



Division of Materials and Waste Management Response to Comments

Agency Contact for Hazardous Waste Rules Set L- IP Comments

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Ohio EPA held a 30-day comment period for interested parties (IP) beginning 12/29/2014 regarding draft hazardous waste management rules Set L, which contained 114 draft rules. This document summarizes the comments and questions received during the comment period, which ended **1/28/2015**.

Ohio EPA reviewed and considered all comments received during the IP comment period, which included 3 letters and 1 telephone call. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

General/Overall Concerns

Comment 1: The following summarizes a phone conversation during which the caller asked several questions and expressed the following concerns:

- Requested a hard copy of the Set L draft rules be sent to the caller.
- Requested an extension of the IP comment period. The caller was aware that the IP comment deadline was the day of the phone call and was informed that no other request for an extension had been received during the IP comment period.
- The caller asked if there would be a responsiveness summary. The caller expressed an interest in seeing other people's comments.
- The caller expressed many concerns regarding depleted uranium, and that it is regulated by DOE and not a different agency.

(Diana Cahall of Sardinia, Ohio, phone call to K. Arthur, 8:40-9:00a.m., 1/28/2015)

Response 1: In response to the requests made during the phone conversation, the caller was mailed a hard copy of the Set L draft rules. A copy of this responsiveness summary will be mailed to the caller.

In consideration of the lateness of the caller's IP comment period extension request and that it was the only extension request received, the Agency choose not to extend the IP comment period. It is worth noting that the next anticipated step is the filing proposed rules. The filing of proposed rules will afforded the caller and other persons another opportunity to provide written and oral comment as part of the statutorily required rule-making process.

During the phone conversation, Agency staff explained that depleted uranium is not the subject of any rule in Set L. This information was acknowledged by the caller.

Comment 2: **Definition of Solid Waste:** On July 22, 2011, US EPA proposed new safeguards for hazardous secondary materials recycling with the intent of better protecting public health and the environment. At this time, the federal Office of Management and Budget is now scheduled to release the final Definition of Solid Waste rule. OESI recommends that Ohio EPA adopt the final federal rule in order to maintain consistency and equivalence with the Federal program under RCRA. (Ohio Environmental Service Industries; Thomas P. Pappas, Executive Director, via Dee Smith, Manager, Client Services, 8/22/2014^a)

Response 2: At the time of this letter, the final federal rulemaking had not been published; it was published on 1/13/2015. The up to 70 new and amended rules that could result in Ohio were not added to Set L. The Early Stakeholders Outreach (ESO) comment period is in progress for the DoSW concept. The ESO comment period ends 8/13/2015.

Comment 3: **Land Disposal Restrictions– Revision of Universal Treatment Standards for Carbamate Wastes:** On June 13, 2011, USEPA issued a direct final rule... which revised the LDR UTs for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. OESI requests that Ohio EPA revise its carbamate treatment standards to meet the updated US EPA treatment standards. (Ohio Environmental Service Industries; Thomas P. Pappas, Executive Director, via Dee Smith, Manager, Client Services, 8/22/2014^a)

Response 3: This Federal Register (FR) is already being addressed in the Set L rules. No changes to the Set L rules are necessary.

Comment 4: **Comparable Fuels and Gasification Exclusion Vacatur:** In *Natural Resources Defense Council v. EPA*, decided June 27, 2014, the US Court of Appeals held that the Comparable Fuels Gasification exclusions violate RCRA. Following its opinion, the Court is expected to enter its mandate vacating the rule this month. As such, US EPA is expected to issue a notice in the Federal Register withdrawing both the Comparable Fuels and Gasification rules as soon as practicable. OESI urges the Agency to withdraw its comparable fuels and gasification exclusions under OAC 3745-51-04 to match the anticipated US EPA revised rulemaking. (Ohio Environmental Service Industries; Thomas P. Pappas, Executive Director, via Dee Smith, Manager, Client Services, 8/22/2014^a)

Comment 5: **Solvent Contaminated Wipes:** On July 31, 2013, the US EPA published the final rules titled "*Conditional Exclusion from Hazardous Waste and Solid Waste for Solvent Contaminated Wipes.*" OESI urges the Agency promulgate conditional exclusions for solvent contaminated wipes which are the equivalent to the 2013 US EPA final rules. (Ohio Environmental Service Industries; Thomas P. Pappas, Executive Director, via Dee Smith, Manager, Client Services, 8/22/2014^a)

Response 5: This FR is already being addressed in the Set L rules. No changes to the Set L rules are necessary.

