



Department of
Environmental
Conservation

New and Upcoming RCRA Regulations Affecting LQGs

State and Federal Initiatives of Fedreg5 and
Fedreg6

May 15, 2020

Webinar Reminders

Please ***remain muted*** (all participants were muted on entry)

If we need to unmute you to clarify a question, the host will unmute you.

- If you have a question or comments, please send them to all or to the participant labeled as “1 Comments”
- If you have questions or concerns about a particular issue at a particular facility, please email hwregs@dec.ny.gov
- If you accidentally unmute yourself, the host will mute you; if you continue to unmute yourself we will need to remove you from the meeting

Thank you for your cooperation!



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Agenda

- FedReg 5
 - Revisions from state initiatives
 - Revisions from federal rules
- FedReg6
 - Revisions that promote recycling
 - Other revisions that affect LQGs

FedReg5

Adopts EPA changes and state initiatives from about 2002 to 2012

- Regulations proposed June 2019
- Public comment period ended August 2019
- Final regulations filed with NYS Department of State February 18, 2020
- Regulations became final April 19, 2020



Fedreg5

State Initiatives



C7 notification

- DEC no longer requires copies of c7 notifications for :
 - Dental amalgam - 374-4.2
 - Lead-acid batteries - 371.1(g)(1)(ii)(‘e’)
 - Precious metals – 374-1.6
 - E-waste 371.1(c)(7)

C7 notification samples:

<https://www.dec.ny.gov/chemical/51768.html>

371.1(c)(7) requires parties claiming exemptions or exclusions to notify DEC and describe how they meet the exemption or exclusion



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Changes in Waste Storage Requirement

In 372.2(a)(8)(ii) the accumulation time for tanks and storages has changed:

...The date upon which each period of accumulation begins must be clearly marked and visible for inspection on all containers...

- The storage area does not need to be marked but must track that waste has been there for less than 90 days
- Tank areas can be tracked by other means such as mass balance

Wastewater Treatment Unit Elementary Neutralization Unit

- The permitting exemption at 373-1.1(d)(1)(xii) now has requirements consistent with the facility's generator status.
- The base permit exemption will remain

WWTU and ENU Exemption

For LQGs, the conditions of the exemption have minor changes to the format of the requirements. They must comply with the following:

- ('1') the requirements for personnel training in section 373-3.2, subdivision 373-3.2(g), for preparedness and prevention in section 373-3.3, and for contingency plans and emergency procedures in section 373-3.4;
- ('2') elementary neutralization units that qualify as containers must be managed in accordance with section 373-3.9 Use and Management of Containers of this Part;
- ('3') all containers and tanks used to treat hazardous waste must be marked with the words "hazardous waste" and other words that identify the contents.

WWTU and ENU Exemption

LQGs Cont:

('4') if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high TOC subcategory defined in section 376.4(a) of this Title, Table Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in sections 373-2.2(i)(2) and 373-3.2(h)(2) of this Part.

WWTU and ENU Exemption

For Small Quantity Generators:

('b') Small quantity generators, as defined in subdivision 370.2(b) of this Title, must meet the requirements of 372.2(a)(8)(iii)(e) for these units, and subclauses 372.2(a)(8)(iii)(e)(a)(2), 372.2(a)(8)(iii)(e)(a)(3), and 372.2(a)(8)(iii)(e)(a)(4) of this subparagraph.

WWTU and ENU Exemption

For Conditionally Exempt Small Quantity Generators:

('c') Conditionally exempt small quantity generators, as defined in 371.1(f) of this Title, must meet the requirements of subparagraph 373-1.1(d)(1)(v) of this paragraph, provided the waste is managed immediately upon generation in the unit.



FedReg5 Overview

Federal Changes



Methods Innovation

- Apply SW-846 when it is the only method that can be used to determine a parameter
- Removed from regulations unnecessary references to SW-846 which do not affect the intention of the RCRA regulation
- Methods are organized by source of material under subparagraphs (b) through (g) of 6 NYCRR 370.1(e)
- NYSDEC requires that if using analytical techniques or methods for which ELAP-certification is available, must use an ELAP-certified lab.
- DEC-approval needed for alternate test methods in certain circumstances.



