



February 21, 2018

Mr. John Jurgensmeyer, Director  
Hazardous Waste Program  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

**Subject: Red Tape Reduction Comments on Hazardous Waste Program Rules, follow-up to February 15, 2018 stakeholder meeting**

Dear Director Jurgensmeyer:

Thank you for this opportunity to comment and provide input on the rule proposals the Hazardous Waste Program provided and discussed at last week's RTR Stakeholder Meeting.

We support Gov. Greitens' goal and actions toward removing unnecessary restrictions on Missourians. We have identified below several more opportunities to remove unneeded restrictions in Missouri. We have also identified instances in the proposed amendments that would increase restrictions by taking away a flexibility or option that is currently available.

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

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.

Counting accumulation rather than generation forces many 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 amended as needed to establish thresholds based on monthly generation of hazardous waste, not accumulation.

Specifically, 10 CSR 25-3.260(1)(A)24. should be amended to replace the word "accumulates" with "generates".

2. Failing to incorporate Federal exclusions in 40 CFR 261.4 makes Missouri regulations stricter than Federal.

The Department has recently announced on several occasions that it wants to do everything within the law to support and promote recycling in Missouri. The current 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. It reaches beyond the core functions of the Program.

All hazardous waste regulations in Missouri should be revised as needed to encourage and promote lawful recycling and/or reuse of Hazardous Secondary Materials. This includes rescinding regulations that do not adopt the Federal exclusions.

Specifically, 10 CSR 25-4.261(1) should be amended to strike references to “73 FR 64667 to 73 FR 64788, October 30, 2008”. Other references in this passage should also be stricken if they restrict recycling in Missouri.

In order to ensure that no regulation remains on the books in Missouri that unintentionally impedes or restricts Missourians, the last sentence of 10 CSR 25-4.261(1) should be amended to make the less stringent rule control, i.e., replace “more” with “less”.

3. We support the proposed amendment to 10 CSR 25-4.261(2)(A)8 that restores the exclusion provided in 40 CFR 261.4(a)(20) and (21). Thank you for bringing this back into effect.
4. 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.
5. The Resource Recovery Program and certificates (10 CSR 25-9) are unique to Missouri regulations. They are stricter than Federal.

The focus on impeding or restricting 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. The Department has recently announced on several occasions that it wants to do everything within the law to support and promote recycling in Missouri. Removing this requirement would be beneficial.

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. Specifically, 10 CSR 25-4.261(2)(A)1 should be rescinded. 10 CSR 25-4.261(2)(A)15 should also be rescinded.

We do not agree with the Department’s assertion that the removal of the Resource Recovery regulations would force Missouri recyclers to obtain a Part B permit. 40 CFR 261.6(c)(1) exempts units that recycle hazardous waste from RCRA Permitting:

“Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in §261.6(d).)”

The last sentence, in the parentheses makes this clear.

Unfortunately, 10 CSR 25-4.261(2)(A)15 does not incorporate the Federal provision that exempts recyclers from the Part B permit requirement. Again, 10 CSR 25-4.261(2)(A)15 should be rescinded.

We believe the lack of support for the rescission of the Resource Recovery requirements in Chapter 9 at the stakeholder meeting can be attributed to this lack of understanding that rescission of 10 CSR 25-4.261(2)(A)15 relieves recyclers of the Missouri-specific obligation to obtain a Part B permit.

We request that the Department take no action that would result in a recycler in Missouri who is currently not required to obtain a Part B permit being required to do so.

If there are provisions in Missouri regulations that, in the absence of the Chapter 9 and related implementing regulations, would cause a recycler in Missouri who is currently not required to obtain a Part B permit to obtain one, we request that those provisions be amended to completely remove the requirement and make recycling in Missouri equivalent to what is available in Federal regulations.

Since it pertains to Resource Recovery, 10 CSR 25-8.124(4) should also be rescinded.

Any Missouri regulation that authorizes a fee, tax, or cost recovery for obtaining or maintaining a resource recovery certificate should be rescinded.

6. 10 CSR 25-5.262(2)(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.

This use of 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 is an unnecessary restriction on Missourians that should be removed under the current Red Tape Reduction stated goals and actions.

This and all hazardous waste regulations in Missouri should be amended to establish thresholds based on monthly generation of hazardous waste, not accumulation.

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7. We appreciate and value the satellite accumulation area (SAA) options afforded to generators in 10 CSR 5-25.262(2)(C)3. This is valuable and helps Missouri generators do their jobs with diminished burdens. This provision should not be rescinded, as is currently proposed.

The restriction that generators must operate under the same requirements at every SAA within 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. Specifically, we request that 10 CSR 5-25.262(2)(C)3.A. be rescinded, as currently proposed.

8. The ability to label containers with a capacity of less than one gallon on a rack, locker, or other device is valuable to Missouri generators. This was supported during extensive stakeholder meetings and is currently in effect in 10 CSR 5-25.262(2)(C)1.A. It is inconsistent with the stated goal of Red Tape Reduction to remove this flexibility, especially for any facility with a laboratory. Please retain this provision. Do not rescind it as is currently proposed.

References to accumulating waste in this passage should be removed. See our comment number 1 above. The Department has proposed elsewhere to eliminate the pre-transport DOT or Missouri-specific labeling requirements.

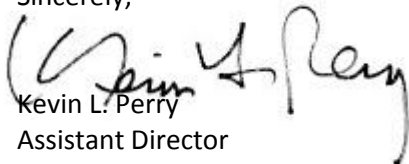
9. We request that you expand 10 CSR 25-16.273 to include paint, paint wastes and aerosol cans as universal waste. This would simplify the process for handling these wastes in Missouri.
10. We appreciate and support the Departments actions to remove the Missouri-specific labeling requirements prior to transport and the hazardous waste tank labeling requirement (NFPA diamond). These are important changes that were strongly supported by generators during extensive stakeholder processes in the past.

Thank you for considering our comments and requests.

John, I would also like to request that you meet with me to discuss these potential rule amendments. I'll call to arrange a meeting.

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

Sincerely,



Kevin L. Perry  
Assistant Director

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