September 14, 2016
PUBLIC COMMENTS AND RIDEM RESPONSES
REGARDING 2016 AMMENDMENTS to the RULES AND REGULATIONS FOR HAZARDOUS WASTE MANAGEMENT

The Department has reviewed the following comments and has, where appropriate made changes to the Regulations as explained in the responses. These changes represent either clarifications or changes to accommodate specific situations. For readability, comments were numbered, and re-formatted. The Department's responses are shown in red and italicized.

The Department has determined that none of the rule changes constitute a major change to the Draft Regulations that were issued for public notice on May 17, 2016.

COMMENTS AND DEPARTMENT RESPONSES

Below is the text of comments received with Department responses in red italics.

1. Jim Mullowney, Senior Chemist, Cytotoxic Safety Council.

Received in person at Public Hearing 6/21/2016

Okay. Good morning. My name is Jim Mullowney. I represent the Cytotoxic Safety Council. And I want to comment on the 2014 regulations that included a definition of extremely hazardous waste, and I'm sure you're familiar with what is extremely hazardous waste. So what we advocate for is the control of chemicals that are known to be carcinogenic, mutagenic, teratogenic, and we do this in this regulation. I believe this is the first state in the country to adopt this definition of extremely hazardous waste.

What we're not thinking is we have these extremely hazardous materials. We know this, we've got Merck, Pfizer, all the band 5, which would be -- level A would be band 3, and they're much more dangerous. OSHA, zero exposure. NIOSH has a list of these drugs. We have a pharmacist in a million dollar room inside a million dollar room mixing these cocktails so there's no exposure, because they're highly carcinogenic. We have engineering controls so that the nurses don't get exposed to these materials.

The problem we have is that we pump them into a patient, and we fill them up like a balloon, and then we send them home to their families where up to 90 percent of the waste comes through their sweat, their saliva, urine and feces right down the toilet. It's known to wipe out septic systems, known to contaminate leaching fields. We have instances where nothing grows over the leaching field. And if you're on a well, the septic system is a disaster.

So a lot has happened in the last couple of years. We have a bill in Rhode Island to require the collection of human waste from these 27 cytotoxic chemotherapy drugs. And we had the former head of the Harvard School of Public Health, Peter Boyle. After that he ran the International Agency for the Research of Cancer for the World Health. He now runs the Prevention Research Institute in Lyon, France, and he flew out and testified at a hearing that we had in the senate last year saying, this is my fault, I'm not sure how we let this get through the cracks. We just weren't thinking that the waste was coming right out.

The analogy I hear is we're attempting to control these extremely hazardous wastes, but we're missing where it actually comes from. It's like taking a drum of PCBs, pouring it down the toilet, slapping an empty label on it and saying, hey, we solved the problem.

So in the coming months, the Cytotoxic Safety Council is going to be putting a full press on an international basis, and a lot of it's going to be here in Rhode Island, because I live here in Newport. Any questions?

RIDEM Response: The suggested changes are beyond the scope of what is considered in this revision. As this would greatly expand the scope of the regulations, to not only regulate waste in private homes but waste produced by patients in these homes. Before considering such a large expansion of scope of the regulations, the Department would look to Federal and State Health Officials for guidance on what the presence of these materials is in the environment and what the standards should be.

2. **William** *R. Howard Jr., CHMM, Lead Environmental Scientist, National Grid*

Received 5/18/2016

Dear Mr. Dennen,
The Narragansett Electric Company d/b/a National Grid (National Grid) wishes to express its support of the proposed changes to the ***Rules and Regulations for Hazardous Waste Management***. We feel that the changes will improve the business climate in our State by providing less regulatory burdens to existing and future businesses, without increased risk or harm to the environment or human health.

National Grid would also suggest that the RI DEM make updates to their "*Hazardous Waste Compliance Workbook"* to reflect the revised regulations and make it available at the time that the revised regulations go into effect. The workbook is a well written document and will help generators to comply with the updated regulations in a timely manner.

We sincerely appreciate the effort expended by the department to keep its regulations current and reasonable. Please feel free to contact me with any questions or comments at my office.

Sincerely,

William R. Howard Jr., CHMM
Lead Environmental Scientist

RIDEM Response: The Department appreciates the comment and strives to achieve the balance between Environmental Protection and allowing industry to succeed. We will consider the changes to the Hazardous Waste Workbook following promulgation of the Regulations.

3. **Alison Keane, Vice President of Government Affairs for the American Coatings Association (ACA).**

Received by email 07/21/2016.