Burden Reduction

- Reduces some reporting and recordkeeping requirements.
- Certain parts of the federal rule will not be adopted
- Certain State notification and documentation requirements that will be retained; and
- The State requirement for an independent professional engineer certification will be retained.
- Certain provisions will be revisited during the next rulemaking - related to manifesting.

Academic Labs Rule

Applicable to any generator that is:

- A college or university (C/U), or
- A teaching hospital or non-profit research institute that is owned by or has a formal written affiliation agreement with a C/U
- May change on-site generator status
- Academic entities may do a one-time cleanout

Some Key Points

- All in – all labs at the site must operate under the lab rule if the site opts in.
- Same terminology and means of meeting time limit at all labs at the site, but other elements can be met differently at different labs.
- Must opt in by site – if multiple EPA ID numbers, each site that wants to opt in must individually notify.
- Can use the same Lab Management Plan for the whole college or university as long as each campus opts in.
- See resources at <http://www.dec.ny.gov/regulations/117115.html#Outreach>; soon to be moved to <http://www.dec.ny.gov/chemical/8489.html>)



FedReg6

Revisions Under Development



Universal Waste Rule Revisions

- Aerosol Cans
- Waste Paint
- Solar Panels

Solar panels will be considered in FedReg6; we may proceed with aerosol cans and paint waste as a separate rulemaking.

Aerosol Cans

- May be hazardous waste due to contents and/or due to propellant
- Fire and explosion hazard from containers still under pressure

EPA's Aerosol Can Rule

Handlers may:

- sort aerosol cans by type;
- consolidate intact aerosol cans in larger containers;
- remove actuators to reduce the risk of accidental release;
- When following certain conditions, are allowed to puncture and drain aerosol cans when the emptied cans are to be recycled.

Accumulation:

- Container storage performance standards;
- Temperature control;
- Follow written procedures for puncturing, including procedures for segregation incompatible waste



Paint Waste

- New state product stewardship law will require take-back system, likely to take effect in 2021
- New law covers architectural paint sold in 5-gallon or smaller container from consumers (consumers include businesses)
- Oil-based paints may be an ignitable hazardous waste
- Universal waste classification would facilitate collection from non-households
- What standards should be applicable?
- What universe – should other types of paint waste such as marine paints and other specialty paints be included in universal waste rule?

Wipes Rule



Wipes Rule

- “Once a listed waste, always a listed waste”
- Two exclusions – laundering, disposal
- Laundering: Some EPA provisions are more stringent than current DEC Policy DSH-HW-03-09
- Should we consider exempting wipes directed for disposal?
- Possible extra controls:
 - Never any free liquids
 - Notify DEC
 - Retain shipping papers
 - Directly to disposal facility (no transfer facilities)
 - Limit disposal options – waste to energy, incinerations (ban landfill)?

Definition of Solid Waste Rule

Purpose of the DSW Rule

- Identify and set standards for materials that would be hazardous waste if disposed but can instead be legitimately recycled, and when recycled are indistinguishable from comparable raw materials or manufacturing intermediates.
- Put the materials to higher value recycling, to make better use of the resources (example: IPA going for distillation instead of fuel blending)
- Set of court rulings stretching back to the beginning of RCRA-C
- States are not required to adopt the exclusions

Legitimate Recycling – Four Factors

1. Hazardous Secondary Material (HSM) provides a useful Contribution;
2. Product or manufacturing intermediate made from the HSM is valuable;
3. HSM is managed as a valuable commodity;
4. Recycling product is comparable to a legitimate product or intermediate – no Toxics Along for the Ride (TARs).

(New York expects to adopt all four factors)



DSW Rule

Three exclusions

1. Generator-controlled exclusion

- Adopt exclusions for recycling on-site and off-site under control of the same generator

2. Transfer-Based Exclusion

Transfer-based exclusion

“Materials transferred for recycling are not solid waste if....”

- Recyclers notify but don't need approval
- Off-site recyclers need financial assurance for closure
- Generator must ensure that they send their hazardous secondary material to a recycler who will legitimately recycle it

NYS OPTIONS:

- Not adopt
- Receiving facilities must be TSDFs
- Other options may be available if statutory changes can be made to the Industrial Hazardous Waste Siting Law.



