

PART 364

WASTE TRANSPORTER PERMITS

(Statutory authority: Environmental Conservation Law, art. 1, title 1, art. 3, title 3, art. 27, titles 1, 3, 7, 9, §§ 27-0301, 27-0303, 27-0305, 27-0307, 27-1511, 27-1515, art. 71, titles 27, 35; L. 1987, ch. 431; L. 1988, ch. 654; L. 1989, ch. 180)

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Historical Note

Part (§§ 364.1-364.2) filed Oct. 15, 1970; renum. Part 458, Title 9, filed Sept. 1971; new (§§ 364.1-364.4) filed June 27, 1972; repealed, new (§§ 364.1-364.7) filed March 6, 1981; amd. filed Jan. 10, 1985 eff. Jan. 10, 1985. Amended Part title.

§ 364.1 General.

(a) *Purpose.* It is the purpose of this Part to protect the environment from mishandling and mismanagement of all regulated waste transported from the site of generation to the site of ultimate treatment, storage or disposal.

(b) *Applicability.* This Part governs the collection, transport, and delivery of regulated waste, originating or terminating at a location within this State. Regulated medical waste is covered in detail in section 364.9 of this Part, and may contain restrictions over and above those in other sections. This Part also regulates:

(c) *General definitions.* When used in this Part:

(1) *Commissioner* means the Commissioner of Environmental Conservation or a duly authorized representative.

(2) *Department* means the New York State Department of Environmental Conservation.

(3) *Disposal* means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste on or into any lands or waters of the State so that such waste or hazardous waste or any related constituent thereof may enter the environment or be emitted into the air or be discharged into any waters, including ground waters thereof. *Disposal* also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering usable energy.

(4) *ECL and Environmental Conservation Law* means chapter 43-B of the Consolidated Laws of New York State, entitled the Environmental Conservation Law.

(5) *Empty* means that wastes have been removed using the practices commonly employed to remove materials from that type of container so that no more than one inch (2.5 centimeters [cm]) of residue remains on the bottom of the container; or in the case of a compressed gas, when the pressure in the container approaches atmospheric. In the case of an acute hazardous waste, *empty* shall be defined as set forth in section 371.1(f)(2)(iii)(a), (b) or (c) of this Title.

(6) *EPA* means the United States Environmental Protection Agency.

(7) *Generator* means any person, by site, whose act or process produces solid waste or whose act first causes a solid waste to become subject to regulation.

(8) *Landspreading facility* means a site where sludge or septage is applied to the soil surface or injected into the upper layer of the soil to improve soil quality or to provide plant

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nutrients. Sludges suitable for these purposes include food processing waste, winery waste, brewery waste, cannery waste and sewage treatment plant sludge.

(9) *Person* means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State or Federal government, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity.

(10) *Re-refined oil* means any waste oil from which physical and/or chemical contaminants have been removed so that it is substantially equivalent to virgin distillate or virgin residual oil.

(11) *Storage* means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, recovered, disposed of or stored elsewhere.

(12) *Storage incidental to transport* means any on-vehicle storage which occurs enroute from the point of initial waste pickup to the point of final delivery for purposes such as, but not limited to, overnight on-the-road stops, stops for meals, fuel and driver comfort, stops at the transporter's facility for weekends immediately prior to shipment, or on-vehicle storage not to exceed 10 days at the transporter's facility for the express purpose of consolidating loads (where such loads are not removed from their original packages or containers) for delivery to an authorized treatment, storage or disposal facility.

(13) *Surface impoundment* or *impoundment* means a facility or part of a facility which is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of solid waste in semisolid or liquid form, and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, ponds and lagoons.

(14) *Transfer incidental to transport* means any transfer of waste material associated with storage incidental to transport where such material is not unpackaged, mixed or pumped from one container or truck into another.

(15) *Treatment, storage or disposal facility (TSD) or facility* means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing or disposing of solid waste. A facility may consist of several treatment, storage or disposal operations units (e.g., one or more landfills, surface impoundments or combinations of them).

(16) *Vehicle* means any device or contrivance which is required by law to be registered with a state, province or the Federal government for conveyance over public roads and which actually contains or carries a regulated waste, for example, in the case of a tractor-trailer combination, the trailer is considered to be the vehicle; and in the case of a roll-off container or other removable containment device, it is the mobile flatbed or the undercarriage that is considered to be the vehicle.

(d) *Definition of solid waste and related terms.* (1) A *solid waste* is any garbage, refuse, sludge or any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining, agricultural, community or other activities, not excluded below, which is discarded, disposed of, burned or incinerated, including being burned as a fuel for the purpose of recovering usable energy, or is being accumulated, stored, or physically, chemically, or biologically treated in lieu of or prior to being disposed of, burned or incinerated, or which has served its original intended use and is sometimes discarded, or is a manufacturing or mining

by-product and sometimes is discarded. The following materials are not solid wastes for the purposes of this Part:

(i) domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment (*domestic sewage* means untreated sanitary wastes that pass through a sewer system);

(ii) industrial wastewater discharges that are point source discharges for which a permit has been issued pursuant to article 17 of the Environmental Conservation Law;

Note: This exclusion applies only to the actual point source discharge. The exclusion does not apply to industrial wastewaters while they are being collected, stored or treated before discharge, nor does it apply to sludges that are generated by industrial wastewater treatment.

(iii) irrigation return flows;

(iv) radioactive materials which are source, special nuclear, or by-product material. For the purposes of this Part: *Source material* means uranium and/or thorium, or ores containing by weight 0.05 percent or more of uranium and/or thorium; *special nuclear material* means plutonium, uranium 233, uranium enriched in uranium 233 or uranium 235, or any material artificially enriched by any of these; and *by-product material* means radioactive material yielded in or made radioactive by exposure to radiation incident to the process by producing or utilizing special nuclear materials, tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and

(v) materials subject to in-site mining techniques which are not removed from the ground as part of the extraction process.

(2) A *regulated waste* is a solid waste which is raw sewage, septage, sludge from a sewage or water supply treatment plant, waste oil or industrial-commercial waste, including hazardous waste.

(3) An *industrial-commercial waste* is any solid waste which originates at, is generated by, or occurs as a result of any industrial or commercial activity. Industrial-commercial wastes are exemplified by, but not limited to:

(i) liquids such as:

(a) acids, alkalis, caustics, leachate, petroleum (and its derivatives), and process or treatment wastewaters;

(b) sludges, which are semi-solid substances resulting from process or treatment operations or residues from storage or use of liquids;

(ii) solids such as:

(a) solidified chemicals, paints or pigments;

(b) dredge spoil, foundry sand, and the end or by-products of incineration or other forms of combustion, including bottom ash and fly ash;

(iii) contained gaseous materials;

(iv) hazardous waste as defined in section 371.1(d) of this Title; and

(v) any liquid, sludge, septage, solid, semi-solid substance or contained gaseous material in which any of the foregoing is intermixed or absorbed, or onto which any of the foregoing is adhered.

(4) *Septage* is the contents of a septic tank, cesspool, or other individual sewage treatment facility which receives domestic sewage waste.

(5) *Sludge* is any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. Sludge does not include the treated effluent from a wastewater treatment plant.

(6) *Raw sewage* is any untreated sanitary waste.

(7) *Waste oil* is used engine lubricating oil and any other oil, including but not limited to fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which has been contaminated by physical or chemical impurities, through use or accident, and has not subsequently been rerefined.