Dear Mr. Dennen:

The American Coatings Association (ACA) and PaintCare are submitting these comments to the above referenced rulemaking (Rule). ACA is a voluntary, nonprofit trade association that represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals in the industry. ACA serves as an advocate and ally for members on legislative,

regulatory and judicial issues. As you are aware, as part of its member services, ACA created the PaintCare program, for which these regulations have a direct impact. We have several concerns with the draft changes as outlined below:

Section 5.8 A. – Moving the recordkeeping provision for Community and Paint Collection Centers from its own subsection (14) to A. does not clarify the provision, but in fact, makes it more confusing. Section A is the overarching recordkeeping paragraph for generators and by moving this provision into it, it appears that *in addition* to all the other recordkeeping subsections, Community and Paint Collection Centers must keep records for anyone dropping off hazardous waste that are not households. When, in fact, the provision is meant to be exclusive. Meaning – over and above what they may record for their own generated waste, these collection centers, accepting other generator's waste, must keep records if that waste is not from households. ACA suggested removing this provision from Section 5 altogether and putting it in Section 10, where it is more applicable or leaving it as its own subsection 14. The current contemplated change only makes the provision and the requirement more confusing.

RIDEM Response: The Department concurs and will remove the addition to Rule 5.8.

Section 10.2 – The new language in this section must be removed. Similar to the issue above, the original provision under D. Recordkeeping was meant to ensure that any waste generated by the Paint Collection Center was managed in accordance with Section 5. However, architectural paint collected through the stewardship program is not part of a Paint Collection Center's waste and no hazardous waste determination is made at the point of collection. By moving this provision and rewording it as such, it mandates that a Paint Collection Center actually make a hazardous waste determination on architectural paint, not generated by the Paint Collection Center itself. The Department has made it clear in the past and through the approved Architectural Paint Stewardship Program Plan, that architectural paint voluntarily accepted under the stewardship program is not part of or counted towards the Paint Collection Center's own generated waste. Thus, the new language should be removed and the old language remain.

Section 10.2 B. – This new language must also be removed. Again – Paint Collection Centers are not making a determination on any waste coming into the site from the general public. Oil-based paint is hazardous by characteristic, however, oil-based paint collected at Paint Collection Center's from the general public is not generated by the Paint Collection Center and no determination other than whether or not it is a program product is made before placing it in PaintCare bins. Shipping is arranged through PaintCare's contractor and a hazardous or non-hazardous waste determination is made at the shipper's consolidation center (which may or may not be permitted) before sending water-based off for recycling and oil-based off for energy recover/fuel blending. In addition, since Paint Collection Centers only take Household or Conditionally Exempt Small Quantity Generator Waste, legally the waste is not hazardous or exempt from hazardous waste regulations. Thus, adding a provision that mandates any hazardous waste that is shipped to a permitted hazardous waste facility, completely negates the first portion (and original provision) that a Paint Collection Center can ship *either* by a bill of lading or a manifest. In essence, since oil and water-based paint is shipped off

together – *all* shipments going to a permitted facility (which is commonly the case) would have to use a manifest. The original provision, again, recognized that Paint Collection Centers are accepting architectural paint voluntarily, that it is not waste generated by the Collection Center itself, and that it is either non-hazardous or exempt from hazardous waste regulations, so that a bill of lading was appropriate. Nothing has changed in this regard to warrant mandating a manifest – the new language must be removed.

In advance, thank you for your consideration of our comments and please do not hesitate to reach out to us with any questions or if you need more information. ACA and PaintCare want to continue to implement the program Rhode Island as we have successfully done over the last two years – making it as easy and convenient for all consumers, whether household or small business, as possible – which means allowing facilities to serve as collection sites without the unnecessary requirements, liability and cost of becoming a hazardous waste generator themselves based on waste collected from the general public. Thus, we have provided the necessary changes to the draft regulations to ensure continued operations as intended by the original regulations.

Sincerely,
Alison A. Keane, Esq. Laura Honis

RIDEM Response: The Department has considered the two comments above and has discussed the issue with USEPA and does not concur. Paint Collection Center could make a determination to separate oil based paint from latex or alternatively, make a determination to treat all paints as hazardous. However, we do agree that making the two changes explained below will help ensure the program continues to function as intended.

1. *We have removed the requirement that Paint Collection Centers use a manifest to ship to hazardous waste treatment, storage and disposal facilities. The Regulations already state that a "Paint Collection Centers shall track all outgoing shipments of paint waste on **either** a hazardous waste manifest or a bill of lading".*

2. *The commenter brings up a valid point that the determination could be construed to count paint collected against the generator status of the Paint Collection Center. Therefore we have added an item 4 to Rule 5.6(B) that exempts "Architectural Paint received by Paint Care Centers" from the generator status calculations.*

4. Nicole Mulanaphy, Senior Project Manager, Sage Environmental

Received by email 07/21/2016.

