

Illegal Tobacco Task Force Meeting #45 Minutes

Meeting Date: Tuesday, January 11, 2022

Meeting Time: 10:00AM

Meeting Location: WebEx conferencing, dial (408) 418-9388, Meeting ID# 2340 354 6063

Board Members Present: John Hayes (Co-Chair), Detective Captain Brian Connors (Co-Chair), Patricia Henley, Susan Terrey, Anna Lumelsky, and Nicholas Ogden.

Call to Order:

- Meeting was called to order at 10:08 AM by Mr. Hayes.
- Mr. Hayes informed all participants that this meeting will not be recorded by WebEx and that notes will be taken to complete the minutes. He reminds everyone to mute their phones and/or computers to limit background noise.

Opening Remarks:

- Mr. Hayes thanks everyone for attending ITTF meeting #45, the first of 2022.

Approval of the minutes for Meeting #44 on November 3, 2021:

- Mr. Hayes emailed a copy of the minutes for Meeting #44 to the Task Force members prior to this meeting. He asks the Board if there are any corrections or edits to the minutes? Hearing none, he asks for a motion to approve. Ms. Henley makes a Motion to Approve. Captain Connors seconds that motion. Mr. Hayes states that with no objection, the minutes are approved.

Follow-up from November 3rd Meeting:

- Request for DEP Guidance RE Disposal of Electronic Nicotine Delivery Systems
 - ▶ On December 13, 2021, Mr. Hayes submitted a letter to DEP on behalf of the ITTF requesting guidance on the storage and disposal of Electronic Nicotine Delivery Systems (ENDS) – more commonly referred to as Vapes. Mr. Hayes indicates that he will attach a copy of the letter to the minutes for this meeting.
 - ▶ On December 28, 2021, Mr. Hayes received a response from the DEP which provided answers related to the storage and disposal questions. After speaking with the DEP representative about the initial response, he received another email with additional instructions on registering as a small quantity generator of hazardous waste. Mr. Hayes indicates that he will attach a copy of both letters to the minutes for this meeting.
 - ▶ Mr. Hayes introduces a guest speaker and states that we are fortunate to have with us today DEP Environmental Analyst Matthew Barber, who will summarize the DEP requirements for ITTF member agencies related to ENDS disposal and answer any questions from the board members.

Mr. Barber states that the liquid nicotine contained in ENDS products are classified as an acutely hazardous waste and lithium-ion batteries can be classified as a universal waste under DEP/EPA regulations. Mr. Barber states that DEP regulations don't apply to the ENDS products in the custody of government agencies (held as evidence for a criminal or civil matter) until the decision is made to dispose of the items. Once that decision is made, the

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regulations now apply and the clock starts. For a small quantity generator of hazardous waste (less than 2.2 lbs of acutely hazardous waste onsite), you have 180 days to dispose of the waste. For a large quantity generator of hazardous waste, you have 90 days to dispose of the waste.

Mr. Barber identified the necessary steps for government agencies to register as a small quantity generator of hazardous waste. The agency would need to request an EPA ID number (free of charge), utilize approved containers, place the waste in the containers, comply with management standards while the waste is onsite, and then arrange with a licensed hazardous waste company to pick up and transport the waste for disposal. Mr. Barber states that employees who handled the waste would need some level of awareness training. Mr. Barber adds that the hazardous waste companies will be able to assist with the specifics of the process.

- Uniform Metric to quantify tobacco seizures
 - ▶ Mr. Hayes indicates that Guidelines will be attached to minutes for this meeting. This will allow for consistency in tracking tobacco seizures. Just to summarize the metric to be used by member agencies and recommended for use by other agencies in the Commonwealth:

Cigarettes counted by packs
Smokeless Tobacco counted by cans/tins/pouches
Cigars counted by individual units
Smoking Tobacco counted by bags
ENDS counted by individual units

FY 2023 ITTF Budget Update:

- Mr. Hayes states that at this point, it appears the ITTF budget request will remain consistent as FY22.

New Intelligence Referral Form Added to DOR/ITTF webpage:

- Mr. Hayes states that a copy of the new ITTF Intelligence Referral Form will be attached to the Minutes of this meeting. The Intelligence Referral Form has been added as a link to the DOR/ITTF webpage so individuals may submit the form via email.

Update from Member Agencies:

- Detective Captain provided an update on the Massachusetts State Police tobacco storage site. Detective Captain states that while the storage location had thought to be open by January, the opening has been postponed due to supply chain delays for some needed equipment. Detective Captain Connors hopes to have the storage site open within one to two months.

Other Business:

- Mr. Hayes states that the Legislative Report is due March 1, 2022.

