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DRAFT REVISED Guidance for Solid Waste Handling And Disposal Facilities on Compliance With MassDEP's Waste Bans

**In Support of 310 CMR 19.000, Solid Waste Management Regulations
310 CMR 19.017 Waste Bans**

~~Initial Publication: August 1999~~

~~Revised: December 23, 2005~~

~~March 15, 2011 and [INSERT DATE] 2013~~

~~January-June 2013~~

Note: Although MassDEP is not required to seek public comment on guidance and the guidance is not part of the proposed amendments to 310 CMR 19.000, the department is making this draft guidance document available for review and comment, along with those proposed amendments, for the information and convenience of the public and regulated entities. MassDEP is issuing this draft revised guidance in redline format to highlight the changes from the existing guidance. The guidance will assist the public and regulated entities in understanding how Mass DEP intends to implement the proposed regulatory amendments. MassDEP will accept informal comments on the draft guidance until August 23, 2013. Comments should be sent to john.fischer@state.ma.us.

**DRAFT Revised Waste Ban Guidance Document
Summary of Proposed Changes**

- **Define “commercial organic material”:** Define commercial organic material as a banned material. Add definition of “Residence or residential” in this context to ensure they are not covered by waste bans. See pgs. 4-6 for definitions.
- **Eliminate bag opening option for comprehensive inspections:** Previously, a facility could choose between conducting a lower number of comprehensive inspections per month, including opening bags, or conducting a larger number of inspections per month without opening bags. Because of worker health and safety concerns, conducting inspections without opening bags has become the standard for the industry. Therefore, MassDEP has removed the option of opening bags to streamline the guidance. See page 11.
- **Change action levels for recyclable paper and bottles and cans:** Reduce the action level for each of these materials from 20% to 10%. See pages 8-9.
- **Add a cumulative action level for all banned materials:** Add a cumulative action level across banned materials with an action level¹, so that if all of these banned materials combined exceed 30% of a load by volume, that would be considered a failed load, even if none of the materials exceed an action level for a specific material. See page 8.
- **Comprehensive inspections:** Eliminate Department Approved Recycling Program (DARP) and add business recycling certification program. The DARP program ended July 1, 2012, so there are no longer “DARP loads” that are exempt from comprehensive inspection. However, a load from a location certified under MassDEP’s Supermarket Certification Program or any other similar certification program that is developed, would be exempt from comprehensive inspections. See page 10.
- **Revise facility letters to haulers:** The facility sample letter to haulers has been modified to address failed loads for commercial organic material when applicable. See Attachment C.
- **Revise facility letters to generators:** Previously the guidance included a provision for the facility to send a letter to a municipality that has been identified as disposing of banned materials. MassDEP has changed this provision and letter so that a facility would send a letter to any generator, when known to the facility, which is identified as disposing of banned materials, in addition to the letter to haulers. See Attachment E.

¹ Includes asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood; commercial organic material; glass, metal, and plastic containers; leaves and yard waste; and recyclable paper.

- **Which permit modification form(s) to use:** MassDEP intends to simplify the permit modification forms used for submitting modified Waste Ban Plans for review. This will be made consistent with changes to 310 CMR 19.00 that have been issued for public comment. See page 8.

GUIDANCE FOR SOLID WASTE HANDLING AND DISPOSAL FACILITIES ON COMPLIANCE WITH MASSDEP'S WASTE BANS

This Guidance for Solid Waste Handling and Disposal Facilities on Compliance with MassDEP's Waste Bans (Guidance Document) is intended to guide parties in complying with the Waste Bans in the Solid Waste Management Facility Regulations at 310 CMR 19.017. The Waste Ban regulations include bans on disposal, transfer for disposal, or contracting for disposal of specific solid waste materials. This Guidance Document summarizes these requirements for solid waste facilities and provides guidance on approaches the Massachusetts Department of Environmental Protection ("MassDEP") considers acceptable for complying with the Waste Bans. Facilities using this Guidance Document should be aware that there may be other acceptable alternatives for achieving compliance with the Waste Bans.

