Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-328

IRRC Number: 1905

(3) Short Title

Comprehensive Hazardous Waste Amendments

(4) PA Code Cite

25 PA Code, Chapters 260a-266a, 266b, 268a-270a

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Freeman, 783-1303

Secondary Contact: Barbara Sexton, 783-8727

(6) Type of Rulemaking (Check One)

____Proposed Rulemaking
__X__Final Order Adopting Regulation
____Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

__X__ No
____ Yes: By the Attorney General
____ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This rule closely aligns Pennsylvania's regulations for hazardous waste management with those of the federal government in 40 CFR Parts 260 - 270. Much of the existing language in Pennsylvania's regulations is being deleted, while much of the language presently contained in federal rules is being adopted. While the language and some of the regulation numbering changes significantly, the overall meaning and intent of the regulations changes only minimally. Additionally, the rulemaking incorporates several parts of the federal rules not presently contained in Pennsylvania's regulations.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are proposed under the authority of Act 97 of 1980, the Solid Waste Management Act (35 P.S. §§ 6018.101 - 6018.1003); the Clean Streams Law (35 P.S. §§691.1 - 691.1001); and § 1920 of the Administrative Code of 1929 (71 P.S. §§510 - 20).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. The regulatory change is not, but the regulations are required by the Solid Waste Management Act and 40 CFR.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This regulation intends to eliminate confusion resulting from industry complying with two sets of regulations - state and federal. Additionally, the regulation makes Pennsylvania industry more competitive with neighboring states by creating similar compliance requirements. Pennsylvania companies having facilities in other states now comply with one set of rules.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The regulation provides more uniform compliance requirements between Pennsylvania and neighboring states. Differences in compliance requirements can lead to confusion and errors in the management of hazardous wastes. This increases the danger to human health and the environment.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The entire regulation is structured to meet the needs of persons who generate, accumulate, treat, store, dispose and transport hazardous wastes in Pennsylvania. The regulation significantly reduces the confusion of dealing with two sets of regulations within Pennsylvania, and helps level the playing field between Pennsylvania and other states. The approximately 25,000 facilities in Pa. that handle hazardous wastes benefit from this regulation by utilizing federal standards and requirements to comply with Pennsylvania law. Citizens and public interest groups will benefit by having one national set of standards to measure environmental performance.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

This regulation is not expected to adversely affect anyone.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The approximately 25,000 entities that generate, treat, store, dispose of or transport hazardous waste will be required to comply with this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who where involved, if applicable.

The need for the regulatory revisions was identified during the Regulatory Basics Initiative (RBI) process. The RBI overview was developed with comments and input from various corporations, associations, and environmental groups.

The original draft proposal was discussed at the Solid Waste Advisory Committee (SWAC) meetings on January 9, 1997 and March 13, 1997. SWAC approved the draft for Environmental Quality Board consideration on May 8, 1997. The proposed rulemaking was approved by the Environmental Quality Board on September 16, 1997 and published on December 6, 1997. Three public hearings were held across the state in January 1998. A 60-day public comment period followed publication. During that time, the Department received 167 comments on the regulations. Many of the comments resulted in changes to the final rule. The draft final rulemaking was presented to the SWAC on July 9, 1998. After recommending minor changes, the Committee unanimously voted to approve the package as final rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The amount of measurable costs associated with compliance with this regulation package are difficult to quantify. Most of the impact associated with the regulatory changes deals with the wording rather than the substance or intent of the regulation. However, savings in manifesting, sampling and analysis and reporting costs should result in an estimated savings of $400,000 to $500,000 to industry.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department funds 50% of certain costs for host municipal hazardous waste inspectors, which it will continue to do. The Department will work with host municipal inspectors to assure their awareness of the changes in these regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

State agencies should receive a proportion of the savings associated with the manifesting requirements. The Department should also receive an estimated $30,000 in savings through reduced mail handling and data entry costs associated with reduced manifesting requirements.

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community	0.4 million	0.4 million	0.4 million	0.4 million	0.4 million	0.4 million
Local Government	0	0	0	0	0	0
State Government	.03 million	.03 million	.03 million	.03 million	.03 million	.03 million
Total Savings	.43 million	.43 million	.43 million	.43 million	.43 million	.43 million
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

The majority of savings to the regulated community were derived from reducing the paperwork and recordkeeping requirements. The cost savings are attributable to reductions in paper handling, mailing and storing of manifest copies. Additional savings are derived from a reduction in sampling costs. Certain types of land disposal facilities will now sample annually instead of semi-annually.

Savings to the Department are attributable to the reduction of manifest copies. This results in less copies of manifest to be handled, and an approximately 50% reduction in manifests that have to be scanned into the Department's computer system.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Hazardous Waste	$6,228,769	$6,666,697	$6,392,000	$6,052,587

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

These amendments impose no new costs to the regulated community. The amendments serve to eliminate adverse effects of complying with two sets of regulations. The long term environmental benefits and cost reduction are expected to far outweigh any short term cost imposed by the implementation of new procedures. The Department is required to routinely update its regulations to maintain primacy in the RCRA program and remain eligible for federal funding.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered. There are no nonregulatory alternatives available in this case.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

One alternative scheme considered was to delete 25 PA Code Chapters 260-270 in its entirety and to incorporate all of the equivalent 40 CFR by reference. This would not have imposed additional costs on the regulated community. This was rejected because it would have eliminated several issues mandated by statute (for example hazardous waste transporters licenses, hazardous waste transportation fees, etc.) along with other requirements not found in federal regulations deemed important to the environment and health of the citizens of the Commonwealth due to population or climatological conditions. Total incorporation by reference would preclude the state from not adopting such regulations. The proposed regulations are almost identical to the federal rules.

A second alternative considered was to restate the federal provisions verbatim. This approach would have taken more program time and would have resulted in less ability to adapt changes to the federal requirements. Also, the Legislative Reference Bureau will not allow the Department to print verbatim federal regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no new standards proposed which are more stringent than the federal standards. There are however, several provisions in Pennsylvania's existing regulations which are more stringent than the corresponding federal regulations which the Department is proposing to retain.

§ 261a.5 - Disposal of Conditionally Exempt Small Quantity Generator waste in municipal or residual waste facilities is not allowed. Legislative and public concern over this issue caused the Board to retain this provision. Additionally, Section 207(b) of the Waste Tire Recycling Act/Small Business and Household Pollution Prevention Program Act of 1996 prohibits this type of hazardous waste disposal.

§ 261a.6 - Retains the permit requirement for certain hazardous waste activities associated with recycling. Most forms of hazardous waste recycling require some type of treatment prior to the actual recycling. Section 6018.501(a) of the Solid Waste Management Act requires a permit for the treatment of a solid waste. While the actual recycling process is not regulated, treatment prior to the recycling is regulated.

§ 261a.7 - Retains the requirement to manage residues in empty containers (less than 1 inch) as hazardous waste if they are hazardous. The seemingly small amount has added up to significant quantities of hazardous waste (thousands of gallons) at several drum recyclers. This resulted in several costly clean ups to the Commonwealth when the facilities went out of business. The provision only requires that a hazardous waste be managed as a hazardous waste. This provision became effective with the regulatory amendments of January 11, 1997. The federal rules do not address residues of less than 1 inch in a container.

§ 262a.22 - Reduces the manifest copies. The use of a manifest to ship hazardous waste is mandated by Section 403(b)(5) of the Solid Waste Management Act. The movement of hazardous waste cannot be accurately tracked with the federal manifest. With the federal requirements, the regulating authority does not receive a copy of the manifest therefore, it cannot track the movement of the waste. With the Pennsylvania manifest, the generator state and the destination state each receive a copy of the completed manifest from the destination facility. In this way, both states can be appraised of movement of the waste. Almost all states in the northeast use a manifest requiring more copies than the federal requirements.

§ 263a.12 - Is incorporated into 25 PA Code by reference. However, a new section has been added requiring Preparedness, Prevention and Contingency (PPC) plans which was part of PA's regulations in a different section (§ 263.30). The PPC plan requirement will be retained as these facilities are not subject to siting criteria. In the event of a spill, a contingency plan affords an extra measure of protection for the surrounding area. The PPC plan requirement is also mandated by Section 403(b)(10) of the Solid Waste Management Act. Additionally, this requirement is consistent with the Department's goal of pollution prevention to the greatest degree possible.

§ 263a.23 - Retains the hazardous waste transportation fees. They are mandated by the Hazardous Sites Cleanup Act.

§ 263a.26 - Provides for minimum penalties for failure to pay transportation fees. The Department has found that minimum penalties are a definite aid to compliance.

§ 263a.32 - Hazardous waste transporter bonding. This provision is statutorily mandated by the Solid Waste Management Act.

§§ 264a.11-13 - Module 1 applications. These requirements are retained in the regulations. The module 1 analyses provide an extra measure of safety; ensuring that wastes accepted are manageable by the facility. The final form rule allows for a permit modification to simplify and expedite the applications. A simple notification would be allowed after the facility's waste analysis plan is modified.

§ 264a.15 - Construction schedule approval. This requirement is retained in the regulations. It requires Department inspection and approval of each phase of construction in a waste management facility. The requirement places no additional burden on the facility while allowing an extra measure of safety in the construction of the facility.

§ 264a.52 - Contingency plans. This requirement is retained in the regulations as it provides an extra measure of safety should a spill or accident occur. The requirement of a contingency plan is also mandated by Section 403(b)(10) of the Solid Waste Management Act. This requirement is consistent with the Department's goals of pollution prevention.

§ 264a.71 - Use of the manifest system. The Pennsylvania manifest helps to ensure the accurate tracking of the movement of hazardous wastes. The federal manifest does not allow for this.

§§ 264a.78 - 264a.81 - Fee Requirements. The fee requirements of these sections are retained. The fees are mandated by the Hazardous Sites Clean Up Act.

§§ 264a.82 - 83 - Administration fees. The administration fee requirement is retained in this section. These fees are based on the actual staff time required to enforce the hazardous waste regulations at a permitted facility and mandated by Section 104(8) of the Solid Waste Management Act.

§ 264a.96 - Recordkeeping and reporting requirements. These requirements are incorporated into the new § 264a.97. They require submission of records in a timely fashion and enable the Department to do an expedient review of the records.

§ 264a.153 - Bonding requirements. The bonding requirements currently found in the regulations are retained as mandated by the Solid Waste Management Act.

§ 264a.173 - Container storage requirements. The final form rule adopts a performance-based standard in place of the previous prescriptive standard. This allows use of newer types of containers not permitted under the old regulations while still providing adequate protection to human health and the environment.

§ 264a.194 - Tank labeling. This requirement is retained. The requirement mandates that tanks used to store hazardous waste be properly labeled. This helps to ensure proper management of the waste in the tanks and further supports a compelling state interest in public safety.

§ 264a.195 - Inspections. The regulation retains the inspection requirements for tanks that contain wastes. The inspection requirements during normal facility operation are consistent with the federal regulations, however for increased safety and the prevention of problems, even if a facility is closed the Department directs inspections every 72 hours whenever the tanks contain waste.

§ 264a.221 - Groundwater isolation distances. The Department proposes to retain the isolation distances currently in Pennsylvania's regulations. The isolation distances help ensure that the waste in the impoundment does not impact the water table. This protects the groundwater and associated drinking water supplies of the citizens of the Commonwealth.

§ 264a.251 - Design requirements for waste piles. The 20 inch minimum distance between the subbase and seasonal high groundwater table is retained. This requirement helps protect the groundwater from impact by the waste pile and helps protect the groundwater and associated drinking water supplies of the citizens of the Commonwealth. In response to comments, a variance procedure is incorporated in the regulation to allow a variance if the applicant demonstrates equivalent protection to the environment.

§ 264a.273 - Specific application requirements for land treatment. The requirements currently found in 25 PA Code are retained. The requirements provide an extra measure of safety for the management of the wastes and help protect the groundwater, surface water and associated drinking water supplies of the citizens of the Commonwealth without undue burden to the regulated community. There is no federal equivalent.

§ 264a.276 - Food chain crops. The regulation retains the existing restrictions on food chain crops grown on land treatment sites. The restrictions provide an extra measure of safety to human health without undue burden to the regulated community. There is no federal equivalent to this regulation.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation conforms Pennsylvania's requirements to those of the federal government and most other states. The regulation allows Pennsylvania industry to be more competitive with industry in other states through the adoption of regulations similar to those in other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect the intent of any existing or proposed regulations.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes, three public hearings were held at 1 p.m. on the following dates in the following places:

January 12, 1998	Department of Environmental Protection, Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA
January 14, 1998	Department of Environmental Protection, Southwest Regional Office 500 Waterfront Drive Pittsburgh, PA
January 16, 1998	Department of Environmental Protection, 1st Floor Meeting Room Rachel Carson State Office Building Harrisburg, PA

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will provide for a reduction in existing paperwork requirements. Manifest copies will be reduced from 8 to 6. Industry will be able to use their own forms for certain requirements that formerly required the use of Department forms. Certain monitoring requirements will be reduced to annual instead of semiannual reporting.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions have been developed to meet the particular needs of individually affected groups. The proposed regulation places no new burdens on the regulated community. While some citations and language are changed, the overall scope and intent of the regulations is not.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*. No new permits, licenses or other approvals are required by this proposed rulemaking.

(31) Provide the schedule for continual review of the regulation.

Regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

UL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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›py below is hereby approved as to ‹ and legality. Attorney General (DEPUTY ATTORNEY GENERAL) DATE OF APPROVAL ‹heck if applicable ›py not approved. Objections ‹tached.	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD (AGENCY) DOCUMENT/FISCAL NOTE NO. DATE OF ADOPTION: 7-328 BY: TITLE: JAMES M. SEIF, CHAIRMAN (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)	Copy below is hereby approved as to form and legality. Executive or Independent Agencies. BY: R. E. Gruenaldi 2/16/99 DATE OF APPROVAL (Deputy General Counsel) ~~(Chief Counsel, Independent Agency)~~ (Strike inapplicable title) ☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Comprehensive Hazardous Waste Amendments

25 Pa. Code, Chapters 260a-266a, 266b, 268a-270a

Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapters 260a-266a, 266b, 268a-270a)
(Hazardous Waste Management)

The Environmental Quality Board (Board) by this order deletes 25 Pa. Code, Chapters 260-265, 266-267, and 269-270 (relating to hazardous waste) and renumbers existing or adds new hazardous waste regulations to 25 Pa. Code, Chapters 260a-266a, 266b and 268a-270a. The changes are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1. Under the Regulatory Basics Initiative and Executive Order 1996-1, the Department reviewed Pennsylvania's existing hazardous waste regulations to identify where the regulations could be improved.

This order was adopted by the Board at its meeting of Feb. 16, 19 99.

A. Effective Date

With the exception of Chapter 264a, Subchapter S, these amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking. The provisions of Chapter 264a, Subchapter S will become effective upon delegation of the corrective action program to the Department by the Environmental Protection Agency.

B. Contact Persons

For further information contact Rick Shipman, Division of Hazardous Waste Management, P.O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105- 8471, (717) 787-6239; or Leigh B. Cohen, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105- 8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This rulemaking is available electronically through the DEP Web site (http://www.dep.state.pa.us).

C. Statutory Authority

The final rulemaking is being made under the authority of sections 105, 401-403 and 501 of the Solid Waste Management Act (SWMA), (35 P.S. §§ 6018.105, 6018.401-6018.403 and 6018.501); sections 105, 402 and 501 of the Clean Streams Law (35 P.S. §§ 691.105, 691.402 and 691.501); and section 1920-A of the Administrative Code of 1929 (71 P.S. §§ 510-20).

Under sections 105, 401-403 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste necessary to protect the public's health, safety and welfare, and the environment of this Commonwealth. Sections 105, 402 and 501 of the Clean Streams Law grant the Board the authority to adopt regulations necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of the Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations necessary for the proper work of the Department.

D. Background and Summary

The Department administers the hazardous waste program under numerous State laws, including the Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.101-6018.1003), the Hazardous Sites Cleanup Act (HSCA) (35 P.S. §§ 6020.101-6020.1304), the Clean Streams Law (35 P.S. §§ 691.1-691.1001), the Small Business and Household Pollution Prevention Program Act (35 P.S. §§ 6029.201-6029.209); the Air Pollution Control Act (35 P.S. §§ 4001-4015) and Sections 1917-A and 1920-A of the Administrative Code of 1929 (71 P.S. §§ 510-17 and 510-20).

Numerous Federal statutes applicable to hazardous waste management activities are administered by Federal agencies, including the Environmental Protection Agency (EPA). EPA administers the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§ 6901-6992) and Federal regulations at 40 CFR Parts 124, 260-270, 273 and 279 which contain the basic Federal hazardous waste program requirements. RCRA provides that no state "may impose any requirements less stringent than [EPA's RCRA regulations] respecting the same matter governed by such regulations." 42 U.S.C.A. § 6929. Therefore, a state standard less stringent than the RCRA standard respecting the same matter would be superseded by Federal law.

In addition, RCRA provides that states may apply for and receive authorization from the EPA for all or parts of the state hazardous waste management program, under 42 U.S.C.A. § 6926 and 40 CFR Part 271. The EPA authorization essentially eliminates the dual Federal and state permitting requirements for the hazardous waste management activities that are covered entirely within the scope of the state program authorized by the EPA, and thereby allows the regulated community to comply with state law in lieu of the affected parts of Federal law. RCRA provides that an action taken by a state under an authorized hazardous waste program "shall have the same force and effect" as an action by the EPA under RCRA. 42 U.S.C.A. § 6926(d). The EPA retains enforcement authority over authorized state provisions and Federal law.

