



September 29, 2017

Missouri Department of Natural Resources
Attn: Red Tape Reduction
P.O. Box 176
Jefferson City, MO 65102

Subject: Red Tape Reduction Comments on Hazardous Waste Program Rules

To whom it may concern:

Please find below REGFORM's comments on current hazardous waste program regulations for the Red Tape Reduction process.

We appreciate the Department taking on this significant effort to identify and eliminate unnecessary, burdensome, and ineffective rules that do little to protect or improve public health and the environment.

Thank you for considering these comments. Please do not hesitate to contact me if you have any questions or need clarification.

Summary

1. **Thresholds.** Missouri regulations set thresholds based on accumulated quantities of hazardous waste. Federal regulations set thresholds based on generated quantity per month. Accumulation based thresholds bring in too many small generators who in most other states would not be regulated. We should adopt generation based (exclusively) thresholds in Missouri. Those thresholds should be exactly identical to Federal thresholds.
2. **Reporting.** Generators in Missouri are required to report either annually or quarterly. Generators would like to report every other year like they already do for US EPA. We understand fees are calculated based on reporting. But we believe a true-up process can be used during reporting years to get accurate assessments and payments. Please amend Missouri rules to allow reporting in Missouri every other year.

3. **Null and Void Rules.** There are regulations on the books in Missouri that have been nullified and voided by the No Stricter Than law (§ 260.373, RSMo. We request that these and all regulations that are nullified because they are more stringent than Federal be removed from Missouri regulations to avoid further confusion.
4. **Recycling & Reuse of HSMs.** Many regulations on the books in Missouri are designed to impede, prohibit, or discourage recycling and/or re-use of hazardous secondary materials. All of these regulations should be rescinded so that Missourians can take full advantage of the recycling/reuse regulations in place at the Federal level.
5. **Resource Recovery Program/Certificate.** The Resource Recovery program is not needed. It is an additional burden to Missouri generators that generators in other states do not deal with. We request that the Resource Recovery program be dismantled and all regulations associated with it rescinded.
6. **Zinc Bearing Fertilizer.** An exemption for zinc bearing fertilizer exists at the Federal level. It has not been adopted in Missouri. This again discourages recycling and re-use. We request that the exemption be adopted in Missouri.
7. **Unique Waste Codes.** Any unique Missouri waste codes or obligations/requirements associated with unique Missouri waste codes should be rescinded. They are unnecessary and impose requirements that produce little or no environmental benefit.
8. **SAA's.** Generators with Satellite Accumulation Areas currently have the option of complying with either the Standard Federal rules or a Missouri option. This is a beneficial and sound approach, because operations are so different from place to place. However, a generator can only select one option at any location. Please amend the regulations so that a single generator can use any combination of Federal or State compliance options at any of his/her SAAs at a location.
9. **Universal Waste.** Please expand Missouri Universal waste regulations to include aerosol cans and paint/paint wastes as Universal Waste.

Detailed Comments

1. 10 CSR 25-3.260(1)(A)25. Establishes thresholds in Missouri that are more stringent than Federal regulations. Specifically, the rule says, "when a person accumulates one hundred kilograms...." Federal thresholds are based on generating, not accumulating, specified quantities of hazardous waste per month. Although § 260.373.1(3)(a), RSMo allows the Hazardous Waste Management Commission (HWMC) to promulgate regulations that are stricter than Federal in the setting of thresholds, it does not require them to be stricter. This focus on accumulation rather than generation forces numerous small generators into compliance with this rule that otherwise would not be regulated. This is an unreasonable burden on small generators that reaches beyond the core functions of the program. This and all hazardous waste regulations in Missouri should be revised as needed to establish thresholds based on monthly generation of hazardous waste, not accumulation. This includes 10 CSR 25-4.261(2)(A)10.A which imposes the accumulation requirement on CESQGs.
2. The definitions of the terms *abandoned or uncontrolled, attenuation, CFR, CSR, Commission, DOT, Farmer, Generation, hazardous waste transporter, household hazardous waste, identification number, International Registration Plan, Missouri hazardous waste mileage, motor vehicle, professional engineer, power unit, RCRA, Registry, Remedial action, remedial action plan, resource recovery, responsible party, site, substantial change, training, United States importer, vehicle, and waste* currently found in 40 CSR 25-3.260(3) are not found in 40 CFR 260.10. Therefore, these should be removed from the CSR. Because these definitions are

present in State regulations, they create confusion and a burden to the regulated public who must constantly monitor differences between Federal and State regulations. Therefore, they are stricter or sooner than Federal, as defined by § 260.373, RSMo. We believe they are null and void as defined by § 260.373.3, RSMo and should be removed to avoid further confusion. If the Department finds that any one of these definitions is useful, it could move that definition to a chapter other than 10 CSR 25-3, 10 CSR 25-4, 10 CSR 25-5, or 10 CSR 25-7, which is outside the scope of § 260.373, RSMo.