This Guidance Document is intended solely as guidance for solid waste management facilities in how to create waste ban compliance plans as required by 310 CMR 19.017(5). This Guidance Document is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in any litigation with the Commonwealth. Nothing in this Guidance Document relieves a solid waste management facility from compliance with the facility's MassDEP approved waste ban compliance plan, nor does it limit MassDEP's authority in approving or disapproving any Waste Ban Plan or determining compliance with an existing plan or enforcing an existing plan. MassDEP reserves the right to act at variance with this Guidance Document and change it at any time without public notice.

INTRODUCTION

"Waste Bans" are prohibitions on the disposal, transfer for disposal, or contract for disposal, of certain hazardous, recyclable, and compostable items at solid waste facilities in Massachusetts. The goals of the waste bans are to: promote reuse, waste reduction, or recycling; reduce the adverse impacts of solid waste management on the environment; conserve capacity at existing solid waste disposal facilities; minimize the need for construction of new solid waste disposal facilities; and support the recycling industry by ensuring that large volumes of material are available on a consistent basis. The waste bans also prohibit disposal or transfer for disposal of certain toxic substances or materials that may adversely affect our environment when landfilled or combusted.

This Guidance Document supersedes and replaces in its entirety the previous version issued by MassDEP on March 11, 2011. The changes to this document include the addition of commercial organic materials as a restricted material, changes to action levels for some materials, changes to comprehensive inspection requirements, and other changes. To aid reviewers, a summary of the changes has been provided at the beginning of this document.

REMOVAL OF WASTE BAN MATERIAL

The waste ban regulation states that “no landfill, transfer facility or combustion facility shall accept the restricted material except to handle, recycle or compost the material in accordance with a plan submitted pursuant to 310 CMR 19.017(6~~5~~) and approved by the Department.”

Pursuant to this regulation, every solid waste management facility must remove and/or divert from disposal all waste ban materials in accordance with a waste ban compliance plan (“Waste Ban Plan”) approved by MassDEP.

This Revised Guidance document is intended to assist the operator of a solid waste management facility in complying with the waste ban requirements at 310 CMR 19.017. In accordance with the provisions and the timetable set forth in MassDEP’s solid waste facility regulations (310 CMR 19.000), acceptance for the purpose of disposal or transfer for disposal of the following materials is prohibited at a Massachusetts solid waste transfer station, landfill, combustion facility, and construction and demolition debris handling facility:

- Asphalt pavement, brick and concrete;
- Cathode ray tubes;
- Clean gypsum wallboard;
- Commercial organic material;
- Glass containers;
- Lead batteries;
- Leaves and yard waste;
- Metal;
- Metal containers;
- Recyclable paper;
- Single polymer plastics;
- Tires;
- White goods; and
- Wood.

These materials may be transferred for further processing, reuse or recycling. The waste bans on wood and whole tires do not apply to combustion facilities.

Waste Ban Plans must demonstrate in detail how the facility operator will not dispose, or transfer for disposal, banned materials. Waste Ban Plans must demonstrate how the facility will, to the greatest extent possible, separate out from waste loads banned materials for subsequent reuse or recycling. Once MassDEP approves a Waste Ban Plan, it becomes a condition of the facility’s permit and the facility must implement it. MassDEP will use a facility’s approved Waste Ban Plan and all applicable permits to evaluate compliance with 310 CMR 19.000 and conduct enforcement as necessary.

The plans may be submitted using the forms in Attachment G and should include detailed descriptions of procedures for:

- Monitoring all incoming loads on an ongoing basis;
- Conducting comprehensive inspections of certain loads;

- Responding to failed loads, including written communication that will be sent to responsible parties when they deliver unacceptable amounts of banned materials; and
- Complying with other Waste Ban Plan components such as signage, training and annual reporting.