Hazardous Waste Regulation Comments:

- Section 5.8 (A)(1) – outlines that the generator must maintain a copy of the generators copy of the manifest and the copy of the manifest returned by the designated facility. However, in 40 CFR 262.40(a) it outlines the generator must maintain the generators copy until the signed copy from the designated facility is received. Is it the department's intention that both copies are maintained (i.e. the generators copy and the signed copy from the designated facility)?

RIDEM Response: Yes, this is the intent as any discrepancies can be easily noted. We realize this goes slightly above the federal requirement but do not believe it creates an additional burden as the generator copy should already be in the file when the facility copy is placed in.

- In regards to manifests does RIDEM accept digital/electronic manifests (i.e. scanned copies) for the purpose of retaining a copy of the manifest? This is not specifically addressed in the regulations and I understand EPA is currently working on a digital system. However, in searching for clarification I found this BLR article that has a nice summary: http://envirodailyadvisor.blr.com/2013/03/can-a-tsdf-send-an-electronic-return-manifest/. In this article it references two letters from EPA that in short state as long as the conditions outlined in the letter are met it is acceptable to use digital/electronic manifests. However, it specifically outlines that one must verify with the state agency if a scanned copy is acceptable. Is this something that could be added to the regulation? Or, would it be a case by case review of the generators practice?

RIDEM Response: The Department agrees with this comment and has added a sentence to clarify that digital copies of manifest are allowed if they comply with the federal requirements. Transporter requirements were also modified in this way.

- Section 5.13 (J)(9)(b)(vi) can the wording of this section be further clarified to state that it is facility property, as facility could be interpreted as the building only. As 40 CFR 265.56 (d)(2) states that NRC is to be notified when an incident occurs that could threaten human health or the environment outside of the facility property.

RIDEM Response: The definition of facility from 40 CFR 265.56(d)(2) was discussed with the commenter and she has concurred that no change is necessary as the federal definition of facility includes property outside the building..

- In the regulations it states that the Definition of Solid Waste Rule (DSW) has not been adopted. It specifically states specific EPA regulations that have not been adopted, such as 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25). However, I do not see any mention of 261.4(a)(27). I am assuming that this is also not adopted as it is part of the 2015 DSW ruling and within 261.4(a)(27) it makes reference to other EPA regulations that are stated as not being adopted by the department. Should this be added to Section 2.2 (C)(20)?

RIDEM Response: The Department is using the 2013 version of 40 CFR that does not contain 261.4(a)(27). When a later version of 40 CFR is adopted, this issue will be clarified. The Department intends to consider a limited adoption of the DSW rule in a future revision.

- Section 5.9 Satellite Waste Accumulation can the department add any clarification for laboratories? In some laboratories the analytical instruments can use the 55 gallons allowed for satellite waste. Questions that come up are: Would the waste containers used to collect the waste stream from the analytical instrument be considered a "working container" and not count towards the 55 gallons until they are full? Would the containers collecting the analytical instrument waste be considered one point of generation, whereas waste poured off from lab bench work be considered another point of generation in the same lab (i.e. there would be two SAA in one individual lab)?

We concur and have added a new condition (G) to rule 5.9 that reads:

G. *If satellite containers are in close proximity to each other, then the total quantity of waste stored in these containers collectively cannot exceed 55 gallons.*

5. **Robert J. Gallagher, President, Gallagher Environmental Consulting Group**

Received by email 07/21/2016.

This letter is intended to support the RIDEM proposed changes to the Hazardous *Waste Regulations, dated May 16, 2016.*

There are two proposed changes in particular that reduce the burden on small businesses without compromising environmental protection:

- The first one is the proposed removal of the Authorized Manifest Signers List requirements from Section 5.7.
- The second one is from Section 15.2 and 15.3 for burning of used oil at off-site locations under the same ownership.

Some of the added language such as the requirement in Section 5.13 B(6) for "No Smoking" signs where there is ignitable or reactive wastes is a good reminder of requirements that some employers may overlook otherwise.

If you have any questions, please call me at 401-339-9742 on my cell phone.
Sincerely,
Robert J. Gallagher, President
Gallagher Environmental Consulting Group

RIDEM Response: The Department appreciates the comment.

6.

7. **Kristina Richards, Project manager, Woodard and Curran**

Received by email 07/21/2016.