RCRA was amended in 1984 to add the Hazardous and Solid Waste Amendments of 1984 (HSWA) which authorized EPA to impose and administer directly certain more stringent requirements in all states unless the state has been expressly authorized to administer the HSWA. The HSWA requirements are listed in tables appearing in 40 CFR Part 271. State law may cover the same subject areas and impose standards that are at least as stringent as the HSWA and may be broader in scope than the HSWA.

The Commonwealth received authorization for the State hazardous waste program, effective January 30, 1986, 51 F.R. 1791 (January 15, 1986). This authorization relieves the regulated community of the burden of obtaining EPA permits for treatment, storage or disposal facilities (TSDs). However, the regulated community must still comply with all EPA requirements under the HSWA, in addition to all applicable Commonwealth requirements. One purpose of this rulemaking is to adopt the HSWA requirements. The Department intends to seek authorization for the HSWA requirements, so that the regulated community will only need to comply with the Pennsylvania hazardous waste requirements in order to be in compliance with RCRA.

Since the Commonwealth received its authorization in 1986, the Board has adopted several hazardous waste rules. Pennsylvania's hazardous waste regulations were most recently significantly amended with substantive changes at 23 Pa. B. 363 (January 15, 1993). This regulatory amendment is referred to as PK-4. The basic framework for the Department's hazardous waste program was amended in that rulemaking through the definition of "waste" and related terms such as "coproduct". These provisions, which differ significantly from the federal hazardous waste regulations, are currently contained in the Department's regulations. This final rulemaking deletes these requirements and replaces them with the federal regulations.

The Department has reviewed all of its hazardous waste regulations pursuant to Executive Order 1996-1. As a consequence of its review, the Department has determined that continuing to regulate hazardous waste in Pennsylvania under a regulatory scheme that differs from the schemes found in the federal regulations and in other states' regulations creates confusion for the regulated community. In addition, the Department has determined that adopting the federal regulations with some modification that is justified by an identified compelling state interest will protect human health and the environment. The regulatory amendments that are finalized in this rulemaking are intended to align the Department's hazardous waste program with the federal program by incorporating by reference the applicable federal hazardous waste regulations and to maintain this consistency in the future as the federal program evolves. It is expected that the Commonwealth will seek an authorization update from EPA for its hazardous waste program based on this final rulemaking.

E. Summary of Comments and Responses on the Proposed Rulemaking

The proposed amendments were published at 27 Pa.B. 6407 (December 6, 1997). The 60 day public comment period ended on February 4, 1998. The Department received comments from 30 citizens and regulated persons. Comments were also received from the Independent Regulatory Review Commission (IRRC) and the United States Environmental Protection Agency (EPA). All comments received were given due consideration and review, and changes were made to the amendments in response to comments received. The Board believes that the regulations have been improved as a result of the efforts of the commentators. A copy of the Comment and Response Document prepared for this regulation may be obtained by contacting Rick Shipman, Division of Hazardous Waste Management, at the address given in Section B of this Preamble.

The changes contained within these final amendments were reviewed and approved with certain recommendations by the Department's Solid Waste Advisory Committee (SWAC) on July 9, 1998. SWAC suggested the following: 1) include the coproduct transition scheme in the preamble; 2) clarify the provisions of § 261a.7 (relating to residues of hazardous waste in empty containers) to indicate that the material in an empty container means a material that, if disposed, would be a hazardous or solid waste in accordance with the SWMA; 3) clarify that the definition of "financial institutions" could be broader than "banks"; 4) reexamine whether or not an 8,000 Btu/lb. minimum heating value is justified where the federal regulations set a 5,000 Btu/lb. minimum heating value for small quantity onsite burners, § 266a.108 (relating to small quantity on-site burners); and 5) clarify that the exemption from application and administration fees applies only to the recycling related activities prior to reclamation at a facility permitted for treatment of hazardous waste. The Department revised the final form regulation to conform to SWAC's suggestions except for SWAC's suggested changes to § 261a.7 and to the financial assurance provisions. Regarding § 261a.7, the Department determined that until a material is actually disposed, the Department does not have jurisdiction over a material that, if disposed, would be a hazardous or solid waste. Therefore, the regulation cannot be amended to regulate these materials. With regard to the suggestion that the term "financial institution" could be broadened to include more than banks, the Department agrees that the term "financial institution" should be broadened. However, for purposes of letters of credit, the Department found that it should only accept letters of credit issued by banks since banks are the only institutions for which the Department can be assured that the institution will issue a letter of credit that is regulated by Pennsylvania law. Finally, the Department reexamined whether or not an 8,000 Btu/lb. minimum heating value for small quantity onsite burners at § 266a.108 is justified. As explained below, the Department determined that a 5,000 Btu/lb. minimum heating value is adequate to ensure safe operation of small quantity onsite burners subject to § 266.108.

Substantive changes to the proposed amendments which are made in this rulemaking are discussed in this section by general topic. Several stylistic or typographical corrections are not discussed. Amendments to the regulations which have not been changed from the proposed rulemaking are discussed in the Preamble published with the proposed regulations at 27 Pa.B. 6407.

Format and interface with 40 CFR

The Board's proposed amendments to the hazardous waste regulations deleted the current text of the Pennsylvania hazardous waste regulations and added new chapters that incorporate by reference the Federal hazardous waste regulations. The purpose of incorporating by reference is to ensure that Pennsylvania's hazardous waste regulations are consistent with the federal regulations. In cases for which the Board has determined that Pennsylvania has a compelling state interest to promulgate regulations that are more stringent than the Federal regulations, the Board has promulgated regulations that are more stringent than the federal regulations.

The proposed regulations were formatted so that the first section of each Pennsylvania chapter contained language to incorporate by reference each corresponding federal part that Pennsylvania proposed to incorporate by reference. Individual Pennsylvania sections were

identified by a small letter "a" that was included in the section number. The sections with an "a" contained Pennsylvania additions to, deletions from or modifications of the federal regulations that had been incorporated. In most instances, the Pennsylvania chapter numbers corresponded to the parallel federal part numbers; the Pennsylvania subchapter numbers corresponded to the parallel federal subpart numbers; and the Pennsylvania section numbers corresponded to the parallel federal section numbers. In instances for which no Pennsylvania section number existed for a federal counterpart section, Pennsylvania decided to incorporate the federal section without modification. The final form regulation retains this format.

EPA was concerned with the Board's use of the word "notwithstanding" in sections that contained modifications to the federally incorporated language and the phrase "in addition to" in sections that contained additions to the federal language. EPA felt that the resulting regulation was confusing since it did not identify specifically the federal language that was being modified. The Board has removed all of the "notwithstanding" language and replaced it with language that identifies more clearly the federal language that is being modified by the Pennsylvania provisions. The Board has decided that the phrase " in addition to" clearly indicates that Pennsylvania intends to add to the federally incorporated provisions, and therefore, the Board has decided to continue to use the phrase "in addition to" to indicate additions to federally incorporated language.

EPA was also concerned about the Board's blanket substitution of terms found in the proposed regulation at § 260a.3(a) (relating to terminology and citations related to federal regulations). EPA was particularly concerned about individual Pennsylvania sections in the regulation for which the substitution of terms should not apply because EPA retains certain authorities or responsibilities, or because EPA cannot delegate certain incorporated provisions of 40 CFR in the state authorization process. Based on the EPA's identification of these individual sections, the Board has made specific exceptions from the substitution of terms found at § 260a.3(a) (relating to terminology and citations related to federal regulations). In situations in which a blanket substitution should not apply to a particular provision, but for which the Department inadvertently may have applied a blanket substitution, the regulatory provision should be read in a manner that is consistent with the law. For example, federal law prohibits states from enforcing certain RCRA provisions and gives the enforcement authority for these provisions to EPA exclusively. These provisions should be read to be unenforceable by Pennsylvania, regardless of whether or not Pennsylvania's regulation includes an inappropriate substitution of terms.

EPA pointed out that dates contained in the federally incorporated language or in Pennsylvania's proposed language could be confusing. The Board has reviewed all of the dates contained in the federally incorporated language and has modified those dates where it was necessary to reflect accurately Pennsylvania's authority to regulate. For example, the proposed regulation at § 264a.570 modified the federal date for compliance for certain drip pad operations from December 6, 1990 to a Pennsylvania date of January 11, 1997. Drip pads have been subject to federal regulation since December 6, 1990, but were not subject to Pennsylvania regulatory requirements until January 11, 1997. EPA suggested that Pennsylvania should retain the federal date for HSWA units in its regulations since the regulated community has been subject to federal regulation for HSWA units beginning on the date that EPA promulgated HSWA regulations. The

Board has reviewed EPA's suggestions on date modification and has concluded that Pennsylvania does not have the authority to enforce regulatory provisions prior to the date on which the regulatory provisions were promulgated in Pennsylvania. Therefore, the Board has retained Pennsylvania's effective dates.

Coproduct

The proposed regulation deleted from the definitions section of the hazardous waste regulations the terms "coproduct", "byproduct", "solid waste" and "waste" and replaced them with the federal definition for solid waste found at 40 CFR 261.2 (relating to definition of solid waste). Several commentators were concerned that certain facilities that produced coproducts under Pennsylvania's existing system would suddenly find themselves regulated under the federally incorporated language. The commentators suggested that the Board include a transition period for these facilities. The Board believes that most facilities currently producing a coproduct will find that their coproduct does not fall within the federally incorporated definition of solid waste at 40 CFR 261.2 (relating to definition of solid waste). However, the Board recognizes that it may not be aware of all of the facilities that may be handling materials as coproducts, and therefore, the final form regulation includes a transition period for these facilities at § 260a.30 (relating to variances from classification as a solid waste). The transition period is intended to allow the operators of these facilities to determine if their coproducts do not fall within the federally incorporated definition of solid waste or if the operators of these facilities will have to apply to the Department for a variance from classification as a solid waste pursuant to the federally incorporated variance provisions found at 40 CFR Part 260, Subpart C (relating to rulemaking petitions) and § 260a.20 (relating to rulemaking petitions). The final form regulation also includes a 90 day notification period during which time any person producing, selling, transferring, possessing or using a material as a coproduct that is not exempt from regulation in other parts of these final regulations must notify the Department so that the person can qualify for the transition period.

Definitions - Section 260a.10

In response to the concerns of several commentators, the Board has modified the definition section, § 260a.10 (relating to definitions), of the final form regulation so that all of the definitions are contained within one section rather than in several subsections. The definition section is now in alphabetical order and includes every term that modifies a federal definition, adds to a federal definition or is excluded from the incorporation by reference of the federal definitions. The Board received several comments suggesting that the final form regulation would be easier to follow if it included definitions found in Pennsylvania's SWMA. The final form regulation does include SWMA definitions for those terms that are replacing federal regulatory terms, as well as, for other terms, the inclusion of which is intended to clarify the SWMA definitions. For example, the term "disposal" is defined using the SWMA definition rather than the federal regulatory definition.

Definition of hazardous waste - Section 261a.3

The proposed regulation did not incorporate by reference the federal exclusion for high temperature metals reclamation (HTMR) slags derived from listed hazardous wastes that meet health-based criteria. The federal regulation at 40 CFR 261.3(c)(2)(ii)(C) provides an exemption for HTMR slags that meet certain criteria and that are disposed of in subtitle D units. The purpose of the federal exemption is to allow operators to dispose of hazardous HTMR slag in subtitle D landfills rather than requiring them to dispose of the slags in subtitle C facilities. The federal exclusion does not affect any other aspect of the management of hazardous HTMR slags. The Department has determined that these HTMR slags should be disposed of as hazardous wastes and should not be permitted to go to subtitle D landfills for the reasons set forth below.

Several commentators felt that the federal provision should be incorporated by reference so that these slags would be excluded from regulation. The commentators believe that if the Board does not incorporate the exclusion and eliminates the definition of coproduct, beneficial uses of HTMR slag would be eliminated and recycling of HTMR slag would be discouraged.

The Department reviewed this provision and found that even if the Board did adopt the federal exclusion for these HTMR slags, HTMR slags that are being recycled would nonetheless continue to be subject to all of the Pennsylvania regulations that apply to the storage or treatment of hazardous wastes. Furthermore, the Department believes that this requirement will encourage recycling of these slags, since recycling may be a more economical alternative than disposal of these slags in accordance with hazardous waste disposal requirements.

The Board also bases its decision to prohibit these slags from going to subtitle D landfills, because in past rulemakings, the Department received many comments from the public opposing a proposal to allow conditionally exempt small quantity generator (CESQG) hazardous waste to go to hazardous waste landfills. Like HTMR slags, EPA was not concerned about CESQG wastes going to subtitle D landfills but the public was concerned. Since EPA exempts HTMR slags from the definition of hazardous waste only to allow for its disposal in subtitle D landfills, the Board believes that the public would not approve of this exemption any more than it approved of the exemption to allow CESQG waste to go to subtitle D landfills.

The beneficial uses of HTMR slag will not be affected by the Board's decision not to incorporate the federal exemption. Beneficial uses do not involve "disposal in subtitle D units", which is the specific exemption in 40 CFR 261.3(c)(2)(ii)(C), and therefore, to the extent that beneficial uses are authorized by the current hazardous waste regulations, beneficial uses are authorized by the final form regulations. Since the final form regulations do not amend the existing hazardous waste regulations with regard to this exemption, the regulated community will experience no additional costs as a result of the final form regulations. In addition, HTMR slags that have been determined to be coproducts or that are beneficially used are HTMR slags that are residual wastes. The beneficial use or coproduct status of residual waste HTMR slags is unaffected by these hazardous waste regulations.

Based on comments received, the Board has decided to incorporate by reference the federal exemption for biological treatment sludge generated from the treatment of organic waste from the production of carbamates and carbamoyl oximes as well as wastewaters from the production of carbamates and carbamoyl oximes. The commentators felt that the Department's lack of experience with these wastes was not a sufficiently compelling reason to continue to regulate them as hazardous wastes.

The exemption at 40 CFR 261.3(c)(2)(ii)(D) for certain listed wastes from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156 and K157) was not included as an exclusion in the proposal because the federal listings and the exclusion were relatively new, controversial and had been challenged in a lawsuit (*Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394). In addition, the Department was unable to verify if any hazardous waste handlers for EPA hazardous waste numbers K156 and K157 exist in Pennsylvania at the time that the proposed regulation was being developed, because the waste listing was very recent. This lack of information prompted concern for automatically adopting by reference the exemption and its effect in Pennsylvania. The Department has researched whether any entities exist in Pennsylvania that have been affected by this exemption and determined that no entities within Pennsylvania would be affected by this exemption at this time. The Department has also conducted a detailed review of the EPA preamble of the carbamate rule. The Department has reviewed the extensive research and analysis conducted by EPA on the carbamate rule and believes that the exemption would be protective of human health and the environment if such a facility began to operate in Pennsylvania.

Exclusions - Section 261a.4

Several commentators suggested that the Board should incorporate without modification the federal exclusions found at 40 CFR 261.4 (relating to exclusions) and exclude the materials listed in 40 CFR 261.4(a) (relating to exclusions) from the definition of solid waste, rather than from the definition of hazardous waste. The Department has reevaluated the proposed manner of adopting 40 CFR 261.4 (relating to exclusions). After closer examination of the materials excluded from classification as solid wastes under 40 CFR 261.4(a) (relating to exclusions), the Department agrees that there are no compelling environmental or human health needs justifying further regulation of these materials as solid wastes in Pennsylvania's hazardous waste regulations. The final form regulation will adopt by reference and without modification 40 CFR 261.4 (relating to exclusions) so that the regulation excludes from classification as solid wastes the materials identified in 40 CFR 261.4(a) (relating to exclusions).

Special requirements for hazardous waste generated by small quantity generators - Section 261a.5

One commentator pointed out that the PK-5 amendments to the hazardous waste regulations allowed CESQG hazardous wastes to be mixed with waste oil and transported, stored or processed as municipal or residual waste, as long as the mixture was to be recycled or reused. The commentator noted that the proposed regulation did not include this provision and would require such mixtures to be regulated as hazardous wastes, unless the wastes were destined to be

burned for energy recovery. In accordance with the proposed regulation, if a mixture of CESQG hazardous waste and waste oil is destined to be burned for energy recovery, the mixture would be regulated as a residual or municipal waste. The commentator believes that if the proposed rule is finalized, waste oil burning will be encouraged rather than waste oil recycling.

The Board has incorporated by reference 40 CFR 261.5(j). This federal provision, as incorporated into the Pennsylvania program, applies Pennsylvania's waste oil regulations found at Chapter 266a, Subchapter E to mixtures of CESQG hazardous waste and waste oil only if the mixture is destined to be burned for energy recovery. This is the same as the federal equivalent waste oil provision found at 40 CFR Part 279, although EPA has proposed to broaden the class of mixtures subject to Part 279 to include CESQG waste mixed with waste oil that is not destined to be burned for energy recovery. Mixtures of CESQG waste and waste oil should be regulated in the same manner as any other conditionally exempt small quantity generator hazardous waste if the mixtures are not destined to be burned for energy recovery. It is the Department's intent to develop a draft chapter of waste oil regulations and to present it to the Board as a proposed rulemaking in the near future. The issue regarding mixtures of waste oil and CESQG generator waste has been addressed in that proposed rulemaking, which will also consider the final outcome of the May 6, 1998, EPA proposed/direct final rule regarding recycling of such mixtures.