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Also included as a separate document are the following attachments:

- Attachment A - Ongoing Monitoring Recording Sheet
- Attachment B - Comprehensive Inspection Recording Sheet
- Attachment C - Sample Facility Letter to Hauler
- Attachment D - Summary of Waste Ban Requirements
- Attachment E - Sample Facility Letter to Generator
- Attachment F - Sample Signage Language
- Attachment G - Waste Ban Compliance Plan Form

I. DEFINITIONS OF MATERIALS BANNED BY 310 CMR 19.017

Asphalt Pavement, Brick, and Concrete (ABC): asphalt pavement, brick and concrete from construction activities and demolition of buildings, roads and bridges and similar sources. This includes both coated (e.g. painted) or uncoated ABC.

Cathode Ray Tubes: any intact, broken, or processed glass tube used to provide the visual display in televisions, computer monitors and certain scientific instruments such as oscilloscopes.

Clean Gypsum Wallboard: gypsum wallboard that is not contaminated with paint, wallpaper, joint compound, adhesives, nails, or other substances after manufacture. Gypsum wallboard means a panel (also known as drywall) with a gypsum core and faced with a heavy paper or other material on both sides.

Clean Wood: discarded material consisting of trees, stumps and brush, including but not limited to sawdust, chips, shavings, bark, and new or used lumber. Clean wood does not include:

- (1) wood from commingled construction and demolition waste;

- (2) engineered wood products; and
- (3) wood containing or likely to contain:
 - (a) asbestos;
 - (b) chemical preservatives such as, but not limited to, chromated copper arsenate (CCA), creosote or pentachlorophenol; or
 - (c) paints, stains or other coatings, or adhesives.

Commercial Organic Material: food material and vegetative material from any commercial or institutional entity, public or private, that disposes of more than one ton of that material per week, but excludes ~~using~~ material from a residence.

Food Material: material produced from human or animal food production, preparation and consumption activities and which consists of, but is not limited to, fruits, vegetables, grains, and fish and animal products and byproducts.

Glass Containers: glass bottles and jars (soda-lime glass). ~~but excluding~~ Excludes all of the following: light bulbs, glass cookware, plate glass, drinking glasses, windows, windshields and ceramics.

Lead Batteries: lead-acid batteries used in motor vehicles or stationary applications.

Leaves: deciduous and coniferous leaf deposition.

Metal: ferrous and non-ferrous metals derived from used appliances, building materials, industrial equipment, transportation vehicles, and manufacturing processes.

Metal Containers: aluminum, steel or bi-metal beverage and food containers.

Recyclable Paper: all paper, corrugated cardboard, and paperboard products, except tissue paper, toweling, paper plates and cups, wax-coated corrugated cardboard, and other low-grade paper products.

Residence or Residential: a single, multi-family, or group home, or apartment complex. For purposes of this guidance document, a group home means an establishment, usually resembling a private home, for providing a small group of persons with special needs, such as handicapped or elderly persons or children, with lodging and supervised care. Residence does not include any centralized dining facility.

Single Polymer Plastics: all narrow-neck plastic containers where the diameter of the mouth of the container is less than the diameter of the body of the container. This includes single polymer plastic containers labeled 1 – 6.

Tires: a continuous solid or pneumatic rubber covering intended for use on a motor vehicle. Shredded tires, defined as tires that have been cut, sliced or ground into four or more pieces such that the circular form of the tire has been eliminated, are not tires subject to the waste bans.

Vegetative Material: plant material.

White Goods: appliances employing electricity, oil, natural gas or liquefied petroleum gas to preserve or cook food; wash or dry clothing, cooking or kitchen utensils or related items; or to cool or to heat air or water.

For purposes of the waste bans, white goods include, but are not limited to, refrigerators, freezers, air conditioners, water coolers, dishwashers, clothes washers, clothes dryers, gas or electric ovens and ranges, and hot water heaters. White goods do not include microwave ovens.

Wood: treated and untreated wood, including but not limited to clean wood.

Yard Waste: deciduous and coniferous seasonal depositions (e.g., leaves), grass clippings, weeds, hedge clippings, garden materials, and brush 1 (one) inch or less in diameter (excluding diseased plants).