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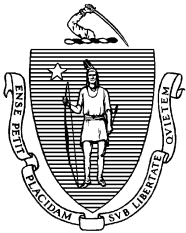
- Mr. Hayes speaks about receiving a question from a private sector individual about the stamping or control of smokeless tobacco. Mr. Hayes notes that the Board had previously discussed this issue a while ago. Ms. Henley comments that the Board previously discussed this issue at length and the board made a recommendation to the legislature. Mr. Hayes notes that the recommendation was dropped from the legislation. Mr. Hayes states that unless there is an objection, he will ask the individual to make a presentation to the Board.
- Mr. Hayes asks the Task Force Members if there is anything else to address, and there were no additions by anyone.

Schedule Next Meeting:

- Mr. Hayes indicates due to the upcoming deadline for submitting the Annual Report to the Legislature, we will plan on having (2) meetings in February.
- Mr. Hayes states that the ITTF will begin to review recommendations for changes to the tobacco laws and further states that the Board previously considered this. He states that the Board will re-visit the issue so the board can make updated recommendations to the legislature.

Closing Remarks:

- Mr. Hayes states that if there is nothing else to add, is there a Motion to Adjourn? Ms. Henley moves to adjourn. Detective Captain Connors seconds that motion. Mr. Hayes states that with no objections, the meeting is adjourned at 10:38AM and thanks everyone for attending.



GEOFFREY E. SNYDER
COMMISSIONER

MICHAEL T. FATALE
ACTING GENERAL COUNSEL

The Commonwealth of Massachusetts
Department of Revenue
Criminal Investigations Bureau
100 Cambridge Street, 8th Floor
Boston, MA 02114-9570

December 13, 2021

Mr. James Paterson
Commonwealth of Massachusetts
Department of Environmental Protection
1 Winter Street
Boston, MA 02108

Dear Mr. Paterson,

I am writing this letter in my capacity as the Co-Chair of the Massachusetts Illegal Tobacco Task Force (ITTF). I previously emailed you inquiring about what environmental regulations would apply to the disposal of Electronic Nicotine Delivery Systems (ENDS) products, which contain liquid nicotine and/or rechargeable lithium-ion batteries. In your response, you indicated that liquid nicotine would be classified per the Resource Conservation and Recovery Act (RCRA) as a P075 acute hazardous waste when disposed of by a business/institution (government agency) and lithium-ion batteries may be considered a hazardous waste, but could be managed as a universal waste. Please let me know if I correctly summarized your response.

Based upon the above preliminary information, I am requesting formal guidance from the DEP as to how government agencies within the Commonwealth may lawfully dispose of commercial ENDS products containing liquid nicotine and/or lithium-ion batteries. I have conducted some online research and discovered formal guidance issued by several other state environmental agencies. However, ITTF member agencies need to establish the proper procedures for the storage and disposal of seized ENDS products based upon DEP rules and regulations. Specifically, the ITTF would like a response to the following questions:

If government agencies accumulate commercial ENDS products that contain liquid nicotine and/or lithium-ion batteries, are there any short-term or long-term storage restrictions required by DEP regulations?

If government agencies accumulate commercial ENDS products that only contain liquid nicotine, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

If government agencies accumulate commercial ENDS products that contain both liquid nicotine and a lithium-ion battery, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

If government agencies accumulate commercial ENDS devices that contain only lithium-ion batteries, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

As it relates to the above questions, will government agencies need to obtain any DEP/EPA special permits or licenses to store and/or dispose of commercial ENDS products that contain liquid nicotine and/or lithium-ion batteries?

I can be reached at [REDACTED] or by email [REDACTED] if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John H. Hayes".

John H. Hayes
Director, Criminal Investigations Bureau
Co-Chair, Illegal Tobacco Task Force

From: [Paterson, James \(DEP\)](#)
To: [Hayes, John \(DOR\)](#)
Cc: [Blanchet, Richard \(DEP\)](#); [Henry, Marrcus \(DEP\)](#); [Ellis, Dave \(DEP\)](#)
Subject: FW: Request for DEP Guidance RE Storage & Disposal of Electronic Nicotine Delivery Systems (ENDS)
Date: Tuesday, December 28, 2021 10:53:32 AM
Attachments: [ITTF Memo to DEP RE ENDS Storage & Disposal 12-13-21.pdf](#)

John,

The following is in response to your request for a summary of hazardous waste regulations that would apply to the disposal of Electronic Nicotine Delivery Systems (ENDS) products, which contain liquid nicotine and/or rechargeable lithium-ion batteries.

In your letter you correctly summarized our previous exchange during which I said liquid nicotine would be classified per state and federal regulations as a P075 acutely hazardous waste when disposed of by a business or institution (government agency) and lithium-ion batteries may be considered a hazardous waste but could be managed as a universal waste.

My responses to the questions in your letter (attached) appear in red below.

If government agencies accumulate commercial ENDS products that contain liquid nicotine and/or lithium-ion batteries, are there any short-term or long-term storage restrictions required by DEP regulations?

ENDS do not have to be managed as a hazardous waste while being held in storage as evidence for a criminal investigation and potential prosecution. However, once a decision is made to discard the ENDS the hazardous waste regulations, 310 CMR 30.000, would apply. Note that because nicotine is an acutely hazardous waste (P075 waste code), the generator of ENDS waste would need to notify as a Large Quantity Generator (LQG) of hazardous waste if more than 1 kilogram of ENDS waste is generated in a month.

