

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel  
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APR 14 2022

To Whom It May Concern:

This is to advise you, that subject to the terms set forth in this letter, the New York State Department of Environmental Conservation ("DEC") will utilize enforcement discretion with respect to certain provisions of the 6 NYCRR Part 372, Subparts 373-2, 373-3 and 374-1 hazardous waste regulations related to the hazardous waste manifest system.

This enforcement discretion will remain in place until these provisions are adopted into State regulation or this enforcement discretion letter is modified or rescinded, whichever is earlier. All other provisions of the 6 NYCRR Part 370 through 374 and 376 regulations remain in effect and will be enforced.

DEC is exercising enforcement discretion with respect to the following provisions:

6 NYCRR 372.2(b)(3) requires the generator to retain one copy of the manifest, and mail one copy of the manifest form to the generator state, and one copy to the destination state (if different from the generator state).

6 NYCRR 373-2.5(b)(1)(i)('b')('5') and 373-3.5(b)(1)(i)('b')('5') require receiving facilities to submit copies of the manifest to both the generator state and destination state (if different).

6 NYCRR 372.3(b)(4)(ii) requires transporters to contact a generator any time a shipment of hazardous waste cannot be delivered to the designated facility because of an emergency condition. The transporter must obtain further directions from the generator and revise the manifest according to the generator's instructions.

Generators, transporters, and receiving facilities will not be required to comply with the above provisions provided that they adhere to the following procedure.

Procedure:

1. If the hazardous waste identified on the manifest will be shipped within or imported into the United States, generators located in New York State do not need to submit a copy of the manifest to DEC. In lieu of complying with the requirements of 6 NYCRR 372.2(b)(3) to mail one copy of the manifest form to the generator state and one copy to the destination state, generators must comply with the applicable requirements of 40 CFR 262 Subpart B.

2. If the hazardous waste identified on the manifest will be exported out of the United States, generators located in New York State must still comply with 6 NYCRR 372.2(b)(3) and mail a copy of the manifest to DEC.
3. In lieu of complying with the applicable requirements of 373-2.5(b)(1)(i)(b)(5) and 373-3.5(b)(1)(i)(b)(5) for receiving facilities to submit copies of the manifest to the generator state and destination state, receiving facilities must now comply with the applicable requirements of 40 CFR 264.71 or 40 CFR 265.71 and submit hazardous waste manifests to EPA's e-Manifest System.
4. Generators and receiving facilities must continue recording the DEC waste codes, listed in 6 NYCRR 371.4(e), for PCB-containing hazardous wastes on their hazardous waste manifests.
5. Generators and receiving facilities must continue recording the ultimate disposal code on the manifest as required by 6 NYCRR 372.2(b)(2)(ii).
6. In lieu of complying with the requirements of 6 NYCRR 372.3(b)(4)(ii) during an emergency condition generators and transporters may comply conditions of 40 CFR 263.21(b) to allow the designation of alternate transporters without prior approval from the generator, provided that all applicable requirements of 6 NYCRR Part 364 are also met.

If you have any questions, please call Thomas Killeen of the Division of Materials Management at (518) 402-8652.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman  
Deputy Commissioner & General Counsel