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Response to Comment for
"Public Hearing Draft
Revisions to 310 CMR 30.000
May 2009"

Hearings (6): June 9, 2009 - DEP - Boston
June 10, 2009 - DEP - Lakeville; and DEP - Wilmington
June 11, 2009 - DEP - Boston; DEP - Worcester; and DEP - Springfield

Submitters (1): US Environmental Protection Agency – Region I (EPA)

Comment period: Closed at 5 p.m. on June 22, 2009

Date: April 16, 2010

Summary of Comments Received

Prior to the public comment period for these regulations, EPA reviewed and commented to MassDEP on a preliminary version of these regulations, which pertain to the federal Land Disposal Restriction program. While EPA had previously determined that the regulations generally met the federal RCRA requirements, it discovered some minor additional changes that it thought should be made to the State regulations. EPA submitted these suggested changes to MassDEP as public comments. All of these suggested changes, which are listed below, have been made to the final regulations.

1. Comment: The state definition for "landfill" at 310 CMR 30.010 does not exclude corrective action management units (CAMUs) whereas the federal definition does (see below). EPA commented that MassDEP should track the federal definition since the state is already authorized for the federal CAMU regulations which are incorporated by reference at 310 CMR 30.602(12). The following change would make the state definition of landfill consistent with the adoption of the CAMU regulations:

260.10 - Landfill means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD# 1-866-539-7622 or 1-617-574-6868.

MassDEP on the World Wide Web: <http://www.mass.gov/dep>

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2. Comment: Similar comment for the state definition of miscellaneous unit at 310 CMR 30.010. This definition does not exclude staging piles whereas the federal definition does. Track the federal definition since the state is already authorized for the federal regulations for staging piles which are incorporated by reference at 310 CMR 30.602(14). The following change would make the state definition consistent with the adoption of the staging pile regulations:

260.10 - Miscellaneous unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under part 146 of this chapter, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 40 CFR 270.65, or staging pile.

3. The state regulations at 30.515(2)(c) were revised. The intent of the change is to address the air emission requirements and other additional requirements for interim status facilities within the scope of the inspection requirements for all interim status facilities. However, it seems that some of the references from 30.099 may have been omitted. In order for the references to be more complete, the reference for 310 CMR 30.099(n)-(o) should be changed to 310 CMR 30.099(6)(n)-(q) and the following reference should be added: 310 CMR 30.099 (6)(u). The reference to 30.099 also had a typo and needs to be corrected to read "30.099(6)."

4. Make the same change to the staging piles regulation at 30.602(14), as was done for corrective action management units and for temporary units at 30.602(12) & (13), respectively (i.e., updating to reference the most recent CFR).

5. There is a typographical error in your waste listing F038 - in the third to last line, you need to add the words "and floats."

6. The new waste listings for K149, K150 and K151 should go under the Organic Chemicals subgroup of your 30.132 waste listings. Thus, they should be listed after the K136 waste listing, rather than after the K087 waste listing as your proposed regulations currently specify.

7. The K181 waste listing is copied from the federal language, but as a result currently has cross-references to other federal regulatory provisions described as being provisions in "this section." This turns out to be confusing when placed in the State regulations. You should specify the other federal regulations being cross-referenced (e.g., 40 CFR 261.32(c)) rather than simply saying "this section" (e.g., paragraph (c) of "this section").

8. Add hazardous constituents information under 310 CMR 30.160 relating to K181 that EPA has added to its Appendix VIII. Proposed regulations already do this for waste listings P204 and P188, but not for K181 (no new information is needed regarding K149, K150, K151, F037 or F038).

9. As set forth at page 36 in EPA's Incorporation by Reference Guidance, there is an error in EPA regulation 268.7(a)(9)(iii) – that regulation incorrectly references waste codes D001-D0043 and instead should reference waste codes D001-D008 and D010 - D043 (i.e., waste code D009 should not be included in the reference). Since the State is incorporating 268.7 by reference, the State should make this correction. This can be done by adding the following as 310 CMR 30.750(3)(d)(16):

"16. At 268.7(a)(9)(iii), "D001-D0043" is replaced by "D001-D008 and D010-D0043." Note that although this reference relates to lab packs, and the State is being more stringent with respect to lab packs disposal requirements within the State, the State is not being more stringent but rather is tracking the federal requirements with respect to lab packs sent for disposal in other States. Thus, the State needs to make this correction.

10. State regulation 30.750(3)(d)(12) should reference the "Treatment Standard Table" as does (3)(d)(13), rather than using the shorthand "Table."

11. The revised State regulation 30.099(6)(j) should cross-reference to all of State regulation 30.596 (thus covering 596(1) as well as (2) and (3)), in order to include all of the State provisions which are analogous to the federal regulation 265.120.