3. The definition of *hazardous waste* at 40 CSR 25-3.260(3)(H)1 is stricter than that found in 40 CFR 260.10. Therefore, it should be removed.

REGFORM is aware that the Department has indicated in the past that it has retained the State definition of *hazardous waste* (and other provisions) because of the “general authority” of the Hazardous Waste Management Commission (§ 260.370, RSMo) to categorize hazardous waste, safely manage hazardous waste, and establish criteria for listing to determine whether or not a waste is hazardous.

260.373(2) RSMo states that limitations on the prohibition against promulgating state rules that are stricter than Federal exist only “where State statutes expressly prescribe standards or requirements that are stricter....” The general authority in § 260.370, RSMo is not an expressly prescribed standard or requirement.

Because of this prohibition, the only legal definition of a hazardous waste in Missouri that is different from the definition found in 40 CFR 260.10 is the one that is expressly prescribed in Missouri statute. That definition is found at 260.360(11): “(11) “Hazardous waste”, any waste or combination of wastes, as determined by the commission by rules and regulations, which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a present or potential threat to the health of humans or the environment;”

This statutory definition itself refers to “rules and regulations” promulgated by the Hazardous Waste Commission. Those rules and regulations have been prohibited by law from being stricter than Federal RCRA in § 260.373, RSMo.

The current definition of hazardous waste 40 CSR 25-3.260(3)(H)1 violates § 260.373.3, RSMo. Therefore it is null and void and should be removed from the CSR.

4. The definitions of the terms *transporter*, *universal waste*, and *used oil* currently found in 40 CSR 25-3.260(3) are not equal to the definitions published in 40 CFR 260.10. Therefore, these should be removed from the CSR. Because these alternate definitions are present in State regulations, they create confusion and a burden to the regulated public who must constantly monitor differences between Federal and State regulations. Therefore, they are stricter or sooner than Federal, as defined by § 260.373, RSMo. We believe they are null and void as defined by § 260.373.3, RSMo and should be removed to avoid further confusion.
5. Failing to incorporate 40 CFR 261.4(a)(16) (see 10 CSR 25-4.261(2)(A)7) makes Missouri regulations stricter than Federal. § 260.373.1(3)(f), RSMo allows the Hazardous Waste

Management Commission (HWMC) to promulgate regulations that are stricter Federal where such rules pertain to hazardous secondary materials burned for fuel or recycled. It does not require them to be stricter. This focus on impeding or prohibiting recycling of HSMs forces numerous generators to handle material as hazardous waste that otherwise would be treated as a useful product. This is an unreasonable burden on Missouri generators and it reaches beyond the core functions of the program. This and all hazardous waste regulations in Missouri should be revised as needed to encourage and promote lawful recycling and/or reuse of Hazardous Secondary Materials.