(8) A *hazardous waste* is any solid waste identified in section 371.1(d) of this Title.

(9) An *acute hazardous waste* is any hazardous waste identified in section 371.4(d)(5) of this Title.

(10) *Low-level radioactive waste (LLRW)* means radioactive material that is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(e) *Exemptions.* (1) Rail, water and air carriers are exempt from the requirements of this Part.

(2) Vehicles transporting the following regulated wastes are exempted from this Part, provided that no other regulated waste is intermixed, contained in, or otherwise included with such waste:

(i) vegetable oils and greases from restaurants and fast food operations;

(ii) tallow (animal fat);

(iii) food processing waste destined for use in other food or animal feed processes (except blood);

(iv) garbage and trash collected from cafeterias;

(v) food processing residues which are recognizable as part of the plant or vegetable, including, but not limited to cabbage leaves, bean snips, onion skins, apple pomace and grape pomace (except brewery wastes);

(vi) scraps, including but not limited to plastic, rubber, paper, cardboard, wood chips, glass and metal;

(vii) grubbing, construction and renovation debris, such as roots, stumps, bricks, cement, asphalt, blacktop, stone and like materials, except asbestos;

(viii) agricultural waste, including but not limited to crop residues and animal manure productively employed in agriculture;

(ix) nonhazardous dredge or fill material;

(x) nonhazardous bottom and fly ash from incinerators and resource recovery facilities;

(xi) foundry sand containing no phenols (less than one part per billion);

(xii) empty drums or containers destined for reconditioning or being returned to the original manufacturer;

(xiii) empty food containers being collected, transported or stored for recycling or reuse;

(xiv) samples shipped to laboratories solely for analysis;

(xv) scrap lead-acid automotive batteries destined for recovery;

(xvi) waste transported by a public utility vehicle where the transportation of such waste is incidental to the primary function of the vehicle whenever the waste is brought to a utility-owned collection facility for storage prior to treatment or disposal;

(xvii) waste collected, transported or transferred wholly on-site by the person responsible for the origination, generation or occurrence of such waste, provided that storage, treatment and disposal of waste upon those premises are authorized pursuant to this Title. (As used in this subparagraph, *on-site* means the same or geographically contiguous property. It may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person, but

connected by a right-of-way which that person controls and to which the public does not have access, are also considered on-site property.);

(xviii) pesticides, transported by the farmer who generated them, to a pesticide clean-up day collection site authorized pursuant to section 360.1(f)(1)(xi) or 373-1.1(d)(1)(xviii) of this Title; and

(xix) bottom ash from the burning of fossil fuel, provided that:

(a) the ash has been tested for toxicity by the owner or operator of the generating facility pursuant to a testing protocol approved by the commissioner, and certified to be nontoxic; and

(b) the ash is destined for use by a municipality or other governmental entity as a traction agent on roadways;

(xx) wastes transported during an explosives or munitions emergency response as defined in section 370.2(b) conducted in accordance with section 373-1.1(d)(1)(xiii)(a)(4) of this Title;

(xxi) elemental mercury and dental amalgam waste generated at dental facilities, destined for mercury recovery.

(3) Small quantity waste transporter exemption. (i) Any generator who is exempt from the requirements of Part 372 through Subpart 374-3 and Part 376 of this Title, pursuant to section 371.1(f) of this Title, and who transports less than a total of 220 pounds (100 kilograms) of hazardous waste or less than 2.2 pounds (1 kilogram) of acute hazardous waste, during any calendar month is exempt from the requirements of this Part, provided that the wastes are generated and transported exclusively by the generator.

(ii) Any person who transports less than 500 pounds of nonhazardous industrial/commercial waste or universal waste as defined in Part 370 and regulated in Subpart 374-3 of this Title in any single shipment is exempt from the requirements of this Part.

(4) The department may, upon written application from a transporter who is subject to this Part, grant approval for exemption of vehicles owned and operated by the transporter from specified permit requirements of this Part. Any such transporter is still subject to the requirements of subparagraph (ii) of this paragraph and other conditions which the department may impose on the granting of such approval, which are reasonably necessary to effectuate the purposes of this Part.

(i) Any application for such an exemption must demonstrate:

(a) that compliance with the specified permit requirement provisions would create a hardship on the applicant's business activities;

(b) the transporter owns and operates a minimum of 500 vehicles which operate in interstate commerce;

(c) the applicant does not have any vehicles specifically designated for the transport of regulated waste and that such designation would create a hardship;

(d) the transport of regulated waste accounts for no greater than one percent of the applicant's total annual cargo; and

(e) the transport of regulated waste is over irregular routes on a nonregularly scheduled call-on-demand basis.

(ii) An exemption pursuant to this paragraph is subject to the following terms and conditions:

(a) the transporter shall comply with all applicable manifest requirements under Part 372 of this Title;

(b) a copy of the department's approval for exemption shall be carried in all vehicles transporting regulated waste in this State;

(c) a waste transporter annual report shall be submitted to the department on forms issued or approved by the department;

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(d) vehicles used for transporting regulated waste shall not be used for transporting any food for human consumption or animal feed or any articles destined for sale to the general public whose use normally involves physical contact with humans (e.g., clothing). This prohibition shall not apply if the vehicle has been properly cleaned in accordance with all applicable Federal and State regulations governing decontamination or other methods approved by the department; and

(e) other requirements specified by the commissioner.

(iii) The exemption shall be valid for the specific time period as indicated in the exemption letter and under no circumstances for longer than one year. Any exemption granted hereunder may be revoked for any violation of the terms of such exemption or for a violation of any other applicable rules and regulations of the department related to the transportation of regulated waste, or upon a showing that the transporter no longer meets the requirements for exemption. Such revocation will be subject to the procedures specified in the Uniform Procedures Act and Part 621 of this Title.

(f) *Severability.* If any provision of this Part or the application thereof to any person or circumstance is held invalid, the remainder of this Part and the application of such provisions to persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

(g) *Variances.* (1) The department may, upon written application from any person who is subject to this Part, grant a variance from one or more specific provisions of this Part, consistent with this subdivision.

(2) Any application for a variance hereunder must:

(i) identify the specific provisions of this Part from which a variance is sought;

(ii) demonstrate that compliance with the identified provisions would, on the basis of conditions unique and peculiar to the applicant's particular situation, impose a substantial financial, technological or safety burden on the applicant or the public; and

(iii) demonstrate that the proposed activity will have no significant adverse impact on public health, safety or welfare, the environment or natural resources, and will be consistent with the provisions of the ECL, the purpose of this Part and the performance expected from applications of this Part.

(3) In granting any variance hereunder, the department may impose specific conditions reasonably necessary to assure that the subject activity will have no significant adverse impact on public health, safety or welfare, the environment or natural resources.

(h) *Safeguarding information.* The department shall hold confidential any information concerning the chemical composition, quantity, method of treatment or disposal of hazardous waste or any information related thereto when shown by any person that such information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such person. However, such information may be disclosed to any officers, employees, or authorized representatives of the United States or the state concerned with the Federal Resource Conservation and Recovery Act or the State hazardous waste program, or when relevant in any proceeding. All requests for confidential treatment of information submitted to the department will be handled in accordance with the procedures set forth in Part 616 of this Title.

(i) *Uniform procedures.* The procedures applicable to the submittal and processing of applications for permits, permit renewals and permit modifications, and the procedures applicable to the modification, suspension and revocation of permits, pursuant to this Part, are set forth in Part 621 of this Title.