Transporter requirements for conditionally exempt small quantity generators - Section 261a.5

The Board has added a provision to §261a.5(relating to special conditions for conditionally exempt small quantity generators) that allows CESQG facilities to transport their hazardous waste without using a hazardous waste transporter as long as the CESQG facility complies with § 261a.5 and 40 CFR 261.5. A CESQG facility is deemed to have a transporter license if the CESQG complies with § 261a.5(b) and 40 CFR 261.5.

Requirements for recyclable materials except waste oil - Sections 261a.2, 261a.4, 261a.6, 270a.60 and Chapter 266a

In the proposed rulemaking, the Board intended to require operators to obtain permits for treatment activities related to recycling of hazardous wastes. The proposed regulation included this requirement at § 261a.6 (relating to recyclable materials). Several commentators found the language of proposed § 261a.6 (relating to recyclable materials) to be confusing and unclear about the scope of Pennsylvania's recycling permit requirements and felt that provisions in the proposed regulations conflicted with each other. Other commentators requested that the Board exclude any regulation of recycling that is more stringent than the federal recycling requirements.

The Board did not intend to require permits for <u>all</u> recycling and reclamation activities in its proposed regulation. The proposed regulation incorporated most of the federal regulations that exempt from permitting most recycling and reclamation activities that occur within Pennsylvania. Specifically, the proposed regulation incorporated the federal definition of solid waste at 40 CFR 261.2 (relating to definition of solid waste); the federal exclusions at 40 CFR 261.4 (relating to exclusions); the federal provisions on recyclable materials at 40 CFR 261.6 (relating to recyclable materials) and the federal provisions for reduced management standards for

certain recycling activities contained in 40 CFR Part 266 (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities). The final form regulations clarify the Board's intent to regulate certain activities associated with recyclable materials.

After the proposed regulations were published, the Department reviewed all of the hazardous waste recycling activities that occur in Pennsylvania to determine how many facilities are impacted by its recycling regulations and whether the recycling regulations are essential to assuring proper management of hazardous waste that is destined for recycling or reclamation. As a result of this review, the Department identified approximately sixty hazardous waste recycling facilities in Pennsylvania that are currently subject to recycling requirements that are more stringent than the federal requirements. Of these, six are required to receive individual permits - the remainder operate pursuant to a permit-by-rule. Onsite solvent recovery accounts for the greatest number of the activities subject to a permit-by-rule.

Regarding the individually permitted facilities, the six facilities are subject to the federal storage permit requirements at 40 CFR 261.6(c) (relating to recyclable materials). In addition to the storage permit requirement, the Department found that the following processes occur at these facilities prior to reclamation: physical treatment, chemical/physical treatment and thermal treatment. The Board has determined that the SWMA requires these facilities to obtain permits for these activities, because these activities make the waste suitable for recovery. Furthermore, the activities at these facilities are identical to activities that are regulated as permitted treatment activities at hazardous waste facilities where the treatment process neutralizes the waste; renders the waste nonhazardous or less hazardous; or makes the waste safer for transport, storage, or disposal.

Regarding the facilities regulated by permit-by-rule, the Department determined that permits-by-rule ensure adequate protection of human health and the environment without being overly burdensome on the facilities' operations. Permit-by-rule is a self implementing process where the facility is deemed to have a permit as long as the facility complies with the requirements specified in the applicable permit-by-rule that is contained in the regulation. A permit-by-rule does not require the operator to submit a permit application or financial assurance information; and record keeping and reporting are minimal. The Department uses the permit-by-rule approach for those activities for which the statute mandates regulation but for which the technical complexity of the operation does not justify a full written permit. The permit-by-rule provisions for hazardous waste recycling facilities are available for: 1) battery manufacturing facilities that treat spent, lead acid batteries prior to reclaiming them; 2) facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of precious metals; and 3) facilities that treat hazardous waste onsite prior to reclaiming the hazardous waste. The permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

Examples of activities conducted at battery manufacturing facilities reclaiming spent lead acid batteries that are covered by a permit-by-rule include: 1) breaking battery cases to remove acid, 2) physical separation of the lead components from the plastic cases, and 3) physical mixing of the lead component with flux materials, limestone, coke or other additives to prepare the materials for charging to the secondary lead smelter. The smelter is the reclamation unit and is not subject to a permit; the other activities described above meet the SWMA definition of treatment.

Examples of activities conducted at facilities that reclaim economically significant amounts of precious metals that are covered by a permit-by-rule include: 1) various physical, chemical or electrochemical methods used to extract silver metal from x-ray or photographic film fixers, and 2) drying silver recovery media prior to charging to the secondary smelter. The smelter is the reclamation unit not subject to a permit. The other activities described meet the definition of treatment.

Examples of activities conducted at facilities that reclaim hazardous waste onsite can be extremely varied. The most common onsite reclamation is solvent recovery. Physical separation of the spent solvent and water or sludge would constitute an activity subject to permit-by-rule. In some cases the spent solvent can be placed directly into a distillation unit, in which case there is no treatment prior to reclamation and the permit-by-rule would not be applicable. The distillation unit is the reclamation unit not subject to a permit. Other onsite reclamation activities that require a physical, chemical or thermal process prior to placing the recyclable materials in any of the various reclamation units for onsite recovery would be subject to permit-by-rule rather than a full hazardous waste treatment permit.

In the final form regulation, the only federal provision regarding recycling exemptions that the Board has not incorporated by reference is 40 CFR 261.6(c) (relating to recyclable materials). This federal provision includes a parenthetical phrase that states that the recycling process is exempt from regulation. In retaining the exclusion of 40 CFR 261.6(c) (relating to recyclable materials) from Pennsylvania's regulations, Pennsylvania does not intend to regulate all recycling activities. Specifically, reclamation and recovery processes tend to resemble or replace a manufacturing process, and therefore, the permit requirement is not intended to apply to the reclamation or recovery process itself. Operation of the recovery process such as feed rates, temperature, residence time, and the construction of the recovery unit are dictated by the specific process and should not be regulated in the same manner as a waste management unit. The Department intends to regulate only those activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery. Consequently, the Department does not intend to regulate the actual reclamation or recovery process.

The Department does intend to regulate more extensively than the federal government certain hazardous waste activities that occur prior to the actual reclamation or recycling process, such as those processes described in the examples above. The Department believes that it is responsible for ensuring that hazardous waste is properly managed before it enters the recycling process so that it poses a minimal risk to human health and the environment. The Board believes

that including 40 CFR 261.6(c) (relating to recyclable materials) in Pennsylvania's regulations adds confusion since the Department has been presented with an argument that 40 CFR 261.6(c) (relating to recyclable materials) exempts all non-storage related recycling activities, including non-storage activities that occur prior to the actual recycling or reclamation process. Therefore, the Board is not incorporating by reference 40 CFR 261.6(c) (relating to recyclable materials). This is not a substantive change from the proposed rulemaking, but it simply clarifies a point which the commentators found confusing.

In addition to the Board's decision not to incorporate 40 CFR 261.6(c) (relating to requirements for recyclable materials), the Board is promulgating regulations at 25 Pa. Code Chapter 266a (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities) that are more stringent than the federal requirements for battery manufacturers and precious metals recovery operations. 40 CFR 266.70 (relating to precious metals reclamation) requires precious metals reclaimers to comply with minimal requirements. The Board has added to the federal requirements the requirement for precious metal reclaimers to obtain an individual permit pursuant to § 261a.6(c) (relating to recyclable materials) or to comply with a permit-by-rule established by § 270a.60(b)(6) (relating to permits-by-rule). The permit-by-rule allows the precious metals reclaimers to operate in a manner that is protective of human health and the environment but that is less burdensome than operating pursuant to an individual permit. The Board does not intend to regulate the recovery process itself, only those activities that occur prior to the recovery process to make the material suitable for recovery such as chemical or electrochemical precipitation and hydrometallurgical processes. In addition, § 266a.70(a)(1) (relating to precious metals reclamation) grants to transporters of recyclable materials used for precious metals recovery a license for the transportation of those materials if certain requirements are met. This transporter license by rule is intended to encourage precious metals recovery by easing the burden and cost of transporting the recyclable materials.

Battery reclaimers are subject to the requirements of 40 CFR 266.80 (relating to lead acid battery reclamation). As with the precious metals reclaimers, the Board's regulation at §266a.80 (relating to lead acid battery reclamation) requires battery reclaimers to obtain an individual permit pursuant to the requirements of § 261a.6(c) (relating to recyclable materials), unless the operator is eligible for the permit-by-rule established by § 270a.60(b)(3) (relating to permits-by-rule). The federal regulations require operators of spent lead acid battery reclamation facilities to obtain a storage permit only. The permit-by-rule at § 270a.60(b)(3) applies to battery manufacturing facilities that reclaim spent lead acid batteries. Again, the Board's intent in promulgating the permit-by-rule is to encourage battery manufacturers to reclaim spent lead acid batteries in a manner that is protective of human health and the environment but that is less burdensome than operating pursuant to an individual permit.

Consequently, all Pennsylvania recycling activity regulation that is more extensive than the federal requirements is found at §§ 261a.6, 266a.70, 266a.80 and 270a.60. As explained above, Pennsylvania does not intend to regulate the recycling process itself, but it does intend to regulate certain activities that occur prior to the recycling process. In making this decision, the Board has

promulgated several permits-by-rule so that most facilities will not be subject to all of the burdensome requirements associated with securing an individual permit.

The Board supports the hierarchy of preferred waste management practices in order to promote more effective methods of hazardous waste management. To promote the improved operation of existing hazardous waste recycling facilities and to encourage the development of new improved technologies for hazardous waste reclamation, the final-form regulation eliminates the requirement for permit application, modification and administration fees for hazardous waste recycling permits, and for research, development, and demonstration permits (40 CFR 270.65) that employ new improved technologies for hazardous waste reclamation. The elimination of the fee requirements applies only to those activities directly involved in a recycling activity. If a facility conducts other treatment, storage or disposal activities in addition to the recycling activity, the fees are applicable to those other activities.

Residues of hazardous waste in empty containers Section 261a.7

The proposed regulation retained Pennsylvania's requirement to manage as hazardous wastes residues from empty containers and inner liners removed from empty containers if the residues meet the criteria used to identify hazardous waste. The Board did not intend the proposed regulation to change the existing practices for the management of hazardous waste in empty containers or inner liners removed from empty containers. Two commentators felt that the proposed regulation classified as a residual waste all containers or container liners being transported to a facility for processing or disposal, regardless of whether the containers could be reused or otherwise qualify as coproducts under the residual waste program. In addition, the commentators found the regulation to be unclear as to whether the residual waste classification of the containers and container liners applies only during transportation or during other stages of container and container liner management. Finally, the commentators did not think that the regulation provided the regulated community with clear guidance on how to manage residues from empty containers.

The regulation was initially written to classify as residual waste empty containers and inner liners removed from empty containers to allow operators to transport these items for processing or disposal without using a hazardous waste transporter The residual waste classification was intended to apply to these items for transportation purposes only. In addition, the regulations were intended to regulate as hazardous wastes those residues that may remain in containers or inner liners if those residues are ever removed from the empty containers or inner liners. The regulation did not intend to regulate the residues while they remain in the empty containers or inner liners.

The Board agrees that the proposed regulation is confusing. Therefore, the final form regulation clarifies the intent of the proposed regulation. The final form regulation specifically states that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners. The final form regulation focuses on the residues rather than on the containers that hold the residues. As intended by the proposed regulation, the containers,

tanks and inner liners will not be subject to hazardous waste regulation unless the containers, tanks or inner liners satisfy the criteria used to determine whether or not a solid waste is a hazardous waste. Therefore, if a tank, container or inner liner is determined to be a residual waste under the SWMA, the tank, container or inner liner will be eligible for residual waste coproduct status if it meets all of the residual waste coproduct criteria.

SWAC was presented with a proposal that included the term "hazardous material". SWAC specifically requested that the Department clarify the provisions of § 261a.7 to indicate that the material in the empty containers that is subject to these regulations is a material that, if disposed, would be a hazardous or solid waste under the SWMA. After further review, the Department found that it is unnecessary to use the terminology "material that, if disposed, would be a solid or hazardous waste" since the regulation can only apply to hazardous wastes in accordance with the applicability provisions of the hazardous waste regulations and the SWMA. As written in its final form, the regulation only applies to hazardous wastes.

The Manifest - Chapter 262a, Subchapter B

In addition to the federal manifest requirements, the Board proposed to require the use of a manifest that may have up to six parts rather than the four part manifest required by the federal regulations. The two additional copies are sent from a Pennsylvania treatment, storage or disposal (TSD) facility to the generator state and disposal state. If Pennsylvania is both the generator and disposal state, only one manifest copy must be sent to Pennsylvania in order to satisfy this requirement. The Board believes that hazardous waste cannot be properly monitored unless the generator state and the disposal state can track the waste. Since the manifest contains all of the necessary information once it gets to the TSD facility, the regulation requires the TSD facility to send the manifest copies to the generator and disposal states. The existing Pennsylvania regulation requires the use of a manifest that may have up to eight parts. The two copies that the final form rule will no longer require are the copy that the generator sends to the generator state and the copy that the generator sends to the disposal state.

Several commentators pointed out that EPA is considering revising the manifest system to streamline it. The commentators were concerned that Pennsylvania facilities will receive no benefit if EPA does streamline the manifest system. In addition, the commentators felt that sending the additional copies to the generator and TSD states does not serve any health, safety or environmental protection purpose.

In addition to providing the generator with a mechanism for tracking hazardous waste, the federal manifest system was designed as a paperwork reduction effort so that EPA would not receive a copy of each manifest from each shipment in each of the 50 states. However, the Board has determined that if the regulatory agency does not receive a manifest copy, it cannot track the movement of the waste to determine whether operators are in compliance with the hazardous waste regulatory requirements. The Department's manifest copy is also used to verify payment of fees required by the Hazardous Sites Cleanup Act, 35 P.S. § 6020.101 et seq. The biennial report does not provide the Department with enough information to determine compliance with fee payment requirements since the report provides data from the year prior to the year in which the

report is compiled. Finally, the manifest data is also used in developing the Hazardous Waste Facilities plan.

EPA and DEP are considering the application of electronic data interchange for manifest submission. This will not take the place of manifest requirements, but it will provide an additional option to satisfy the reporting requirements that will result in less paperwork and faster more accurate data transmission. The Department is currently exploring this option with several companies.

Transfer Facility Requirements - Section 263a.12

The proposed regulation retained a Pennsylvania requirement for all transporters to submit for approval a preparedness, prevention and contingency plan if they utilize in-transit storage of hazardous waste for more than three days but no more than 10 days or if they transfer hazardous waste from one vehicle to another. Several commentators pointed out that the regulation does not provide a deadline for Department review and approval of PPC plans. One commentator suggested that the Department should be allowed 30 days to complete the review, and if the review is not approved in that time-frame, then the plan should be considered approved.

The Board agrees that the time-frame for the review of an administratively complete plan should be limited. Review of transfer facility preparedness, prevention and contingency plans will be added to the Department's Money Back Guarantee Program, which requires the Department to review listed submissions within a set time frame.

Transporter Compliance with the Manifest System - Sections 263a.20 and 263a.21

The transporter manifest requirements have been clarified to require transporters to print or type their names on the manifest forms and to prohibit a transporter from accepting or transporting hazardous waste that does not accurately correspond with the information contained on the manifest form.

Bonding - Section 263a.32

The provision that requires hazardous waste transporters to post bonds was included in Pennsylvania's hazardous waste regulations prior to this rulemaking. The proposed rulemaking did not include a change to this provision. One commentator felt that transporter bonds are unnecessary and that the requirement is unenforceable due to a USDOT ruling which preempts it. The commentator also felt that the financial cost of possible environmental harm resulting from the transportation of hazardous waste is covered by the liability insurance requirements of the regulations.

The Board has retained the bonding requirements for transporters based on a DC Circuit Court decision, *Massachusetts vs. US DOT*, 93 F.3rd 890. In that case, the DC Circuit Court found that the Massachusetts bonding requirements for hazardous waste transporters were not preempted by Federal law. Pennsylvania's bonding requirements are similar to Massachusetts's,

and therefore, the Board believes that Pennsylvania's bonding requirements are not preempted by federal law.

The bond is required by the SWMA, regardless of whether or not the environmental impairment risk is covered by liability insurance. In addition, the bond requirement has helped the Department receive timely and accurate paperwork and fee submission from the regulated community. Finally, the Department's ability to hold and forfeit a collateral bond provides incentives to transporters who owe money to the Department for civil penalties to pay those penalties.

Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Purpose and Scope - Sections 264a.1 and 265a.1

The final form regulation is intended to have the same scope as the proposed regulation, but the final form regulation has fewer subsections than the proposed regulation. The final form regulation has condensed the same information that was contained in the proposed regulation into fewer subsections. The final form regulation also relocated sections 264a.1(b)(6) and 265a.1(b)(6) (relating to surface impoundments and landfills) to the specific provisions that deal with surface impoundments and landfills.

Module I requirements - Sections 264a.13 and 265a.13

The Board's proposed regulation retained the requirement for operators of TSD facilities to seek pre-approval from the Department before accepting new waste streams. This requirement is known as the Module I or Mod I requirement. Several commentators opposed this requirement. The commentators stated that the requirement to obtain Department approval before accepting new waste streams exceeds federal requirements, adds unnecessary costs, and delays their ability to accept new wastes and customers. The commentators felt that the Mod I is unnecessary since it duplicates approvals granted through the permitting process. One commentator also expressed concern about the safety of confidential business information which the operator may be required to submit as part of the Source Reduction Strategy. One commentator requested that the Board retain the Generic Module I process or an equivalent process to expedite an owner and operator's ability to receive new waste streams and to reduce burdens on the owner and operator who receives consistent waste from various generators.

