

## **RESPONSE TO COMMENTS HAZARDOUS WASTE MANAGEMENT REGULATIONS**

The Agency of Natural Resources (Agency) proposed for public comment revised Hazardous Waste Management Regulations (VHWMR) on July 13, 2006. The comment period was open through August 18, 2006, and a public hearing was held in Barre, Vermont on August 1, 2006. This document includes (in italics) each comment received by the Agency regarding the proposed rule and the Agency's response to each comment. The only written comments received were submitted by e-mail from the Vermont Department of Motor Vehicles (DMV); no oral comments were made at the public hearing.

In addition to the comments submitted by the Vermont DMV, the Agency identified two minor but necessary corrections.

### **Comments (1 through 7) were submitted by the Vermont Department of Motor Vehicles**

- 1) **Section 7-107 (c)(1):** *Include a provision that compliance with the rules for access for enforcement officers set forth in DMV Rule #38 (Rules for Transportation of Hazardous Materials) promulgated pursuant to 5 VSA 2001 is required if, in commerce, a person offers for transportation or transports a hazardous waste as defined by 49 CFR 171.8. (see: DMV Rule #38, Action 2)*

**Agency Response:** Comment noted; no change resulting at this time. The Agency believes that DMV enforcement officers are not currently restricted from enforcing hazardous waste regulations in the absence of the proposed change noted above. See 10 V.S.A. § 6607a(c). The Agency believes that further communication with the DMV is necessary prior to modifying Section 7-107(c)(1) as proposed by the DMV.

- 2) **Section 7-309(b)(7)(B):** *Insert "172" between "CFR" and "Subpart C". As currently written, there is no part number cited and the CFR citation as shown is not valid.*

**Agency Response:** Section 7-309(b)(7)(B) has been amended in the final proposed rule to read as follows:

Submit to the Secretary, within 10 days of the date of shipment, a copy of the DOT shipping papers required by the U. S. Department of Transportation under **Subpart C of 49 CFR Part 172** ~~Subpart C~~ and the following information if it is not already addressed in the shipping papers:

- 3) **Subchapter 4:** *Include a provision to require that persons offering for transportation or transporting a waste that is a hazardous waste as defined by 49 CFR 171.8, to comply with all applicable provisions of 49 CFR 171 -180. (this provision appears in the current rule for used oil transporters, 7-811(b)(4); and in 7-912 and 7-913 for universal waste management)*

**Agency Response:** Section 7-401(e) has been added to the final proposed rule which reads as follows:

A transporter of hazardous waste shall comply with all applicable requirements of 49 CFR Parts 171 through 180.

- 4) **Section 7-404(b)(4):** *Insert “172” between “Parts” and “173”. Labeling and marking provisions in 49 CFR are contained in part 172. (see 7-309(b)(1)(B)&(C), the 49 CFR part 172 citation for labeling and marking requirements is correct in these subparagraphs.)*

**Agency Response:** Section 7-404(b)(4) has been amended in the final proposed rule to read as follows:

Ensure that all hazardous waste managed at the transfer facility is packaged, labeled, and marked in accordance with 49 CFR Parts 172, 173, 178, and 179; and

- 5) **Section 7-409:** *As written, these provisions apply only to permitted transporters. 7-406 requires only transporters that transport to or accept for transport a waste from a location in Vermont to be permitted. Is it ANR’s intention to exempt pass-through waste transporters from the training requirements set forth in 7-409?*

**Agency Response:** Comment noted, no change resulting. The requirements of subchapter 4 supplement, and do not supplant, the requirements of Title 49 of the Code of Federal Regulations (49 CFR). Section 7-409 requires that all Vermont permitted transporters provide employee training that is *consistent* with federal Department of Transportation (DOT) training requirements regardless of whether DOT training requirements apply. Since it is independent (from DOT), Section 7-409 does not in any way exempt transporters who are not subject to the 7-406 permit requirements (e.g., pass-through transporters) from training required under 49 CFR.

- 6) **Section 7-401(a):** *Precede this section with the phrase, “Except as otherwise provided in this subchapter....” The section states that the requirements apply to persons transporting waste within OR through Vermont, however the provisions of 7-406 apply only to transporters that transport to or accept waste from a location in Vermont, not persons transporting waste through Vermont. 7-406(a) appears to contradict the scope and applicability provisions of 7-401(a) as currently written.*

**Agency Response:** Comment noted, no change resulting. The 7-401(a) provision is a general “purpose” statement. It is meant to inform persons who transport hazardous waste either within or through Vermont that some elements of subchapter 4 (i.e., including, but not limited to, the permitting requirements of § 7-406) apply to them. While “pass-through” transporters are not required to obtain a permit, they are subject to the § 7-404 transfer facility standards (if they own or operate such a facility in Vermont), the § 7-405 prohibitions, and the § 7-411 emergency preparedness requirements.

- 7) **Section 7-406(a):** *Insert, “as required by 10 VSA 6607a” after “Secretary”. This statute sets forth the requirements for obtaining a waste transporter permit.*

**Agency Response:** Section 7-406(a) has been amended in the final proposed rule to read as follows:

With the exception of those persons and activities specified under § 7-401(c), no person shall transport to or accept for transport from any location in Vermont any hazardous waste or used oil without first obtaining a permit to do so from the Secretary, as required under 10 V.S.A. § 6607a.

**Comments (8 and 9) are from within the Agency of Natural Resources:**

- 8) **“Note” following section 7-309(b)(6):** *Correct the note in the same manner as suggested by DMV Comment #2; as currently written, there is no part number cited and the CFR citation is invalid.*

**Agency Response:** The “Note” following section 7-309(b)(6) has been amended in the final proposed rule to read as follows:

**Note:** Outside of Vermont, the hazardous waste manifest may not serve to replace the shipping papers required by the U. S. Department of Transportation under Subpart C of 49 CFR Part 172 ~~Subpart C~~, if the waste being shipped is not defined as hazardous in 40 CFR Part 261 (i.e., waste regulated as hazardous by Vermont).

- 9) **Section 7-401(b):** *Revise the Subchapter 4 applicability statement to include transporters who accept waste from small and large quantity generators; treatment, storage, or disposal facility owners or operators; and transfer facilities.*

**Agency Response:** Section 7-401(b) has been amended in the final proposed rule to read as follows:

This subchapter applies to:

- (1) Transportation of hazardous waste accepted ~~only from; conditionally exempt generators when the total amount accepted from all such generators in any shipment exceeds the amounts set forth in § 7-306(a);~~
  - (A) Conditionally exempt generators when the total amount accepted from all such generators in any shipment exceeds the amounts set forth in § 7-306(a);
  - (B) Any small or large quantity generator; or
  - (C) Any owner or operator of a facility;
- (2) Transportation of recyclable hazardous wastes unless exempted from some or all provisions under § 7-608; ~~and~~
- (3) Transportation of used oil as specified under § 7-811; ~~and~~
- (4) Any owner or operator of a transfer facility.