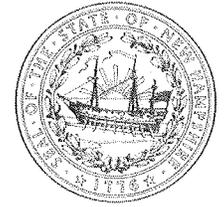


The State of New Hampshire
Department of Environmental Services



Thomas S. Burack, Commissioner

January 15, 2014

The Honorable Russell Prescott, Chair
Senate Energy and Natural Resources Committee
Legislative Office Building, Room 101
Concord, NH 03301

RE: SB 252, An Act relative to the Management of Hazardous Waste

Dear Chair Prescott and Members of the Committee:

Thank you for the opportunity to testify on SB 252. This bill would exclude solvent-contaminated wipes and rags that are sent for cleaning and reuse from the definition of hazardous waste as long as such wipes and rags are managed in accordance with a new federal rule at 40 CFR 261.4(a)(26). This new federal rule was finalized on July 31, 2013 and takes effect on January 31, 2014. While the Department of Environmental Services (DES) supports the intent of SB 252, DES has concerns about this bill.

DES is concerned for a number of reasons about the incorporation of this or any federal regulation into state statute. Most importantly, federal regulations are subject to change, and changes made at the federal level might not be agreeable to this legislature nor be appropriate for New Hampshire. This bill, as written, would mandate that DES automatically implement any federal changes to 40 CFR 261.4(a)(26) unless and until new state legislation is brought forward to remedy the situation.

Since the mid-1990's, DES has had in place a fact sheet (attached) that allows hazardous solvent-contaminated wipes to be managed in a similar fashion to that required by the new federal rule at 40 CFR 261.4(a)(26). The regulatory interpretation outlined in the fact sheet is similar to, but less stringent than, the new federal rule. DES intends to replace the fact sheet by adopting the federal rule and must do so in order to maintain authorization to operate the hazardous waste management program in lieu of the Environmental Protection Agency (EPA). DES recently learned that we are not required by EPA to adopt the more stringent federal rule until July 1, 2015. Depending on its effective date, SB 252 may require DES to impose those more stringent federal standards on New Hampshire businesses more than a year earlier than necessary.

On December 17, 2013, DES met with the Business and Industry Association (BIA) to discuss the federal rule and the fact sheet, and since then has reached out to BIA in an effort to gather interested parties for further discussions. DES wants to ensure that state rules on this topic address the needs and concerns of our stakeholders. We think the rulemaking process is the more appropriate method of adopting the federal wipes rule and thus have concerns about SB 252.

Thank you for your consideration in this matter. If you have questions or need additional information, please contact John J. Duclos, Administrator, Hazardous Waste Management

www.des.nh.gov

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Bureau (John.Duclos@des.nh.gov, 271-1998) or Mike Wimsatt, Director, Waste Management Division (Michael.Wimsatt@des.nh.gov, 271-2905).

Sincerely,

A handwritten signature in cursive script that reads "Thomas S. Burack".

Thomas S. Burack
Commissioner

CC: Sponsors of SB 252

Attachment: Fact Sheet #WMD-HW-6 Contaminated Cloth Wipers for Laundering

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

WMD-HW-6

2009

Contaminated Cloth Wipers for Laundering

The New Hampshire Department of Environmental Services receives many inquiries concerning the regulatory status of contaminated cloth wipers and the commercial laundering industry in New Hampshire. This fact sheet clarifies DES's position on wipers contaminated with minor amounts of hazardous waste constituents that are to be laundered. The regulatory status of contaminated wipers destined for laundering is one that has been of concern for a long time in New Hampshire, and elsewhere. After DES's thorough review of the issues, the Hazardous Waste Rules (Env-Hw 100-1100), and the positions of other states and regions, DES determined the following management requirements.

Definition

DES defines "contaminated wipers" as rags, shop towels, and wipers that have been used, contaminated with minor amounts of hazardous waste constituents such as solvents or oils, and are intended to be laundered before reuse. Contaminated wipers must be managed in a manner that will not pose a threat to human health or the environment. Other wastes, including spill absorbent materials and debris, do not meet the definition of contaminated wipers and therefore are not to be laundered or mixed with contaminated wipers destined for laundering. Spill absorbent materials may be laundered as long as they were not used to clean up spills of listed hazardous waste, do not exhibit any characteristic of hazardous waste, and would not otherwise be regulated as a hazardous waste mixture under Env-Hw 404.01. To the extent that the spill absorbent materials are used to clean up spills of listed hazardous waste (i.e., P, U, F, or K-listed hazardous waste), if the used spill absorbent materials exhibit any of the characteristics of hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity via the Toxicity Characteristic Leaching Procedure), or if the used spill absorbent materials meet the classification of a hazardous waste mixture, the spill absorbent materials would be classified as a hazardous waste and therefore not able to be laundered.

Management

DES has determined that the following conditions must be complied with in order to manage contaminated wipers in accordance with this fact sheet.

1. The contaminated wipers shall contain no free liquids as identified by the paint filter test (PFT, EPA SW 846 method 9095B) or the liquids release test (LRT, EPA SW 846 method 9096). Any contaminated wiper that fails one of the tests may release free liquid hazardous waste constituents as defined in the Hazardous Waste Rules.

2. The contaminated wipers must be placed in containers such as lidded drums or sealed laundry bags. The containers are to be closed and sealed at all times except when it is necessary to add or remove the contaminated wipers. The containers must also be stored away from sources of ignition.
3. The container must be labeled "Contaminated Wipers for Laundering" in order to prevent incompatible materials and wastes from being placed in the container.
4. The contaminated wipers are to be managed and transported in accordance with the United States Department of Transportation (US DOT) standards.
5. The contaminated wipers must either be laundered at a commercial off-site laundry facility or laundered on-site.

A. Off-site laundering:

1. Any industrial wastewater discharge from a commercial laundry must be in compliance with applicable state and federal permits (*i.e.*, local pretreatment permit or National Pollutant Discharge Elimination System NPDES permit).
2. The generator of the contaminated wipers must have a contractual agreement (such as a current signed purchase order) in place with the commercial laundry which documents that the contaminated wipers are being laundered. Copies of the contractual agreements and related receipts must be retained by the generator and available for inspection by DES personnel, in accordance with Env-Hw 803.05.

B. On-site laundering:

On-site laundering of the contaminated wipers can be done, provided that industrial wastewater is discharged in compliance with applicable state and federal permits, *i.e.*, local pretreatment permit or NPDES permit.

6. Facilities not managing their contaminated wipers in an environmentally sound manner as described above can and shall be subject to full regulation under the New Hampshire Hazardous Waste Rules and RSA Ch. 147-A.

Please note that this position pertains only to the regulation of contaminated wipers under New Hampshire's Hazardous Waste Rules. Regulation of these materials under any other federal or state rule or statute, such as the federal Clean Air Act or the New Hampshire Department of Safety transportation regulations, remains in full effect.

For more information

Questions regarding this fact sheet should be directed to the DES Waste Management Division at (603) 271-2942 or toll-free within New Hampshire at 866-HAZWAST. For information on the regulation of contaminated wipers by other state or federal agencies, contact the agency in question. For a complete description of the requirements, refer to the New Hampshire Hazardous Waste Rules, Env-Hw 100-1100, available from DES's website at www.des.nh.gov.