II. SOLID WASTE MANAGEMENT FACILITIES SUBJECT TO 310 CMR 19.017 AND REQUIRING A WASTE BAN PLAN

The following facilities must comply with the waste bans and submit a ~~waste ban plan~~ [Waste Ban Plan](#) to MassDEP for approval:

- Solid waste landfills;
- Solid waste combustion facilities;
- Solid waste transfer stations; and
- Construction and demolition handling facilities (including both construction and demolition processing facilities and construction and demolition transfer stations).

MassDEP will not require a Waste Ban Plan from an ash-only or sludge-only landfill as long as these facilities do not manage municipal solid waste or construction and demolition debris and, therefore, do not handle banned materials.

Specific Exemptions from Certain Waste Ban Compliance Plan Requirements

Notwithstanding the following specific exemptions, MassDEP encourages every facility to establish and implement a program to divert waste ban materials from disposal whenever possible.

- 1. A Facility That Receives Only Waste Loads less than or Equal to 5 Cubic Yards.** A solid waste facility whose approved waste ban compliance plan states that it does not receive any amount of waste in containers or vehicles with a capacity greater than 5 (five) cubic yards does not need to conduct record keeping or comprehensive load inspections. However, the facility still needs to monitor all waste for banned materials as part of its ongoing waste ban monitoring and, for any failed loads discovered during on-going waste ban monitoring, comply with Section VIII, Facility Response to Failed Loads.

A facility that receives only waste loads less than or equal to 5 cubic yards may aggregate loads of 5 cubic yards or less that may contain asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood, into any size solid waste container or vehicle. The consolidated load may then be sent to a permitted solid waste facility for disposal and not be subject to MassDEP waste ban enforcement for asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood disposal. Please note this exemption allowing aggregating waste loads of 5 cubic yards or less for the listed materials does not apply to other banned materials (i.e. cathode ray tubes, commercial organic material, glass containers, lead batteries, leaves, metal containers, recyclable paper, single polymer plastics, tires, white goods, and yard waste).

Example: A municipal transfer station with an approved waste ban compliance plan, which states it does not receive waste in containers or vehicles with a capacity of greater than 5 cubic yards, may consolidate asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood, into a container or vehicle, in any amount, for those specific materials. That container or vehicle may then be sent to another solid waste facility for disposal. In such a case, that container or vehicle would not be subject to MassDEP waste ban enforcement for asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood disposal for that waste load, regardless of the quantity of those materials in the load. However, the municipal transfer station Waste Ban Plan must demonstrate how other banned materials (i.e. cathode ray tubes, glass containers, lead batteries, leaves, metal containers, recyclable paper, single polymer plastics, tires, white goods, and yard waste) will be handled.

MassDEP will post on its website a list of every solid waste transfer station that has an approved waste ban compliance plan which states that the facility does not receive waste in containers or vehicles with a capacity of greater than 5 cubic yards.

If a facility accepts any waste load of any type of waste greater than five cubic yards, this exemption does not apply. In this case, all the requirements for waste ban compliance apply.

2. **Tires.** Whole tires may be disposed at a solid waste combustion facility, and shredded tires may be disposed at a landfill.
3. **Wood.** Wood may be disposed at a solid waste combustion facility.
4. **Commercial Organic Material.** This definition does not include food and vegetative material from a residence. Therefore, a solid waste facility is not required to inspect and monitor for food and vegetative material in municipally contracted or collected loads from residential routes. Note that these loads must still be inspected for leaves and yard waste and wood.

III. COMPLIANCE PLAN SUBMITTAL AND APPROVAL

A. Deadline for plan submission

Pursuant to 310 CMR 19.017, a facility is required to submit a Waste Ban Plan for MassDEP review at least 90 days prior to the effective date of the ban. The Waste Ban Plan should be addressed to the solid waste section chief at the appropriate MassDEP regional office and submitted by April 1, 2014.