(j) *Enforcement.* Any person who violates any of the provisions of ECL, article 27, title 3, this Part or any permit issued hereto, or any order issued by the department, shall be liable for the relevant civil and criminal sanctions set forth in ECL, article 71.

Historical Note

Sec. filed Oct. 15, 1970; renum. 458.1, Title 9, filed Sept. 1971; new filed June 27, 1972; repealed, new filed March 6, 1981; amds. filed: Jan. 10, 1985; April 19, 1985 as emergency

measure, expired 60 days after filing; Sept. 9, 1985; Oct. 24, 1985; Nov. 1, 1985; Dec. 30, 1985; July 21, 1986; Dec. 31, 1986 as emergency measure, expired 60 days after filing; Aug. 10, 1988 as emergency measure; Oct. 7, 1988 as emergency measure, expired 60 days after filing; Dec. 7, 1988 as emergency measure; March 7, 1989 as emergency measure, expired 60 days after filing; May 8, 1989 as emergency measure, expired 60 days after filing; July 10, 1989 as emergency measure; Sept. 8, 1989 as emergency measure, expired 60 days after filing; Nov. 14, 1989 as emergency measure; Jan. 12, 1990 as emergency measure; March 13, 1990 as emergency measure; June 8, 1990 as emergency measure; Aug. 7, 1990 as emergency measure; Aug. 7, 1990; Sept. 29, 1998; Nov. 4, 1999; Jan. 7, 2003; March 13, 2006 eff. 60 days after filing. Amended (e).

§ 364.2 Permit requirements.

(a) No person shall, except pursuant to and in accordance with a valid permit issued pursuant to this Part:

- (1) collect or remove any regulated waste from its point of origin, generation or occurrence;
- (2) transport any regulated waste; and
- (3) deliver any regulated waste to a treatment, storage or disposal facility, or otherwise dispose of or relinquish possession of any regulated waste other than as specified in such permit.

(b) No person who owns or operates a facility at, or premises on, which any regulated waste originates, is generated or occurs, shall deliver or otherwise relinquish possession of such waste except to a person who has a valid permit issued pursuant to this Part.

(c) The transporter of regulated waste shall not be required to obtain a permit pursuant to this Part if the transporter has contracted with a generator of such waste who has been issued a valid permit pursuant to this Part, provided that:

- (1) the transporter is designated on the generator's waste transporter permit as a waste transporter contracted to transport the generator's regulated waste; and
- (2) the transporter does not transport any regulated waste other than those specified on the generator's permit while operating under the provisions of such permit; and
- (3) the transporter does not dispose of, deliver or otherwise relinquish possession of any generator's regulated waste to any place other than that designated in the generator's permit.

Historical Note

Sec. filed Oct. 15, 1970; renum. 458.2, Title 9, filed Sept. 1971; new filed June 27, 1972; repealed, new filed March 6, 1981; amds. filed: Jan. 10, 1985; Dec. 31, 1986 as emergency measure, expired 60 days after filing; Jan. 7, 2003 eff. 60 days after filing. Repeal (a)(4)-(5).

§ 364.3 Permit application procedures.

(a) *General.* (1) Any person who requires a permit, pursuant to this Part, for the collection, removal, transport, transfer or disposal of solid waste, or for transfer incidental to transport or storage incidental to transport, shall apply for such permit in accordance with this Part.

(2) Applications shall be completed and submitted on forms prescribed by the department and shall indicate the type of waste involved, vehicles that the applicant will use, any transfer or storage facilities the applicant will use (except where such transfer or storage is incidental to transport), and the place or places where, and the manner in which, the applicant will finally treat, store or dispose of collected wastes. The application shall also contain such analyses, plans, reports, fees, insurance certificates and other data as the department may require.

(3) The applicant must demonstrate that the proposed disposal site is one authorized as specified in section 364.4 of this Part.

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(4) When regulated wastes are to be disposed of at a site which is not owned by the applicant, the application shall be accompanied by written permission from the site owner for such activity.

(5) The department may require inspection of vehicles as a condition of application approval or review during the permit year.

(b) *Renewals.* Applications for permit renewals, in order to be timely submitted for purposes of the State Administrative Procedure Act, must be received by the department at least 30 days in advance of the expiration date of the existing permit.

(c) *Expedited permits.* (1) The department may, upon determining that a situation that poses an immediate threat to the environment exists, issue an expedited waste transporter permit for the transport of regulated wastes caused by or resulting from the emergency situation, to a specific treatment, storage or disposal facility. All terms of such permit shall be specific to the emergency situation and thereby limited in scope and duration.

(2) Any transporter requiring an expedited permit shall submit to an authorized department representative:

- (i) transporter's name;
- (ii) vehicle license number;
- (iii) state of vehicle registration;
- (iv) waste type and quantity;
- (v) location of emergency; and
- (vi) facility name and address.

Historical Note

Sec. filed June 27, 1972; amd. filed Jan. 15, 1980 as emergency measure, expired 60 days after filing; repealed, new filed March 6, 1981; amd. filed Jan. 10, 1985 eff. Jan. 10, 1985.

§ 364.4 Permitting standards.

(a) The department's decision to issue or deny a permit for the transport of regulated waste shall be based on the following considerations:

(1) The status of any receiving facilities identified in the permit application. No permit shall be issued unless each of the receiving facilities is in one of the following categories.

- (i) a facility authorized to accept such waste pursuant to requirements of the Environmental Conservation Law, including this Part, or regulations promulgated pursuant thereto;
- (ii) a facility operating under an active department issued order on consent;
- (iii) a facility outside the jurisdiction of this State; in such case proof of authorization to operate may be required by the department as a condition of application review; or
- (iv) a facility not requiring any State or Federal license, permit or certificate to operate.

(2) The compliance status of any receiving facility. A waste transporter permit may be denied, revoked, suspended or modified if the receiving facility has been determined to have violated any law, rule or regulation or permit condition related to the operation of its treatment, storage or disposal facility.

(3) The compliance history and reliability of the applicant. A waste transporter permit may be denied, revoked, suspended or modified based upon the unsuitability of the applicant under the provisions of Environmental Conservation Law, section 27-0913.

Historical Note

Sec. filed June 27, 1972; repealed, new filed March 6, 1981; amds. filed: Jan. 10, 1985; Jan. 7, 2003 eff. 60 days after filing. Repeal (b)-(c).

§ 364.5 Surety.

(a) The department may require a form of surety or financial responsibility from a permittee acceptable in form and amount to the department, to ensure compliance with the terms of the permit issued to such permittee pursuant to this Part.

(b) Any transporter carrying hazardous wastes in New York State shall supply evidence of security to the department from a reliable insurer or surety authorized to do business in New York State. Policies of insurance or surety bonds shall be in a form and amount specified below and shall provide liability coverage for bodily injury or property damage, including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous waste. The limits of the aforementioned insurance policy or surety bond shall be:

(1) \$1,000,000 for the transport of hazardous wastes not requiring a hazardous waste manifest pursuant to Part 372 of this Title.

(2) \$5,000,000 for the transport of hazardous wastes requiring a hazardous waste manifest pursuant to Part 372 of this Title in any vehicle which exceeds 10,000 pounds (4,545 kilograms) maximum gross weight.

(3) \$1,000,000 for the transport of hazardous wastes in any vehicle which does not exceed 10,000 pounds (4,545 kilograms) maximum gross weight.