3. Remanufacturing (high value solvents) exclusion

Conditional Exclusion for certain high-value solvents generated, recycled and subsequently used within certain industries

Pharmaceuticals Rule



There are 3 major components to this rule:

- Sewer Ban – effective August 21, 2019
- Amendment of Nicotine Listing
- Subpart P pharmaceutical management provisions



How it Impacts LQGs

- Nicotine listing;
- Revision to the empty containers rule may affect counting of acute hazardous waste pharmaceuticals;
- Pharms handled under Subpart P (will be numbered 374-1.16 in NYS regulations) towards generator category while on-site

Pharms Rule: Nicotine Listing

Nicotine P075 Listing		
No Longer Part of Listing	Still Included in the Listing, Regulated as Pharmaceuticals*	Still Included in Listing
<p>FDA-approved over-the counter nicotine replacement therapies (OTC NRTs)</p> <ul style="list-style-type: none"> Nicotine Patches Nicotine Gums Nicotine Lozenges 	<ul style="list-style-type: none"> Prescription nicotine (e.g., nasal spray, inhaler) E-liquids packaged for retail use in ENDS Finished product ENDS, including components & parts sealed in final packaging intended for consumer use <p>(ENDS means Electronic Nicotine Delivery System) *If generated by a health care facility</p>	<ul style="list-style-type: none"> E-liquids used by manufacturers of tobacco products E-liquids sold or distributed for further manufacturing, mixing or packaging into a finished e-delivery system Legacy pesticides containing nicotine Nicotine used in research and manufacturing Other unused formulations

Generator Improvements Rule



More stringent Provisions Include:

- SQGs and LQGs must re-notify.
- SGQs and LQGs must indicate the hazards of the contents when labeling containers and tanks.
- LQG contingency plan quick reference guide.
- LQG that cannot “clean close” their facility or accumulation unit, must close the unit or facility as a landfill.

Less stringent Provisions:

- VSQG allowed to send waste to LQG if both are under control of the same person.
- VSQGs and SQGs are allowed to conduct episodic events, provided that certain conditions are met.
- LQGs are allowed to seek a waiver from the 50-foot setback requirement for ignitable or reactive hazardous waste.