In the final form regulation, the Board has replaced the Mod I requirement with case specific individual permit conditions for TSD facilities operating under a permit issued pursuant to Chapter 264a. In place of the Mod 1, § 264a.13 requires an operator to notify the Department before it accepts a new waste stream. The notification requirements will be contained in individual permits rather than in a regulation. All existing permitted facilities will be required to continue to use the Generic Mod I and the Mod I system unless they obtain a permit modification. The requirement for generators to submit their Source Reduction Strategy to the Department as part of this approval process has also been eliminated.

The final form regulation retains the Generic Mod I and Mod I requirements of § 265a.13 for interim status facilities. These facilities do not have permits or approved waste analysis plans in place, so the Mod I and Generic Mod I requirements in this section are necessary to ensure that the facilities are operating in a manner that is protective of human health and the environment. When these facilities apply for and receive operating permits, the Mod I and Generic Mod I requirements will no longer apply to them, provided that an alternative to the Mod I requirement has been included in the permit.

General inspection and construction inspection - Section 264a.15 and 265a.15

The Board proposed retaining the Pennsylvania requirement for an operator to obtain prior Department approval before beginning construction on a new facility. One commentator felt that general inspection authority is well provided for elsewhere in law and regulation and that the regulation micro-manages the construction schedule. The commentator also felt that waiting for approvals will extend the time and cost of construction without commensurate benefit. The Board does not intend to manage the construction schedule for any facility, but the Board does believe that the Department should be fully aware of the proposed schedule. This permits the Department to be on-site for critical phases of construction, (for example, installation of the liner and drilling of monitoring wells) that are essential to ensuring adequate protection of human health and the environment. Therefore, the Board has decided to retain this requirement.

Content of contingency Plan - Sections 264a.52 and 265a.52

The proposed regulation required operators to submit contingency plans pursuant to §§ 264a.52 and 265a.52. These provisions required that the operators write contingency plans that comply with Department guidance for contingency plans. Several commentators stated that requiring contingency plans to be submitted in accordance with Department guidance for contingency plans is unclear since it does not identify the Department guidance for contingency plans. The commentator suggested that the Board include guidance as part of the regulation. The commentators also believed that this provision is vague since it requires the plan to be submitted "at the time in the application process the Department prescribes." In addition, commentators stated that the federal "Integrated Contingency Plans" are adequate and the commentators requested that the Department explain the insufficiency of the federal requirements. Finally, one commentator asked the Department to include an estimate of the economic impact that the Department contingency plan will have on the regulated community.

The Board has removed from the final form regulation the requirement to comply with the Department's Guidelines. The Department's Guidelines were prepared as a guidance document to assist the regulated facilities by consolidating all emergency response plan information into one document. These guidelines are updated periodically with input from the various Department programs that require emergency response plans. The guidance document is not included in the regulations, because it is not intended to be a regulation.

The EPA, as the chair of the National Response Team (NRT), published the Integrated Contingency Plan Guidance in the June 5, 1996 Federal Register. EPA's Guidance is intended to

provide a mechanism for consolidating multiple plans that one facility may have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan (ICP). Emergency response plans prepared from either guidance would contain very similar information but with different formats, therefore, the Board has decided to allow operators to use either guidance document - the Department's or EPA's - in preparing their contingency plans. Since the requirements for submitting contingency plans with permit applications are clearly defined in other areas of the regulations; the Board has deleted from the final form regulation §§ 264a.52(2) and 265a.52(2).

Emergency procedures - Sections 264a.56 and 265a.56

Several commentators stated that the emergency procedure requirements in §§ 264a.56 and 265a.56 are unauthorized by state law, to the extent that they require an emergency coordinator to notify a federal agency. In addition, several commentators noted that the Federal law requires notice to either a designated government official or the National Response Center, while the state provision requires notification to both the Department and the National Response Center. The commentators believe that notification should be given to the Department's regional offices rather than the Department's Central Office in Harrisburg, as the proposed regulation requires. Other commentators suggested that it is more efficient to notify the Department's Central Office rather than requiring emergency coordinators to figure out which regional office to call. The commentators suggested reviewing the selection of the phone numbers to assure that DEP is not duplicating the services and equipment of other Commonwealth entities. Finally, one commentator stated that the proposed regulation duplicated Federal language and that the duplicative language should be eliminated.

The Department has reviewed the emergency notification requirements proposed in §§ 264a.56 and 265a.56 and 40 CFR 264.56 and 265.56 and agrees that it is unnecessary to include the requirement to notify the National Response Center given the incorporation by reference of that requirement at 40 CFR 264.56(d)(2) and 265.56(d)(2). The Board has changed the final form regulation so that the emergency coordinator will continue to notify the Department by telephone, but the emergency coordinator may contact either the Department's regional office or Central office The Board has also deleted §§ 264a.56(2) and (3) and 265a.56(2) and (3) since they are duplicative of requirements incorporated by reference.

TSD Use of the Manifest System - Sections 264a.71 and 265a.71

One commentator noted that the Board should not use the term "six part manifest" in its regulations since the maximum number of manifest copies required is six. Depending on the number of parties involved in handling hazardous wastes, the number of manifest copies could be less than six. Therefore, the Board has deleted this language from the regulation and has clarified that the manifest used by TSD facilities should be either a Pennsylvania manifest form or another form approved by the Department.

Biennial Reports - Sections 264a.75 and 265a.75

Several commentators stated that the proposed rule required operators to retain biennial reports for the life of the facility. They felt that this requirement created unnecessary paperwork without serving any practical purpose. The Board agrees and has changed the final form regulation to conform to the federal requirement that operators retain biennial reports for three years.

Groundwater Monitoring - Section 264a.97

Several commentators stated that compliance and monitoring reports required by proposed § 264a.96 (relating to compliance period) exceed federal requirements and add unnecessary costs to the regulated community. In addition, it was noted that there are no exemptions from these requirements; and therefore, the proposed regulations, unlike the federal regulations, lack flexibility that is necessary to deal with different conditions that exist at different sites.

The monitoring and reporting requirements that the Board proposed in § 264a.96 (relating to compliance period) have been relocated to § 264a.97. These provisions are authorized in the federal program by the incorporated federal regulations found at 40 CFR 264.91 (relating to required programs), 40 CFR 264.97 (relating to general groundwater monitoring requirements), 40 CFR 264.98 (relating to detection monitoring program) and 40 CFR 264.99 (relating to compliance monitoring program). However, the federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. In addition, the provisions only apply to certain facilities that have releases to groundwater.

The Board has determined that permit conditions are appropriate for requirements that are determined on a case-by-case basis rather than for requirements that are applicable to an entire class of facilities. Pennsylvania's seasonal, climatological and hydrological features, including a high water table, make it necessary to require all surface impoundments, land treatment units, landfills and, in some cases, waste piles operating in Pennsylvania to conduct the same type of groundwater monitoring and reporting. Consequently, the Board's final form regulation continues to require certain monitoring and reporting requirements, by regulation rather than by permit condition. Specifically, the Board found that the proposed monitoring and reporting requirements found in proposed § 264a.96 (relating to compliance period) are necessary for the protection of human health and the environment for the following reasons:

1. A quarterly interval between sampling events would allow for early detection of a potential problem and for the operator to respond to and correct a problem before significant wide-spread contamination would occur.
2. The frequency established provides a basis for valid statistical evaluation of groundwater data.
3. Quarterly data generated considers Pennsylvania's seasonal, temporal and spatial variability and climatological variations which are not adequately taken into account with less frequent monitoring.

4. These reporting requirements allow the Department to receive the data in a timely fashion. It can be analyzed and assessed in the early stages of any environmental problem. This provides a pro-active rather than a remedial response which is the purpose of the hazardous waste regulations.

These monitoring and reporting requirements, like the federal requirements, only apply to active facilities that have releases to groundwater. For facilities that have gone through closure and are in post-closure care, some flexibility may be warranted. The Board has provided flexibility on the issue of monitoring and reporting frequency in cases in which the owner or operator of a facility that is conducting post-closure activities has demonstrated that the facility is secure. In these situations, a reduction of the monitoring frequency from quarterly to semi-annually will be allowed. The final form regulation, by incorporation of federal language found at 40 CFR 264.117 (relating to postclosure care and use of property) and 40 CFR 264.118 (relating to postclosure plan; amendment of the plan), provides this flexibility.

Closure and Post-closure - Chapters 264a and 265a, Subchapter G

A minor change to Sections 264a.115, 264a.120, 265a.115 and 265a.120 has been made in the final form rule clarifying that Pennsylvania specific procedures are required for owners or operators to certify closure and post-closure. The final form retains the certification provisions previously found at 25 Pa. Code § 267.26 (Closure an Post-closure Certification) and which have been relocated in the final form rule to §§ 264a.166 and 265a.166. The final form rule is different from the proposed regulation because the proposed regulation incorporated by reference 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h) (relating to financial assurance for closure and financial assurance for post-closure care). These Pennsylvania specific certification procedures are necessary to demonstrate that the facility is closed and that the closure or post-closure bond can be released by the Department. This change was necessary because the federal provisions at 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h) that were proposed to be incorporated by reference do not provide a mechanism for release of closure or post-closure bonds.

Financial Assurance for Closure and Post-closure Care - Chapters 264a and 265a, Subchapter H

The final form regulation has been slightly modified. The final form regulation includes cross-references that connect together different financial assurance provisions. The final form regulation also updates some of the terminology used in the financial assurance regulations. The term "financial institution" has been broadened to include entities other than banks, and the term "customer" has been changed to "operator".

Financial Assurance for closure and financial assurance for post closure - Sections 264a.143, 264a.145, 265a.143, and 265a.145

Several commentators noted that Pennsylvania's failure to incorporate 40 CFR 264.143, 265.143, 264.145, and 265.145 (relating to financial assurance for closure and financial assurance for post-closure) puts Pennsylvania's facilities at a competitive disadvantage, since Pennsylvania's closure and post-closure RCRA requirements foreclose all of the financial instrument options available under these federal provisions. The commentators recommended that the Board incorporate the federal provisions into Pennsylvania's regulations.

The Board has reviewed all of the federal provisions and has determined that, with the exception of the bond pledging a corporate guarantee, the federal financial instruments that are authorized by 40 CFR 264.143 and 264.145 fail to satisfy the SWMA requirement that operators submit bonds. In addition, any federal financial assurance mechanism that requires the use of a standby trust fund fails to satisfy the SWMA requirement that all forfeited bond proceeds go to the Solid Waste Abatement Fund.

Liability Requirements - 40 CFR 264.147 and 265.147

Several commentators noted that proposed § 264a.147 (relating to liability requirements) contains liability insurance requirements that exceed federal requirements. Commentators expressed opinions that the federal requirements are sufficient and should be adopted by reference. The requirement for an ordinary public liability policy, including the amounts required were proposed to be relocated from § 267.42 (relating to insurance coverage) to §§ 264a.147 and 265a.147 (relating to liability requirements). The proposal anticipated the need to continue to differentiate between environmental impairment and ordinary public liability coverage. Upon further review, the Department has determined that the federal insurance provisions satisfy the SWMA requirements. Changes have been made to EPA's insurance requirements since Pennsylvania last amended its hazardous waste insurance requirements, which now include comprehensive general (ordinary public liability) coverage, and consequently, the federal insurance requirements now satisfy the SWMA requirements. The final rulemaking will incorporate the federal requirement for liability requirements - the separate proposed requirement for comprehensive general liability (ordinary public liability) coverage has been removed from the final form regulation.

Wording of Instruments - Sections 264a.151 and 265a.151

The proposed regulation incorporated by reference 40 CFR 264.151 and 265.151(relating to wording of instruments). The Board has decided not to incorporate this federal provision since Pennsylvania will review each instrument on a case by case basis to determine if it complies with Pennsylvania law and if it is appropriate for the facility that is submitting the financial instrument.

Form, terms and conditions of bonds - Sections 264a.154 and 265a.154

EPA also commented that, unlike the federal requirements, the Commonwealth does not require the owner or operator to submit the letter of credit at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The Board agrees and has modified §§ 264a.154 and 265a.154 to require submittal of a letter of credit at least 60 days prior to the date on which hazardous waste is first received by the facility.

Special conditions for collateral bonds and bonds pledging corporate guarantee - Sections 264a.156 and 265a.156

EPA commented that §§ 264a.156(d)(1) and 265a.156(d)(1) of the proposed regulation specifies that the letter of credit shall be a standby or guarantee letter of credit. The Federal code only specifies a standby letter of credit and does not appear to allow a guarantee letter of credit. Depending on the Commonwealth's interpretation of "standby letter of credit" and "guarantee letter of credit", EPA felt that Pennsylvania could be less stringent than the Federal rule. The Board has reviewed the Pennsylvania requirements for a standby or guarantee letter of credit and has found that either term is used to describe the same type of letter of credit. Therefore, the final form regulation has eliminated the phrase "or guarantee" from §§ 264a.156(d)(1) and 265a.156(d)(1).

EPA noted that the Federal code at 40 CFR 264.143(d)(5) requires that the letter of credit must be issued for at least one year, must be automatically extended for a period of at least one year, and must require at least a 120 day notification by certified mail prior to termination. EPA believes that Pennsylvania could be less stringent because the proposed regulation does not include these specific requirements. The final form regulation includes a modification to § 264a.156 to reflect the one year minimum time periods and the 120 day termination notice by certified mail. The same change has been made to § 265a.156.

Cost estimate for closure and post-closure care - Sections 264a.161 and 265a.161

The final form regulation deletes these proposed sections. The proposed provisions require an owner or operator to prepare a detailed written cost of closing the facility and providing post-closure care as specified in 40 CFR 264.142, 264.144, 265.142 and 265.144. These requirements are already incorporated by reference and therefore, the proposed regulation is unnecessary.

Bond amount adjustments, adequate bond and bond - Sections 264a.162 and 265a.162

EPA commented that the responsibility for determining if a bond amount change is needed rests with the permittee under the federal requirements and with the Department under the Commonwealth's requirements. This could make the Commonwealth less stringent if the Department fails to demand that the permittee increase the bond amount in the same circumstances where the permittee would have to do so under the Federal code. The Board agrees with this comment and has changed the final form regulation to require operators to

deposit with the Department additional amounts of bond if the cost of closure or post closure increases. This provision has been added to §§ 264a.162 and 265a.162.

Bond Release - Sections 264a.165 and 265a.165

EPA stated that under the proposed Pennsylvania regulation at §§ 264a.165(e) and 265a.165(e) the Department has six months within which to make a decision on a bond release application. Under the Federal code the Regional Administrator has 60 days to make a decision and notify the owner. EPA believes that this could make the Commonwealth less stringent than EPA. The Board has retained the six month review period for a bond release. The Board has determined that the Department must have six months to reach a decision on bond release so that the Department has the time necessary make a correct decision on bond release. Limiting the time period to a 60 day maximum could force a decision which is based on time rather than on accurate and complete site information. Nothing in the final form regulation prevents the Department from making a bond release decision before the six month time period expires.

Management of Containers - Sections 264a.173 and 265a.173

One commentator recommended that the Department incorporate by reference 40 CFR 264.173 and 265.173 (relating to the management of containers) without further restrictions on the labeling of containers. The commentator stated that Federal regulations require that any hazardous waste being accumulated in a satellite area be placed in a container labeled as hazardous waste and that the operator use DOT approved containers. The commentator pointed out that containers placed in a storage area (including generator storage of less than 90 days) must, according to Federal regulations, have the proper labels that indicate the type of waste in the containers, waste codes of the waste in the containers, and date the waste was placed in the storage area. The Board's proposed regulation never included a Pennsylvania labeling requirement, although the preamble inaccurately stated that the labeling requirement was being proposed. The Board's final regulation does not include a Pennsylvania labeling requirement for containers, and any applicable Federal labeling requirements will continue to apply.

Containment - Sections 264a.173, 265a.173, 264a.175 and 265a.175

Several commentators noted that proposed §§ 264a.175 and 265a.175 (relating to management of containers) included detailed provisions applicable to storage of hazardous waste containers. Specific requirements for maximum container height, width and depth of container groups, and aisle widths were prescribed. Comparable federal regulations do not contain such exact requirements. Commentators stated that the proposed State provisions do not accommodate newer containers known as "totes" and suggest that the final form regulation be more performance oriented.

The Board agrees and has modified the proposed language in §§ 264a.175 and 265a.175 (relating to containment in the proposed regulation), to exclude the prescriptive nature of the requirements and modify the proposed regulations towards performance-based requirements directed toward the use of best management practices, that is, maintaining appropriate aisle

spacing, heights and configuration of containers to allow for the use of more modern containers and to facilitate inspections and unobstructed movement of emergency equipment and personnel. The requirements for the management of containers have also relocated to §§ 264a.173 and 265a.173 (relating to management of containers) in the final form regulation.

Inspections - Sections 264a.195 and 265a.195

One commentator suggested deleting the requirement found at § 265a.195 (relating to inspections) to inspect hazardous waste tanks every 72 hours when the facility is not operating. The commentator felt that site specific best management practices could be employed to replace inspection requirements when the facility is not operating. Another commentator stated that the inspection requirement should be retained.