(c) Policies of insurance, surety bonds and endorsements required under this section shall remain in effect continuously throughout the term of the permittee's waste transporter permit. Only policies which provide for notification of intent to cancel at least 35 days in advance of cancellation by the insurer to the department will fulfill the requirements of this section. The 35-day notice begins on the date the notice is postmarked.

(d) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. Policies shall state that the liability of the retiring insurer or surety, shall terminate on the effective date of the replacement policy of insurance or surety bond or at the end of the 35-day cancellation period above, whichever is sooner.

Historical Note

Sec. filed March 6, 1981; amds. filed: Jan. 10, 1985; July 21, 1986; Aug. 10, 1988 as emergency measure; Oct. 7, 1988 as emergency measure, expired 60 days after filing; Dec. 7, 1988 as emergency measure; March 7, 1989 as emergency measure, expired 60 days after filing; May 8, 1989 as emergency measure, expired 60 days after filing.

§ 364.6 Operation requirements.

(a) The operator of any vehicle used for activities covered by this Part shall carry the original permit or a legible photocopy of such permit in the vehicle. The operator shall present the permit, together with shipping or transporting documents relative to the waste being transported, to authorized representatives of the department or to any law enforcement officers when requested to do so.

(b) A permittee shall display the full name of the transporter on both sides of each vehicle and the transporter's permit number, in figures at least three inches high and of a color which contrasts with the background, in a prominent position on each side and the rear of each vehicle used for activities covered by this Part.

(c) The operator of any vehicle used for activities covered by this Part shall remain with such vehicle while it is being filled or discharged.

(d) All wastes must be properly contained during transport so as to prevent leaking, blowing or any other type of discharge into the environment.

(e) A permittee shall submit a report to the department annually, or more frequently if the department deems necessary, on forms prescribed by the department. A permittee shall retain for three years the records on which such reports are based, and shall make such records available, upon request, to the department during normal business hours.

(f) A permittee and the operator of any vehicle used for activities covered by this Part shall comply with all applicable State and Federal laws and all rules and regulations promulgated thereunder. The permittee is responsible for all requirements for all vehicles, including leased vehicles operated under his permit.

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(g) A permittee shall conspicuously mark or placard every vehicle, in a manner consistent with section 14-f of the New York State Transportation Law and any rules and regulations promulgated thereunder and any related Federal requirements, related to the transportation of the regulated waste and its principal hazard.

(h) Permitted vehicles shall be restricted to the transportation of materials not intended for human or animal consumption or for other use by the general public except when properly cleaned in accordance with all applicable Federal and State regulations governing decontamination.

(i) *Permits are not transferable.* Changes of ownership invalidate the provisions of such permits. Any change of address, name or location of garaged vehicles must be submitted immediately to the department.

Historical Note

Sec. filed March 6, 1981; amds. filed: Jan. 10, 1985; Dec. 31, 1986 as emergency measure, expired 60 days after filing; Aug. 10, 1988 as emergency measure; Oct. 7, 1988 as emergency measure, expired 60 days after filing; Dec. 7, 1988 as emergency measure; March 7, 1989 as emergency measure, expired 60 days after filing; May 8, 1989 as emergency measure, expired 60 days after filing.

§ 364.7 Hazardous waste manifest system.

Any transporter of hazardous waste shall comply with all applicable requirements of Part 372 of this Title.

Historical Note

Sec. filed March 6, 1981; amds. filed: Jan. 10, 1985; July 21, 1986 eff. July 21, 1986.

§ 364.8**Historical Note**

Sec. filed Dec. 31, 1986 as emergency measure, expired 60 days after filing.

§ 364.9 Standards for the tracking and management of medical waste.

(a) *Purpose, scope, and applicability.* (1) The purpose of this section is to establish a program for tracking and managing medical waste shipments pursuant to Environmental Conservation Law.

(2) The regulations in this section apply to regulated medical waste as defined in subdivision (c) of this section that is generated or managed in New York State.

(b) *Definitions.* (1) For the purposes of this section, all of the terms defined in 6 NYCRR Parts 360 and 370 are hereby incorporated, except for the following terms, which have been redefined as appropriate to address the management of medical waste specifically:

(i) *Facility* means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of regulated medical waste. A facility may consist of several treatment, destruction, storage or disposal operation units.

(ii) *Generator* means any person, by site, whose act or process produces regulated medical waste as defined in subdivision (c) of this section, or whose act first causes a regulated medical waste to become subject to regulation. In the case where more than one person (e.g., doctors with separate medical practices) are located in the same building, each individual business entity is a separate generator for the purposes of this Part.

(iii) *Landfill* means a disposal facility or part of a facility where regulated medical waste is placed in or on the land and which is not a land treatment facility, a surface impoundment, or an injection well.

(iv) *Person* means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or any department, agency or instrumentality of the United States.

(v) *Solid waste* means a solid waste defined in 6 NYCRR Part 360.

(vi) *Storage* means the containment of regulated medical wastes in such a manner as not to constitute disposal of such waste.

(vii) *Transfer facility* means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of regulated medical waste are held (come to rest or are managed) during the course of transportation. A location at which regulated medical waste is transferred directly between two vehicles is considered a transfer facility.

(viii) *Transporter* means a person engaged in the off-site transportation of regulated medical waste by highway.

(ix) *Transportation* means the shipment or conveyance of regulated medical waste by highway.

(x) *Treatment* means any method, technique, or process designed to change the character or composition of any regulated medical waste so as to either neutralize such waste or to render such waste not infectious, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(2) In addition, when used in this section, the following terms have the meanings given below:

(i) *Biologicals* means preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

(ii) *Blood products* means any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon.

(iii) *Body fluids* means liquid emanating or derived from humans and limited to blood cerebrospinal, synovial, pleural, peritoneal and pericardial fluids, and semen and vaginal secretions.

(iv) *Central collection point* means a location where a generator consolidates regulated medical waste brought together from original generation points prior to its transport off-site or its treatment on-site (e.g., incineration).

(v) *Decontamination* means the process of reducing or eliminating the presence of harmful substances, such as infectious agents, so as to reduce the likelihood of disease transmission from those substances.

(vi) *Destination facility* means the disposal facility, the incineration facility, or the facility that both treats and destroys regulated medical waste, to which a consignment of such is intended to be shipped.

(vii) *Destroyed regulated medical waste* means regulated medical waste that has been ruined, torn apart, or mutilated through processes such as thermal treatment, melting, shredding, grinding, tearing or breaking, so that it is no longer generally recognizable as medical waste. It does not mean compaction.

(viii) *Destruction facility* means a facility that destroys regulated medical waste by ruining or mutilating it, or tearing it apart.

(ix) *Intermediate handler* is a facility that either treats regulated medical waste or destroys regulated medical waste but does not do both. The term, as used in this Part, does not include transporters.

(x) *Infectious agent* means any organism (such as a virus or a bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(xi) *Laboratory* means any research, analytical, or clinical facility that performs health care related analysis or service. This includes medical, pathological, pharmaceutical, and other research, commercial, or industrial laboratories.

(xii) *Medical waste* means any solid waste which is generated in the diagnosis, treatment (e.g., provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The term does not include any hazardous waste identified or listed under section 27-0903 article 27 of the ECL or any household waste as defined in regulations promulgated under such section.

Note: Mixtures of hazardous waste and medical waste are subject to this section except as provided in subdivision (c)(2) of this section.

(xiii) *Original generation point* means the point at which the regulated medical waste leaves the generator's facility site. Waste may be taken from original generation points to a central collection point prior to off-site transport or on-site treatment.

