 C.F.R. ~~§§~~262.20, ~~to 262.21, 262.22, 262.23,~~ 262.24, 262.27, ~~262.34(m)(1) and (2),~~ 262.40(a), (c), and (d), ~~262.41(a)(1)-(8),~~ and 262.43, ~~and~~ 40 C.F.R. part 262, subparts ~~E and~~ H ~~and the appendix to the part~~, except 40 C.F.R. ~~§§262.54, 262.55, and~~ 262.80, and 40 CFR part 262, subparts K and M, except §§40 CFR 262.201 and 262.202 ~~and the references to performance track members.~~

(m) 40 C.F.R. part 263, subpart B.

(n) 40 C.F.R. part 264, subpart B, subpart C, subpart D, subpart F, subpart G, subpart I, subpart J, subpart K, subpart L, subpart M, subpart N, subpart O, subpart X, subpart W, subpart AA, subpart BB, subpart CC, subpart EE, except 40 C.F.R. §§264.15(b)(5), 264.94(a)(2) and (3), ~~264.94~~(b), and (c), 264.100, 264.101, 264.112(d)(1), 264.115, 264.120, 264.221(f), 264.251(f), 264.301(f), 264.340(a) to (d), 264.344(a)(2) and (b), and 264.1200.

(o) 40 C.F.R. §§264.1(j)(1) to (13), 264.71(a), (b), (f), and (h) to (~~k~~l), 264.72, 264.73, 264.75~~(a)-(j)~~, 264.94(a)(2), table 1, 264.141, 264.142, 264.144, 264.147(c), (d), and (f), 264.151(g), and 264.554, except 40 CFR 264.554(l).

(p) 40 C.F.R. part 264, appendix I and appendix IX.

(q) 40 C.F.R. part 265, except subparts ~~E,~~ H, DD, and O, and 40 C.F.R. ~~§§265.15(b)(5),~~ 265.70, 265.73 to 265.77, 265.112(d)(1), 265.115, and 265.120.

(r) 40 C.F.R. part 265, appendices I and VI.

(s) 40 C.F.R. part 266, subpart H, except §§40 CFR 266.100(a) and (b), 266.101, 266.102(a), and 266.112(a) and (c).

(t) 40 C.F.R. §§266.203 and 266.205(a), (b), (d), and (e).

(u) 40 C.F.R. part 266, appendices I through XIII.

(v) 40 C.F.R. part 268, including appendices III through XI.

(w) 40 C.F.R. §§270.10(e), (g), (k), and (l)(1); 270.11; 270.13; 270.14(b) and (d); 270.15; 270.16; 270.17; 270.18; 270.19(c); 270.20; 270.21; 270.22; 270.23; 270.24; 270.25; 270.26; 270.27; 270.30, except §40 CFR 270.30(l)(1) and (8); 270.31; 270.33; 270.41(a), except §40 CFR 270.41(a)(3); 270.62(a) to (d); 270.64; 270.66; 270.70; 270.71; 270.73; and 40 C.F.R. part 270, subpart H, except §§40 CFR 270.80, 270.85, 270.90, 270.155, 270.160, 270.190, and 270.195; and 40 CFR 270.235(a) and (c).

Commented [RH26]: Adopted by reference, 40 CFR 262 Subpart H

Commented [PT27R26]: Per this adoption by reference we have suggested updating some of the definitions above to align with 262.81

Commented [RH28]: Adopted by reference

→ Amendment 12, Public Comment File, Draft 6

Michigan Manufacturers Association

October 23, 2019

Transmitted via e-mail

Ms. Ronda L. Blayer
Materials Management Division (MMD)
Michigan Department of Environment, Great Lakes, and Energy
PO Box 30241
Lansing, MI 48909-7741

RE: Proposed Revisions to the Hazardous Waste Program Administrative Rules (Part 111) ORR 2018-012EQ

Dear Ms. Blayer,

The Michigan Manufacturers Association (MMA) appreciates the opportunity to provide comment on the Michigan Department of Environment, Great Lakes, and Energy (EGLE) proposed administrative rules promulgated pursuant to Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

Subject to these comments, MMA supports EGLE's adoption of the federal hazardous waste regulatory changes which will align the state rules with federal regulations that impact companies doing business in Michigan. MMA understands that EGLE is required to adopt revised federal regulations to maintain Michigan's federal authorization to administer the state's Part 111 Hazardous Waste Management Program addressing the Generator improvements Rule.