B. Appropriate Permit Application Forms and Approval Process

MassDEP encourages every facility to use one of the enclosed Waste Ban Compliance Plan Forms (see Attachment G) to ensure that the key elements of this document are included in its Waste Ban Plan and to speed MassDEP's review and evaluation.

In addition to all other Sections in Attachment G, a C&D Handling Facility must complete Section 4 – Construction and Demolition Handling Facilities.

Every facility must submit a permit transmittal form [and a](#), permit modification form and fee (if applicable) with its waste ban compliance plan. The appropriate permit form for each solid waste facility is listed below.

- A solid waste transfer or handling facility. (Form BWP SW 21 – Modification of a Small Handling Facility)
- A solid waste landfill (Form BWP SW 22 – Landfills – Minor Modification)
- A solid waste combustion facility (Form BWP SW 21 – Modification of a Small Handling Facility)

~~Except for a solid waste transfer or handling facility permitted at less than 50 tons per day that will not undergo construction as a result of implementing the Waste Ban Plan,~~ MassDEP will review the Waste Ban Plan from a facility in accordance with 310 CMR 19.037 – Review Procedure for Permit Modifications, Permit Renewals and Other Approvals and issue a written approval or denial.

IV. WASTE BAN COMPLIANCE STANDARD AND ACTION LEVEL THRESHOLDS

Every solid waste management facility must remove and/or divert from disposal all waste ban materials to the greatest extent possible. Failure to prevent disposal of waste ban materials to the greatest extent possible may result in enforcement action by MassDEP. While MassDEP may take enforcement for any amount of waste ban materials that MassDEP observes in a shipment destined for disposal, a solid waste management facility is only required to take action in accordance with its approved Waste Ban Plan under the following circumstances:

- Lead batteries, white goods, whole tires (except tires disposed of at a municipal waste combustion facility) and CRTs are unacceptable in any quantity.
- All banned materials should be cumulatively estimated as a percentage of the waste load. The Action Level is 30 percent by volume. (This excludes zero tolerance materials and tires and wood being disposed at a municipal waste combustion facility.)

- Un-bagged leaves and yard waste should be estimated as a percentage of the waste load. The Action Level is 10% by volume, or 10 bags of leaves and yard waste in a load.
- Recyclable paper, including corrugated cardboard, should be estimated as a percentage of the waste load. The Action Level is 10% by volume.
- Asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood should be cumulatively estimated as a percentage of the waste load. The Action Level is 20% by volume.
- Glass containers, metal containers and single polymer plastic containers should be cumulatively estimated as a percentage of the waste load. The Action Level is 10% by volume.
- Commercial organic material should be estimated as a percentage of the waste load. The Action Level is 10 % by volume.

A failed load is a load in which the banned materials in the load meet or exceed the above action levels. When a failed load is accepted by the facility (i.e. any load that is not turned away or diverted to another facility), the facility shall comply with the requirements of Section VII and VIII;

Removing Materials to the Greatest Extent Possible

A facility must remove waste ban materials to the greatest extent possible for every failed load accepted by the facility. Failure of a facility to comply with this standard may result in enforcement against the facility. Complying with this standard is determined by many factors, including but not limited to the following:

- The type of waste ban material;
- The quantity of waste ban material;
- The quality or physical condition of the waste ban material as it may impact recycling/recovery options; and
- The potential for removing the waste ban material based on the size of the material and whether the material can be separated easily from the solid waste.

Please note that MassDEP may lower the action level thresholds in the future and, as noted above, reserves the right at any time to undertake enforcement for any amount of waste ban materials destined for disposal.

V. ONGOING WASTE STREAM MONITORING/INSPECTION

To identify the presence of banned materials in waste loads, a Waste Ban Plan must provide for ongoing waste stream monitoring. An on-going waste stream monitoring program must provide effective means for the facility to: 1) determine whether a waste load is a failed load (i.e., whether an action level has been met); 2) detect and divert banned materials from disposal or transfer for disposal; 3) identify and notify haulers and generators who are delivering failed loads

to the facility; and 4) compare the monitoring results against the results of comprehensive load inspections to see if they are representative of all incoming loads.