(xiv) *Oversized regulated medical waste* means medical waste that is too large to be placed in a plastic bag or standard container.

(xv) *Regulated medical waste* means those medical wastes that have been listed in paragraph (c)(1) of this section and that must be managed in accordance with the requirements of this Part.

(xvi) *Tracking form* means New York State's, or other states' Medical Waste Tracking Form that must accompany all applicable shipments of regulated medical wastes generated within New York State.

(xvii) *Treated regulated medical waste* means regulated medical waste that has been treated to substantially reduce or eliminate its potential for causing disease, but has not yet been destroyed.

(xviii) *Untreated regulated medical waste* means regulated medical waste that has not been treated to substantially reduce or eliminate its potential for causing disease.

(c) *Regulated medical waste.* (1) Definition of regulated medical waste.

(i) A regulated medical waste is any medical waste that is a solid waste, defined in 6 NYCRR Part 360, generated in the diagnosis, treatment, (e.g., provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, that is not excluded or exempted under subparagraph (ii) of this paragraph, and that is listed below:

Note: The term *solid waste* includes solid, semisolid, or liquid materials, but does not include domestic sewage materials identified in section 364.1(d) of this Part.

(a) cultures and stocks of infectious stocks agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) human pathological wastes, including tissues, organs, body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(c) liquid waste human blood, products of human blood, items saturated and/or dripping with human blood, or items that were saturated and/or dripping with human blood that are now caked with dried human blood, including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;

(d) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;

(e) contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals, or testing of pharmaceuticals;

(f) wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;

(g) laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats and aprons;

(h) dialysis wastes that were in contact with the blood of patients undergoing hemodialysis or renal dialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;

(i) biological waste and discarded materials contaminated with blood, excretion, exudates, or secretion from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases;

(j) the following unused, discarded sharps: hypodermic needles, suture needles, syringes, and scalpel blades.

(ii) Exclusions and exemptions.

(a) Exclusions.

(1) Hazardous waste identified or listed under the regulations in 6 NYCRR Part 371 is not regulated medical waste.

(2) Household waste, as defined in 6 NYCRR Part 360 is not regulated medical waste.

(3) Ash from incineration of regulated medical waste is not regulated medical waste once the incineration process has been completed.

(4) Residues from treatment and destruction processes are no longer regulated medical waste once the waste has been both treated and destroyed.

(5) Human corpses, remains, and anatomical parts that are intended for interment or cremation are not regulated medical waste.

(b) Exemptions. Samples of regulated medical waste transported off-site by EPA or State designated enforcement personnel for enforcement purposes are exempt from the requirements of this Part during the enforcement proceeding.

(2) Mixtures. (i) Except as provided in subparagraph (ii) of this paragraph, mixtures of solid waste and regulated medical waste are a regulated medical waste.

(ii) Mixtures of hazardous waste and regulated medical waste are subject to the requirements in this Part, unless the mixture is subject to the hazardous waste manifest requirements in 6 NYCRR Part 372.

Note: Mixtures of regulated medical waste with hazardous waste that is exempt from the hazardous waste manifest requirements remain subject to this Part.

(d) *Pretransport requirements.* Generators must comply with the requirements of this subdivision prior to shipping waste off-site, and generators must comply with paragraph (3) of this subdivision for on-site storage. Transporters, intermediate handlers (*e.g.*, treatment or destruction facilities), and destination facilities must comply with applicable requirements of this subdivision, when specified in subdivision (f) or (g) of this section.

(1) Segregation requirements.

(i) Unmixed regulated medical waste.

(a) Generators must segregate regulated medical waste intended for transport off-site to the extent practicable prior to placement in containers according to clause (b) of this subparagraph.

(b) Generators must segregate regulated medical waste into sharps, fluids (quantities greater than 20 cubic centimeters), and other regulated medical waste.

(ii) If other waste is placed in the same container(s) as regulated medical waste, then the generator must package, label, and mark the container(s) and its entire contents according to the requirements in paragraphs (2), (5) and (6) of this subdivision.

(2) Packaging requirements. Generators must package regulated medical wastes according to the following requirements before transporting or offering for transport such waste off-site.

(i) Regulated medical waste, except for all discarded sharps, shall be contained in bags which are impervious to moisture and have a strength sufficient to resist ripping, tearing or bursting under normal conditions of usage and of handling. The bags shall be secured so as to prevent leakage during storage, handling or transport. All bags used for containment and disposal of regulated medical wastes shall be red in color.

(ii) All discarded sharps shall be contained for disposal in leakproof, rigid, puncture-resistant containers which are secured to preclude loss of the contents. Such containers shall be red in color or shall be conspicuously labeled with the word "infectious" or the words "regulated medical waste".

(iii) Before regulated medical waste is transported from the generator's facility, regulated medical waste contained in disposable containers shall be placed for storage or handling in disposable or reusable pails, cartons, drums, or portable bins. The containment system shall be leakproof, have tight-fitting covers, and be kept clean and in good repair. The

containers may be of any color and shall be conspicuously labeled with the word "infectious" or the words "regulated medical waste".

(3) Storage of regulated medical waste prior to transport, treatment, destruction, or disposal. Any person who stores regulated medical waste prior to treatment or disposal on-site (e.g., landfill, interment, treatment and destruction, or incineration), or transport off-site, must comply with the following storage requirements:

- (i) containment of regulated medical waste shall be in a manner and location which affords protection from the environment and limits exposure to the public;
- (ii) maintain the regulated medical waste in a nonputrescent state, using refrigeration when necessary;
- (iii) lock the outdoor storage areas containing regulated medical waste (e.g., dumpsters, sheds, tractor trailers, or other storage areas) to prevent unauthorized access;
- (iv) limit access to on-site storage areas to authorized employees; and
- (v) store the regulated medical waste in a manner that affords protection from animals and does not provide a breeding place or a food source for insects and rodents.

(4) Decontamination standards for reusable containers. Generators, transporters, intermediate handlers, and destination facility owners and operators must comply with the following requirements with respect to reusing containers:

- (i) All nonrigid packaging and inner liners must be managed as regulated medical waste under this Part and must not be reused.
- (ii) Any container used for the storage and/or transport of regulated medical waste and designated for reuse once emptied, must be decontaminated if the container shows signs of visible contamination.
- (iii) If any container used for the storage and/or transport of regulated medical waste is for any reason not capable of being rendered free of any visible signs of contamination in accordance with subparagraph (ii) of this paragraph, the container must be managed (labeled, marked and treated and/or disposed of) as regulated medical waste under this Part.

(5) Labeling requirements. Generators must label each package of regulated medical waste in accordance with paragraph (2) of this subdivision before transporting or offering for transport off-site.

(6) Marking (identification) requirements. Generators (including intermediate handlers) must mark each package of regulated medical waste according to the following marking requirements before the waste is transported or offered for transport off-site:

- (i) The outermost surface of the containment system described in subparagraph (2)(iii) of this subdivision must be marked with a water-resistant identification tag containing, and of sufficient dimension to contain, the following information:
 - (a) generator's or intermediate handler's name;
 - (b) generator's or intermediate handler's address;
 - (c) transporter's name;
 - (d) transporter's State permit or identification number, or if not applicable, then the transporter's address;
 - (e) date of shipment; and
 - (f) identification of contents as medical waste.
- (ii) Inner containers, including red bags, sharps and fluid containers, must be marked with indelible ink or imprinted with water-resistant tags. The marking must contain the following information:
 - (a) generator's or intermediate handler's name; and
 - (b) generator's or intermediate handler's address.