MMA provides the following comments on the Part 111 proposed rule:

Adoption of Federal Exclusion for Airbags to Address Urgent Safety Issue

MMA requests that EGLE adopt the federal airbag exclusion at 40 CFR 261.4(j) in this rulemaking to accelerate protection of human health and the environment. In 2013, some Original Equipment Manufacturer (OEM) automakers began recalling vehicles worldwide to replace defective airbags manufactured by the former Takata Corporation (Takata) after it was determined that the defective airbags were injuring vehicle occupants, some fatally. In February 2015, the U.S. Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA) issued a Preservation Order (PO) requiring that defective airbags removed from vehicles in the U.S. be returned to Takata, at its expense, and that Takata preserve the airbags indefinitely, except for a portion that were to be set aside for testing. Environmental Protection Agency (EPA) subsequently issued a Coordinated Remedy Order (CRO) to help speed the pace of recalls in the U.S., recognizing that the risk of injury associated with some airbags increases over time due to physical / chemical changes continuing to occur in the airbag inflators. While scrap airbags are often believed to possess the hazardous waste characteristic of

reactivity (D003), a memorandum from EPA (June 23, 2017) indicated that defective Takata airbags subject to the PO were not regulated as hazardous waste, which provided some level of regulatory certainty to auto dealers and others managing the defective airbags and returning them to Takata.

In April 2018, NHTSA modified the PO, effectively subjecting most defective airbags removed from vehicles to regulation as hazardous waste. Regarding this current situation, EPA learned through "conversations with DOT, the automobile manufacturers, automotive salvage vendors, and other affected stakeholders, that imposing full generator requirements on automobile dealers and salvage vendors who lack the expertise and experience in managing hazardous waste would result in the slowdown, rather than the necessary acceleration, of the recall effort, resulting in even greater harm to human health and the environment" (see 83 FR 61554). In response, EPA issued an interim final rule (IFR), published November 30, 2018 (see 83 FR 61552), titled Safe Management of Recalled Airbags. In the IFR, EPA explains its determination that "modified RCRA requirements are appropriate for automobile dealers, salvage yards, and other entities that are removing the recalled airbag inflators and facilitating the recalls." The IFR creates a new exclusion at 40 CFR 261.4(j) which streamlines the recall and disposal process by designating the point of generation for covered airbags to a newly-defined entity designated as an "airbag waste collection facility." The exclusion also covers other non-recalled or non-Takata waste airbags.

The recall of defective airbags is ongoing. Because the new rule is considered less stringent than current requirements for airbags, Michigan and other authorized states are not required to adopt it. Unfortunately, fatalities resulting from defective airbags have continued to occur as the recall proceeds. Therefore, in the interest of public safety and prevention of potential additional harm to human health and the environment, MMA urges EGLE to adopt the new exclusion as soon as possible and as part of this rulemaking.

Waste/ Scrap Leather

The proposed revisions do not correct the longstanding lack of clarity in the existing chromium exclusion in the federal rules and in the Part 111 Rules [R 323.9204(2)(g)] regarding the amounts of hexavalent chromium in waste leather that satisfy the criterion that, for leather to be considered non-hazardous waste, the "chromium in the waste is exclusively, or nearly exclusively, trivalent chromium." "Nearly exclusively trivalent chromium" is very ambiguous and leads to regulatory uncertainty such that generators of leather waste unnecessarily manage the leather as hazardous waste. Many manufacturing facilities in Michigan generate end-user waste / scrap leather items (made of leather tanned with chromium), such as personal protective equipment (gloves, footwear, aprons, etc.) and vehicle parts. When tested, these items often fail TCLP testing for chromium. In accordance with guidance provided by EGLE via email, if waste/ scrap leather is shown to be free of hexavalent chromium via testing and is not a hazardous waste for any other reason, the leather is not required to be managed as a hazardous waste, when disposed. However, more often than not, attempts to use the guidance provided by EGLE are complicated by the (federal) language in the guidance that was copied from the chromium exclusion in the Part 111 Rules.

