



JAN 16 2025

RE: Hazardous Waste Manifest System and Use of the e-Manifest System

To Whom It May Concern:

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

This enforcement discretion letter modifies and supersedes the e-Manifest enforcement discretion letter dated April 14, 2022. This enforcement discretion will remain in place until these provisions are adopted into State regulations, or this enforcement discretion letter is modified, rescinded, superseded, or otherwise replaced, whichever is earlier. All other provisions of the 6 NYCRR Part 370 through 374 and 376 regulations remain in effect and will be enforced.

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

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

6 NYCRR 372.2(c)(3) - Requires generators who do not receive a copy of the final signed manifest from the owner or operator of the designated facility within 35 days from that date of shipment off-site from the generator's facility, to contact the waste transporter and designated facility to inquire about the status of their hazardous waste shipment. If the generator does not receive a copy of the final signed manifest from the designated facility within 45 days from that date of shipment off-site, the generator must submit a report to DEC consisting of a legible copy of the generator copy of the manifest and a cover letter stating the efforts undertaken to locate the shipment.

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

6 NYCRR 372.5(k)(1)(iv) - Requires transporters to return a signed copy of the manifest to the generator and the generation state, as indicated on the instructions with the manifest.

6 NYCRR 373-2.5(b)(1)(i)(‘b’)(‘5’) and 373-3.5(b)(1)(i)(‘b’)(‘5’) - Requires designated facilities to mail copies of the signed final manifest to the generator, and the generator state and destination state (if different) within 10 calendar days of the date of waste delivery.

6 NYCRR 373-2.5(b)(1)(iii) and 373-3.5(b)(1)(iii) – Upon discovering a significant difference in waste quantity or type, designated facilities are required to immediately submit a report to both the generator state and destination state (if different) if the discrepancy is not resolved within 15 days after receiving the waste. The report must include a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Refer to 6 NYCRR 373-2.5(b)(3)(i)(‘d’) and (‘e’), and 373-3.5(b)(3)(i)(‘d’) and (‘e’) for descriptions of circumstances that qualify as manifest discrepancies.

6 NYCRR 373-2.5(b)(3)(ii) and 373-3.5(b)(3)(ii) - Upon receipt of a shipment of hazardous waste that is not accompanied by a hazardous waste manifest, designated facilities must attempt to determine why the shipment did not have a manifest and must submit an unmanifested waste report providing the required information about the shipment and the parties involved in generating and shipping the unmanifested waste within the required timeframes (within 10 days for most shipment types and within 15 days if shipment was transported by rail or a bulk shipment by water). Refer to 6 NYCRR 373-2.5(b)(2)(iii) and (iv), and 373-3.5(b)(2)(iii) and (iv) for a description of the procedure used for unmanifested waste shipments.

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

Procedure:

1. **Interstate and imported shipments:** Beginning on June 30, 2018, if hazardous waste identified on the manifest will be shipped within or imported into the United States, generators located in New York State do not need to submit a copy of the manifest to DEC. In lieu of complying with the requirements of 6 NYCRR 372.2(b)(3) to mail one copy of the manifest form to the generator state and one copy to the destination state, generators must comply with the applicable requirements of 40 CFR 262 Subpart B.
2. **Exported shipments:** Beginning on December 1, 2025, if hazardous waste identified on the manifest will be exported out of the United States, generators located in New York State do not need to submit a copy of the manifest to DEC. In lieu of complying with the requirements of 6 NYCRR 372.2(b)(3) to mail one copy of the manifest form to the generator state and one copy to the destination state, generators and exporters must comply with the applicable requirements of 40 CFR 262 Subpart H. The exporter will be required by EPA to submit that copy of the export manifest to the e-Manifest system and pay the requisite fees, as described in 40 CFR 262.83(c). In lieu of complying with 6 NYCRR

372.5(k)(1)(iv), the transporter who transports the exported shipment of hazardous waste to or across the port of exit will be required to send a copy of the signed manifest to the exporter instead of the generator. (The exporter and the generator may be the same entity).

3. **Submission of final manifests:** Beginning on June 30, 2018, in lieu of complying with the applicable requirements of 373-2.5(b)(1)(i)(‘b’)(‘5’) and 373-3.5(b)(1)(i)(‘b’)(‘5’) for designated facilities to submit copies of the signed final manifest to the generator state and destination state within 10 calendar days of the date of waste delivery, designated facilities must comply with the applicable requirements of 40 CFR 264.71 or 40 CFR 265.71 and submit hazardous waste manifests to EPA’s e-Manifest System within 30 days of the date of waste delivery.

Beginning on January 22, 2025, in lieu of complying with the applicable requirements of 373-2.5(b)(1)(i)(‘b’)(‘5’) and 373-3.5(b)(1)(i)(‘b’)(‘5’) for designated facilities to mail a copy of the signed final manifest to a generator within 10 calendar days of the date of waste delivery, designated facilities must comply with the applicable requirements of 40 CFR 264.71 or 40 CFR 265.71 and will no longer need to mail a copy of the signed final manifest to the small or large quantity generator.

4. **Use of state waste codes:** Generators and designated facilities must continue recording the DEC waste codes, listed in 6 NYCRR 371.4(e), for PCB-containing hazardous wastes on their hazardous waste manifests.
5. **Use of ultimate disposal codes:** Generators and designated facilities must continue recording the ultimate disposal code on the manifest as required by 6 NYCRR 372.2(b)(2)(ii).
6. **Submission timeframe for manifest exception reports for small and large quantity generators**
 - a. **Small quantity generators:** Beginning on January 22, 2025, in lieu of complying with 6 NYCRR 372.2(c)(3) for exception reports, small quantity generators will be required to comply with 40 CFR 262.42(b) through (b)(1). A small quantity generator who does not receive a copy of the signed final manifest from the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery to DEC.