After consideration, the Board has decided to retain the proposed regulation. The proposed language clarified that the inspections were only required at facilities that were not operating but that continued to store waste in the tank and tank system components. The Board has determined that, as long as waste remains in the tank and tank components, there is a potential for leaks and spillage, and therefore, the facility should be inspected on a regular basis.

Surface Impoundments - 264a.221, Subchapter K

In the final form rule the variance procedure that was proposed for surface impoundments was relocated from Section 264a.1(b)(6)to the specific Subchapters for surface impoundments, Section 264a.221 (Design and operating requirements). This was done for clarity and the convenience of surface impoundment operators.

Land Treatment - 264a.276, Subchapter M

The final form rule eliminates a redundant requirement from the proposal. In the proposal, Section 264a.276 repeated the annual application of cadmium rates found at 40 CFR § 264.278(b)(ii), which is incorporated by reference. Reiterating those application rates in the regulation is not necessary.

Landfills - 264a.301, Subchapter N

In the final form rule the variance procedure that was proposed for surface impoundments and landfills was relocated from Section 264a.1(b)(6) to the specific Subchapter for landfills, 264a.301 (Design and operating requirements). This was done for clarity and the convenience of operators of landfills.

Corrective Action for Solid Waste Management Units - 40 CFR Part 264, Subpart S

The proposed regulation did not incorporate by reference the corrective action program found at 40 CFR Part 264, Subpart S. Upon further review, the Board has decided to include the corrective action program in Pennsylvania's hazardous waste regulation. The Board's decision is

based on an EPA comment stating that Pennsylvania must have regulations for corrective action if it intends to seek authorization for corrective action. Although Pennsylvania has not decided whether or not it will seek authorization for corrective action, the final form regulation does include the corrective action provisions. However, unlike the other provisions of the final form regulation, the effective date of the corrective action provisions is the date on which EPA approves of the corrective action provisions as part of Pennsylvania's hazardous waste program. The Board has decided to include the corrective action regulations in the final form regulation so that Pennsylvania can easily seek authorization for the corrective action program in the future, if it decides that it wants to administer the corrective action program.

Recyclable Materials Used in a Manner Constituting Disposal, Chapter 266a, Subchapter C

The proposed regulations required prior written Department approval of products that contain recyclable materials to be used by the public in a manner that constitutes disposal. The Board has determined that this requirement is no longer necessary. After surveying other states that do not have this requirement, the Department found that these states did not report any problems that they felt could be aided by inclusion of this type of requirement, and therefore, the Board has eliminated this requirement from the final form regulations.

Waste Oil - Sections 261a.6(a) and 261a.5(a); Chapter 266a.40, Subchapter E; 40 CFR 261.5(j) and 261.6(a)(4)

The Board received several comments stating that the regulations regarding waste oil were confusing since the Board only proposed to renumber the existing regulations but did not propose to incorporate the federal waste oil provisions into Pennsylvania's waste program. The commentators were particularly confused about cross references to the federal waste oil requirements that are found in some of the federal provisions that Pennsylvania has incorporated by reference. After reviewing the waste oil provisions of the proposed regulations, the Board has decided to write out the waste oil provisions with cross reference corrections rather than rely on an editor's note stating that the existing waste oil provisions are being renumbered. Therefore, the final form regulation includes the text of the waste oil regulations that were intended to be renumbered only. The text of the final form regulation includes corrections to cross reference citations. The final form regulation does not change substantively the requirements of Pennsylvania's waste oil regulations that were found at 25 Pa. Code Chapter 266, Subchapter E prior to today.

The final form regulation has several provisions that regulate waste oil. The final rule provides that, unless excluded by Chapter 266a, Subchapter E, waste oil that is hazardous and that is being burned for energy recovery is subject to the requirements of Chapter 266a, Subchapter E. The final rulemaking does not substantively amend the Department's existing regulations regarding waste oil burned for energy recovery. The only substantive change that has been made to the Department's proposed regulations regarding waste oil is that Pennsylvania has incorporated by reference the federal CESQG provision found at 40 CFR 261.5(j) without modification. This provision, as incorporated, subjects mixtures of CESQG waste and waste oil to Chapter 266a, Subchapter E if the mixtures are being burned for energy recovery and to the

regulations applicable to all CESQG hazardous waste which are found at 40 CFR 261.5 and §261a.5 if the mixtures will be recycled or reused.

In sum, several provisions of the hazardous waste regulations apply to waste oil. 40 CFR 261.6(a)(4) and § 261a.6(a) regulate waste oil that is hazardous solely due to a characteristic and that is to be recycled or reused. If this type of waste oil is destined to be burned for energy recovery, §261a.6(a) requires the operator to comply with Chapter 266a, Subchapter E. If this type of waste oil is not destined to be burned for energy recovery, § 261a.6(a) requires the operator to comply with the residual waste regulations. In the proposed regulation, § 261a.3(b) set forth the same requirements that have been relocated to 40 CFR 261.6(a)(4) and §261a.6(a) of the final form regulations. Chapter 266a, Subchapter E continues to direct the operator dealing with waste oil that is destined to be burned for energy recovery to the applicable provisions of the regulations. Mixtures of CESQG waste and waste oil are regulated under 40 CFR 261.5 and §261a.5. In accordance with 40 CFR 261.5(j), if mixtures of CESQG waste and waste oil are burned for energy recovery, the mixtures are subject to Chapter 266a, Subchapter E. The final form regulations are not intended to change the substance of Chapter 266a, Subchapter E. The changes made to Chapter 266a, Subchapter E are intended to correct cross references and to take into account the adoption of the boiler and industrial furnace rule, incorporated by reference at Chapter 266a, Subchapter H. The Department intends to propose a rulemaking specifically for waste oil. Any substantive changes to the waste oil provisions will be made through that rulemaking

Recyclable Materials Utilized for Precious Metal Recovery - Chapter 266a, Subchapter F

The Board proposed to incorporate by reference the federal provisions for precious metal recovery. In addition, the proposed regulation required operators of precious metals recovery facilities to obtain treatment permits pursuant to the proposed language of § 261a.6 (relating to recyclable materials). After further consideration, the Board has determined that requiring individual permits for these facilities discourages recycling of precious metals. Therefore, the Board has added a new permit-by-rule in § 270a.60(b) (relating to permits-by-rule) for facilities that recover precious metals. This permit-by-rule will satisfy the SWMA requirement for a permit without imposing a burden on the facilities that will discourage them from recycling precious metals. In addition to the permit-by-rule for precious metals recovery facilities, § 266a.70 (relating to applicability and requirements) grants to transporters transporting recyclable materials utilized for precious metals recovery a license for the transportation of the recyclable materials if they comply with 40 CFR 263.11 (relating to EPA identification number) and § 263a.23 (relating to hazardous waste transportation fees).

Spent Lead-Acid Batteries Being Reclaimed - Chapter 266a, Subchapter G

The final form regulation clarifies that facilities that treat spent lead-acid batteries prior to reclamation must comply with § 261a.6 (relating to recyclable materials) unless the facilities qualify for the permit-by-rule for battery reclamation found at § 270a.60(b) (relating to permits-by-rule).

Interim Status Standards for Burners - Section 266a.103

One commentator stated that the proposed 8,000 Btu/lb. minimum heating value is better than the weak federal standard. The commentator felt that the Board was correct in identifying the need for assurance that hazardous wastes are being burned for energy recovery, rather than disposal.

The Board has determined that substituting an 8,000 Btu/lb. minimum heating value for the federal 5,000 Btu/lb. minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The substitution proposed at § 266a.103(1) was applicable only to interim status BIFs that have not certified compliance with certain emission standards or received a final permit. After further research, the Department found that all interim status BIF facilities in Pennsylvania have certified compliance with the EPA, meaning that all of Pennsylvania's interim status BIF facilities meet specified emissions standards established by EPA. Furthermore, there will be no additional interim status BIF facilities in Pennsylvania since the owners or operators of facilities wishing to initiate burning or processing of hazardous waste in a BIF unit must first obtain a permit.

The 8,000 Btu/lb. minimum heating value substitutions proposed in § 266a.103 (relating to small quantity onsite burners) will not be included in the final form rule. After further review of the incorporated federal provisions and the existing regulations, the Board found that the existing regulations at § 266.30(f) (relating to applicability for hazardous waste burned for energy recovery) that were proposed to be deleted allow operators to use a 5,000 Btu/lb. minimum heating value as long as the operator complies with 40 CFR 266.104-266.112 (relating to hazardous waste burned in boilers and industrial furnaces). In the final form regulations, small quantity onsite burners are required to comply with 40 CFR 266.108 (relating to small quantity on-site burner exemption), which the Department has determined to provide adequate regulation for onsite burners. Therefore, the Board is deleting from the final regulation proposed § 266a.108 (relating to small quantity on-site burner exemption).

Hazardous Waste Permit Program - Chapter 270a

The proposed regulation incorporated by reference the federal permitting program and retained many of the existing Pennsylvania permitting procedural requirements. After further review, the Board has found that many of the incorporated provisions duplicate existing Pennsylvania requirements that were included in the proposed rulemaking. The Board also determined that some of the procedural requirements that were retained in the proposed rulemaking should have been relocated to sections that dealt more directly with the substantive requirements that were subject to the procedural requirements. Therefore, the final form regulation does not include those provisions that are duplicative of federal requirements that the final form regulation incorporates by reference. In addition, the Board has relocated to different section numbers some of the procedural requirements that were included in the proposed regulation so that the procedural requirements can be found in the same section as the relevant substantive requirements.

Effect of a permit - Section 270a.4

EPA also commented that Pennsylvania has excluded 40 CFR 270.4 (relating to effect of a permit) from its incorporation by reference of 40 CFR Part 270 (relating to the hazardous waste permit program). This provision addresses the effect of a permit. EPA stated that the Federal section is required for authorization; and therefore, the Commonwealth is less stringent. The Board has included this provision in Pennsylvania's regulations. However the final form regulation clarifies that nothing contained in the incorporated language prohibits the Department from taking any enforcement action pursuant to section 602 of the SWMA, 35 P.S. § 6018.602, which authorizes the Department to take enforcement actions against permitted facilities for any violation of the SWMA or any regulations promulgated under the SWMA.

General application requirements and permit issuance procedures - Section 270a.10

EPA commented that Pennsylvania is required to include procedural requirements that are equivalent to certain procedural requirements found in 40 CFR Part 124 (relating to procedures for decision making). The Board has reviewed the essential procedural requirements found in 40 CFR Part 124 (relating to procedures for decision making) and has included the text rather than an incorporation by reference of those requirements. The number of essential provisions contained in Part 124 (relating to procedures for decision making) are minimal and the cross reference problems that resulted from incorporating these requirements into the Pennsylvania hazardous waste regulatory numbering scheme were most easily resolved by including the text of those requirements. In response to EPA comments, the Board has substituted applicable Pennsylvania citations for any Part 124 (relating to procedures for decision making) citations that are included in the incorporated language. The essential Part 124 text is found in the final form rule at 270a.10.

Classification of Permit Modification - Appendix I for 40 CFR 270.42

The final form regulation incorporates by reference the federal classification system for permit modifications and the federal public notice requirements for those permit modifications. One commentator noted that Appendix I would increase the scope of permit changes that could be instituted by the Department and the permittee, with no effective public participation. The commentator felt that without public notice this provision would be abused. The existing Pennsylvania regulations have minor and major modifications. The federal permit modifications are divided into three classes. Class 1 modifications are the most minor modifications and are subject to less stringent notification requirements than Class 2 or Class 3 permit modifications. Pennsylvania's existing minor modifications are essentially the same as the federal class 1 modifications. All three classes of permit modification require the permittee to notify everyone on the facility mailing list (including local and county government) of the proposal. In the minor modification (Class1), anyone can request the Secretary of the Department to review and deny the modification request. Class 2 and 3 modification procedures call for full public participation, including publishing the notice in a major local newspaper, announcement of at least a 45-day comment period, and announcement of a public meeting and a public hearing, if requested. The Department believes that adopting this appendix by reference will increase public participation

since the current regulations do not require the Department or the permittee to notify the public of a minor permit modification.

Permits-by-rule - Section 270a.60

The Board received many comments regarding its permits-by-rule. Pennsylvania uses permits-by-rule in many instances for which Pennsylvania is more stringent than the federal government. Without the permits-by-rule, Pennsylvania would require individual permits. Consequently, the permits-by-rule are intended to assure proper management of hazardous waste without causing overly burdensome regulation. After reviewing the proposed regulation and comments received, the final form regulation has been modified. In addition to the changes made to this section in response to the comments summarized below, the permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

One commentator felt that permits-by-rule serve the permitted industries by providing the illusion of regulation, instead of serving the public by providing effective regulation. The commentator thought that abolishing the permits-by-rule and requiring individual permits would be better than retaining them.

In general, permit-by-rule is available under Pennsylvania's regulations to the owners or operators of certain hazardous waste management facilities that are exempt from permit and other requirements under federal hazardous waste regulations. Permit-by-rule satisfies the Pennsylvania SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities and provides adequate regulatory oversight. The owners or operators of permit-by-rule facilities must notify the Department of their activity and meet some basic facility standards. The notification requirement alone is important to the Department so that inspectors may schedule and prioritize periodic visits to a permit-by-rule facility. In situations where a facility is not in compliance with the applicable permit-by-rule requirements, particularly to the extent that harm or threat of harm to people or the environment is present, the Department may require the owners or operators of such facilities to obtain an individual permit.

Several commentators felt that Pennsylvania should adopt the Federal regulation at 40 CFR 270.1(c)(2)(v) (relating to purpose and scope) which specifically excludes wastewater treatment units that treat hazardous waste, from RCRA permitting and RCRA permit-by-rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. A commentator stated that the federal exclusion from permitting and permit-by-rule requirements for units regulated under the Clean Water Act eliminates duplication of effort by different departments of the federal agency and allows the regulated community to focus its compliance efforts on the regulations that are most appropriate to the operating unit. Concern was also expressed over the additional recordkeeping requirements for operators as well as additional inspection requirements for state hazardous waste inspectors. A

commentator stated that if the SWMA requires permit-by-rule for units such as elementary neutralization and wastewater treatment units, the regulations should clarify that wastes to such units do not count in determining if the site is a large quantity generator.

Permit-by-rule is available to wastewater treatment units, and certain other hazardous waste management facilities, in order to satisfy the Pennsylvania SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities. The Department has examined the permit-by-rule provisions of proposed § 270a.60 (relating to permits-by-rule) and determined that they will reduce or streamline many requirements that would otherwise be required by an individual permit. With regard to CESQG quantity determinations, the federal regulation at 40 CFR 261.5(c)(2) (relating to CESQGs), incorporated by reference with this rulemaking, clearly states that generator quantity determinations do not need to include hazardous wastes that are managed in on-site elementary neutralization or wastewater treatment units.

Several commentators noted that § 270a.60(b)(1)(i) (relating to captive elementary neutralization or wastewater treatment units) of the proposed regulation retains Pennsylvania's prohibition against intracompany shipments of hazardous wastes to an elementary neutralization or wastewater treatment permit-by-rule facility. This limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. The prohibition does not exist in neighboring states. For instance, the commentator pointed out, member companies can send hazardous wastes from their Pennsylvania plants to Ohio plants for treatment, but cannot receive intracompany shipments from either Ohio or Pennsylvania. This type of exception to the Federal rules is typical of the discrepancies between Pennsylvania's rules and the Federal rules that were intended to be eliminated by the regulatory basics effort. This section should be consistent with Federal regulations and allow intracompany shipments of wastes for treatment. Conforming to the federal elementary neutralization/wastewater treatment unit provisions will afford Pennsylvania business the opportunity to use existing investment to reduce operating costs, and reduce risks associated with transporting such wastes to neighboring states. It should be noted the final form regulation does allow intracompany transfers for reclamation.

In the final form regulation changes have been made to the elementary neutralization and wastewater treatment unit permit-by-rule provisions to allow receipt of off-site hazardous waste shipments for treatment at such facilities, provided the conditions of the permit-by-rule are not violated (for example, compliance with an NPDES permit or pretreatment requirements is maintained). To prevent classification as a commercial hazardous waste treatment facility and consequential application of the siting, fee assessment and other requirements of the Hazardous Sites Cleanup Act, such permit-by-rule facilities must be limited to receipt of wastes from other facilities operated or owned by the same generator. Limiting off-site wastes in this manner will also provide additional assurance that the owner or operator of the permit-by-rule facility has a better knowledge of the physical and chemical character and composition of the wastes being treated at the facility.

One commentator questioned whether operators would continue to be allowed to recycle oily wastewaters from other facilities they own and operate under proposed § 270a.60(b)(5)(iii) (relating to onsite reclamation) since the proposed regulations do not define on-site as including

materials generated at facilities owned and operated by the same generator. If this is the case, the commentator requests that a provision allowing recycling of materials generated at facilities owned and operated by the same generator be included in the new regulations. Proposed section § 270a.60(b)(5)(iii) (relating to onsite reclamation) provided for the reclamation of materials generated at other facilities operated or owned by the same generator at an onsite reclamation permit-by-rule facility. This is included in the final form regulation as well.