Every construction and demolition handling facility (or other solid waste management facility that is permitted to accept, separate, recycle and/or divert specific waste ban materials as identified in the facility's approved Waste Ban Plan) does not need to keep records of the amounts of those materials in waste loads received but are required to keep records of ongoing waste stream monitoring and follow-up on failed loads for all other banned materials.

A. Load Selection

A facility must monitor all waste loads to identify banned materials.

B. Inspection Procedure

At the core of an on-going waste stream monitoring program is the observation and evaluation made by the facility's personnel to identify the types and quantities of waste ban materials in the waste loads the facility handles. Therefore, the Waste Ban Plan should identify each specific activity the facility conducts during its daily operation and what is expected of personnel to implement the on-going inspection program, including the types of training needed to implement these goals. Depending on the type of solid waste facility, the facility's operation may include: receiving, tipping, spreading, consolidating and reloading waste. The Waste Ban Plan should include how staff will be trained:

- For their specific waste ban compliance responsibilities;
- To identify waste ban materials as they may appear in the myriad of forms within the matrix of a mixed waste load;
- To quantify the amounts of waste ban material in a waste load;
- To identify which loads, depending on the type of materials involved, the condition of the materials, the distribution of the materials or other factors, should be diverted to remove waste ban materials to the greatest extent possible; and
- To know when failed load letters should be sent to haulers and generators.

VI. COMPREHENSIVE LOAD INSPECTIONS

Comprehensive load inspections ("comprehensive inspections") complement on-going waste stream monitoring by providing a detailed accounting of the types, amounts and sources of material entering the facility in a sample of waste loads each month. In addition, results of comprehensive inspections can be compared with ongoing monitoring results to check for discrepancies. This section provides guidance to a facility operator regarding frequency of inspections, selection of loads for inspections, and inspection procedures. As part of its Waste Ban Plan, a solid waste facility is encouraged to propose innovative detection methods, such as the use of video monitors or third party "auditors" of waste ban compliance activities.

A. Loads not Subject to Comprehensive Load Inspections

The loads described below are not considered subject to comprehensive load inspections, but are still subject to ongoing monitoring as described in Section V.

1. A load with a capacity of five (5) cubic yards or less. Passenger vehicles and most pick-up trucks have less than five (5) cubic yard capacity.
2. A load originating solely from a supermarket or other business certified under a MassDEP Certification Program. –For a list of certified locations, see the MassDEP web site at <http://www.mass.gov/dep/recycle/srpclist.htm>.
3. A load originating from a transfer station, because a transfer station -is responsible for monitoring its waste stream and conducting its own comprehensive inspections.
4. A load accepted by a construction and demolition handling facility which is required as a condition of their permit and/or Waste Ban Plan approval to separate, recycle and divert specific waste ban materials, may satisfy the comprehensive load inspection requirement for those specific banned materials by complying with their permit condition (and waste ban approval). Such facilities shall conduct comprehensive load inspections for all banned materials not specifically identified in their permit.

B. Load Selection

The deterrence capability of an inspection program stems from a combination of the number of days each month or year on which comprehensive inspections occur and the percentage of loads comprehensively inspected. Therefore, facilities shall complete a minimum number of inspections per month. The Inspection Frequency Table below provides guidance on the number of inspections MassDEP believes is reasonable to ensure compliance.

