

Summary of Consultation Comments

Hazardous Waste Regulation Review January 2008 Intentions Paper

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British Columbia
Ministry of Environment

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Section A: Background to the Consultation Process and Responses Received

Introduction and Background to the Consultation Process

This report provides a summary of stakeholder comments received as part of the consultation process for review and revision of the Hazardous Waste Regulation under British Columbia's *Environmental Management Act*.

An intentions paper with response form was posted for public review and comment on the ministry's website (www.env.gov.bc.ca/epd/codes/) through January of 2008. The intentions paper provided a summary of ministry and government goals, background information regarding hazardous waste and its regulation in B.C., proposed housekeeping and other minor revisions to the regulation and a response form for providing comments or suggestions to the ministry. Note that a second intentions paper and accompanying response form, incorporating more substantive and complex issues, has been prepared by the ministry for public consultation in the spring of 2008 and is available on the ministry's web site for review by stakeholders.

This document has been prepared for the Ministry of Environment by C. Rankin & Associates, contracted by the ministry to independently receive, compile and review comment on the proposed revisions to the Hazardous Waste Regulation. The summary does not reflect the ministry's position on any issue. It provides a synopsis of the responses that are being considered by the ministry in revising the regulation – without specific attribution, except to the extent required to provide context for the comments. The summary follows the headings contained in the ministry intentions paper and response form.

All detailed comments have not been included in this document – but have been compiled as part of the comprehensive documentation of responses being reviewed by the ministry. All comments and references submitted through this process, through independent submissions and through direct consultations with stakeholders, will be reviewed and carefully considered by the ministry in revising the regulation.

Description of Responses Received

Ten responses to the intentions paper and response form were received (by e-mail, fax and attached file), and have been reviewed for this summary of stakeholder comments. Most respondents identified themselves as representatives of an association or business. Responses were also received from individuals associated with an academic institution and a medical health organization.

This summary of public comment attempts to capture the tenor and content of comments through summarization and specific excerpts from representative submissions.

Section B: Summary of Comments

This section contains a summary of responses arranged by topic as presented in the intentions paper. Direct excerpts from submissions are included in quotation marks (“ ”). Square brackets ([]) indicate inferred or contextual terms. The complete set of responses received through the consultation process has also been compiled and passed to the ministry for detailed review and consideration.

Topic 1: Proposed housekeeping and other minor changes to the regulation

The proposed changes to the regulation are intended by the ministry to address omissions and inconsistencies, and to improve efficiency in administering and complying with the regulation.

A. Remove forms from the regulation and revise references to forms within the regulation

Respondents who commented on this topic felt that this would be a “good” or “excellent” idea... “especially if there is still a reference from the regulations to the document.” One respondent noted that the creation of new forms “has the potential to significantly impact our work procedures – we request... sufficient opportunity for our organization and other stakeholders to review... and provide comments [on any proposed changes].”

B. Add a business license number to the information for registration:

Several respondents commented that this provision would improve communication between levels of government and “awareness with the municipal agencies that might otherwise be unaware of hazardous waste being generated and stored at [a] site.” One respondent requested consideration for exemption, noting that as “crown corporations...have operations throughout the province, there may be several instances where a business license is not applicable.” Another suggested that “for those jurisdictions that do not require a business license...require the generator to notify in writing the emergency measures agency in the jurisdiction that hazardous wastes are generated and stored at this site.”

C. Consolidate requirements for plans

Respondents who commented on this topic generally supported the intention, with the following specific suggestions:

- “We would suggest that as Operational Plans are updated or revised, that these additional plans be incorporated;” and
- “Thought must be given on how this is to be implemented when a variety of Waste Management Facilities do not currently have an approved Section 4 Operational Plan – this will further the gap between the first Section 4 Operational Plans and the ones that are in the process of being approved – changes to this section of the regulations, mean the Regional Offices will again be moving the targets to approve [a] Plan.”

D. Add a new manifest supplement form

Respondents who commented on this topic felt that it would be “a good idea” and “a significant improvement to the process for the movement of bulk hazardous waste...it is analogous to the multiple generator forms currently in use.”

