



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
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Secretary

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Response to Comments on Proposed Amendments to

310 CMR 30.000

Hazardous Waste Regulations

November 15, 2019

Regulatory Authority

M.G.L. c. 21A, §§ 2 and 8, c. 21C, §§ 4 and 6, c. 21H, § 7, c. 111, §§ 150A and 150A1/2

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On January 25, 2019, the Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 30.000, Hazardous Waste Regulations, that included several key proposals, as well as a number of miscellaneous revisions. The key proposals related to adoption of the federal rules for academic laboratories, the addition of multiple federal hazardous waste codes and their underlying hazardous waste constituents, clarification on the shipping requirements for wastes generated from on-site treatment of photographic processing wastewaters, restrictions on fluorescent lamp crushing by very small quantity generators (VSQGs) and universal waste handlers, cathode ray tubes (with companion changes to 310 CMR 16.00) and solvent-contaminated wipes (rags).

MassDEP held six public hearings and solicited comments on the proposed amendments in accordance with Massachusetts General Law Chapter 30A. On January 25, 2019, MassDEP published a notice in the Boston Globe and The Republican announcing the public hearings and public comment period on the proposed amendments. Public hearings were held as follows:

Hearings (6): February 26, 2019 - DEP - Wilmington
 February 27, 2019 - DEP - Boston and DEP - Lakeville
 March 5, 2019 - DEP - Boston
 March 6, 2019 - DEP - Worcester and DEP - Springfield

The comment period closed on March 20, 2019.

This document summarizes and responds to comments that were received during the public comment period. Those who provided comments are listed below:

UMASS Boston/Boston College (submitted jointly)

N. Gail Hall	Zehra Schneider Graham
Environmental Health and Safety	Office of Environmental Health and Safety
Boston College	UMass Boston
Chestnut Hill, MA	Boston, MA

Steve Brehio and Andrew Sullivan
Office of Environmental Health and Safety
Northeastern University
Boston, MA

Summary of Comments Received

UMASS Boston and Boston College have participated in MassDEP's University Labs XL Project (predecessor to proposed Academic Labs Rule, Subpart K) since 2000. In their comments, both schools supported adoption of Subpart K, and provided a few suggested revisions to the rule. Northeastern University, which participated in discussions that led to the development of Subpart K through the former Campus Consortium for Environmental

Excellence (C2E2), supported adoption of Subpart K. In response to these comments, which were related to container labeling, MassDEP is revising the final version of 310 CMR 30.354(6)(a) to make it more consistent with the federal container labeling requirements described at 40 CFR 262.206 (a)(2).

1. Comment by Boston College/UMASS Boston Regarding Labeling:

At Boston College the key element for making a waste determination has always been the waste label. Use of the heading “HAZARDOUS/LABORATORY WASTE” was developed so that when the waste is in the lab it is clearly identified as a laboratory waste, but then the word “laboratory” is crossed out in the Central Accumulation Area and it becomes a “HAZARDOUS WASTE.”

As the sole means of communication between the person generating the waste and the trained technician who makes the final waste determination, the label requires a listing of the specific components and their relative concentrations. These labels were designed to reflect the fact that laboratory wastes are very often known mixtures, either the results of specific experiments, or produced during certain types of processes (e.g., chromatography).

UMass Boston has a similar tagging system. Once UMass Boston OEHS moves the material to a central accumulation area, OEHS staff determine if the material is able to be used by another lab or if it is waste. If it can be used by someone else the tag is removed. If it is waste, then a determination of hazardous or non-hazardous is made and the tag is updated.

UMASS Boston/Boston College both agree with the recommendations on labelling that are described in 310 CMR 30.354(6)(a)(1), but they believe that the additional items mentioned in 30.354(6)(a)(2), which were taken from the federal regulation, were only meant to be proposed as examples in the federal regulation, 40 CFR 262.206 (a)(2):

“(ii) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste code(s), pursuant to §262.11. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:”

From an operational perspective labels need to be as simple as possible while also being thorough so that the proper waste determination can be made. MassDEP has proposed that one of the requirements on the label be a field indicating whether the material is used or unused. We believe this fact is immaterial to the waste determination and potentially confusing: is a chemical “used” merely because it has been opened? If the goal is to differentiate between process wastes and clean-out wastes, it is generally obvious if a material is in an unused state in a commercial chemical container.

Response to Comment: Per 310 CMR 30.354(6)(a)(2)(b), information regarding “[w]hether the unwanted material has been used or not” does not have to appear on the label. Rather, this information may be “associated with” the container and recorded and accessible to a MassDEP inspector, if requested, using an electronic spreadsheet, a bar code or some other printed inventory of containers. Further, this is a federal provision that must be included in MassDEP’s final rule.