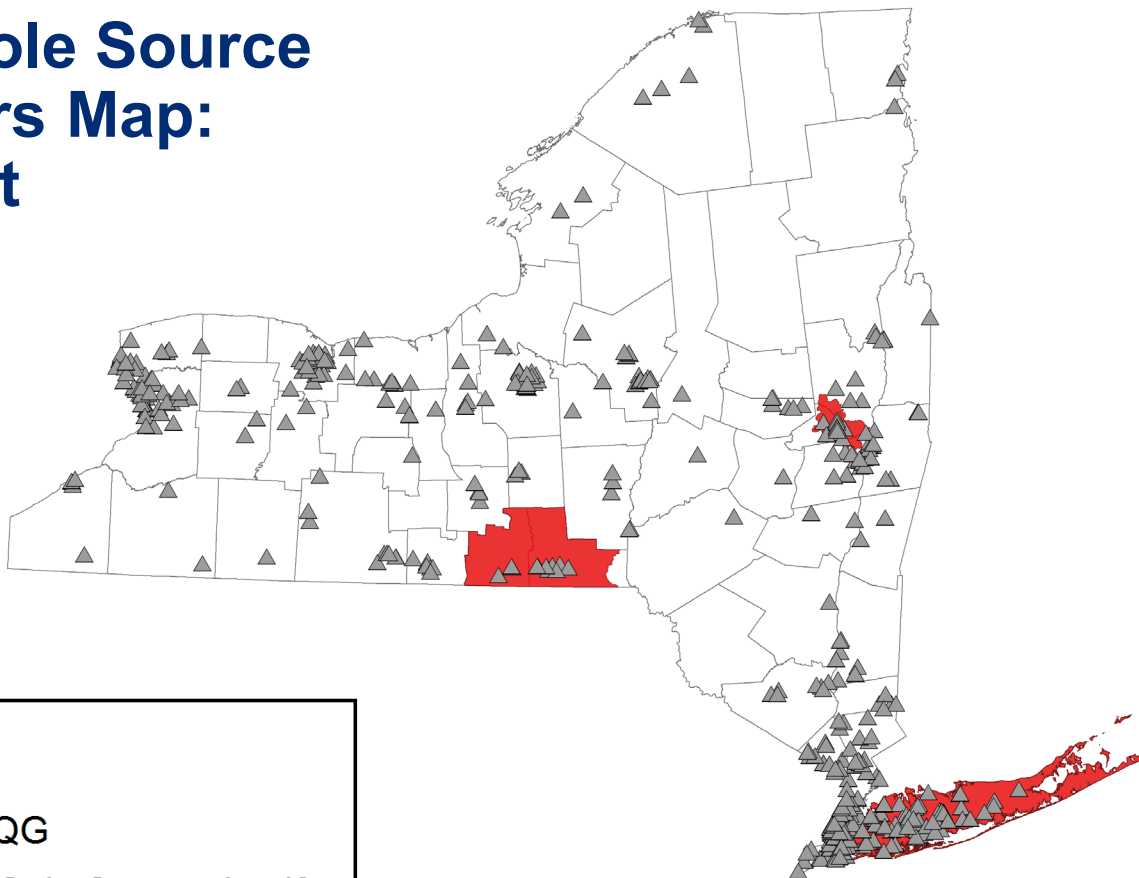
Recycler Annual Reporting

- Facilities that do not store prior to recycling will now be required to file an Annual Report – 40 CFR 261.6(c)(2)(iv)

Sole Source Aquifers

- List of sole-source aquifers is out of date
- Delineation of aquifers in definitions is confusing
- Protection of drinking water is a major issue