EPA commented that the permit-by-rule for facilities storing hazardous waste onsite in tanks, containers or containment buildings and reclaiming them pursuant to the proposed regulation at § 270a.60(b)(6) (relating to onsite storage permits-by-rule) is less stringent than federal requirements. EPA noted that according to 40 CFR 261.6(c)(1) (relating to recyclable materials), such facilities are subject to the permitting requirements unless specifically exempted pursuant to 40 CFR 261.6(a)(3) (relating to recyclable materials). The Board agrees that the permit-by-rule proposed at § 270a.60(b)(6) (relating to onsite storage permits-by-rule) for storage of hazardous waste onsite prior to reclamation under the onsite reclamation permit-by-rule provisions of § 270a.60(b)(5) (relating to onsite reclamation) could be less stringent than federal storage permit requirements. The storage permit-by-rule provision has been dropped from the final form rule.

EPA also commented that the variance from any permits-by rule described in the proposed regulation at § 270a.60(b)(3) - (6) would make the Commonwealth's program less stringent than the federal program if the variance could apply to requirements which are equivalent to or less stringent than the Federal code. In order to be as stringent as the federal program, EPA noted that Pennsylvania may only grant a variance from requirements that are more stringent than the federal requirements. The Board has revised the permit-by-rule provisions of proposed § 270a.60 to insure that they only apply to hazardous waste activities that are exempt from federal permit requirements.

Minor changes to regulations

In addition to the above revisions, the Board has made minor changes to the following sections: Sections 260a.1, 260a.2, 260a.3, 260a.10, 261a.1, 261a.3, 261a.5, 261a.7, 262a.10, 262a.12, 262a.20, 262a.21, 262a.22, 262a.23, 262a.41, 262a.55, 262a.56, 262a.57, 262a.80, 263a.10, 263a.11, 263a.13, 263a.20, 263a.30, 264a.1, 264a.11, 264a.12, 264a.75, 264a.96, 264a.147, 264a.149, 264a.150, 264a.153, 264a.156, 264a.157, 264a.158, 264a.159, 264a.160, 264a.166, 264a.191, 264a.221, 264a.251, 264a.301, 264a.570, 265a.1, 265a.11, 265a.12, 265a.56, 265a.71, 265a.75, 265a.141, 265a.147, 265a.149, 265a.150, 265a.153, 265a.156, 265a.157, 265a.158, 265a.159, 265a.160, 265a.191, 265a.193, 265a.194, 266a.40, 266a.41, 266a.108, 266b.30, 266b.50, 266b.60, 268a.1, 270a.2, 270a.3, 270a.4, 270a.5, 270a.6, 270a.10, 270a.12, 270a.60, 270a.64, 270a.72, 270a.81 and 270a.82.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The final regulations will incorporate by reference the federal regulatory requirements for hazardous waste management and add Pennsylvania requirements to the federal requirements in instances in which the Department has identified a compelling state interest that requires Pennsylvania to modify or add to the federal requirements. As a result of the incorporation by reference, the regulations will align more closely the text and numbering system of the Pennsylvania regulations found in Chapters 260a-266a, 266b and 268a-270a with the federal numbering system found in 40 CFR Parts 260-273. In addition, the rule will eliminate the confusion caused by using two different sets of regulations - those used by EPA and those used by the Department - for managing hazardous waste in Pennsylvania. Since most states have hazardous waste regulations that closely resemble the federal regulations, amending the Pennsylvania hazardous waste regulations to follow the federal regulations will allow companies to comply more easily on an interstate basis. In addition, most of Pennsylvania's regulations mirror the intent of the federal rules, and many Pennsylvania regulations use the same language that the federal rules use. Most of the Pennsylvania requirements that have federal analogs use the same section numbers as the federal numbering system. Consequently, all classes of hazardous waste generators; transporters; and treatment, storage and disposal facilities will benefit from the regulatory changes since the final regulations provide the regulated community with consistency between the state and federal regulatory requirements, language, and numbering systems.

Compliance Costs

Although this is a large and comprehensive rulemaking, it imposes very few additional costs on the regulated community and the Department. Since the overall purpose of this rulemaking is to align the Department's hazardous waste regulations with the federal hazardous waste regulations, the Department expects a decrease in the overall cost of compliance since the regulated community will need to comply with only one set of regulations rather than the two sets with which it must currently comply.

The regulated community will realize an estimated $400,000 of additional savings through the amendment of the manifest regulation to require fewer manifest copies than the current eight part manifest. The savings will result from reduced clerical and mailing costs. Costs to the Commonwealth will also be reduced as a result of this amendment. The reduction in the amount of mail handled will be significant. The number of manifests scanned and data entered into the Department computer system will be reduced by approximately 50%. This will result in a savings to the Department of an estimated $30,000 through reduced mail handling and data entry costs associated with reduced manifesting requirements.

Newly permitted facilities or facilities seeking permit renewals will no longer be required to submit Module 1 forms. Therefore, operators will no longer be required to pay a fee to amend their Module 1 forms every time that they receive a new waste stream. The regulations allow permit applicants to submit information on their own forms rather than on the Department's Module 1 forms. The Department estimates that this will save the regulated community $35,000 annually. These savings would be a direct result of the elimination of the requirement to transcribe information from an operator's form to a Department form.

Compliance Assistance Plan

The Department will assist the regulated community by developing a series of fact sheets explaining any changes to the regulations, and how the changes impact on specific groups within the regulated community. In addition, the Department intends to meet with industry groups to develop workshops to explain the regulatory changes and how the changes affect particular types of industry. Department field staff will also provide compliance assistance during routine facility inspections.

The Department intends to develop a series of compliance guides customized for specific groups of entities affected by this regulation. These compliance guides will be a printed version of the full text of the federal regulation with any Pennsylvania changes made to the federal regulation incorporated into the text. Therefore, the Department expects most operators to be able to use the guides as stand alone documents that synthesize all of the federal and Pennsylvania requirements into one guide. The Department expects to publish different guides to target the needs of specific groups. For example, there could be a guide for each of the following groups: CESQGs, small quantity generators, generators, transporters, onsite reclamation facilities and permit-by-rule facilities. The guides, as well as the fact sheets and any other written material the Department publishes, will be available on the world wide web.

Paperwork Requirements

These regulations will result in a net reduction in paperwork requirements. Manifest copies will be reduced resulting in substantial paperwork reduction and reduced filing, storage and mailing costs. An additional reduction in paperwork will result from the reduced groundwater monitoring requirements. These forms will only have to be completed and mailed once per year, as opposed to the current requirement that operators complete and mail these forms twice per year. Allowing industry to use their own forms in place of the Department's Module 1 forms will also reduce paperwork requirements. Transcription and storage of duplicate records will be eliminated. No additional forms are required by these regulations.

G. Pollution Prevention

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, this regulation has incorporated the following provision and incentive to meet that goal: § 262a.100 provides that any person or municipality that generates hazardous

waste must prepare a source reduction strategy that identifies the methods and procedures that the person or municipality intends to implement to reduce the amount of hazardous waste generated. The incentive for a person or municipality to implement their source reduction strategy is to save money in hazardous waste management costs, protect employee health and safety, lower insurance costs and protect the environment by reducing the amount of hazardous waste generated.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), the Department submitted a copy of this proposed amendment on _____ to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with Section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing this final-form regulation, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this preamble. The Committees did not provide comments on the proposed rulemaking.

This final-form regulation was (deemed) approved by the House Environmental Resources and Energy Committee on _____ and was (deemed) approved by the Senate Environmental Resources and Energy Committee on _____. The Commission met on _____ and (deemed) approved the regulation in accordance with Section 5.1(e) of the Act.

J. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 27 *Pennsylvania Bulletin 6407* (December 6, 1997).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code,* Chapters 260-265, 266-267 and 269-270, are deleted or renumbered by creating Chapters 260a-266a, 266b and 268a-270a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairman shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

JAMES M. SEIF
Chairman
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

(*Editor's Note*: The Department is deleting or renumbering the existing regulations at 25 Pa. Code Chapters 260–270 as they appear in the *Pennsylvania Code* at pages 260-1–270-28 (serial pages (233837), (233838), (225009)–(225028), (228321), (228322), (225031)–(225038), (228323), (228324), (225041)–(225048), (228325), (228326), (230435)–(230446), (225061), (225062), (228327), (228328), (230447), (230448), (225067), (225068), (230449)–(230474), (225095)–(225110), (230475)–(230482), (225117)–(225276), (230483)–(230488), (225281)–(255324), (230481)–(230492), (225329)–(225340), (230493), (230494), (225343)–(225398), (230495)–(230546), (228335), (228336), (225423)–(225426), (210143)–(210154), (225427), (225428), (210157), (210158), (228337)–(228340), (210163)–(210178), (230547), (230548), (210181)–(210206), (230549), (230550) and (225431)–(225456).)

CHAPTER 260. (Reserved)

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchap.

Subchapter A. GENERAL

Sec.

§ 260a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 260 and its appendices (relating to hazardous waste management system: general) are incorporated by reference.

(b) [**Notwithstanding**] **REGARDING** the requirements incorporated by reference, nothing contained in this

article relieves or limits a person or municipality who generates, transports, stores, treats or disposes of hazardous waste from complying with the requirements of Pennsylvania law, including The Clean Streams Law (35 P. S. §§ 691.1–691.1001); the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305); the Air Pollution Control Act (35 P. S. §§ 4001–4015); the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.31); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27); the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 1406.1–1406.21); the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101–70-1405); and the act of July 9, 1976 (P. L. 931, No. 178) (52 P. S. §§ 27.7-1–27.7-9).

§ 260a.2. Availability of information.

[**Notwithstanding the requirements incorporated by reference,**] 40 CFR 260.2 (relating to availability of information) is not incorporated by reference.

§ 260a.3. Terminology and citations related to Federal regulations.

(a) For purposes of interfacing with 40 CFR Parts 260–279, the following terms apply, unless [**the context clearly indicates**] otherwise **NOTED**:

(1) "Administrator" [**and**], "Regional Administrator", **"ASSISTANT ADMINISTRATOR", "ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE" AND "STATE DIRECTOR"** are [**synonymous**] **SUBSTITUTED** with "Department."

(2) When referring to an operating permit or to the Federal hazardous waste program, "Resource Conservation and Recovery Act" (42 U.S.C.A. §§ 6901–6986), "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C" is [**synonymous**] **SUBSTITUTED** with the "Pennsylvania Solid Waste Management Act" (35 P. S. §§ 6018.101–6018.1003).

(3) "Environmental Protection Agency" **OR "EPA" AND ALL NAMES OR ASSOCIATED ACRONYMS ARE** [**is synonymous**] **SUBSTITUTED** with "Department" **EXCEPT WHEN REFERRING TO THE TERMS "EPA FORM", "EPA IDENTIFICATION NUMBER", "EPA ACKNOWLEDGMENT OF CONSENT", "EPA HAZARDOUS WASTE NUMBER", EPA PUBLICATION", "EPA PUBLICATION NUMBER", "EPA TEST METHODS", AND "EPA GUIDANCE" INCLUDING ANY MAILING ADDRESSES ASSOCIATED WITH THESE TERMS**.

[**(4) Whenever the regulations require publication in the "*Federal Register*" compliance will be accomplished by publication in the "*Pennsylvania Bulletin.*"**]

[**(5)**] **(4)** "Used oil" is [**synonymous**] **SUBSTITUTED** with "waste oil."

[**(6)**] **(5)** "State," "authorized state," "approved state" or "approved program" is [**synonymous**] **SUBSTITUTED** with "the Commonwealth."

[**(7)**] **(6)** Whenever the regulations require compliance with procedures found in 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program), compliance [**shall be**] **IS**

accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

[(8)] (7)The Commonwealth equivalent of 40 CFR Part 273 (relating to standards for universal waste management) is found in Chapter 266b (relating to standards for universal waste management).

(8) THE COMMONWEALTH EQUIVALENT OF 40 CFR PART 279 (RELATING TO STANDARDS FOR THE MANAGEMENT OF USED OIL) IS FOUND IN CHAPTER 266a SUBCHAPTER E (RELATING TO STANDARDS FOR WASTE OIL BURNED FOR ENERGY RECOVERY).

(b) [**If a provision of the *Code of Federal Regulations* incorporated by reference in this article includes a section which is inconsistent with the *Pennsylvania Code*, the *Pennsylvania Code* controls to the extent Federal law does not preempt Commonwealth law. If a provision of the *Code of Federal Regulations* incorporated by reference in this article is beyond the scope of authority granted the Department under statute, or is in excess of the statutory authority, the provisions shall be and remain effective only to the extent authorized by Pennsylvania law.**]

[(c)] Federal [**statutes and**] regulations that are cited in [**40 CFR Parts 260–266, 268 and 270**] **THIS ARTICLE OR THAT ARE CROSS REFERENCED IN THE FEDERAL REGULATIONS INCORPORATED BY REFERENCE INCLUDE ANY PENNSYLVANIA MODIFICATIONS MADE TO THOSE FEDERAL REGULATIONS.** [**that are not specifically adopted by reference will be used as guidance in interpreting the Federal regulations in 40 CFR Parts 260–266, 268 and 270.**]

(c) ALL REFERENCES TO 40 CFR PART 124 FOUND IN FEDERAL REGULATIONS INCORPORATED BY REFERENCE ARE SUBSTITUTED WITH PENNSYLVANIA PROCEDURES FOUND IN CHAPTER 270a.

(d) ALL REFERENCES TO THE "DEPARTMENT OF TRANSPORTATION" OR "DOT" MEANS THE UNITED STATES DEPARTMENT OF TRANSPORTATION.

(e) THE EFFECTIVE DATE FOR THE *CODE OF FEDERAL REGULATIONS* INCORPORATED BY REFERENCE IN THIS ARTICLE IS _____ (EDITOR'S NOTE: THE DATE ON WHICH THESE REGULATIONS ARE PUBLISHED AS FINAL RULEMAKING). THE INCORPORATION BY REFERENCE INCLUDES ANY SUBSEQUENT MODIFICATIONS AND ADDITIONS TO THE CODE OF FEDERAL REGULATIONS INCORPORATED IN THIS ARTICLE.

Subchapter B. DEFINITIONS

Sec.
260a.10. Definitions.

§ 260a.10. Definitions.

(a) [**Notwithstanding the requirements incorporated by reference:**] **ANY TERM DEFINED IN THIS SECTION REPLACES THE DEFINITION OF SUCH TERM IN 40 CFR 260.10, OR, IN SITUATIONS**

FOR WHICH NO SUCH TERM EXISTS IN 40 CFR 260.10, THE TERM SHALL BE DEFINED IN ACCORDANCE WITH THIS SECTION. THE SUBSTITUTION OF TERMS AT 260a.3 DOES NOT APPLY TO THE INCORPORATED DEFINITION OF "EPA REGION", "STATE", "UNITED STATES", "ADMINISTRATOR",AND "REGIONAL ADMINISTRATOR".

[(1) The following terms are not incorporated into this section:

(i) "Act."

(ii) "Disposal."

(iii) "Management."

(iv) "Storage."

(v) "Transportation."

(2) The definitions for the following terms are incorporated by reference, but the dates contained in 40 CFR 260.10 (relating to definitions) are modified as follows:

(i) ***Existing tank system or existing component*****–Installation of the tank system or components shall have been on or prior to January 10, 1993.**

(ii) ***New hazardous waste management facility*****–A facility that began operation or for which construction commenced after November 19, 1980.**

(iii) ***New tank system or new tank component*****–Installation of the tank system or components shall have been after January 16, 1993.**

(b) In addition to the definitions incorporated by reference, the terms listed as follows have the following meanings:]

[(1)] *Act*– The Solid Waste Management Act (35 P. S. §§ 6018.101–6018.1003).

[(2)] *Disposal*– The incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth. **[The term also includes the abandonment of solid waste with the intent of not asserting or exercising control over, or title or interest in the solid waste.]**

***EXISTING TANK SYSTEM* OR *EXISTING COMPONENT*– THE FEDERAL DEFINITION FOR "EXISTING TANK SYSTEM OR EXISTING COMPONENT" AT 40 CFR 260.10 IS INCORPORATED BY REFERENCE EXCEPT THAT THE DATE REFERENCED IS JANUARY 16, 1993 INSTEAD OF JULY 14, 1986.**

FACILITY— ALL LAND, STRUCTURES AND OTHER APPURTENANCES OR IMPROVEMENTS WHERE MUNICIPAL OR RESIDUAL WASTE DISPOSAL OR PROCESSING IS PERMITTED OR TAKES PLACE, OR WHERE HAZARDOUS WASTE IS TREATED, STORED OR DISPOSED.

[(3)] *Fund*–The host municipalities fund.

[(4)] *Hazardous Sites Cleanup Act*–The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305).

[(5)] *Hazardous Sites Cleanup Fund*–The fund established by section 901 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.901).

[(6) ***Hazardous waste management unit***–**A contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. The term includes a surface impoundment, waste pile, land treatment area, landfill cell, incinerator, tank and associated piping and underlying containment system, and container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.**]

[(7)] *Host municipality*–A municipality, other than a county, where a qualifying facility is located, either in whole or in part, within its established corporate boundaries.

[(8) ***Household waste***–**Waste material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas.**

(9) ***Identification number***–**The number either assigned by the EPA to each generator, transporter and treatment, storage or disposal facility or provisionally assigned by the Department.**

(10) ***In-transit storage***–**The storage of hazardous waste by the transporter at a transfer facility for no more than 10 days if the hazardous waste is manifested and remains in containers that conform to the requirements of 40 CFR 262.30 and 262.33 (relating to packing, labeling and marking; and placarding.**]

MANAGEMENT OR HAZARDOUS WASTE MANAGEMENT– THE ENTIRE PROCESS, OR ANY PART THEREOF, OF STORAGE, COLLECTION, TRANSPORTATION, PROCESSING, TREATMENT, AND DISPOSAL OF SOLID WASTES BY ANY PERSON ENGAGING IN SUCH PROCESS. THE TERM "HAZARDOUS WASTE MANAGEMENT" REFERS TO MANAGEMENT OF HAZARDOUS WASTE.