However, in response to this comment requesting simplification of the information required on unwanted laboratory waste containers, and a similar comment from Northeastern described below, MassDEP has revised the final version of 310 CMR 30.354(6)(a) (see language below) to be more consistent with 40 CFR 262.206(a)(2):

(6) Labeling and management standards for containers of unwanted material in the laboratory.

An eligible academic entity shall manage containers of unwanted material while in the laboratory in accordance with the requirements in this section.

(a) Labeling: Label unwanted material as follows:

1. The following information shall be affixed or attached to the container:

a. The words “unwanted material” or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in Part I of the Laboratory Management Plan, and

b. Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

i. The name of the chemical(s),

ii. The type or class of chemical, such as organic solvents or halogenated organic solvents.

c. The hazard(s) of the chemical(s)

d. The date that the unwanted material first began accumulating in the container, and

~~e. Information sufficient to allow a trained professional to properly identify whether an unwanted material is a hazardous waste and to assign the proper hazardous waste code(s), pursuant to 310 CMR 30.302.~~

2. The following information may be affixed or attached to the container, but must at a minimum be associated with (i.e., the container information must be recorded and accessible using an electronic spreadsheet, a bar code or some other printed inventory of containers.) the container:

a. Information sufficient to allow a trained professional to properly identify whether an unwanted material is a hazardous waste and to assign the proper hazardous waste code(s), pursuant to 310 CMR 30.302. Examples of information that would allow a trained professional to properly identify whether an unwanted material is a hazardous waste include, but are not limited to:

ai. The description of the chemical contents or composition of the unwanted material, or, if known, the product of the chemical reaction,

bii. Whether the unwanted material has been used or is unused,

eiii. A description of the manner in which the chemical was produced or processed, if applicable.

2. Comment by Boston College AND UMASS Boston Regarding Laboratory Management Plan:

When Boston College, UMass Boston and the University of Vermont signed on to participate in Project XL one of the main drivers was to move from the prescriptive RCRA regulations to performance-based regulations. The idea was that there are minimum requirements that schools should all be meeting but how they got them accomplished could be site-specific. This idea and approach extended into our then “Environmental Management Plans” – if you were to look at the plans for each school they would have looked completely different. The reason for this was that every campus had different resources, approaches, etc. so there was no one plan that would fit all. UMass Boston chose to integrate its Chemical Hygiene Plan with its Environmental Plan which became one plan – its Integrated Chemical Hygiene and Environmental Management (CH/EM) Plan. Boston College developed the Chemical Hygiene and Environmental Management Plan (CHEMP). This allowed it to simplify its training for lab personnel. These schools are able to point out common elements in both plans and the different elements.

This has saved the schools time and allowed them to have a comprehensive program that covers both virgin chemicals and waste chemicals.

In 310 CMR 30.354(14), there is discussion of a “Laboratory Management Plan” which will “contain two parts with a total of nine elements identified in 310 CMR 30.354(14)(a)-(b).” In the spirit of the performance-based approach, we recommend that DEP list the nine elements and

allow the college or university the flexibility of how they package it in their laboratory plans and procedures. The college or university needs to ensure that these elements are auditable.

Response to Comment: Part I and Part II of the LMP are separate for a reason. Part I of the LMP, which is mandatory and enforceable, contains necessary information for inspectors about what options within Subpart K the eligible academic entity is exercising.

Part II, while not enforceable, must reasonably address the seven required elements. EPA envisioned that eligible academic entities will use this section to capture “BMPs for holistic waste management within laboratories.” See December 1, 2008 *Federal Register* notice; discussion of the two parts of the LMP begins on page 72944 (34 of the pdf): <https://www.govinfo.gov/content/pkg/FR-2008-12-01/pdf/E8-27863.pdf>

Revising 310 CMR 30.354(14) as suggested would blur the distinction between mandatory/enforceable requirements and best management practices that should be observed. While UMASS/Boston and Boston College may support this approach, it would not benefit other schools that may opt in to Subpart K, since the proposed revision is arguably more stringent. Therefore, MassDEP is finalizing 310 CMR 30.354(14) as proposed.

3. Comments (oral testimony at hearing) by Northeastern University Regarding Labeling:

Northeastern supported adoption of Subpart K. With regards to labeling, it noted that MassDEP seemed to be proposing state-only labeling requirements that were similar to current hazardous waste requirements, which may defeat the purpose of one of the key objectives of Subpart K, which is to provide a set of alternative, less burdensome requirements in the academic laboratories. Additional wording requirement for labeling does not support this objective, or make things easier for lab health and safety staff. No major concern with proposal, however. Northeastern also commented that the proposed label accumulation start date is a good idea.

Response to Comment: MassDEP is revising the proposed labeling requirements to be more consistent with EPA’s requirements at 40 CFR 262.206(a)(2). See response to comment 1. above.