Comments on 2016 Proposed Amendments to Hazardous Waste Rules and Regulations

Dear Mr. Dennen:

This letter provides comments on the proposed amendments to the Rhode Island Department of Environmental Management Hazardous Waste Rules and Regulations. Overall, Woodard & Curran believes that the proposed changes help to clarify the regulatory requirements and improve/streamline the burden on the regulated community. Based on our review, we identified a few areas where additional improvements can be made, as described below:

Rule 3, Definition of "Rhode Island Hazardous Wastes"

RIDEM has proposed to add a new Rhode Island waste code, R001, representing used electronics that are voluntarily managed as hazardous waste. We suggest that this waste code is unnecessary and should not be added. Used electronics that meet the definition of hazardous wastes are required to be managed either under the universal waste rule, or as hazardous waste (in which case, the appropriate EPA or RI hazardous waste code would be required to properly characterize the waste). If used electronics are hazardous waste, it would be incorrect to characterize them with any waste code other than the waste code that corresponds to the actual hazardous waste listing or characteristic. In other words, the use of the waste code R001 would never be appropriate for used electronics that meet an EPA or RI hazardous waste definition. There does not seem to be a need to create a waste code for voluntarily managing a specific non-hazardous waste as hazardous. Further, it may be confusing to generators managing nonhazardous used electronics, who may use the waste code R001 when shipping nonhazardous used electronics offsite and inadvertently subject themselves to hazardous waste regulations. For the same reasons described above, we believe the waste code "R010" representing nonhazardous used oil that is voluntarily managed by the generator as hazardous waste should be removed. We have encountered situations where generators have not intended or chosen to manage nonhazardous used oil as hazardous waste, but have inadvertently assigned the waste code R010 on manifests when shipping waste oil offsite.

With regard to the R001 code, electronic waste may be managed as universal waste, in which case, no waste codes are necessary. If the generator chooses to manage these waste as hazardous waste, it is unlikely they will know exactly which electronics exhibit which characteristics. Therefore this is intended to assist them in those situations. Also having the R001 code for electronic waste is consistent with Rule 13.2 which states that "used electronic wastes shall be managed as universal waste (or hazardous waste) whether or not they exhibit a hazardous characteristic".

Regarding R010 waste code (oil), the commenter brings up a valid point that use of this code may be redundant with R015 (non-hazardous waste transported on a manifest). However, we feel that since no change to the R010 waste code was placed in the public notice, such a change should be placed into a future change in the regulations to allow broader public notice.

Rule 5.9G.

We support the deletion of Rule 5.9G, which prohibited the storage of PCB wastes in satellite accumulation containers.

RIDEM Response: The Department appreciates the comment.

8. Robin Biscaia, USEPA New England- Region 1

Received by email 04/26/2016.

Rule 5.13(C)(2) -- Tank Systems. You accepted my comment at the end of the first paragraph to reinstate rule 5.13((C)(7)(g); however, your entry incorrectly referenced 5.13(C)(**8**)(g) instead. Please correct the entry to read 5.13(C)(**7**)(g).

Rule 5.13(C)(7)(g) – Tank Failure or Leaking Tank. Also, relative to this section, there are a couple more corrections needed.

1. Rule 5.13(C)(7)(g)(iv) -- The analogous federal requirement, 40 CFR 265.196(e)(1), identifies three paragraphs with which the O/O must comply with regard to releases and return to service [265.196(e)(2), (3) and (4)]. Failure to meet these conditions requires the tank system to go through closure. You do address the (e)(4) requirement in (C)(7)(g)(vi); however, you also need to reference the other two state analogs equivalent to (e)(2) and (e)(3) in (C)(7)(g)(vi). These would be (C)(7)(g)(i)(1) and (2). See the suggested language below:

   ”(g)(vi). Unless the owner or operator satisfies the requirements at 5.13(C)(7)(g)(i)(1) and (2) and (C)(7)(g)(vii), the tank system must be closed in accordance with Rule 5.13(C)(7)(h) (Closure and Post Closure Care Actions).”

   Also, the placement of (g)(vi) is somewhat awkward in addressing these requirements. It might be a better fit if addressed as the last item under (g). But, perhaps you have reasons (i.e., cross references) for not wanting to change the numbering.

2. Rule 5.13(C)(7)(g)(i)(3) – Certification of major repairs. You have adopted language analogous to the federal requirement, 40 CFR 265.196(f), however, I just noticed that in referencing repair of a tank system “in accordance with the requirements **above**,” does not include the recently added requirement, (g)(vii), which is located “below.” The easiest fix is to simply reference all three citations to which (7)(g)(i)(3) applies; i.e., (C)(7)(g)(i)(1) and (2) and (C)(7)(g)(vii).

RIDEM Response: Suggested changes were made.