(e) *Generator standards.* (1) Applicability and general requirements.

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- (i) This subdivision establishes standards for generators of regulated medical waste.
- (ii) A person who generates a medical waste, as defined in subparagraph (b)(2)(xii) of this section must determine if that waste is a regulated medical waste.

(iii) A generator who either treats and destroys or disposes of regulated medical waste on-site (e.g., incineration, burial or sewer disposal) is not subject to tracking requirements for that waste.

Note: Generators of regulated medical waste with on-site incinerators are subject to the on-site incinerator requirements in subdivision (f) of this section. In addition, generators who treat and destroy regulated medical waste are subject to the recordkeeping requirements of subparagraph (5)(ii) of this subdivision. Generators who treat or dispose of medical waste on-site may be subject to additional Federal, State or local laws and regulations.

(iv) Vessels at port are subject to the requirements of this Part for those regulated medical wastes that are transported ashore. The owner or operator of the vessel and the person(s) removing or accepting waste from the vessel are considered cogenerators of the waste.

(v) A generator of regulated medical waste must determine the quantity of regulated medical waste that he generates in a calendar month, and that is transported or offered for transport off-site for treatment, destruction, or disposal.

(a) Generators of 50 pounds or more per month. Generators who generate and transport or offer for transport off-site 50 pounds or more of regulated medical waste in a calendar month are subject to the requirements of subdivision (d) of this section and all of the requirements of this subdivision for each shipment of regulated medical waste.

(b) Generators of less than 50 pounds per month.

(1) Generators who generate and transport or offer for transport off-site less than 50 pounds of regulated medical waste in a calendar month are subject to the requirements of subdivision (d) of this section and paragraphs (1), (2), (3), (5) and (7) of this subdivision.

(2) Generators of regulated medical waste who generate less than 50 pounds in a calendar month but who transport or offer for transport off-site more than 50 pounds in any one shipment, are also subject to subdivision (d) of this section and all of the requirements of this subdivision for each shipment of 50 pounds or more.

(vi) Generators of regulated medical waste must use transporters who are permitted by the Department of Environmental Conservation except as provided in paragraph (2) of this subdivision.

(2) Exemptions. Generators of less than 50 pounds per month. Generators who meet the conditions of section 27-1510 of the ECL are exempt from the requirement to use a transporter who is permitted by the Department of Environmental Conservation provided that:

(i) The regulated medical waste is transported from the point of generation for treatment or disposal to a facility approved by the department. The generator shall have registered with the department in a form prescribed by the commissioner, which registration shall designate the treatment or disposal facility and the employees acting on behalf of and under the supervision of the generator and that such person would not otherwise be subject to an adverse determination under section 27-1517 of the ECL.

(ii) The generator must complete two pages of the New York State Medical Waste Tracking Form.

(3) Use of the tracking form. (i) A generator who transports or offers for transport regulated medical waste for off-site treatment or disposal, must prepare a tracking form according to this section.

(ii) Generators must obtain the tracking form from the following sources:

(a) for generators who transport or offer for transport off-site regulated medical waste to an intermediate handler or a destination facility in a state which prints the tracking form and requires its use, the form from that state; and

(b) for all other generators, the tracking form from New York State.

(iii) The generator must prepare at least the number of tracking form copies that will provide the generator, each transporter(s), and each intermediate handler with one copy, and the owner or operator of the destination facility with two copies with the exception of the generator, exempted from using a permitted transporter by subparagraph (2)(i) of this subdivision, who when self transporting requires only two copies of the medical waste tracking form, one for himself and one for the destination facility.

(iv) The generator must also:

(a) sign the certification statement on the tracking form by hand;

(b) obtain the handwritten signature of the initial transporter and date of acceptance on the tracking form; and

(c) retain one copy, in accordance with paragraph (5) of this subdivision.

(4) Generators exporting regulated medical waste. Generators (including transporters and intermediate handlers that initiate tracking forms) who export regulated medical waste to a foreign country for treatment and destruction, or disposal, must request that the destination facility provide written confirmation that the waste was received. If the generator has not received that confirmation from the destination facility within 45 days from the date of acceptance of the waste by the first transporter, the generator must submit an exception report as required under paragraph (6) of this subdivision.

(5) Recordkeeping. (i) Each generator must:

(a) keep a copy of each tracking form signed in accordance with paragraph (3) of this subdivision, for at least three years from the date the waste was accepted by the initial transporter; and

(b) retain a copy of all exception reports required to be submitted under subparagraph (6)(iii) of this subdivision.

(ii) Each generator who treats and destroys regulated medical waste on-site by a method or process other than incineration, must maintain the following records:

(a) the approximate quantity by weight, of regulated medical waste that is subject to the treatment and destruction processes;

(b) approximate percent, by weight, of total waste treated and destroyed that is regulated medical waste; and

(c) records must be maintained by the generator for a period of at least three years from the date the waste was treated and destroyed.

(6) Exception reporting. (i) A generator must contact the owner or operator of the destination facility, transporter(s), and intermediate handler(s), as appropriate, to determine the status of any tracked waste if he does not receive a copy of the completed tracking form with the handwritten signature of the owner or operator of the destination facility within 35 days of the date the waste was accepted by the initial transporter.

(ii) A generator must submit an exception report, as described below, to the regional office of the department having jurisdiction over the county in which the generator is located if he has not received a completed copy of the tracking form signed by the owner or operator of the destination facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must be postmarked on or before the 46th day and must include:

(a) a legible copy of the original tracking form for which the generator does not have confirmation of delivery; and

(b) a cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the regulated medical waste and the results of those efforts.

(iii) A copy of the exception report must be kept by the generator for a period of at least three years from the due date of the report.

(7) Additional reporting. A generator of regulated medical waste shall submit a report to the department annually, or more frequently if the department deems necessary, on forms prescribed by the department, bearing a notice to the effect that false statements made therein are punishable by law.

(f) *On-site incinerators.* (1) Applicability.

(i) The regulations in this subdivision apply to generators of regulated medical waste who incinerate regulated medical waste on-site.

(ii) Generators of regulated medical waste who incinerate such waste on-site and who accept regulated medical waste accompanied by a tracking form are also subject to the requirements of subdivision (h) of this section.

(2) Recordkeeping.

(i) Generators must keep an operating log at their incineration facility that includes the following information:

- (a) the date each incineration cycle was begun;
- (b) the length of the incineration cycle;
- (c) the total quantity of medical waste incinerated, per incineration cycle; and
- (d) an estimate of the quantity of regulated medical waste incinerated, per incineration cycle.

(ii) Generators must compile the operating log required by subparagraph (i) of this paragraph by September 20, 1989.

(iii) Generators must retain the operating log required by subparagraph (i) of this paragraph until at least 36 months from the date of shipment.

(iv) Generators with on-site incinerators that accept regulated medical waste from generators subject to the tracking form requirements must keep copies of all tracking forms for a period of three years from the date they accepted the waste.

(v) Generators must retain a copy of the on-site incinerator report form required under paragraph (3) of this subdivision for three years from the date of submission.