DEC Sole Source Aquifers Map: Current

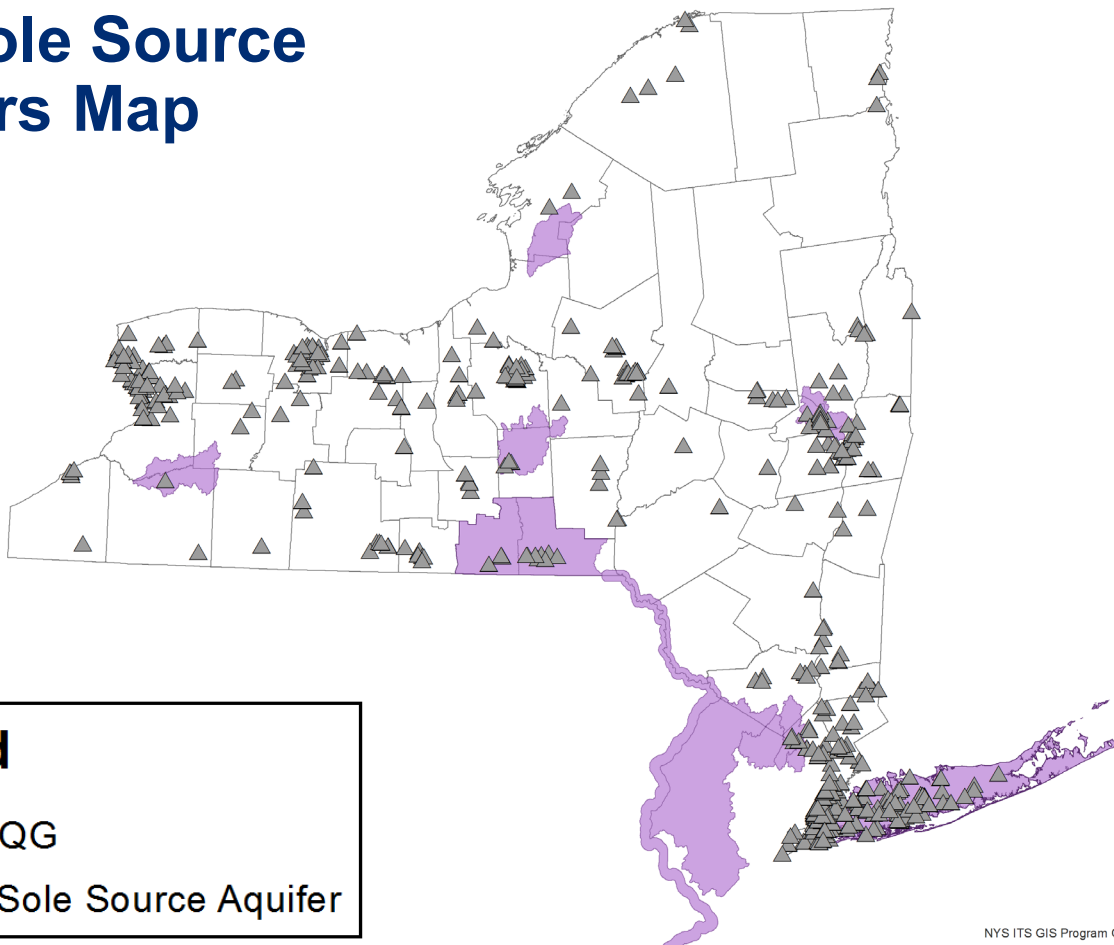


Legend

▲ NY LQG

■ DEC Sole Source Aquifer

EPA Sole Source Aquifers Map



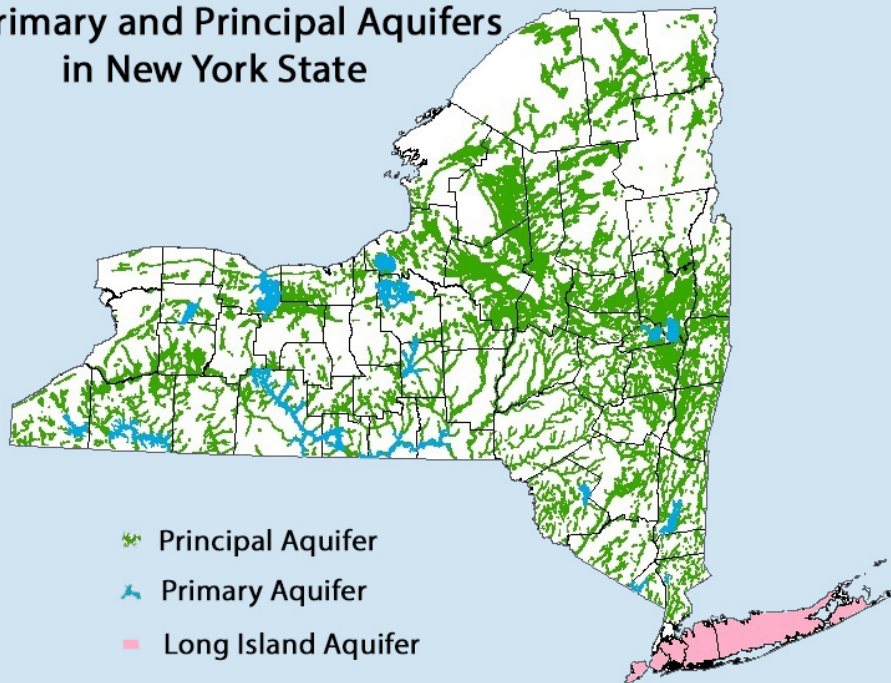
Legend

▲ NY LQG

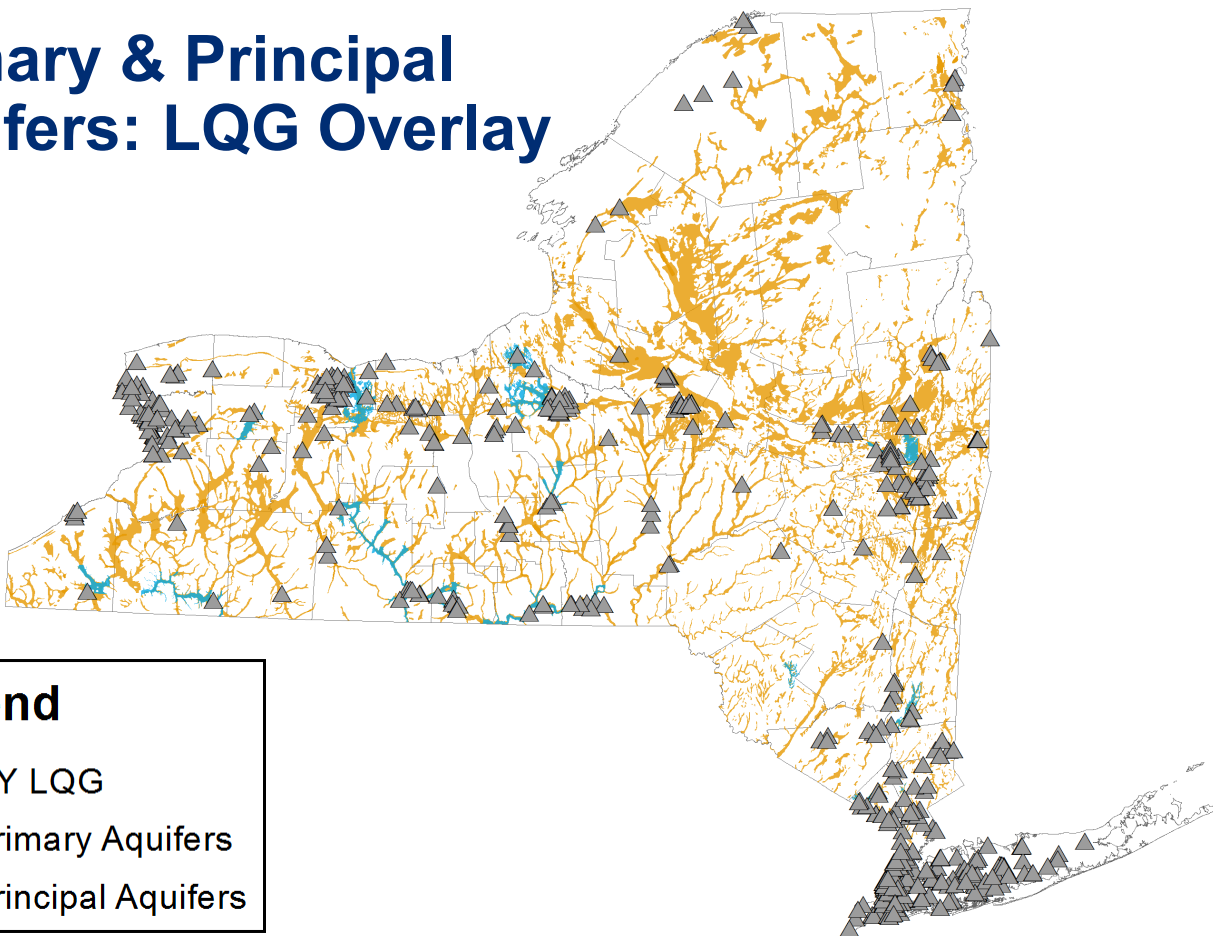
■ EPA Sole Source Aquifer

Primary and Principal Aquifers Map

Primary and Principal Aquifers in New York State



Primary & Principal Aquifers: LQG Overlay



Closure Requirements

	DEC SSA	EPA
Notification	45 days (final closure – what about unit closure?)	EPA (unit – operating record or notification to EPA within 30 days of closing the unit; facility – 30 days)
Public Notice	Yes	No
Certification	w/in 60 days of partial or final closure, PE Cert	EPA 90 days (is this just full closure?) – Site ID form
Date on which they expect to begin closure	within 30 days; or 1 year if reasonable expectation of receiving more waste	Seems to say within 30 days
Date to remove final volume of hazardous waste	Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (4) and (5) of this subdivision, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later	Seems to say within 90 days; the request for extension of time language seems to match ours
Closure performance standard	same	Same; If can't close clean, must close as a landfill
Written closure plan	Maintained onsite, furnished upon request	No

Secondary Containment of Liquid HW

Update Secondary Containment Requirements

- SQG and LQG storage of liquid hazardous waste in quantities greater than 185 gallons;
- Phase-in time?
 - By volume that can be stored;
 - By time;
 - By priority

Contact Information

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