In recognition of the need to provide equitable treatment for all of a facility's waste suppliers, vehicles shall be selected for inspection on a random basis. Random load selection also will ensure inspection of waste from all types and sizes of collection vehicles. Facility operators must keep the random inspection approach employed confidential so as not to allow haulers to evade detection.

| Inspection Frequency Table | |
|--|---|
| Facility Size in Permitted Tons per Day | Min. # of Vehicles to Inspect per Month (must have capacity greater than 5 cubic yards) |
| facility only accepting loads of 5 cubic yards or less | 0 |
| 1-99 | 4 |
| 100-299 | 8 |
| 300-499 | 12 |
| 500-999 | 16 |
| 1000 + | 20 |

C. Inspection Procedure

1. A comprehensive load inspection shall be conducted in a manner that does not endanger the safety of facility or hauler personnel. In general, a waste load designated for inspection shall be spread out in a manner that will allow facility personnel to identify banned material. Facility personnel should then assess the load by following the inspection procedure below.

Facility personnel shall visually inspect waste by walking around the load looking for banned materials that are typically not bagged (e.g., tires, lead batteries, white goods, CRTs, corrugated cardboard, asphalt pavement, brick, concrete, clean gypsum wallboard, metal and wood). Then, personnel shall scan the bagged waste for obvious evidence of banned materials (e.g., clear bags containing paper, leaves, single polymer plastic containers, glass containers, and/or metal containers; paper yard waste bags; plastic bags of leaves that “bounce” off the truck).

2. Once a waste load has been tipped and inspected for banned materials and quantities of banned materials that meet or exceed the Action Level Thresholds are discovered, the entire load is considered to have failed the inspection and must be recorded as such. See Section IV, Waste Ban Compliance Standard and Action Level Thresholds, for descriptions of Action Level Thresholds for banned materials. Guidance on procedures for how the facility must respond to a failed load is outlined in Section VIII, Facility Response to Failed Loads.
3. For a transfer station where it is logistically infeasible to spread out a waste load for inspection, typically a small transfer station, the facility’s compliance plan shall describe how banned materials will be identified.

VII. RECORD KEEPING

To implement the record-keeping requirements of 310 CMR 19.017 (6)(b), the facility should record and maintain the following information.

On-going Waste Stream Monitoring

The same information listed below for comprehensive load inspections shall be recorded for all ongoing waste stream monitoring loads that contain quantities of banned materials that meet or exceed Action Level Thresholds (failed loads).

Comprehensive Load Inspections

The following should be recorded for every comprehensive load inspection.

- Date and time of inspection;
- Hauler's name, address and phone number;
- Load Scale ticket number (or other facility specific load record number);
- Generator’s name and address (if known);
- Tons or cubic yards of waste in each inspected load;
- The quantity of banned materials discovered;
- Whether or not the load is a failed load;

- Disposition of every failed load including loads that were rejected after tipping and reloaded into the hauler's vehicle;
- Where a failed load is disposed at the facility or transferred for disposal due to difficulties associated with reloading it, the operator's rationale for the decision should be included in the inspection program records;
- When banned materials are separated from a failed load, the disposition of separated banned materials, including the quantity and location where banned materials were diverted from disposal; and
- Documentation of communication follow-up with haulers and/or generators connected with a failed load as noted in Section VIII.

The results of the comprehensive load inspection shall be documented on the comprehensive load inspection reporting sheet. See Attachment B for suggested format. In addition, the facility's annual report must summarize and incorporate the inspection program data for both on-going and comprehensive load monitoring.

The facility is encouraged to include materials in its reports, such as photographs or videotapes, to document inspection activities and the detection and handling of failed loads.

VIII. FACILITY RESPONSE TO FAILED LOADS

A. Communication

The facility shall take the following actions when a failed load is received at the facility. The facility's Waste Ban Plan must document how it will address the items below and also include sample letters and other documents that will be used as part of the facility's communication aids.

1. Notify the driver that the load is in violation of the waste ban regulations, including the type and amount of banned material found in the load. Include in the communication any photographs or videotapes of the failed load.
2. Within 45 days of the observation, send a letter to the hauler (see Attachment C) identifying the generator (as available), which banned materials were in the load, and encouraging the hauler to work with its customers to separate banned materials and recycle or dispose of them appropriately. The facility also shall furnish a MassDEP letter and fact sheet (see Attachment D) to the hauler explaining the waste bans. The exception to this notification requirement is if the banned material is identified through the Ongoing Monitoring procedure and the source is a vehicle with a capacity of five (5) cubic yards or less; in which case the facility is not required to send a letter to the entity that delivered that material.
3. Where the generator can be identified, send a letter to the generator (see Attachment C) within 45 days of the observation. The facility also shall furnish a

MassDEP letter and fact sheet (see Attachment D) to the generator explaining the waste bans.

