

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WASTE MANAGEMENT

**Response to Comments on the Amendment and Codification of the
Rules and Regulations for the Investigation and Remediation
of Hazardous Material Releases**

250-RICR-140-30-1

November 19, 2018

The Rhode Island Department of Environmental Management (DEM) has received comments on the proposed amendment and codification of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1). No oral testimony was received during the public comment hearing held on October 30, 2018. One set of written comments was received by electronic mail during the public comment period from October 9, 2018 to November 8, 2018. Copies of all comments are on file and available for public review at the RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908.

Comments:

Comment received in writing:

Richard M. Fil, of Robinson & Cole, LLP, commented that the regulation should be revised to clarify that the incorporation by reference of 40 C.F.R. § 300 within the regulation should be limited to those sections that are not inconsistent with this regulation, and expressing concern that the incorporation by reference of 40 C.F.R. § 300 could be construed as requiring more expansive imposition of that section than what DEM intends. Specifically, Mr. Fil commented as follows:

1. Replace § 1.3(A) with the following: “The adoption and incorporation in these regulations of 40 C.F.R. § 300 or any portion thereof shall not include any further amendments thereto after the promulgation of these regulations nor to the extent any provisions therein are inconsistent with these regulations.”
2. For the first sentence of the definition of hazardous substance at § 1.4(A) (35), that should read: “‘Hazardous substance’ shall have the same meaning as that term is defined in 40 C.F.R. § 300.5, which is incorporated by reference for such purpose.”

3. The first sentence of the definition of release at § 1.4(A)(63) should read: “‘Release’ shall have the same meaning as that term is defined in 40 C.F.R. § 300.5, which is incorporated by reference for such purpose.”
4. The first sentence of Section 1.5.2(B) should read: “Sites listed on the National Priorities List shall comply with the requirements of the National Contingency Plan, 40 C.F.R. § 300, which is incorporated by reference for such purpose.”

Response:

Paragraph 2 of Mr. Fil’s comment references § 1.4(A)(35), in reference to the regulation’s definition of “Hazardous Substances.” RI DEM read this as a typo, and interpreted the comment as being directed at § 1.4(A)(34), which is the paragraph that defines the term “hazardous substances.” § 1.4(A)(35) does not implicate 40 C.F.R. 300 in any way.

One change has been made to the proposed Rule that went to public notice, based on the above comment. That change was a technical revision to provide language consistency between §§ 1.4(A)(34) and 1.4(A)(63).

As stated in the public notice, the purpose of the proposed amendment and codification of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases is to codify the Regulation as required by state statute. No attempt was made to update or change any of the requirements of the Regulation. The changes are limited to only those necessary to reformat the Regulation into the code.

DEM has no intention of applying any of the requirements of 40 C.F.R. § 300 under the proposed Regulation beyond what it currently and historically has applied those requirements. The specific instances where 40 C.F.R. § 300 is implicated by the proposed Regulation are specifically enumerated in the proposed Regulation themselves. The four specific comments noted above request specific language changes to the proposed Regulation, and DEM believes that the proposed language in each of the specified sections that went to public notice achieves the intended result of the requested language changes, and therefore declines to make the requested changes at this time.