Beginning December 1, 2025, the requirement to submit exception reports directly to DEC will cease, and from that date forward generators will be required to submit such reports electronically to the e-Manifest system; see section 8 “Submission format of manifest reports” below. (Note:

Upload of a final manifest by the designated facility to the e-Manifest system will meet the requirement to send a signed final copy of the manifest to the generator, as small quantity generators will be federally required to have access to their manifests in the e-Manifest system.)

- b. **Large quantity generators:** Beginning on January 22, 2025, in lieu of complying with 6 NYCRR 372.2(c)(3) for exception reports, large quantity generators will be required to comply with 40 CFR 262.42(a)(1) through (2). A large quantity generator who does not receive a copy of the signed final manifest from the designated facility within 45 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the designated facility to determine the status of the hazardous waste. A large quantity generator must submit an exception report to DEC stating that the generator has not received a copy of the signed final manifest from the designated facility within 60 days of the date the waste was accepted by the initial transporter. The exception report must include a legible copy of the manifest for which the generator does not have confirmation of delivery, and a cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

Beginning December 1, 2025, the requirement to submit exception reports directly to DEC will cease, and from that date forward generators will be required to submit such reports electronically to the e-Manifest system; see section 8 "Submission format of manifest reports" below. (Note: Upload of a final manifest by the designated facility to the e-Manifest system will meet the requirement to send a signed final copy of the manifest to the generator, as large quantity generators will be federally required to have access to their manifests in the e-Manifest system.)

7. Submission timeframe for manifest discrepancy reports:

Beginning on January 22, 2025, in lieu of complying with 6 NYCRR 373-2.5(b)(1)(iii) and 373-3.5(b)(1)(iii), designated facilities will be required to comply with 40 CFR 264.72(c) through (c)(1) and 265.72(c) through (c)(1). Designated facilities that discover a significant difference in waste quantity or type and cannot resolve the discrepancy within 20 days of receiving the waste must submit a discrepancy report to DEC and the generator state. The report must include a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. Beginning December 1, 2025, the requirement to submit exception reports directly to DEC and the generator state will cease, and from that date forward generators will be required to submit such reports electronically to the e-Manifest system; see section 8 "Submission format of manifest reports" below.

8. Submission format of manifest reports:

Beginning on December 1, 2025, in lieu of complying with the requirements of 6

NYCRR 372.2(c)(3), 6 NYCRR 373-2.5(b)(1)(iii) and 373-3.5(b)(1)(iii), to submit copies of manifest reports (i.e., exception, discrepancy and unmanifested waste reports) to DEC and other state environmental agencies in generator and destination states, generators and designated facilities will be required to comply with 40 CFR 262.42(b)(2), 40 CFR 262.42(a)(3), 40 CFR 264.72(c) through (c)(1) and 265.72(c) through (c)(1). Such manifest reports must be submitted electronically to EPA's e-Manifest system instead of DEC and other state environmental agencies in generator and destination states.

9. Record retention requirements for manifest reports:

- a. **Exception reports:** Beginning on December 1, 2025, in lieu of complying with the requirements of 6 NYCRR 372.2(c)(1)(ii) to retain a copy of each Exception Report in site records for at least three years from the due date of the report, generators will be required to comply with 40 CFR 262.42(d)(1). This new requirement will be satisfied by retention of a signed electronic Exception Report in the generator's account on the EPA e-Manifest system, provided that the Exception Report is readily available if requested by DEC or the EPA during an inspection or otherwise, and the generator maintains access to such site records with an active e-Manifest account (RCRAInfo account).
- b. **Discrepancy reports:** Beginning on December 1, 2025, the requirements of 6 NYCRR in 373-2.5(b)(3)(iii) and 373-3.5(b)(3)(iii) for designated facilities to retain a copy of each Discrepancy Report in site records for at least three years from the date of submittal will be satisfied by retention of a signed electronic Discrepancy Report in the designated facility's account in the EPA e-Manifest system, provided that the Discrepancy Report is readily available if requested by DEC or the EPA during an inspection or otherwise, and the designated facility maintains access to such site records with an active e-Manifest account (RCRAInfo account).
- c. **Unmanifested waste reports:** Beginning on December 1, 2025, the requirements of 6 NYCRR in 373-2.5(b)(3)(iii) and 373-3.5(b)(3)(iii) for designated facilities to retain a copy of each Unmanifested Waste Report in site records for at least three years from the date of submittal will be satisfied by retention of a signed electronic Unmanifested Waste Report in the designated facility's account in the EPA e-Manifest system, provided that the Unmanifested Waste Report is readily available if requested by DEC or the EPA during an inspection or otherwise, and the designated facility maintains access to such site records with an active e-Manifest account (RCRAInfo account).

- 10. Use of alternative transporters during emergencies:** Beginning on June 30, 2018, in lieu of complying with the requirements of 6 NYCRR 372.3(b)(4)(ii), during an emergency condition generators and transporters may comply with the

conditions of 40 CFR 263.21(b) to allow the designation of alternate transporters without prior approval from the generator, provided that all applicable requirements of 6 NYCRR Part 364 are also met.

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

Sincerely,

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

Thomas S. Berkman
Deputy Commissioner
& General Counsel