

**06-096 C.M.R. chs. 850 through 858: Maine Hazardous Waste Management Rules
Basis Statement and Response to Comments**

September 16, 2021

*ch. 850 (Identification of Hazardous Waste),
ch. 851 (Standards for Generators of Hazardous Waste),
ch. 852 (Land Disposal Restrictions),
ch. 853 (Licensing of Transporters of Hazardous Waste),
ch. 854 (Standards for Hazardous Waste Facilities),
ch. 855 (Interim Licenses for Waste Facilities for Hazardous Waste),
ch. 856 (Licensing of Hazardous Waste Facilities),
ch. 857 (Hazardous Waste Manifest Requirements),
ch. 858 (Universal Waste Rules)*

Background and Purpose: The principal reason for this rulemaking is to update the rules through incorporation of revised and new regulations promulgated by U.S. Environmental Protection Agency (USEPA) under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C.A. 6901, *et seq.* These regulations include 40 C.F.R. 260 to 273, 40 C.F.R. 279, and 40 C.F.R. 761.

This rulemaking amends the rules, consistent with an ongoing RCRA authorization plan established between the Department and USEPA in order for the State of Maine to maintain its RCRA program authorization and its delegated authority to administer the RCRA hazardous waste program in Maine.

These amended rules address or incorporate federal standards and updates for: new hazardous waste listings (ch. 850), waste exclusions (ch. 850), drip pads for wood preservative wastes and waste munitions (chs. 851, 854, 855 and 856), land disposal restrictions (ch. 852), hazardous waste air emissions (chs. 851, 854, 855, and 856), landfills, surface impoundments, and incinerators (chs. 854, 855, and 856), hazardous waste manifests, including EPA's e-Manifest rules (chs. 851 and 857), and import/export of hazardous waste (chs. 851, 853, 857, and 858). These updates to Maine's rules generally incorporate by reference the 2019 version of the Code of Federal Regulations (C.F.R.), which is the most recent published version.

In addition to updating state regulations for consistency with current federal RCRA regulations, the amendments also update regulatory citations throughout the rules to conform with the Department's "Legal Citation Standard Operating Procedure", correcting and/or clarifying certain existing provisions, and incorporating consistent language throughout the chapters.

Rule Development: On May 6, 2021, the Board of Environmental Protection voted to post the proposed rule changes for public comment. On May 10, 2021, the Department posted the proposed rule for a 30-day comment period; the comment period closed on June 18, 2021.

Comments Received: During the comment period from May 10, 2021 to June 18, 2021, comments were received from two parties. The Department has summarized these comments and provided responses below.

Summary of Comments

- Dean Dadmun, Clean Harbors Environmental Services, Inc., South Portland, ME (CHES)
 - Dennis Lettre, Augusta, ME (DL)
1. **Comment (CHES):** Commenter requests that the federal exemption for manufactured gas plant wastes from the characteristic of toxicity, (40 C.F.R. § 261.24(a)), be included in the revised 06-096 C.M.R. ch. 850, § 4(B)(5)(a). Commenter has previously treated manufactured gas plant wastes from Maine and other New England states and elimination of this exemption would have a fiscal impact on its South Portland treatment facility.

Response: *The exemption referenced in this comment is not being eliminated since it was never incorporated into Maine rule, including during rulemaking in June 2018 when Maine adopted 24 organic hazardous waste constituents under the toxicity characteristic leaching procedure (TCLP) provision in 06-096 C.M.R. ch. 850, § 4(B)(5)(a). The proposed rule does not include any changes to the existing rule concerning the toxicity characteristics of hazardous waste for the 40 inorganic and organic hazardous waste constituents. Manufactured gas plant (MGP) waste can exhibit the hazardous waste characteristic of toxicity due to the presence of hazardous waste constituents, including, but not limited to benzene and cresols, at levels above the TCLP thresholds. The existing and proposed rule would continue to regulate MGP waste in accordance with its toxicity, as other wastes are regulated, if a hazardous waste constituent in the MGP waste exceeds its respective TCLP threshold. Specifically, MGP waste which exhibits the characteristic of hazardous waste due to its toxicity would be regulated as hazardous waste. This approach is consistent with that of a number of other northeast states including Massachusetts, Connecticut, Vermont and New York. The Department has considered this exemption and determined that it is reasonable and appropriate to regulate this waste in the same way that most other wastes are regulated with regard to the toxicity characteristic, and that this approach is consistent with that of many other states in the region. No changes were made to the rule in response to this comment.*

2. **Comment (CHES):** Commenter requests that the wastewater treatment unit exemption found at 06-096 C.M.R. ch.856, § 6(D) be changed to mirror the federal exemption (40 C.F.R. § 264.1(g)(6)), to allow the treatment of wastewater that is generated off-site.

Response: *A facility cannot treat hazardous wastewater received from an off-site generator unless the facility is licensed to accept hazardous waste from off-site as a “commercial hazardous waste facility” as defined in 38 M.R.S. § 1303-C (6) and licensed as a hazardous waste facility pursuant to 38 M.R.S. § 1319-O and 06-096 C.M.R. ch. 856, § 5. The wastewater treatment unit exemption provides for a licensing exemption only for treatment of wastewaters generated on-site under the specified conditions and requirements of the exemption. Maine has not adopted the federal wastewater exemption under 40 C.F.R. § 264.1(g)(6) because of concerns that the federal exemption allows for the handling and disposal of hazardous waste and*

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associated hazardous waste constituents in wastewater treatment units without adequate treatment standards, controls and conditions. The existing rule addresses these concerns with reasonable standards, controls and conditions which include: compatible construction materials for units and associated piping, adequate secondary containment and high-level alarms, a wastewater treatment license or pre-treatment agreement for hazardous waste constituents, periodic inspections of the integrity of unit components and sewer systems including prompt implementation of repairs, and adequate spill prevention and response procedures. No changes were made to the rule in response to this comment.

- 3. Comment (CHES):** The commenter requests clarification of the elementary neutralization unit exemption in 06-096 C.M.R. ch. 856, § 6(I) by asking “Can the Operator of an Elementary Neutralization Unit treat corrosive wastewater that is generated off-site?”

***Response:** The operator of an elementary neutralization unit cannot treat hazardous waste including hazardous corrosive wastewater received from an off-site generator unless the operator and the operator’s facility is licensed to accept hazardous waste from off-site as a “commercial hazardous waste facility” as defined in 38 M.R.S. § 1303-C (6) and licensed as a hazardous waste facility pursuant to 38 M.R.S. § 1319-O and 06-096 C.M.R. ch. 856, § 5. No changes were made to the rule in response to this comment.*

- 4. Comment (DL):** Commenter owns property which abuts an active outdoor shooting range and expressed concern about contamination of soils from lead shot and lead debris on the property, potential impact on well water and the neighboring environment, and the conduct of lead remediation activities related to abandoned lead shot and lead debris.

***Response:** The concerns expressed by the commenter are outside the scope of the current rulemaking. The rules that are the subject of this rulemaking do not include provisions that directly address lead-contaminated soils at outdoor shooting ranges. No changes were made to the rule in response to this comment.*

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