E. Amend definition of hazardous waste to exclude wastes that have the pH equal to 2.0:

Respondents who commented on this topic supported this proposal as “a good idea to provide consistency between jurisdictions.” One respondent further commented that “consideration should be given to including corrosivity, as some wastes with a pH greater than 2.0 are corrosive and would be captured by the [federal Transport of Dangerous Goods Regulations].”

Ministry Note: Waste dangerous goods exhibiting the “corrosivity” characteristic as defined in the Transportation of Dangerous Goods Regulations are currently captured in the definition of “hazardous waste” in the Hazardous Waste Regulation, with the exception of those that would be corrosive only as a result of exhibiting a pH greater than or equal to 11.5 and less than or equal to 12.5.

F. Application for change in requirements/specific exemptions under HWR

Respondents who commented on this proposal did not “see a significant impact” or supported the provision of “administrative simplicity for MOE.”

G. Amend the threshold for reporting discrepancies in the quantities of hazardous waste shipped and received (section 5(4))

Respondents had a number of detailed comments regarding this proposed change, including:

- “We would suggest that while Part C of the manifest may be useful for noting corrective actions for minor discrepancies, such as a known error in weight shipped, it should not be the only option – based on the information required and the level of follow up, a letter may still be required – the regulation should recognize that the summary report of discrepancy letters should be consistent with the reporting requirements of receiver’s existing Operational Plan;”
- “This will reduce reporting effort for minor discrepancies and reduce administrative load for minor discrepancy issues – uncertain that the comment box in Part C of the manifest is the best option to identify and address corrective action, as it places the onus on the person on the ground to solve the discrepancy, when they don’t have an easy way to access all of the necessary information;”
- “This also applies to volumes of containers picked up at a customer site, not just weight – often containers are packaged and prepared for transport prior to arriving on the customer site and the containers are assumed full until consolidated at the waste management facility. We don’t see any significant impact on this change;” and
- “Amend[ing] the threshold for reporting discrepancies in the quantities of hazardous waste shipped and received (section 5(4)) to greater than 10% discrepancy is a good idea, but in order to provide the ministry with earlier notification for those generators who may be near the edge of compliance, reporting should be done on a quarterly basis with the Director having the ability to adjust the reporting frequency to semi-annual or annual depending on the Director’s comfort with the generator’s performance.”

H. Clarify provisions for return collection facilities

One respondent suggested an additional clarification: “[a person filling in the registration form should be able to] identify [their facility]... as a return collection facility [as well as] an ‘onsite Management Facility’ or a ‘Receiver of Hazardous Waste’...this may be as simple as changing [the wording on Form 1A, in Schedule 5] from ‘check the box’ to ‘check the boxes’ that apply.”

I. Increase generator manifest responsibilities

This topic generated detailed comment from a number of respondents. While several respondents supported the intent of increased generator manifest responsibility, they recommended that additional time should be given for a receiver/consignee to provide a copy to the generator/consignor (e.g., “15 working days” or “45-60 days to allow time for internal processing and invoicing”). Respondents also requested clarification regarding the intended purpose of the proposal, (e.g., “Is the intent to ensure that the waste has actually been received, and is the mailing of copy 3 to the BC MOE within three days still to be a requirement?”) and commented that the proposal could increase administrative workload. One respondent noted that “this requirement [would] be excessively onerous for consignors, especially when the consignor... is also the consignee and this is often the case for companies operating throughout British Columbia.”

One respondent suggested that an alternative to the ministry’s proposal might be to “have the generator prepare an annual report, or easy to complete form to confirm that all manifest copy 2 and copy 6 have been matched up from the previous year.” Another commented that “as the receiving facilities also receive a copy of the form, and have a final weight and do have the requirement to submit an annual report to BC Environment (based on their operational PS or PR permit), the Ministry already has the information and is able to cross reference and verify [it].” A third respondent suggested that the ministry “consider annual performance reviews to assess if such a requirement is necessary or, as a minimum, consider exempting situations when the consignor and consignees are the same company.”

Ministry Note: Most respondents to this item appear to be confused about the proposal in light of the existing manifest copy distribution requirements in section 46(8) of the regulation. The following paragraphs are intended to clarify the proposed requirements.