[(11) ***Manifest document number***–**The unique number assigned to a particular manifest form, usually printed in the upper right corner of the form.**]

NEW HAZARDOUS WASTE MANAGEMENT FACILITY OR *NEW FACILITY*– THE FEDERAL DEFINITION FOR "NEW HAZARDOUS WASTE MANAGEMENT FACILITY OR NEW FACILITY" AT 40 CFR 260.10 IS INCORPORATED BY REFERENCE EXCEPT THAT THE DATE

REFERENCED IS NOVEMBER 19, 1980, INSTEAD OF OCTOBER 21, 1976.

NEW TANK SYSTEM OR *NEW TANK COMPONENT*–THE FEDERAL DEFINITION FOR "NEW TANK SYSTEM OR NEW TANK COMPONENT" AT 40 CFR 260.10 IS INCORPORATED BY REFERENCE EXCEPT THAT THE DATE REFERENCED IS JANUARY 16, 1993 INSTEAD OF JULY 14, 1986.

[(12)] *Pennsylvania hazardous waste facilities plan*–A plan required by sections 104(14) and 105(f) of the act (35 P. S. §§ 6018.104(14) and 6018.105(f)) and adopted by the EQB which identifies current and future hazardous waste treatment and disposal facilities necessary for the proper management of hazardous waste in this Commonwealth.

[(13) ***Permit-by-rule*–A provision of this article whereby a facility or activity is deemed to have a hazardous waste management permit if it meets the applicable requirements of this article.]**

PERSON—ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, INSTITUTION, COOPERATIVE ENTERPRISE, MUNICIPAL AUTHORITY, FEDERAL GOVERNMENT OR AGENCY, STATE INSTITUTION AND AGENCY (INCLUDING, BUT NOT LIMITED TO, THE DEPARTMENT OF GENERAL SERVICES AND THE STATE PUBLIC SCHOOL BUILDINGS AUTHORITY), OR ANY OTHER LEGAL ENTITY WHATSOEVER WHICH IS RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND DUTIES. IN ANY PROVISION OF THE ACT PRESCRIBING A FINE, IMPRISONMENT OR PENTALTY, OR ANY COMBINATION OF THE FOREGOING, THE TERM "PERSON" SHALL INCLUDE THE OFFICERS AND DIRECTORS OF ANY CORPORATION OR OTHER LEGAL ENTITY HAVING OFFICERS AND DIRECTORS.

QUALIFYING FACILITY - A COMMERCIAL HAZARDOUS WASTE TREATMENT OR DISPOSAL FACILITY, OR EXPANSION TO AN EXISTING HAZARDOUS WASTE TREATMENT OR DISPOSAL FACILITY, WHICH WAS PERMITTED AFTER DECEMBER 18, 1988, IS OPERATING, AND FULFILLS THE COMMERCIAL HAZARDOUS WASTE TREATMENT OR DISPOSAL NEEDS IDENTIFIED IN THE PENNSYLVANIA HAZARDOUS WASTE FACILITIES PLAN.

RCRA—THE FEDERAL SOLID WASTE DISPOSAL ACT, AS AMENDED BY THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, AS AMENDED, 42 U.S.C. SECTION 6901 ET SEQ.

[(14) ***Recycling permit*–A treatment permit for a facility that treats hazardous waste to turn the waste into a product or make the waste otherwise suitable for use or reuse, including use as a fuel.]**

[(15)] *Registered professional engineer* or *professional engineer*–An engineer registered to practice engineering in this Commonwealth.

[(16)] *Registered professional geologist* or *professional geologist*–A geologist registered to practice geology in this Commonwealth.

[(17)] *Responsible official*–For corporations, [**the**] A corporate officer[s]; for limited partnerships, [**the**] A

general partner[s]; for all other partnerships, [**the**] A partner[s]; for a sole proprietorship, the proprietor; for a municipal, state or Federal authority or agency, an executive officer or ranking elected official responsible for compliance of the hazardous waste activities and facilities of the authority or agency with all applicable rules and regulations.

[**(18)**] *Source reduction*–The reduction or elimination of the quantity or toxicity of hazardous waste generated. Source reduction may be achieved through changes within the production process, including process modifications, feedstock substitutions, improvements in feedstock purity, shipping and packing modifications, housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. The term does not include dewatering, compaction, reclamation, treatment, or the use or reuse of waste.

[**(19)**] *State manifest document number*–The state abbreviation, the letter and the unique number assigned to the manifest, usually preprinted on the form, for recording and reporting purposes.

***STORAGE*– THE CONTAINMENT OF ANY WASTE ON A TEMPORARY BASIS IN SUCH A MANNER AS NOT TO CONSTITUTE DISPOSAL OF SUCH WASTE. IT SHALL BE PRESUMED THAT THE CONTAINMENT OF ANY WASTE IN EXCESS OF ONE YEAR CONSTITUTES DISPOSAL. THIS PRESUMPTION CAN BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.**

***TRANSPORTATION*– THE OFF-SITE REMOVAL OF ANY SOLID WASTE AT ANY TIME AFTER GENERATION.**

Subchapter C. RULEMAKING PETITIONS

Sec.
260a.20. Rulemaking petitions.

§ 260a.20. Rulemaking petitions.

[**Notwithstanding the requirements incorporated by reference, e**] Each petition shall be submitted in accordance with Chapter 23 (relating to Environmental Quality Board–policy for processing petitions–statement of policy)[,] instead of the procedures in 40 CFR 260.20(b)–(e) (relating to general).

§ 260a.30. VARIANCES FROM CLASSIFICATION AS A SOLID WASTE.

COPRODUCT TRANSITION SCHEME

(1) THOSE MATERIALS PREVIOUSLY REGULATED AS COPRODUCTS PRIOR TO THE EFFECTIVE DATE OF THIS SECTION AND THAT ARE NOT OTHERWISE EXCLUDED AS SOLID WASTES, CONTINUE TO BE REGULATED AS IF EXCLUDED FROM CLASSIFICATION AS A SOLID WASTE UNTIL SUCH TIME AS A VARIANCE FROM CLASSIFICATION AS A SOLID WASTE UNDER 40 CFR §260.30 (RELATING TO VARIANCES FROM CLASSIFICATION AS A SOLID WASTE) IS ACTED UPON BY THE DEPARTMENT. THE REQUEST FOR SUCH VARIANCE MUST BE FILED WITHIN TWO YEARS OF (EDITOR'S NOTE: THE DATE ON WHICH THIS REGULATION IS PUBLISHED AS FINAL RULEMAKING).

(2) IN ORDER TO QUALIFY UNDER SUBSECTION (1), A PERSON PRODUCING, SELLING, TRANSFERRING, POSSESSING OR USING A MATERIAL AS A COPRODUCT NOT EXEMPT FROM REGULATION UNDER OTHER PROVISIONS OF THIS REGULATION SHALL SUBMIT, WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS REGULATION A WRITTEN NOTIFICATION TO THE DEPARTMENT THAT THE EXEMPTION IN SUBSECTION (1) APPLIES TO THEIR ACTIVITY.

CHAPTER 261. (Reserved)

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchap.
A. GENERAL

Subchapter A. GENERAL

Sec.

§ 261a.1. Incorporation by reference, purpose and scope.

Except as expressly provided in this chapter, the requirements of 40 CFR Part 261 and its Appendices (relating to identification and listing of hazardous waste) are incorporated by reference. **THE SUBSTITUTION OF TERMS IN 260a.3(a)(1) DOES NOT APPLY TO 40 CFR 261.4(f)(1) (RELATING TO NOTIFICATION OF TREATABILITY STUDIES), 261.10 (RELATING TO CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE), 261.11 (RELATING TO CRITERIA FOR LISTING HAZARDOUS WASTE). THE SUBSTITUTION OF TERMS IN 260a.3(a)(3) DOES NOT APPLY TO APPENDIX IX (RELATING TO WASTES EXCLUDED UNDER §§260.20 AND 260.22).**

§ 261a.3. Definition of "hazardous waste."

[(a) Notwithstanding the requirements] **40 CFR 261.3(c)(2)(ii)(C) (RELATING TO CERTAIN NON-WASTEWATER RESIDUES SUCH AS SLAG RESULTING FROM HTMR PROCESSING OF K061, K062 OR F006 WASTE) IS NOT** incorporated by reference[:].

[(1) Certain nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste in units identified as rotary kilns, flame reactors, electric

furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces are hazardous wastes if they are described in 40 CFR 261.3(c)(2)(ii)(C) (relating to definitions of hazardous waste.)

(2) Biological treatment sludge from the treatment of organic waste from the production of carbamates and carbamoyl oximes, and wastewaters from the production of carbamates and carbamoyl oximes are hazardous wastes if they are described in 40 CFR 261.3(c)(2)(ii)(D).]

[(b) In addition to the requirements incorporated by reference, waste oil that is hazardous only because it exhibits any characteristic of hazardous waste under 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) which has not been mixed with a hazardous waste, and which is destined to be recycled or reused in some other manner than burning for energy recovery is not subject to Chapters 260a–266a and 266b. This waste oil is regulated under residual waste regulations in Article IX (relating to residual waste management). Burning waste oil that exhibits any characteristic of hazardous waste is not subject to Chapters 260a–265a, unless otherwise specified in Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).]

§ 261a.4. Exclusions.

[(a) Notwithstanding the requirements incorporated by reference, the materials excluded from regulation as solid waste under 40 CFR 261.4 (relating to exclusions) are only excluded from regulation as hazardous wastes in this Commonwealth.]

[(b)] In addition to the requirements incorporated by reference, a copy of the written state agreement required by 40 CFR 261.4(b)(11)(ii) that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed for free phase hydrocarbon recovery operations shall be submitted to: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, Post Office Box 8471, Harrisburg, Pennsylvania 17105-8471.

§ 261a.5. Special requirements for hazardous waste generated by CONDITIONALLY EXEMPT small quantity generators.

(a) THE REFERENCE TO 40 CFR PART 279 IN 40 CFR 261.5(c)(4) AND (j) IS REPLACED WITH CHAPTER 266a, SUBCHAPTER E (RELATING TO WASTE OIL BURNED FOR ENERGY RECOVERY).

(b) [**Notwithstanding**] **IN ADDITION TO** the requirements incorporated by reference,

[(1) A] a conditionally exempt small quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

[(2) A conditionally exempt small quantity generator may either treat or dispose of its acute hazardous waste in an onsite facility or ensure delivery to an offsite treatment, storage, or disposal facility, either of which, if located in the United States, is:

(i) Permitted, licensed or registered by another State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 CFR Part 258 (relating to criteria for municipal solid waste landfills).

(ii) Permitted, licensed or registered by another State to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5–257.30.

(3) A conditionally exempt small quantity generator may either treat or dispose of its hazardous waste in an onsite facility or ensure delivery to an offsite treatment, storage or disposal facility, either of which, if located in the United States, is:

(i) Permitted, licensed or registered by another state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 CFR Part 258.

(ii) Permitted, licensed or registered by another state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5–257.30.]

(c) A CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR COMPLYING WITH THIS SUBCHAPTER AND 40 CFR 261.5 IS DEEMED TO HAVE A LICENSE FOR THE TRANSPORTATION OF THOSE CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTES GENERATED BY THE GENERATOR'S OWN OPERATION.

§ 261a.6. Requirements for recyclable materials.

(a) THE REFERENCE TO "PART 279 OF THIS CHAPTER" IN 40 CFR 261.6(a)(4) IS REPLACED WITH:

(1) "THE RESIDUAL WASTE REGULATIONS IN ARTICLE IX (RELATING TO RESIDUAL WASTE MANAGEMENT)" IF THE WASTE OIL IS BEING RECYCLED OR REUSED IN A MANNER OTHER THAN BURNING FOR ENERGY RECOVERY; OR

(2) "CHAPTER 266a, SUBCHAPTER E (RELATING TO WASTE OIL BURNED FOR ENERGY RECOVERY)" IF THE WASTE OIL IS DESTINED TO BE BURNED FOR ENERGY RECOVERY.

(b) 40 CFR 261.6(c) (RELATING TO REQUIREMENTS FOR RECYCLABLE MATERIALS) IS NOT INCORPORATED BY REFERENCE.

(c) [Notwithstanding the requirements incorporated by reference,] **INSTEAD OF 40 CFR 261.6(c),** owners [or] **AND** operators of facilities that **STORE,** [reclaim] or [otherwise] treat [hazardous waste] **RECYCLABLE MATERIALS** are regulated under [, required to obtain a permit under and shall comply with this article.] **ALL APPLICABLE AND INCORPORATED PROVISIONS OF 40 CFR PARTS 264 AND 265, SUBPARTS A THROUGH L, AA, BB, CC AND DD; 40CFR PART 264 SUBPART X; 40 CFR**

PARTS 266 AND 270, EXCEPT AS PROVIDED IN 40 CFR 261.6(a). IN ADDITION, OWNERS AND OPERATORS OF FACILITIES REGULATED UNDER THIS SECTION ARE SUBJECT TO ALL APPLICABLE PROVISIONS OF 25 PA. CODE CHAPTERS 264a AND 265a, SUBCHAPTERS A THROUGH L; 25 PA. CODE CHAPTER 264a, SUBCHAPTERS X AND DD; AND 25 PA. CODE CHAPTERS 266a AND 270a. RECYCLING PROCESSES THAT ARE NOT TREATMENT ARE EXEMPT FROM REGULATION EXCEPT AS PROVIDED IN 40 CFR § 261.6(d). THE SIZING, SHAPING OR SORTING OF RECYCLABLE MATERIALS WILL NOT BE CONSIDERED TREATMENT FOR PURPOSES OF THIS SECTION.

(d) THE REQUIREMENTS OF §270a.3 (RELATING TO PAYMENT OF FEES), §264a.82, §264A.83, §265a.82 AND §265a.83 (RELATING TO ADMINISTRATION FEES AND ADMINISTRATION FEES DURING CLOSURE) DO NOT APPLY TO FACILITIES OR THOSE PORTIONS OF FACILITIES THAT STORE, OR TREAT RECYCLABLE MATERIALS.

§ 261a.7. Residues of hazardous waste in empty containers.

[Notwithstanding the requirements incorporated by reference:

(1) A container or an inner liner removed from a container, previously used to hold a hazardous waste, which has been emptied in accordance with the standards of this section, and which is being transported to a facility for processing (as defined in § 260a.10 and 40 CFR 260.10 (relating to definitions)) or disposal shall be managed as a residual waste. For purposes of this section, a tank which is transported for processing or disposal shall be considered a container.

(2) The person in control of the container or inner liner removed from a container, when any remaining residue which was present prior to processing or other cleaning is, either accidentally or intentionally, removed therefrom shall have the responsibility to ensure that the waste is managed in compliance with the act and the regulations thereunder.]

(a) ANY HAZARDOUS WASTE REMOVED FROM EITHER AN EMPTY CONTAINER OR AN INNER LINER REMOVED FROM AN EMPTY CONTAINER, AS DEFINED IN 40 CFR 261.7(b), IS SUBJECT TO CHAPTERS 261a THROUGH 265a, 268a AND 270a.

(b) FOR PURPOSES OF THIS SECTION, THE TERM "CONTAINERS" SHALL INCLUDE TANKS.

CHAPTER 262. (Reserved)

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchap.
A. GENERAL
B. THE MANIFEST
D. RECORDKEEPING AND REPORTING
E. EXPORTS OF HAZARDOUS WASTE
H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD
I. SOURCE REDUCTION STRATEGY

Subchapter A. GENERAL

Sec.
262a.10. Incorporation by reference, purpose, scope and applicability.
[262a.11. Hazardous waste determination.]
262a.12. EPA identification numbers.

§ 262a.10. Incorporation by reference, purpose, scope and applicability.

Except as expressly provided in this chapter, the requirements of 40 CFR **PART** 262 **AND ITS APPENDICES** (relating to standards applicable to generators of hazardous waste) are incorporated by reference. **IN 40 CFR 262.10(g), THE TERM "SECTION 3008 OF THE ACT" IS REPLACED WITH "ARTICLE VI OF THE SOLID WASTE MANAGEMENT ACT."**

[§ 262a.11. Hazardous waste determination.

Notwithstanding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 262.11 (relating to hazardous waste determination).]

§ 262a.12. EPA identification numbers.

(a)[Notwithstanding] **REGARDING** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 262.12 (relating to EPA identification numbers).

(b) IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE, A GENERATOR SHALL SUBMIT A SUBSEQUENT NOTIFICATION TO THE DEPARTMENT IF:

(1) THE GENERATOR ACTIVITY MOVES TO ANOTHER LOCATION.
(2) THE GENERATOR FACILITY'S DESIGNATED CONTACT PERSON CHANGES.
(3) THE OWNERSHIP OF THE GENERATOR FACILITY CHANGES.
(4) THE TYPE OF REGULATED ACTIVITY THAT TAKES PLACE AT THE GENERATOR FACILITY CHANGES.

Subchapter B. THE MANIFEST

Sec.

§ 262a.20. General requirements.

40 CFR 262.20(a),(b) AND (c) ARE NOT INCORPORATED BY REFERENCE. **[Notwithstanding] IN ADDITION TO** the requirements incorporated by reference, a generator shall:

(1) Complete the manifest form in its entirety and **DISTRIBUTE MANIFEST COPIES** in accordance with the instructions included with the manifest.