B. Failed Load Disposition

A facility's Waste Ban Plan must identify how all failed loads will be managed, including addressing the hierarchy listed below:

1. Reject or reload if it is safe to do so.

~~2.~~ Accept the waste load; then to the maximum extent possible, separate and divert banned materials from disposal (in the case of wood and whole tires, divert from disposal at landfills).

~~2. Reject or reload if it is safe to do so.~~

3. Transfer the material to a facility with an approved Waste Ban Compliance Plan that includes separation and diversion of the banned materials for recycling or reuse, or is permitted to accept these materials for transfer to another permitted facility for subsequent diversion of these materials for recycling or reuse.

4. Dispose (or transfer for disposal of) the load, only when the waste cannot be recycled (either at the facility or if transferred to another facility), rejected or reloaded because reloading the waste would endanger workers or substantially disrupt facility operations. The facility operator's rationale for disposing a failed load should be recorded.

IX. OTHER COMPLIANCE PLAN ELEMENTS

A. Training

The plan shall include a description of annual training for facility personnel regarding how to monitor waste loads for banned materials, conduct waste load inspections, and keep proper records.

B. Signage

The plan shall include posting appropriate signs at the facility entrance and at waste receiving areas informing facility users of the waste ban regulations and listing the pertinent materials banned from disposal and transfer for disposal. This signage may also state which materials are permitted to be accepted at the facility for diversion to recycling or reuse. (See Attachment F for examples.)

C. Annual Report

In the plan, the facility shall answer all questions relating to the Waste Ban Plan on the facility's annual reporting form provided by MassDEP. A facility required by its MassDEP permit to submit reports on another frequency, such as quarterly, must indicate that the required reports will be submitted to MassDEP.

X. COMPLIANCE AND ENFORCEMENT

A. Facility Waste Ban Plan Implementation

To comply with 310 CMR 19.017, a facility must implement the actions specified in its Waste Ban Plan as approved by MassDEP and ensure that banned materials are diverted from disposal or transfer for disposal in accordance with the approved plan.

B. Department Inspection Program

MassDEP will conduct a facility inspection that will include, but not be limited to, determining whether a facility is employing an ongoing waste stream monitoring program, conducting comprehensive load inspections and diverting banned materials from disposal or transfer for disposal in accordance with the facility's approved Waste Ban Plan and the regulations. In addition, MassDEP personnel may review a facility's records concerning its monitoring and waste load inspection program to corroborate the facility's compliance activities. Records of correspondence between the facility and haulers and/or generators also will be reviewed to determine whether the facility is conducting its ongoing waste stream monitoring and comprehensive load inspections and whether the appropriate parties are notified about failed loads and the opportunities to source separate banned materials.

In addition to observing ongoing waste stream monitoring procedures, MassDEP may request that comprehensive inspections be performed in the presence of a MassDEP inspector, for the purpose of observing and evaluating the facility's comprehensive waste load inspection process, even if such inspections were not scheduled for that day. Such an inspection may count toward the monthly inspection total required by the Inspection Frequency Table in Section VI.

C. Potential penalties for not complying with a Waste Ban Plan

In accordance with MassDEP's Enforcement Response Guidance, failure to comply with a Waste Ban Plan may result in enforcement action(s). This may include written notices of non-compliance, consent orders, unilateral orders, administrative penalties or referral to the Attorney General. Repeat, pattern, willful or other serious violations, may result in daily penalties of up to \$25,000 for each violation. MassDEP may also require a modified Waste Ban Plan be submitted if it determines that banned materials are not being removed to the greatest extent possible in accordance with 310 CMR 19.017(7).