Comments on Specific Rules

3745-50-10 Definitions and computation of time specifically, at the definition of “treatment”

Comment 6: **Definition of ‘Treatment’:** Ohio EPA’s definition of ‘treatment’ ... includes the phrases “*amenable for further treatment, or amenable for disposal*” which makes it significantly more stringent than the USEPA definition under 40 CFR 260.10. These additional phrases make the definition easier for misinterpretation, or worse, multiple different interpretations by regulators and the regulated community. An overly liberal interpretation as to what the Ohio definition applies to could result in affected facilities needing to permit certain activities which do not need to be permitted in other states. At a minimum, this puts commercial TSDs in Ohio at an economic disadvantage to their competitors located outside of the State. Modifying Ohio’s definition to match the federal one would put everyone in the regulated community on even footing and reduce the overall confusion as to what this definition applies to. (Ohio Environmental Service Industries; Thomas P. Pappas, Executive Director, via Dee Smith, Manager, Client Services, 8/22/2014^a)

Response 6: As a result of comments on this definition, it was re-examined. The amendments were changed, but not in the manner requested by this commenter. Please see Footnote b.

Comment 7: The clause “amenable for further treatment” or “amenable for disposal” or “to reduce the volume of waste” needs to be modified to match the federal definition of treatment to prevent confusion on permit requirements and as to improve the clarity of what constitutes treatment. The definition of treatment adopted by the Ohio EPA [in 2010] is not equivalent to or consistent with the Federal definition or that adopted by any other state. Ohio should consider adoption of the Federal definition of treatment for regulatory clarity to be consistent with US EPA and other states. (Daniel J. McCabe, P.E., President, Environmental Enterprises Inc., 7/15/2014^a)

Response 7: As a result of comments on this definition, it was re-examined. The amendments were changed, but not in the manner requested by this commenter. Please see Footnote b.

3745-53-30 Immediate action.

Comment 8: The language [at this location] where the language “of such discharge to the Ohio EPA office of emergency response, by use of its twenty-four-hour number 1-800-282-9378; and” is omitted is detrimental to the rule and removes “stringent” enforcement of the rule unnecessarily as compared to its Federal counterpart. My suggested solution is to maintain stringent standards by not omitting the language referenced. (Scott Bushbaum, 1/28/2015)

Response 8: The language that is stricken from (C)(1) is being re-located to (C)(3), so it is in fact maintained. No change to the rule is necessary.

Comment 9: I also suggest retaining the language following the proposed omission to maintain the standard of rule 3745-53-30 C (1). (Scott Bushbaum, 1/28/2015)

Response 9: The stricken text appears after (C)(2) in a bracketed informational comment, not a compliance requirement. It references non-RCRA federal requirements that are not part of the Ohio (or federal) hazardous waste rules. The federal counterpart provision, 40 CFR 263.30, does not contain similar text, so the removal of the text is maintained to improve the equivalence of the Ohio rule to its federal counterpart. No change to the rule was made in response to this comment.

Footnotes

- a These letters of comment were received in the summer of 2014, prior to the IP comment period for Set L. The OESI letter was in response to ESOs on different DMWM hazardous waste rulemaking efforts. The EEI letter stated no specific rulemaking or ESO it was responding to, except the 2010 amendment of rule 3745-50-10 (similar comments were not provided at that time). Because these comments were largely about concepts addressed in Set L, DMWM treated the letters as IP comments on the draft Set L rules to ensure that the comments would be taken into consideration in a timely manner with relevant rulemaking concepts. DMWM's response to each commenter pre-dated the beginning of the Set L IP comment period, and each included reference to the availability of the upcoming IP comment period to continue any communications regarding the rule language. DMWM did not receive comments from either commenter during the Set L IP comment period.
- b Regarding the definition of "treatment," DMWM has worked with both commenters prior to and subsequent to receipt of this comment regarding their interpretation of this defined term. The Ohio statute's definition of "treatment" [see ORC 3734.01(K)] is part of the federally authorized hazardous waste management program, and is considered by Ohio EPA and U.S. EPA to be equivalent to the federally defined term in 40 CFR 260.10. In proposed Set L, the definition of "treatment" is amended to make it *identical* to the definition in statute.

End of Response to Comments