Waste/ scrap leather items that fail TCLP testing for chromium almost always do so as a result of chromium contained in the items at the time of purchase, not as a result of chromium

contamination resulting from use at manufacturing facilities. This can be demonstrated via available analytical data from testing of new leather gloves.

When the federal rule was promulgated almost 40 years ago, EPA made clear its motivation to exclude from regulation many categories of chromium-tanned leather was based on its understanding that:

1) The risk to human health and the environment pertains to exposure to hexavalent chromium, not trivalent chromium;
2) Trivalent chromium compounds are used and preferred for leather tanning; and
3) Hexavalent chromium compounds are not effective leather tanning agents.

Unfortunately, the petitions for regulatory exclusion from manufacturers of leather products did not address such products at end-of-life. Efforts by the regulated community to obtain clarification from EPA have generally failed, with EPA repeatedly deferring to authorized states for resolution. As an alternative to the existing regulatory approach and to clarify previous guidance provided by EGLE, MMA suggests a different methodology, specifically:

> If leather waste streams that would otherwise require disposal as a hazardous waste, based on TCLP testing for chromium, can be shown to contain comparable amounts of chromium before use, they may be managed as non-hazardous waste, if the following are also true:
>
> 1. The leather waste streams are not a listed hazardous waste and do not exhibit any hazardous characteristic other than toxicity for chromium.
> 2. When disposed, leather waste is landfilled.

This methodology provides a simple, common-sense approach for evaluating the risks posed to human health and the environment by specific leather waste streams while also ensuring that leather contaminated as a result of use is properly managed.

Management of Broken Universal Waste Lamps

MMA requests that EGLE allow the management of broken lamps as universal waste, without testing. Generators of universal waste lamps usually experience some lamp breakage when handling, despite their best efforts to avoid it, due the fragile nature of the devices. EPA allows broken lamps to be managed as universal waste – see **EPA's RCRA FAQ Database -** https://waste.zendesk.com/hc/en-us/articles/212350287.

R 299.9228(4)(c) requires that universal waste lamps not be crushed or broken and that if breakage does occur, that the fragments and residues be immediately cleaned up and containerized to protect human health and the environment. However, instead of simply allowing management of the containerized broken lamps as universal waste, as other states do (e.g., Ohio – see page 11, question 3 at link http://web.epa.state.oh.us/ocapp/sb/publications/Lampcompliance_checklist.pdf), R 299.9228(4)(c)(iii)(B) contains a requirement for specific waste determination of hazardous constituents (mercury, lead, etc.), which can generally be properly performed only via expensive

analytical testing. The test results might then dictate the broken lamps to be managed as hazardous waste, instead of universal waste, under the current rule.

MMA requests that R 299.9228(4)(c) be revised to allow broken lamps that have been properly cleaned up and containerized to be managed as universal waste. This methodology is in keeping with MMA's approach that EGLE not adopt standards that are more stringent than federal regulations and that do not provide any additional environmental benefit.

Universal Wastes — Paint and Paint-Related Materials

MMA requests EGLE to expand the universal waste rules to include paint and paint-related materials. These materials are regulated as universal wastes in both Ohio ((OAC 3745-273-89 (C)(1)) and Texas (30 TAC 335.262), greatly simplifying the regulatory requirements for these ubiquitous materials and eliminating unnecessary characterizations. This methodology reduces the potential for these items to be improperly managed by providing a simpler, but protective, management approach.

Hazardous Waste, Universal Waste, and Excluded Waste Labeling / Container Marking

MMA requests that Michigan revise its hazardous and universal waste labeling requirements to be similar to Ohio and Indiana; both states allow generators the flexibility to label containers or items with "other words" that accurately describe the waste. This change would reduce generators' potential non-compliance with a prescriptive requirement without increasing the risk of improper management of these materials. (Reference Indiana regulations at 329 IAC 3.1-16-2 Exceptions and additions; petitions to add a universal waste, 329 IAC 3.1-16—2(13) for excluded solvent-contaminated wipes, and Ohio regulations for state-only universal wastes found in OAC 3745-273-14).