This proposal is not to change the current regulatory timelines for distributing copies of the manifest, including copy 6, within 3 days of the date of waste shipment or the date of waste receipt, as applicable.

The intentions paper proposes placing additional responsibility on the consignor to ensure that copy 6 is sent to her or him by the consignee/receiver within three days of the date of waste receipt, as required in section 46(8)(b) of the regulation. If copy 6 is not received, as required, it is proposed that the consignor be required to contact the receiver and attempt to obtain the subject copy. If the consignor is unsuccessful in obtaining the copy from the receiver within 10 days of the date of waste shipment, the consignor must notify the ministry immediately.

Distribution of copy 6 of the manifest to generators by receivers has no legal relation to the administrative business of invoicing. It appears that some stakeholders are retaining copy 6 of the manifest for periods of up to 45 days and sending it to their clients with the associated invoice for the waste management service provided. If this is the case, delaying the distribution of copy 6 of the manifest for invoicing purposes contravenes section 46(8) (b) of the regulation. If there are significant administrative burdens for receivers associated with distributing manifest Copy 6 within the three day regulatory limit, these should be discussed with the ministry and a resolution pursued that would address the non-compliance concern.

Topic 2: Upcoming non-regulatory changes related to hazardous waste management

A. Greater education for industry

Respondents who commented on this topic “welcomed” the effort as “a necessary component of the regulatory requirements.” Several suggested that increased training for regional MOE staff would also be worthwhile. Additional suggestions included: “[development of] a similar training program to assist in the completion of manifests or transportation documents;” and having “regional MOE personnel participate with the Voluntary Industry-led audit program for training purposes.”

B. Posting plan approval letters on the web

Respondents who commented on this topic supported the ministry’s intention, with the common caveat that [there should be] no disclosure of proprietary information.” One respondent suggested that to address this issue, “a draft of the approval letter [could] be provided to the facility owner/operator for review and comment to ensure that they do not have any concerns regarding facility specific information publicly available.”

Differing comments were received regarding the level of detail in the information that might be posted. One respondent recommended that “it should be the MOE letter and not the actual Operational Plan.” Another suggested including “actual Section 4 Operational Plans (excluding proprietary or business sensitive information) in addition to the Approval Letters posted on the web.” The respondent felt that posting plan approval letters on the web is a great idea as well and should help the waste generators determine the services available and lead to them making better management choices.”

C. Voluntary Industry-led audit program

Respondents who commented on this topic were very supportive. For example, one respondent felt that “this provides a great opportunity for the Ministry Staff to participate and learn the application of the regulations” and another commented that “[this would be] another innovative approach by the Ministry to lead smaller receiver/processors and generators to better understand the regulatory requirements and [could] lead to each generator, transporter and receiver/processor being required to conduct annual third party audit to be reported to the Ministry.”

D. Consultation with First Nations

The following specific comments were received on this topic:

- “[We have] some concern on equitable development and management with respect to non-provincial regulated lands (i.e., First Nation – Federal Lands)... in addition to consultation with Aboriginal communities, the Department of Indian and Northern Affairs and Environment Canada should be consulted;” and
- “[We] strongly endorse the Ministry communicating directly with First Nations, but also suggest communicating with the federal and provincial Departments responsible for First Nations issues to insure they are also aware of the hazardous waste regulatory requirement expectations of the Ministry.”

Additional comments

Several respondents provided substantive information as “additional comment” for the ministry to consider. One respondent included a research paper (“Adapting New Zealand’s Individual Transferable Quota (ITQ) Property Regime to the Management of Hazardous Waste in the Province of British Columbia, Canada”) for the ministry’s information. Another respondent provided a detailed discussion of aluminum sulphate (alum) as used in the oil and gas industry, and requested consideration of exempting alum sludge from classification as a “hazardous waste.”

One respondent outlined a number of issues related to the oil and gas industry and recommended that the ministry undertake targeted consultation with industry representatives to ensure that any changes to the Hazardous Waste Regulation are undertaken with an awareness of the implications to the oil and gas sector. Related issues for consideration noted by the respondent included: tracking and recycling inert drilling waste; waste oil storage at remote locations; and the use of oilfield designations to supplement existing tracking mechanisms. Other recommendations from respondents included: re-establishing the “online database of LT-licenses;”¹ and establishing “a unique waste generator number when remediating flare pits.”