(3) Reporting. (i) General. The owner or operator of an on-site incinerator must prepare and submit a copy of the on-site incinerator report on forms provided by the department, bearing a notice to the effect that false statements made therein are punishable by law, to the New York State Department of Environmental Conservation. The report must summarize information collected in the operating log and must contain the following information in the following format:

- (a) facility name, mailing address, and location;
- (b) facility type (e.g., hospital, laboratory);
- (c) contact person;
- (d) waste feed information; and
- (e) the total number of incinerators at the facility that incinerate regulated medical waste and information concerning each incinerator.

(ii) [Reserved]

(iii) Dates.

(a) The first report is due February 6, 1990, and must contain information from June 22, 1989 to December 22, 1989.

(b) The second report is due February 6, 1991, and must contain information from June 22, 1990 to December 22, 1990.

(c) Annual reports for subsequent calendar years are due by March 31st of the following year on forms prescribed by the department.

(g) *Transporter requirements.* (1) Applicability.

(i) These requirements apply to transporters, including generators who transport their own waste, and owners and operators of transfer facilities engaged in transporting regulated medical waste generated or disposed of in New York State.

(ii) These requirements do not apply to on-site transportation of regulated medical waste, nor to shipments exempted under paragraph (e)(2) of this section. These requirements do not apply to air, rail, water or U.S. Postal Service carriers.

(iii) A transporter of regulated medical waste must also comply with subdivision (e) of this section when he consolidates two or more shipments of regulated medical waste onto a single tracking form.

(iv) Transporters must also comply with subdivision (d) of this section if they:

(a) store regulated medical waste in the course of transport; or

(b) remove regulated medical waste from a reusable container; or

(c) modify packaging of regulated medical waste.

(2) Transporter acceptance of regulated medical waste. (i) Transporters must not accept for transport any regulated medical waste generated in New York State unless the outer surface of the container is labeled and marked in accordance with subdivision (d) of this section.

(ii) Transporters must not accept a shipment of regulated medical waste from a generator unless accompanied by a properly completed tracking form.

(iii) Marking (identification). When regulated medical waste is handled by more than one transporter, each subsequent transporter must attach a water resistant identification tag below the generator's marking on the outer surface of the packaging, that does not obscure the generator's or previous transporter's markings. The transporter taking possession of the shipment must ensure that the tag contains the following information:

(a) name of transporter taking possession (receiving) of the regulated medical waste;

(b) transporter State permit or identification number; and

(c) date of receipt.

(3) Permitting requirements.

(i) No person shall engage in the transportation of regulated medical waste originating or terminating at a location within the state without a permit pursuant to the provisions of title 15 of article 27 of the Environmental Conservation Law, unless exempted in subparagraphs (ii) and (iii).

(ii) No permit shall be required for the transportation by the generator of less than 50 pounds per month of required medical waste or by authorized employees of such generator acting on behalf of and under the supervision of the generator provided that:

(a) such waste is being transported from the point of generation for treatment or disposal to a facility approved by the department;

(b) such person shall comply with the requirements of section 27-1510 of the Environmental Conservation Law;

(c) the generator shall have registered with the department in a form that shall designate the treatment or disposal facility and the employees acting on behalf of or under the supervision of the generator; and

(d) such person would not otherwise be subject to an adverse determination under section 27-1517 of the Environmental Conservation Law.

(iii) Vehicles transporting regulated medical waste, such as an emergency rescue vehicle, a blood service collection vehicle or a vehicle operated by a public health nurse in the conduct of routine business, where the transportation of such waste is incidental to the primary function of the vehicle do not require a permit wherever the waste is transported to a central collection facility which shall be considered to be the point of generation.

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(iv) A permitted transporter of regulated medical waste shall notify the department within 30 days of the following occurrences:

(a) any change of substantial interest in ownership or indirect ownership or any change in name or location; or

(b) any permitted vehicle is involved in any spill or accident.

(v) Proof of liability insurance or other form of financial security in the amount of \$100,000 shall be provided to the department.

(4) Vehicle requirements. (i) Transporters must use vehicles to transport regulated medical waste that meet the following requirements:

(a) the vehicle must have a fully enclosed, leak-resistant cargo-carrying body;

(b) the transporter must ensure that the waste is not subject to mechanical stress or compaction during loading and unloading or during transit;

(c) the transporter must maintain the cargo-carrying body in good sanitary condition;

(d) the cargo-carrying body must be secured if left unattended; and

(e) the vehicle must be owned by the transporter. (*Owned* shall include a leasee of a motor vehicle having the exclusive use and possession of the vehicle under a lease for a period greater than 30 days.)

(ii) The transporter must use vehicles to transport regulated medical waste that have the following identification on the two sides and back of the cargo-carrying body in letters a minimum of three inches in height:

(a) the name or trademark of the transporter;

(b) the transporter's state permit number; and

(c) a sign or the following words imprinted:

(1) **INFECTIOUS;** or

(2) **REGULATED MEDICAL WASTE.**

(iii) A transporter must not transport regulated medical waste in the same container with other solid waste unless the transporter manages both as regulated medical waste in compliance with this Part.

(5) Tracking form requirements.

(i) General. A transporter may not accept a shipment of regulated medical waste from a generator unless it is accompanied by a medical waste tracking form.

(ii) Acceptance. Before accepting for transport or transporting any regulated medical waste that is accompanied by a regulated medical waste tracking form, the transporter must:

(a) certify that the tracking form accurately reflects the number and total weight of the packages being transported by signing and dating the tracking form acknowledging acceptance of the regulated medical waste from the generator; and

(b) return a signed copy of the tracking form to the generator before leaving the generator's site.

(iii) In transit. The transporter must ensure that the tracking form accompanies the regulated medical waste while in transit.

(iv) Delivery. A transporter, upon delivery of the regulated medical waste to another transporter (including a transfer facility) or to an intermediate handler or destination facility must:

(a) obtain the date of delivery and the handwritten signature of the transporter, or the owner or operator of the intermediate handling facility, or destination facility on the tracking form;

(b) retain one copy of the tracking form in accordance with paragraph (8) of this subdivision; and

(c) give the remaining copies of the tracking form to the accepting transporter, intermediate handler, or destination facility.

(6) Compliance with the tracking form.

(i) Except as provided in subparagraph (ii) of this paragraph, the transporter must deliver the entire quantity of regulated medical waste that he has accepted from a generator or another transporter to:

(a) the intermediate handler or destination facility listed on the tracking form; or

(b) the next transporter.

(ii) If the regulated medical waste cannot be delivered in accordance with subparagraph (i) of this paragraph, the transporter must contact the generator for further directions, revise the tracking form according to the generator's instructions, and deliver the entire quantity of regulated medical waste from that generator according to the generator's instructions.

(7) Consolidating or remanifesting waste to a new tracking form.

(i) A transporter may choose to consolidate or remanifest to a single tracking form all shipments of regulated medical waste less than 220 pounds.

(ii) When the transporter receives the signed tracking form that he initiated from the destination facility, and the regulated medical waste was accompanied by a tracking form originated by a generator, the transporter must:

(a) attach a copy of the tracking form signed by the destination facility to the generator's original tracking form; and

(b) retain a copy of each tracking form in accordance with paragraph (8) of this subdivision; and

(c) return a copy of each tracking form to the generator within 15 days of receipt of the tracking form from the destination facility; and

(d) for each tracking form initiated by consolidating tracking forms onto a new one, the transporter must maintain a consolidation log indicating all shipments consolidated or remanifested on that form. The log must accompany the tracking form and include the following information:

(1) name of each generator;

(2) generator's state permit or identification number. If the generator's state does not issue permit or identification numbers, then the generator's address;

(3) date the regulated medical waste was originally shipped by the generator;

(4) quantity of regulated medical waste (number of containers and/or weight in pounds) by waste category (*i.e.*, untreated or treated) shipped by each generator; and

(5) the names, state permit or identification numbers of all previous transporters or, if not applicable, the transporters' addresses.