MMA also requests that EGLE adopt Ohio's satellite area container marking requirements that allow generators to use alternative language to the federal "Hazardous Waste" marking requirement. Specifically, in addition to using the federal language, Ohio provides generators the option to use "other words that describe the contents of the containers". [Reference OAC 3745-52-34 (C)(1)(b)].

Weekly Inspections

MMA requests that EGLE adopt Ohio's more flexible approach for weekly inspections of accumulation containers. Ohio's weekly inspection regulation states, "At least once during each period from Sunday to Saturday, the owner or operator shall inspect areas where containers are stored." (Ohio Administrative Code 3745-66-74 inspections - containers). This flexibility provides generators flexibility to develop appropriate and practical inspection schedules while maintaining environmental protection.

Annual Personnel Training Requirements

MMA requests that EGLE adopt Ohio's approach to the annual training review requirement by extending the time allowed for the review. Ohio's regulation states, "Facility personnel shall take part in an annual review of the initial training required in paragraph (A) of this rule during each period from January first to December thirty-first. The review shall occur within fifteen months after the previous review." This approach will reduce potential non-compliance for

generators without compromising the intended purpose of the reviews. (Ohio Administrative Code (OAC 3745-65-16(C))

Marking Containers and Tanks with Hazardous Waste Numbers

MMA supports EGLE's proposal to allow marking of containers in Satellite Accumulation Areas, as well as tanks and containers in central accumulation areas and episodic event waste to indicate the hazards of the contents, in lieu of hazardous waste numbers, including the applicable hazardous waste characteristic(s), the hazard communication consistent with 49 CFR part 172, subpart E or F, a hazard statement or pictogram consistent with 29 CFR §1910.1200, or a chemical hazard label consistent with NFPA 704. This will allow generators in Michigan the flexibility to determine the best way to mark containers and tanks to communicate the hazards associated with the wastes accumulated therein.

Universal Wastes — Aerosol Cans

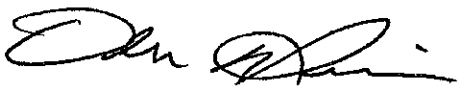
MMA supports the addition of aerosol cans to Michigan's universal waste rules.

Dating Hazardous Waste Tanks

MMA supports EGLE's proposal to not require marking accumulation start dates on hazard waste tanks. Demonstrating that wastes in tanks are accumulated for less than 90 days is easily confirmed using other available documents. This methodology is in keeping with MMA's approach that EGLE not adopt standards that are more stringent than federal regulations and that do not provide any additional environmental benefit.

Thank you for your consideration of these comments. Please contact me directly with any questions or concerns at capitolgroup@me.com.

Sincerely,



Bill Lievense
Capitol Group on behalf of MMA

Environmental GEO-Technologies, LLC

→Amend. 12
RE Public Comments
File / Draft
SEP 18 2019

HAZARDOUS WASTE SECTION

September 13, 2019

Ms. Ronda L. Blayer
Hazardous Waste Section
EGLE, MMD
P.O. Box 30241
Lansing, MI 48909-7741

Re: EGLE Proposed Revisions to Rules, Part 111 Hazardous Waste Management Rules

Dear Ms. Blayer:

On behalf of Environmental Geo-Technologies, LLC ("EGT"), EGT fully supports the subject EGLE Proposed Revisions to Rules, Part 111 Hazardous Waste Management Rules. This is because they incorporate the necessary changes to Michigan's rules as a result of EPA promulgated rules.

We, as members of the commercial hazardous waste management community who are perhaps those most affected by such Draft rules, appreciate the opportunity that EGLE afforded us and indeed, all the members of the regulated community (commerce, government, industry and institutions) to review and comment on the subject Draft rules.

If you should have any questions or comments, please feel free to contact us.