A number of respondents commented on the hazardous waste regulation review process and the principles underlying the ministry’s efforts. For example, “the ministry is to be congratulated [for] a greater focus on those not in compliance with regulatory requirements...[and] concern for compliance in the inter-provincial movement of hazardous wastes.” Specific comments on the principles included:

- *Clarity and simplicity* – “we agree the regulations need to be clearer to minimize the ability for interpretation – this will go a long way to ensure consistent application and standards within the hazardous waste industry as well as the Ministry’s application of the regulation from region to region – introducing a central body for plan approvals and regulatory interpretations would ensure regulatory requirements stay consistent throughout the Province;”
- *Effective oversight and enforcement* – “an excellent principle, but there are many hazardous waste generators that do not belong to industry associations, so efforts must also be made to target these generators” and “this is essential to providing consistent application of regulatory requirements...Industrial associations must play an important part in developing and communicating information when possible, but the enforcement and oversight of the regulation must be properly managed by the Ministry to ensure consistent compliance;”
- *Reduce and streamline regulatory burden* – “although a reduction in the administrative burden of the regulations is important from a business perspective, emphasis must be to protect the environment...[one concern is the] gap between older and newer conditions – this provides a competitive advantage to the companies without the burden of current requirements because their plans were approved under a less stringent structure;”
- *Accountability* – “many hazardous waste generators do not belong to industry associations, so accountability for those generators must also be a priority” and “one word that should be added to this accountability paragraph is ‘consistent.’ One of the issues companies face within this industry is an unlevel playing field; companies that do hold themselves accountable to properly manage waste and comply with regulations are easily undercut by the less concerned companies because they feel the Ministry will not be looking over their shoulder...accountability must also be shown by the Ministry and generators – the Ministry must consistently apply their regulations and enforcement of regulations to all Hazardous Waste Companies – in addition, the Ministry must also ensure generators of Hazardous Waste are also accountable for meeting their requirements under the regulations;” and

¹ Note: an on-line data base for LTs, including a new search function, is currently available on the ministry web site.

- *Harmonization (consistency)* – “we agree with harmonizing regulations to ensure consistency throughout the province and other jurisdictions within Canada providing that the items that are harmonized are reasonable and that harmonization is for the benefit of the Province.”

The following specific comments were also received:

- “Although we have no objections to what is outlined, we find it difficult to offer any specific comments from a public health perspective. We would like to point out that British Columbia seems to have difficulty in finding ‘in-province’ solutions to dealing with hazardous or other waste. In the absence of such solutions, we export our waste to neighbouring jurisdictions such as Alberta or Washington. Given the energy costs and emissions associated with long distance transportation of waste, we question whether this represents a sustainable solution...we hope the Ministry of Environment will place priority to finding more sustainable solutions to waste management in British Columbia;”
- “We recommend the following to assist with a long term solution: 1) centralize approval of the Section 4 Operational Plans and regulatory interpretation by the Regions to clarify requirements under the [regulation]; 2) increase Ministry presence within the hazardous waste industry through regular inspections; 3) ensure all Hazardous Waste Management facilities are held to the same standard when approving plans and facility requirements under those plans; 4) ensure when referring to new standards and guidelines, these requirements are retroactive to facilities already with approved plans to ensure equality between companies; 5) ensure accountability includes the Ministry to consistently apply and enforce their regulations throughout the Province; and 6) increase Ministry presence at generator sites to promote compliance and ensure they meet their requirements under the regulations;” and
- “Upon review of the proposed changes, we recommend the following: 1) increase communication with stakeholders when making changes to referenced forms to reduce non-compliance within the industry; 2) ensure significant grace periods are allowed especially when changing forms such as the manifest which must be purchased from the Ministry at a significant cost; 3) ensure the requirements to meet the changes to the plans being consolidated remain consistent with the first plans approved to maintain a level playing field between companies; 4) ensure the increase to the manifest discrepancy applies to volumes and not just weights as suggested by the intentions paper; and 5) clarify the requirement to register as a Return Collection Facility when submitting the Form 1 A in Schedule 5.”