(8) Recordkeeping. (i) A transporter of regulated medical waste must keep a copy of the tracking form signed by the generator, himself, the previous transporter (if applicable), and the next party, which may be one of the following: another transporter; or the owner or operator of an intermediate handling facility; or destination facility. The transporter must retain a copy of this form for a period of three years from the date the waste was accepted by the next party.

(ii) For regulated medical waste that is not accompanied by a generator-initiated tracking form, the transporter must retain a copy of all transporter-initiated tracking forms and consolidation logs for a period of three years from the date the waste was accepted by the transporter.

(iii) For any regulated medical waste that was received by the transporter accompanied by a tracking form and consolidated or remanifested by the transporter to another tracking form, the transporter must:

(a) retain a copy of the generator-initiated tracking form signed by the transporter for three years from the date the waste was accepted by the transporter; and

(b) retain a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility for three years from the date the waste was accepted by the intermediate handler or destination facility.

(iv) Retain a copy of each transporter report (required by paragraph [9] of this subdivision) for three years after the date of submission.

(9) Reporting. A transporter who accepts regulated medical waste generated or to be disposed of in New York State must submit reports describing the source and disposition of the waste. The reports must be submitted using the form prescribed by the commissioner.

(h) *Treatment, destruction, and disposal facilities.* (1) Applicability.

(i) These regulations apply to owners and operators of facilities that receive regulated medical waste in New York State. Facilities that are subject to this Part include:

(a) destination facilities (*i.e.*, treatment and destruction facilities, a facility that causes the regulated medical waste to meet the conditions of sub-clause [c][1][ii][a][3] or [4] of this section including incineration facilities, and disposal facilities); and

(b) intermediate handlers (*i.e.*, facilities that either treat or destroy the regulated medical waste, but do not cause it to meet the conditions of subclause [c][1][ii][a][3] or [4] of this section).

(ii) Exceptions.

(a) Except as provided by clause (b) of this subparagraph, this subdivision does not apply to generators who incinerate regulated medical waste on-site.

(b) this subdivision does apply to generators who receive regulated medical waste required to be accompanied by a tracking form.

(2) Use of the tracking form. (i) Destination facility. When a destination facility receives regulated medical waste accompanied by a tracking form, the owner or operator must:

(a) sign and date each copy of the tracking form to certify that the regulated medical waste listed on the tracking form was received;

(b) note any discrepancies as defined in subparagraph (3)(i) of this subdivision on the tracking form;

(c) immediately give the transporter at least one copy of the signed tracking form;

(d) send a copy of the tracking form to the generator (or to the transporter or intermediate handler that initiated the tracking form) within 15 days of the delivery; and

(e) retain a copy of each tracking form in accordance with paragraph (4) of this subdivision.

(ii) Intermediate handlers. When an intermediate handler receives regulated medical waste accompanied by a tracking form, the owner or operator must meet the following requirements:

(a) The owner or operator must meet all the requirements for generators under both subdivisions (d) and (e) of this section including signing the tracking form accepting the waste and entering the new tracking form number when initiating a new tracking form for each shipment of regulated medical waste that has either been treated or destroyed.

(b) The owner or operator must maintain a log matching the original generator's tracking forms to the tracking form that he initiates. This log must include:

(1) name(s) of generator(s);

(2) generator's address;

(3) the date the regulated medical waste was originally shipped by the generator or the generator's unique tracking form number;

(4) the new tracking form number to which the waste is assigned;

(c) Within 15 days of receipt of the tracking form that he initiated and that was signed by the destination facility, the intermediate handler must:

(1) attach a copy of the tracking form signed by the destination facility to the original tracking form initiated by the generator identified in subclause (b)(1) of this subparagraph;

(2) send a copy of each tracking form to the generator who initiated the tracking form; and

(3) retain a copy of each tracking form in accordance with the requirements of paragraph (4) of this subdivision.

(3) Tracking form discrepancies. (i) Tracking form discrepancies are:

(a) for containers, any variation in piece count such as a discrepancy of one box, pail, or drum in a truckload;

(b) for waste by categories (*i.e.*, untreated or treated) discrepancies in number of containers for each category of regulated medical waste as described on the label imprinted or affixed to the outer surface of the package;

(c) packaging that is broken, torn, or leaking; and

(d) regulated medical waste that arrives at an intermediate handler or a destination facility unaccompanied by a tracking form, where the owner or operator knows such form is required, or for which the tracking form is incomplete or not signed.

(ii) Upon discovering a discrepancy, the owner or operator must attempt to resolve (*e.g.*, with telephone conversations) the discrepancy with the waste generator, the transporter and/or the intermediate handler. If the discrepancy is not resolved, the owner or operator must submit a letter, within 15 days of receiving the waste, to the New York State Department of Environmental Conservation. The letter must describe the nature of the discrepancy and the attempts the owner or operator has undertaken to reconcile it. The owner or operator must include with the letter a legible copy of the tracking form or shipping papers in question. If the discrepancy is the type specified in clause (i)(d) of this paragraph, the report must specify the quantity of waste received, the transporter, and the generator(s).

(4) Recordkeeping. The owner or operator of a destination facility or an intermediate handler receiving regulated medical waste generated or disposed of in New York State must maintain records for a minimum of three years from the date the waste was accepted. These records must contain the following information:

(i) copies of all tracking forms required by paragraph (2) of this subdivision; and

(ii) copies of all discrepancy reports required by subparagraph (3)(ii) of this subdivision.

Historical Note

Sec. filed: Aug. 10, 1988 as emergency measure; Oct. 7, 1988 as emergency measure, expired 60 days after filing; Dec. 7, 1988 as emergency measure; March 7, 1989 as emergency measure, expired 60 days after filing; May 8, 1989 as emergency measure, expired 60 days after filing; July 10, 1989 as emergency measure; Sept. 8, 1989 as emergency measure, expired 60 days after filing; Nov. 14, 1989 as emergency measure; Jan. 12, 1990 as emergency measure; March 13, 1990 as emergency measure; June 8, 1990; Aug. 7, 1990 as emergency measure eff. Aug. 7, 1990; Aug. 7, 1990 eff. Oct. 7, 1990.

PART 365

Historical Note

Part (§§ 365.1-365.2) filed Oct. 15, 1970; renum. Part 459, Title 9, filed Sept. 1971; new (§§ 365.1-365.8) filed Jan. 8, 1982; Part (*Regulations Relating to the Use, Reporting and Recordkeeping Requirements Associated with the Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities Dealing with Hazardous Waste*, §§ 365.1-365.8) repealed, filed May 14, 1985 eff. 60 days after filing.

TITLE 6 ENVIRONMENTAL CONSERVATION

PART 366

Historical Note

Part (§§ 366.0-366.16) filed Oct. 15, 1970; renum. Part 460, Title 9, filed Sept. 1971; new (§§ 366.1-366.3) filed Sept. 11, 1981 as emergency measure, expired 60 days after filing; repealed, new (§§ 366.1-366.8) filed Jan. 8, 1982; Part (*Identification and Listing of Hazardous Wastes*, §§ 366.1-366.8) repealed, filed May 14, 1985 eff. 60 days after filing.