

II. Proposed State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal, To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Proposed Resulting Authorization of Massachusetts Recyclable Materials Regulations

A. What Massachusetts Regulations Are Proposed To Be Authorized?

In 1986, the MADEP adopted regulations to comprehensively regulate hazardous recyclable materials, under provisions separate from those governing hazardous wastes planned to be disposed. These regulations are found in 310 CMR 30.200. In the Federal RCRA program, some hazardous recyclable materials are not considered to be hazardous wastes and thus are exempt from hazardous waste regulation (e.g., sludges and byproducts exhibiting a characteristic of hazardous waste and being reclaimed) whereas other hazardous recyclable materials are considered to be hazardous wastes and are subject to regulation including all of the usually applicable hazardous waste generator regulations (e.g., spent materials, listed sludges and listed byproducts being reclaimed). In contrast, the State regulations cover virtually all hazardous recyclable materials under some level of regulation. However, based on the perceived level of risk, different recyclable materials are subject to different levels of regulation, from the least regulated Class A to the most regulated Class C.

Initially, the State's Class A regulations applied only to recyclable materials that are exempt from Federal regulation. Thus the State was not required to seek Federal authorization for these regulations. In 1995, however, the MADEP expanded the Class A category to include many recyclable materials that are recycled at the site of generation. Under the State regulations, these Class A recyclable materials must be recycled in a recycling system that is completely enclosed, but may be stored in tanks or containers prior to being recycled, without the entire storage to recycling process being completely enclosed. Thus the Class A regulations now apply to certain federally regulated hazardous wastes that are recycled on site by generators, namely those hazardous recyclable materials that are spent materials, listed sludges and listed byproducts, that are accumulated or stored on site before being recycled, and that are recycled through a process that does not meet all of the conditions for Federal exemption as a completely enclosed recycling process set out in 40

CFR 261.4(a)(8). In particular, the Class A regulations apply to Federally regulated recyclable materials currently being stored by about 136 generators with stand alone solvent stills/distillation units and to Federally regulated recyclable materials currently being stored by about 40 generators with stand alone silver recovery units.

The EPA is proposing to authorize the State's Class A regulations insofar as they apply to the storage of recyclable materials by generators with stand alone solvent stills/distillation units, generators with stand alone silver recovery units, and any other generators who may store Federally regulated recyclable materials subject to the Class A regulations in the future (i.e., generators referenced by 310 CMR 30.212(10)). Once authorized, the Class A regulations will become part of the federally approved and enforceable State base program generator requirements.

It should be noted that the State is in the process of revising its Class A regulations (as part of its current update), and it is the proposed revised Class A regulations which the EPA is proposing to authorize. The EPA expects to authorize the final State regulations, once they are adopted, if they are the same as the proposed State regulations. If the final State regulations are different from the proposed State regulations, the EPA expects to authorize them (without an additional round of public comment) if but only if the final regulations continue to meet the RCRA statutory requirements and are a logical outgrowth of the proposed regulations.

The proposed authorization does not cover the Class A regulations insofar as they apply to the Federally exempt recyclable materials referenced by 310 CMR 30.212(1) through (7), as the regulation of these recyclable materials is beyond the scope of the Federal RCRA program. The authorization also will not cover the Class A regulations insofar as they apply to waste oil and specification used fuel oil as referenced by 310 CMR 30.212(8)–(9), since the MADEP has not yet applied to be authorized for the Federal RCRA Used Oil program (established in 40 CFR part 279). Finally, the authorization will not cover the State's Class B and Class C regulations, since the MADEP has not yet applied to be authorized for these regulations (which generally relate to off-site non-generator recycling).

B. Why Is the EPA Proposing To Make a Federal Regulation Change?

The EPA has reviewed the Massachusetts Class A regulations and

determined that they do not meet particular requirements for State authorization set out in the current EPA regulations. However, the EPA also has determined that the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment and are at least as environmentally protective overall as the Federal program. Thus the EPA is proposing to make a State-specific Federal regulation change to allow authorization of the Massachusetts Class A regulations.

1. Differences in the State Class A Regulations Which Preclude a Standard Authorization

In comparison with the EPA regulations applicable to storage of hazardous wastes by generators, the Class A regulations regarding storage of hazardous recyclable materials by generators differ with respect to various details. For example, under the Federal regulations, storage of hazardous wastes without TSDF permits by LQGs and SQGs generally is limited to 90 and 180 days, respectively. In contrast, the Class A regulations allow recyclable materials to be stored pending recycling so long as there is no "speculative accumulation." This typically allows storage times without TSDF permits of a year or longer. The EPA regulations on State authorization specify that, "[s]tate law must require [TSDF] permits for owners and operators of all hazardous waste management facilities required to obtain permits under 40 CFR part 270 * * *" 40 CFR 271.13(a). By allowing generator storage times without TSDF permits longer than the Federal regulations, the Class A regulations do not comply with this current EPA requirement for State authorization.

In addition, the Class A regulations impose requirements regarding storage of recyclable materials by generators which are quite different from the Federal regulations in 40 CFR part 262 regarding generator storage. In place of the Federal categories of LQG, SQG and CESQG (Massachusetts VSQG), the Class A regulations establish a dual status system. Generators are classified as LQGs or SQGs or VSQGs with respect to wastes to be shipped off-site based on the amount of such wastes to be shipped off-site. Generators are separately classified and regulated with respect to Class A recyclable materials based on the amounts of such materials (and are placed in either a merged LQG/SQG category or a VSQG category for that purpose). The resulting differences between the State and Federal regulations are fully described in a EPA memorandum dated July 8, 2002,