



COMMONWEALTH OF MASSACHUSETTS
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DEPARTMENT OF ENVIRONMENTAL PROTECTION
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**Revisions to 310 CMR 30.000
Response to Comments
February 2009**

Hearings (6): December 1, 2008 - DEP- Boston
December 2, 2008 - DEP - Worcester
December 3, 2008 (3) - DEP - Boston; DEP - Lakeville; and DEP - Wilmington
December 4, 2008 - DEP - Springfield

Submitters (1): Heritage Crystal Clean (Elgin, IL)

Comment period: Closed at 5 p.m. on December 19, 2008

1. The Massachusetts Department of Environmental Protection (the “Department”) has for the first time proposed regulations to subject the RCRA non-hazardous mineral spirits to the waste oil regulations, thus classifying the solvent as a state hazardous waste.

Response: The Department is not “for the first time proposing regulations” to subject the RCRA non-hazardous mineral spirits to the waste oil regulations. High flash mineral spirits have been and will continue to be subject to regulation under 310 CMR 30.000 as waste oil (MA01), a state hazardous waste. This amendment affirms the Department’s longstanding position that the definition of oil, and by extension waste oil, includes petroleum distillates such as certain high flashpoint parts cleaner solvents (mineral spirits/petroleum naphtha composed primarily of aliphatic hydrocarbons).

2. The proposed regulations will result in over-regulation.

Response: As mentioned above, the purpose of these new regulations is to affirm the regulatory status of high flashpoint parts cleaner solvents. As such, this regulation does not impose any new or additional regulations. The Department disagrees that its long standing position requiring high flashpoint parts cleaner solvents to be managed as waste oil constitutes “over-regulation.”

3. The proposed revisions are contrary to the accepted industry usage of the term “oil.”

Response: The Department’s revised definition of “Oil” now reads as follows (emphasis added to show new text):

“Oil means petroleum in any form including crude oil, fuel oil, petroleum derived synthetic oil, refined oil products, *including petroleum distillates such as mineral spirits and petroleum naphtha composed primarily of aliphatic hydrocarbons*. It does not mean *petrochemicals* or animal or vegetable oils.”

This revised definition, along with the Department’s new “Petrochemical” definition, affirms the Department’s position that petroleum distillates, such as mineral spirits and petroleum naphtha composed primarily of aliphatic hydrocarbons, are regulated as oil under 310 CMR 30.000. Having regulated waste oil in Massachusetts since 1973, the Department recognizes that there is a wide range of refined oil products used in industry today. This regulation clearly states the regulatory status of this specific type of petroleum distillate (mineral spirits and petroleum naphtha). The Department believes that the regulated community will benefit from this added clarity.

4. Currently, petrochemicals are specifically excluded from the current definition of Massachusetts waste oil (state hazardous waste.)

Response: The commenter is correct that petrochemicals are specifically excluded from the current definition of oil, and by extension, waste oil in 310 CMR 30.010. However, the material in question - mineral spirits and petroleum naphtha - is classified as an oil and not a petrochemical.

5. The proposed revisions will act as a disincentive for companies to use a safer solvent than ones classified as hazardous waste under the Resource Conservation and Recovery Act (RCRA).

Response: The Department disagrees that these revisions will act as a disincentive for companies to use “safer solvents” since they are only affirming longstanding interpretations and do not result in a change in Department policy.

6. Up until this proposed rulemaking, the Department has attempted to enforce a regulatory interpretation that would include RCRA-non hazardous mineral spirits as a state hazardous waste by calling the solvent a waste oil. This interpretation is not supported by the current regulatory framework. In fact, the current regulations specifically exclude petrochemicals such as mineral spirits, from the Department's definition of waste oil.

Response: The Department has and will continue to regulate high-flashpoint petroleum distillates, such as mineral spirits and petroleum naphtha as waste oil (MA01), as a state-only hazardous waste. The commenter is correct that the current regulations specifically exclude petrochemicals; the commenter’s statement that mineral spirits are excluded from the definition of “oil” as a “petrochemical” is incorrect, however.

7. A solvent is a petrochemical, not a used oil.

Response: Solvent is a general term commonly defined as any substance used for dissolving another substance. It is also not a defined term under the current Massachusetts hazardous waste regulations. A solvent may or may not be a petrochemical and also may or may not meet the definition of oil. This amendment affirms the Department's longstanding position that the definition of oil, and by extension waste oil, includes petroleum distillates such as certain high flashpoint parts cleaner solvents (mineral spirits/petroleum naphtha composed primarily of aliphatic hydrocarbons).

8. Commenter stated discarded used mineral spirits that are not a RCRA hazardous waste should be regulated under a scheme that provides requirements for proper management of waste and incentives for recycling and or direct reuse.

Response: Under the recycling provisions described at 310 CMR 30.220, there is already a regulatory framework to drive environmentally beneficial management of used mineral spirits and other regulated recyclable materials that are described in Table 1 at 310 CMR 30.221. This less stringent section of the hazardous waste regulations provides generators of certain hazardous wastes with an incentive to choose recycling over disposal.

9. The Department makes no showing that regulating mineral spirits as a used oil is necessary to protect human health and the environment or that mineral spirits meet the statutory definition of hazardous waste found in M.G.L. Chap. 21C, Section 2.

Response: The Department regulates high flash mineral spirits and petroleum naphtha composed primarily of aliphatic hydrocarbons as waste oil. It relies upon the same showing that regulating waste oil is necessary to protect human health and the environment as it did when it started regulating waste oil under M.G.L. c. 21C in July 1982. Among the reasons given at that time is that "waste oil is a mixture of compounds which may have a variety of toxic effects on living organisms."

10. Instead of blurring the distinction between these two substances, the DEP should sharpen the distinction. Doing so will encourage, rather than discourage, the use of mineral spirits in place of hazardous solvents.

Response: These revisions sharpen the distinctions between oils and petrochemicals and do not discourage the use of mineral spirits in place of "hazardous solvents."

11. As an alternative to the proposed regulations, the Department should assign a unique waste code for mineral spirits.

Response: The Department is not assigning a new waste code; mineral spirits and petroleum naphtha composed primarily of aliphatic hydrocarbons will continue to carry the MA01 waste code for waste oil.

12. Add the Following Language to 30.222(1) and (4):

-add a semi-colon and the word, 'or' after 30.222(1) (c)

-add as 30.222(1)(d), the provision "the next transporter designated on the manifest."

-add as a new 30.222(4)(b)(i)c. : "Ensure that the ultimate designation point for the material is the recycling facility."

Response: The Department is not adopting these suggested revisions since they would run counter to the intent of 310 CMR 30.222(1), which is that shipments of regulated recyclable material sent off the site of generation by a generator must go directly to the appropriate, authorized facility.