An LQG accumulating nicotine-containing waste in containers must comply with 310 CMR 30.340, which includes the following requirements:

- Obtain an EPA ID number (see how to obtain an EPA ID at <https://www.mass.gov/doc/instructions-how-to-apply-for-an-epa-hazardous-waste-id>).
- Mark or label containers with the words "Hazardous Waste" and the accumulation start date (the date when hazardous waste was first placed into the container). An LQG may accumulate hazardous waste for 90 days or less.
- Ensure containers used for the accumulation of hazardous waste are in good condition and not leaking.
- Keep hazardous waste containers closed except when waste is being added or removed and manage the containers in a manner that does not cause a rupture or leak.
- Do not place wastes that could react together (e.g., could cause a fire, explosion, toxic gases or are otherwise incompatible) in the same container or in an unwashed container that previously held an incompatible material. (See EPA's FAQ regarding how to safely

manage lithium ion batteries: <https://www.epa.gov/recycle/frequent-questions-lithium-ion-batteries>.)

•Prepare a contingency plan - 310 CMR 30.3341(1)(b) - and file a biennial report: [https://www.epa.gov/hwgenerators/biennial-hazardous-waste-report#:~:text=The%20Biennial%20Report%20form%20\(EPA,activities%20from%20calendar%20year%202019\)](https://www.epa.gov/hwgenerators/biennial-hazardous-waste-report#:~:text=The%20Biennial%20Report%20form%20(EPA,activities%20from%20calendar%20year%202019).).

•Offer all hazardous waste to a licensed hazardous waste transporter that uses a manifest and ships all hazardous waste to a licensed treatment, storage or disposal facility (TSDF).

If the lithium-ion battery is removed from the ENDS device, it may be managed separately as a universal waste. Lithium ion batteries managed as a universal waste do not count towards a generator's hazardous waste status and can be shipped off-site by common carrier on a bill of lading. For more information on the universal waste rule go to: <https://www.mass.gov/doc/fact-sheet-universal-waste-rule-for-small-quantity-generators/download>.

If government agencies accumulate commercial ENDS products that only contain liquid nicotine, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

See above.

If government agencies accumulate commercial ENDS products that contain both liquid nicotine and a lithium-ion battery, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

See above.

If government agencies accumulate commercial ENDS devices that contain only lithium-ion batteries, what methods may a government agency utilize to lawfully dispose of the products in accordance with DEP regulations?

As stated above, if the lithium-ion battery is removed from the ENDS device, it may be managed separately as a universal waste.

As it relates to the above questions, will government agencies need to obtain any DEP/EPA special permits or licenses to store and/or dispose of commercial ENDS products that contain liquid nicotine and/or lithium-ion batteries?

Other than having to obtain an EPA ID number, there is no permit or license requirement. -

Finally, here is some information from EPA that you might find helpful. It provides additional background explaining why ENDS are considered a hazardous waste.

- Specifically to Vape shops - <https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and#vape>
- This is specific to e-cigarettes and why they are considered hazardous under RCRA. <https://rcrapublic.epa.gov/files/14850.pdf>

Thank you and please let me know if you have any further questions.

James Paterson
MassDEP

From: John H. Hayes [REDACTED]
Sent: Monday, December 13, 2021 6:59 PM
To: Paterson, James (DEP) [REDACTED]
Subject: Request for DEP Guidance RE Storage & Disposal of Electronic Nicotine Delivery Systems (ENDS)

James: Please see attached letter submitted on behalf of the Massachusetts Illegal Tobacco Task Force (ITTF). The ITTF is seeking DEP guidance to determine the proper storage and disposal procedures for ENDS products that contain liquid nicotine and/or lithium-ion batteries. After reviewing the attached, please feel free to contact me to discuss. Thank you for your assistance. –
John

John H. Hayes
Director | Criminal Investigations Bureau
Co-Chair | Illegal Tobacco Task Force
Commonwealth of Massachusetts
Department of Revenue
100 Cambridge Street, 8th Floor
Boston, MA 02114

From: [Paterson, James \(DEP\)](#)
To: [John H. Hayes](#)
Subject: fact sheet **EXTERNAL EMAIL**
Date: Tuesday, January 4, 2022 2:42:28 PM

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[A SUMMARY OF REQUIREMENTS - Mass.gov](#)

2 It is designed to help you understand the regulations and will assist you in meeting your legal obligation and avoiding potential penalties. However, it is not a substitute for reading and

www.mass.gov

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ITTF TOBACCO SEIZURE METRICS*

Cigarettes = Packs

Smokeless Tobacco = Tins/Cans/Pouches

Cigars = Individual Cigars

Smoking Tobacco = Bags

ENDS = Individual Units (whether Devices/Pods/Bars)