Sincerely,

Richard J. Powals, P.E.

cc: J. Frost (EGT)
J. Greenberg (EPA)

rjp091319/EGTMDEQHWMRules-091319

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→ amendment 12, Public Comment file, Draft 6

Blayer, Ronda (EGLE)

From: MEC Environmental Consulting <mecec@comcast.net>
Sent: Wednesday, September 11, 2019 4:11 PM
To: Blayer, Ronda (EGLE)
Subject: HazWaste Rules Package
Attachments: Ltr_Blayer_HW_2019_Rules_Package.pdf

Ronda,

Please find enclosed our initial comments on the recently announced hazwaste rules package. Thank you very much.

Michael Carlson

MEC Environmental Consulting
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MEC ENVIRONMENTAL CONSULTING

September 11, 2019

Ms. Ronda L. Blayer
Hazardous Waste Section
Michigan Department of Environment, Great Lakes, and Energy, MMD
P.O. Box 30241
Lansing, Michigan 48909-7741

Dear Ronda,

Please find below a few comments concerns regarding the recent hazardous waste rules package https://www.michigan.gov/egle/0,9429,7-135-3312---,00.html).

1) I suggest you run the proposed changes through a spell-checker. I found at least one typo.

2) The following definition makes no sense (under what?):
R 299.9106(~~wx~~) "Publicly owned treatment works", known as "POTW," means any device or system ~~which~~ **under** is used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature and ~~which~~ **under** is owned by a "state" or "municipality," as defined by section 502(4) of the federal clean water act, **33 USC 1362(4).**

3) R 299.9228(2)(s). **. . . An aerosol can is a hazardous waste if it contains a substance that is listed in R 299.9213 or R 299.9214, or if it exhibits 1 or more hazardous waste characteristics under R 299.9212.** So *a priori* an aerosol can that meets these criteria is a hazardous waste even without it being discarded!?!

4) Replacement of "shall" with "must" is inconsistent. Shall appears repeatedly in R 299.9302. This doesn't appear to be a big deal at first, but having a set of regulations with both "shall" and "must" could elicit the thought that there must be some difference between the two terms. Indeed, "must" can refer to a weaker obligation, at least according to my dated Funk & Wagnall's. I'm old-fashioned. I really prefer "shall." The word is stronger than "must," which can mean of necessity or can't be helped. Regardless, only one of these words should be used in the rules package.

5) I seriously question the necessity of notifying the Department when a company starts using an aerosol can puncturing device pursuant to R 299.9228(4)(i)(vi)(A). What's to be gained by such a requirement? I suspect that the impetus is someone who doesn't like aerosol can puncturing devices. I'm not a big fan myself, primarily because of the regulatory compliance nexus the device poses, and the proposed requirements only add to that hassle. Let's look at this critically for a minute. Empty aerosols cans can currently be scrapped as is without being considered hazardous waste. A can puncturing device allows a company to make its scrap empty aerosol cans a bit safer. Even if a company were puncturing non-empty aerosol cans constituting hazardous waste, so what so long as they were complying with the appropriate hazardous waste regulations sans notification?

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What is the Department going to do with these notifications? Will these be used toprioritize hazardous waste inspections? I guess the option is still available to not manage hazardous waste aerosol cans as universal waste under the new regulations, thereby by-passing this notification requirement. However, I'm not sure that all generators are savvy enough to realize that this option exists. I think the overall effect of this requirement will be to chill the sales of aerosol can puncturing devices in Michigan.

6) For similar reasons as Item #5 above, I seriously question the requirement to prepare written procedures for can puncturing devices pursuant to R 299.9228(4)(i)(vi)(C). This requirement makes little sense especially considering R 299.9228(4)(i)(vi)(E) which requires a copy of the manufacturer's specifications and instructions be onsite.

7) I very much support the adoption of the federal language for episodic events. This will provide very small as well as small quantity generators with some flexibility regarding their generator category, e.g., in response to emergencies or planned cleanout of tanks and other equipment.

Thank you very much for your attention to these matters.

Respectfully submitted,

MEC ENVIRONMENTAL CONSULTING

Michael Carlson
Principal