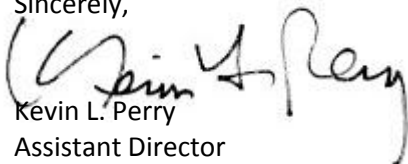
6. Failing to incorporate 40 CFR 261.4(a)(20) and (21) (see 10 CSR 25-4.261(2)(A)8) makes Missouri regulations stricter than Federal. § 260.373.1(3)(e), RSMo allows the Hazardous Waste Management Commission (HWMC) to promulgate regulations that are stricter than Federal where such rules pertain to zinc-bearing fertilizers. It does not require them to be stricter. This focus on impeding or prohibiting recycling of zinc-bearing HSMs forces generators to handle material as hazardous waste that otherwise would be treated as a useful product. This is an unreasonable burden on Missouri generators and it reaches beyond the core functions of the program. This and all hazardous waste regulations in Missouri should be revised as needed to encourage and promote recycling and/or reuse of Hazardous Secondary Materials.
7. Failing to incorporate 40 CFR 261.4(g)(2) (see 10 CSR 25-4.261(2)(A)10.B.) makes Missouri regulations stricter than Federal. This is an unreasonable burden on Missouri generators and it reaches beyond the core functions of the program. This should be revised to incorporate the Federal provisions and bring Missouri regulations into equivalence with the Federal regulation.
8. The Resource Recovery Program and certificates (10 CSR 25-9) are unique to Missouri regulations. They are stricter than Federal. § 260.373.1(3)(f), RSMo allows the Hazardous Waste Management Commission (HWMC) to promulgate regulations that are stricter Federal where such rules pertain to hazardous secondary materials burned for fuel or recycled. It does not require them to be stricter. This focus on impeding or prohibiting recycling of HSMs forces numerous generators to handle material as hazardous waste that otherwise would be treated as a useful product. This is an unreasonable burden on Missouri generators and it reaches beyond the core functions of the program. 10 CSR 25-9 should be rescinded and all hazardous waste regulations in Missouri that refer to it or add special conditions because of it should be revised so that the Resource Recovery requirements are completely eliminated from Missouri regulations. (See 10 CSR 25-4.261(2)15 for one example of a Federal rule that is not incorporated in Missouri because of the resource recovery requirements.)
9. Failing to incorporate 40 CFR 261.38 (see 10 CSR 25-4.261(2)(D)1) makes Missouri regulations stricter than Federal. § 260.373.1(3)(f), RSMo allows the Hazardous Waste Management Commission (HWMC) to promulgate regulations that are stricter than Federal where such rules pertain to hazardous secondary materials burned for fuel or recycled. It does not require them to be stricter. This focus on impeding or prohibiting recycling of HSMs forces numerous generators to handle material as hazardous waste that otherwise would be treated as a useful product. This is an unreasonable burden on Missouri generators and it reaches beyond the core functions of the program. This and all hazardous waste regulations in Missouri should be revised as needed to encourage and promote recycling and/or reuse of Hazardous Secondary Materials.

10. 10 CSR 25-5.262(1)(A)1.A. Establishes thresholds in Missouri that are more stringent than Federal regulations. Specifically, the rule says, "A person generating in one (1) month or accumulating at any one time...." Federal thresholds are based on generating, not accumulating, specified quantities of hazardous waste per month. Although § 260.373.1(3)(a), RSMo allows the Hazardous Waste Management Commission (HWMC) to promulgate regulations that are stricter than Federal in the setting of thresholds, it does not require them to be stricter. This focus on accumulation rather than generation forces numerous small generators into compliance with this rule, that otherwise would not be regulated. This is an unreasonable burden on small generators and it reaches beyond the core functions of the program. This and all hazardous waste regulations in Missouri should be revised as needed to establish thresholds based exclusively on monthly generation of hazardous waste, not accumulation.
11. 10 CSR 5-25.262(2)(B)G. and H. refer to Missouri waste codes MH02 and D098. The unique waste codes and the manifesting requirements are stricter than Federal and should be eliminated.
12. We appreciate the satellite accumulation area (SAA) options afforded to generators in 10 CSR 5-25.262(2)(C)3.A. This is valuable and helps Missouri generators do their jobs with diminished burdens. However, the restriction that generators must operate under the same requirements at every SAA throughout a single generator location is unduly restrictive. The distinction between the Federal approach and the State option are readily observed. Any trained inspector should be able to determine which is in effect. We request that the rule be amended to allow generators to mix and match. Allow them to use the best compliance option at any SAA in their facilities. Likewise, notification is not necessary. MDNR inspectors can easily see which system is in effect at a SAA. Therefore, notification requirements should be removed from regulation.
13. 10 CSR 5-25.262(2)(D)1.B. requires annual or quarterly reporting. 10 CSR 5-25.262(2)(D)1.E. quarterly reporting. 10 CSR 5-25.262(2)(D)2 does not incorporate in Missouri regulation reporting regulations for small quantity generators at 40 CFR 262.44. We request that all appropriate Missouri regulations be amended to require only every other year reporting, as consistent with Federal regulations. We acknowledge that fee calculations hinge on these reports. We suggest that for non-reporting years generators are billed for the same amount as the previous year. During reporting years, fees can be trued up with either a new payment or a refund.
14. We would like to see 10 CSR 25-16.273 expanded to include paint and paint wastes and aerosol cans as universal waste. This would simplify the process for handling these wastes in Missouri.

Thank you for considering our comments and requests.

Do not hesitate to contact me at (573) 680-5069, or via email at kperry@regform.org, should you have any questions.

Sincerely,



Kevin L. Perry
Assistant Director

September 29, 2017

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c: R. Walker, REGFORM, Executive Director
REGFORM members