(2) List no more than four waste streams on one manifest. If the generator is transporting or offering for transportation more than four different hazardous waste streams for offsite treatment, storage or disposal, the generator shall complete additional manifest forms for the remaining waste streams in the shipment, unless the waste stream is a lab pack.

(3) Complete a continuation sheet, EPA Form 8700-22a, when there are more than two transporters, or for lab packs **[when there are]** **WITH** more than four different waste streams in one shipment.

(4) Ensure that the required information on all copies, including photocopies, of the manifest is **[capable of being read by]** **LEGIBLE TO** the Department, transporter and designated facility.

(5) A generator shall designate only one **PERMITTED** facility **[which is permitted]** to handle the waste **DESCRIBED ON THE MANIFEST**.

§ 262a.21 ACQUISITION OF MANIFESTS.

THE SUBSTITUTION OF TERMS IN 260a.3(a)(5) DOES NOT APPLY TO 40 CFR 262.21 (RELATING TO ACQUISITION OF MANIFESTS.

§ 262a.22. Number of copies.

(a) **[Notwithstanding the requirements incorporated by reference,]** 40 CFR 262.22 (relating to number of copies) is not incorporated by reference.

(b) The manifest shall consist of at least the number of copies which will provide the generator, each

transporter and the owner or operator of the designated facility with one copy each for their records and which will allow the designated facility to send copies to the generator, generator state and destination state.

§ 262a.23. Use of the manifest.

(a) [**Notwithstanding**] IN ADDITION TO the requirements incorporated by reference: [**the generator shall:**]

[**(1) Send all manifest copies, except the generator's copy, dated and signed in accordance with the manifest instructions, to the owner or operator of the designated facility or the last water transporter to handle the waste in the United States if exported by water.**

(2) For rail shipments, send all manifest copies, except the generator's copy, dated and signed in accordance with the manifest instructions, to one of the following:

(i) The next nonrail transporter, if any.

(ii) The designated facility if transported solely by rail.

(iii) The last rail transporter to handle the waste in the United States if exported by rail.]

(1) THE GENERATOR SHALL ENTER THE DATE OF SHIPMENT IN THE DESIGNATED SPACE ON THE MANIFEST.

(2) IF THE OUT-OF-STATE MANIFEST DOES NOT INCLUDE GENERATOR-STATE COPIES WHICH WOULD BE SUBMITTED TO THE DEPARTMENT, THE GENERATOR SHALL SUBMIT COPIES, SUCH AS PHOTOCOPIES, OF THE MANIFEST AS SIGNED BY THE GENERATOR AND FIRST TRANSPORTER AND AS SIGNED UPON RECEIPT BY THE DESIGNATED FACILITY.

(b) THE SUBSTITUTION OF TERMS IN 260a.3(a)(5) DOES NOT APPLY TO 40 CFR 262.23(e) (RELATING TO NOTIFICATION OF SHIPMENTS OF HAZARDOUS WASTE TO A FACILITY IN AN AUTHORIZED STATE WHICH HAS NOT YET RECEIVED AUTHORIZATION TO REGULATE A NEWLY DESIGNATED HAZARDOUS WASTE).

SUBCHAPTER D. RECORDKEEPING AND REPORTING

Sec.
262a.41. BIENNIAL REPORT.

§ 262a.41. BIENNIAL REPORT.

REGARDING THE REQUIREMENTS INCORPORATED BY REFERENCE, THE FOLLOWING

REPLACES THE INTRODUCTORY PARAGRAPH IN 40 CFR 262.41 (RELATING TO BIENNIAL REPORT):

(a) A GENERATOR WHO SHIPS ANY HAZARDOUS WASTE OFF-SITE TO A TREATMENT, STORAGE OR DISPOSAL FACILITY WITHIN THE UNITED STATES MUST PREPARE AND SUBMIT A SINGLE COPY OF A BIENNIAL REPORT TO THE DEPARTMENT BY MARCH 1 OF EACH EVEN NUMBERED YEAR. THE BIENNIAL REPORT MUST BE SUBMITTED ON EPA FORM 8700–13A AS MODIFIED BY THE DEPARTMENT, MUST COVER GENERATOR ACTIVITIES DURING THE PREVIOUS YEAR, AND MUST INCLUDE THE FOLLOWING INFORMATION:

Sec.

262a.42 EXCEPTION REPORTING.

§ 262a.42. EXCEPTION REPORTING.

REGARDING THE REQUIREMENTS INCORPORATED BY REFERENCE, THE PHRASE "FOR THE REGION IN WHICH THE GENERATOR IS LOCATED" CONTAINED IN 40 CFR 262.42 IS NOT INCORPORATED BY REFERENCE.

Subchapter E. EXPORTS OF HAZARDOUS WASTE

Sec.

§ 262a.55. Exception report.

[Notwithstanding] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart E (relating to exports of hazardous waste).

§ 262a.56. Annual reports.

[Notwithstanding] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste).

§ 262a.57. Recordkeeping.

[Notwithstanding] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in §

260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste).

Subchapter H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD

Sec.
262a.80. Applicability.

§ 262a.80. Applicability.

[**Notwithstanding**] RELATIVE TO the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart H (relating to transfrontier shipments of hazardous waste for recovery within the OECD).

Subchapter I. SOURCE REDUCTION STRATEGY

Sec.
262.100. Source reduction strategy.

§ 262a.100. Source reduction strategy.

(a) By January 17, 1994, a person or municipality that generates hazardous waste shall prepare a source reduction strategy in accordance with this section. Except as otherwise provided in this article, the strategy shall be signed by the person or municipality that generated the waste, [**shall**] be maintained on the premises where the waste is generated, [**shall**] be available on the premises for inspection by any representative of the Department and [**shall**] be submitted to the Department upon request. The strategy may designate certain production processes as confidential. [**and**] [**this**] THIS confidential information may not be made public without the expressed written consent of the generator. Unauthorized disclosure is subject to appropriate penalties as provided by law.

(b) For each type of waste generated, the strategy shall include:

(1) A description of the source reduction activities conducted by the person or municipality in the 5 years prior to the date that the strategy is required to be prepared. The description shall quantify reductions in the weight or toxicity of waste generated on the premises.

(2) A statement of whether the person or municipality [**has**] established a source reduction program. THIS PROGRAM

[**(3) If the person or municipality has established a source reduction program as described in paragraph (2), the strategy**] shall identify the methods and procedures that the person or municipality will implement to achieve a reduction in the weight or toxicity of waste generated on the premises, [**shall**] quantify the projected

reduction in weight or toxicity of waste to be achieved by each method or procedure, and [**shall**] specify when each method or procedure will be implemented.

([4] 3) If the person or municipality has not established a source reduction program as described in paragraph (2), [**the strategy shall include**] **IT MUST DEVELOP A STRATEGY INCLUDING** the following:

(i) A waste stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.

(ii) A description of potential source reduction options.

(iii) A description of how the options were evaluated.

(iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when either of the following occurs:

(1) There is a significant change in a type of waste generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes, in writing, a different period for the person or municipality that generated the waste.

(d) If hazardous waste generated by a person or municipality will be treated, stored or disposed of at a solid waste management facility which has applied to the Department for approval to treat, store or dispose of the waste, the person or municipality that generated the hazardous waste shall submit the source reduction strategy required by this section to the facility upon the request of the facility.

(e) This section does not apply to persons or municipalities that generate a total of less than 1,000 kilograms of hazardous waste in each month of the year.

(f) A person or municipality that generates hazardous waste may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR 261.41(a)(5)–(7) (relating to biennial report).

CHAPTER 263. (Reserved)

CHAPTER 263a. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Subchap.

A. GENERAL
B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING
C. HAZARDOUS WASTE DISCHARGES
D. BONDING

Subchapter A. GENERAL

Sec.

§ 263a.10. Incorporation by reference and scope.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 263 (relating to standards applicable to transporters of hazardous waste) are incorporated by reference.

(b) [**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, when used in 40 CFR 263.10 (relating to scope), the phrase "Commonwealth of Pennsylvania" shall be substituted for the phrase "United States."

§ 263a.11. EPA identification number.

[**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations), does not apply in 40 CFR 263.11 (relating to EPA identification number).

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter [utilizing in-transit storage of] **STORING** hazardous waste **AT A TRANSFER FACILITY** for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan [**will be approved in writing by the Department**]. **THIS PLAN MUST BE SUBMITTED PURSUANT TO 35 P.S. §6018.403(b)(10) AND APPROVED IN WRITING BY THE DEPARTMENT PRIOR TO THE INITIATION OF SUCH STORAGE.**

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan [**which will be approved in writing by the Department**]. **THIS PLAN MUST BE SUBMITTED PURSUANT TO 35 P.S. 6018.403(b)(10) AND MUST BE APPROVED IN WRITING BY THE DEPARTMENT**

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), [**or**] § 263a.30 (relating to immediate actions), **§261a.5(d) (RELATING TO SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS), § 266a.70(1) (RELATING TO APPLICABILITY AND REQUIREMENTS FOR RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY) OR 266b.50 (RELATING TO APPLICABILITY OF STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS),** a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

(b) A person or municipality desiring to obtain a license to transport hazardous waste within this Commonwealth shall:

(1) Comply with 40 CFR 263.11 (relating to EPA identification number).

(2) File a hazardous waste transporter license application with the Department. The application shall be on a form provided by the Department and [**shall be**] completed as required by the instructions supplied with the form.

(3) Deposit with the Department a collateral bond [**which is**] conditional upon compliance by the licensee with the act, **ARTICLE VII OF** the regulations [**promulgated thereunder**], the terms and conditions of the license and a Department order issued to the licensee. The amount, duration, form, conditions and terms of the bond shall conform to § 263a.32 (relating to bonding).

(4) Supply the Department with [**the**] relevant additional information it may require.

(c) Upon receiving the application and the information required in subsection (b), the Department [**will evaluate**] **EVALUATES** the application for a license and other relevant information and [**issue**] **ISSUES** or [**deny**] **DENIES** the license. If a license is denied, the Department will advise the applicant in writing of the reasons for denial.

(d) A license granted or renewed under this chapter [**will be**] **IS** valid for 2 years unless the Department determines that circumstances justify issuing a license for a period of less than 2 years. The expiration date will be set forth on the license.

(e) A license to transport hazardous wastes is nontransferable and nonassignable and [**shall be used**] **USABLE** only by the licensee and [**employes**] **EMPLOYEES** of the licensee.

(f) The Department may revoke or suspend a license in whole or in part for one or more of the following reasons:

(1) Violation of an applicable requirement of the act or a regulation promulgated under the act.

(2) Aiding or abetting the violation of the act or a regulation promulgated under the act.

(3) Misrepresentation of a fact either in the application for the license or renewal or in information required or

requested by the Department.

(4) Failure to comply with the terms or conditions placed upon the license or renewal.

(5) Failure to comply with an order issued by the Department.

(6) Failure to maintain the required bond amount.

(g) The application for a license shall be accompanied by a check for $500 payable to the "Commonwealth of Pennsylvania." The application for license renewal shall be accompanied by a check for $250 payable to the "Commonwealth of Pennsylvania."

(h) In addition to the fees required by subsection (g), the transporter shall [**also**] submit a fee of $5 for each license card requested in excess of ten cards.

(i) The licensee shall notify the Department within 30 days of any change in the information contained in the license application.

Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

Sec.

§ 263a.20. The manifest system.

(1) [**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply in 40 CFR 263.20 (relating to manifest system), as [**adopted in**] **INCORPORATED BY REFERENCE INTO** this rule.

(2) IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE, A TRANSPORTER SHALL PRINT OR TYPE HIS NAME.

§ 263a.21. COMPLIANCE WITH THE MANIFEST.

IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE:

(1) A TRANSPORTER SHALL NOT ACCEPT OR TRANSPORT HAZARDOUS WASTE IF THE NUMBER OR TYPE OF CONTAINERS OR QUANTITY OF WASTE TO BE TRANSPORTED DOES NOT CORRESPOND WITH THE NUMBER, TYPE OR QUANTITY STATED ON THE MANIFEST.

(2) A TRANSPORTER SHALL ASSURE THE MANIFEST IS PROPERLY COMPLETED.

§ 263a.23. Hazardous waste transportation fee.

(a) A fee is assessed on hazardous waste transportation to or from a location within this Commonwealth which requires a manifest under § 263a.20, 40 CFR 263.20 and 40 CFR 263.21 (relating to the manifest system; and compliance with the manifest). Each of the following [**shall be**] ARE considered a separate transportation activity, subject to assessment of a fee:

(1) Transport to a location within this Commonwealth from a location out-of-state.

(2) Transport from a location within this Commonwealth to a location out-of-state.

(3) Transport from one location to another within this Commonwealth.

(b) A hazardous waste transportation fee will not be assessed for:

(1) Onsite shipments of hazardous waste.

(2) Hazardous waste shipments through this Commonwealth not originating from, or destined for, a location within this Commonwealth.

(3) Shipments of hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (P. L. 96-510, 94 Stat. 2767), known as the Federal Superfund Act (42 U.S.C.A. §§ 9601–9675), Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901–6987) or the act.

(c) A transporter delivering a shipment of hazardous waste to a designated facility or recycler in this Commonwealth shall pay the transportation fees. If a shipment is destined for a location outside this Commonwealth, the transportation fee will be paid by the transporter that accepts the hazardous waste from a Commonwealth generator or other hazardous waste management location within this Commonwealth.

(d) A transporter shall remit to the Department hazardous waste transportation fees due for each quarter, accompanied by the forms required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission).

(e) Payment of the fees, accompanied by the completed forms required by § 263a.24, shall be postmarked or received by the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission deadline falls on a weekend or State holiday, the report shall be postmarked or received on or before the next business day after the 20th.

(f) Payment shall be by check or money order, payable to "The Hazardous Sites Cleanup Fund," and forwarded with the accompanying forms to the Department at the address specified on the form. Alternative payment

methods may be accepted with prior written approval of the Department.

(g) Fees shall be calculated based on standard tons. For purposes of this section:

(1): [**(i)**] A standard ton equals 2,000 pounds.

(2) [**(ii)**] A metric ton [**shall be**] IS converted to a standard ton by dividing the metric ton by a factor of 0.91.

(3) [**(2)**] Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons [**shall be**] ARE converted to tons using a factor of 8 pounds per gallon.

(ii) Liters [**shall be**] ARE converted to tons using a factor of 2.1 [**pound**] POUNDS per liter.

[**(3)**] (4) Cubic yards and cubic meters [**shall be**] ARE converted to standard tons using a factor of 1 ton per each of these units, or part thereof.

(h) [**Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator**] **FEES ARE BASED ON THE QUANTITIES LISTED ON THE MANIFEST BY THE TSD OR, WHEN NOT SPECIFIED BY THE TSD, AS PROVIDED BY THE GENERATOR.**

§ 263a.24. Documentation of hazardous waste transporter fee submission.

(a) A transporter receiving or delivering hazardous waste to or from a site in this Commonwealth shall submit specific information to the Department to document that the amount of fees submitted under § 263a.23 (relating to hazardous waste transportation fee) is accurate. This information shall be provided on forms provided or approved by the Department.

(1) A transporter who has transported hazardous waste during a quarter shall submit completed forms ER-WM-55G and ER-WM-55H, or their successor documents, with the appropriate fees.

(2) A transporter who has not transported hazardous waste during a quarter shall submit only form ER-WM-55G.

(b) The required forms shall be completed by the applicant in conformance with instructions provided.

(c) A transporter shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste transportation activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

§ 263a.25. Civil penalties for failure to submit hazardous waste transporter fees.

(a) The Department may assess a civil penalty for:

(1) Failure to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), failure to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or failure to meet the time schedule for submission established by § 263a.23(e).

(2) Intentional submission of falsified information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305).

(3) Failure of a transporter to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, the Hazardous Sites Cleanup Act or this article.

§ 263a.26. Assessment of penalties.

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and the regulations thereunder, this section sets forth civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), fails to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or fails to meet the time schedule for submission established by § 263a.23(e), the Department may assess a **MINIMUM** civil penalty of $500 for submissions which are less than 15 days late, **AND $500 PER DAY FOR EACH DAY THEREAFTER.**

(c) If a person or municipality falsifies information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101–6020.1305), the Department may assess a civil penalty of $1,000.

(d) Failure to comply with the fee payment and documentation requirements of this chapter constitutes grounds for suspension or revocation of a hazardous waste transporter license, denial of issuance or renewal of a license, and for forfeiture of the hazardous waste transporter's collateral bond, in addition to civil penalties set forth in this section.

Subchapter C. HAZARDOUS WASTE DISCHARGES

Sec.
263a.30. Immediate action.

§ 263a.30. Immediate action.

In addition to the requirements incorporated by reference, in the event of a discharge or spill of hazardous waste during transportation, the transporter shall immediately notify the Department by telephone at (717) 787-4343.

Subchapter D. BONDING

Sec.
263a.32. Bonding.

§ 263a.32. Bonding.

(a) A collateral bond means an indemnity agreement in a certain sum payable to the Department executed by the licensee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Turnpike Commission, the General State Authority, the State Public School Building Authority or a Commonwealth municipality, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(b) A new, revised or renewed license to transport hazardous waste may not be issued by the Department before the applicant for a license has filed a collateral bond payable to the Department on a form provided **OR APPROVED** by the Department, and the bond [**has been**] **IS** approved by the Department.

(c) The [**amount of the**] bond shall be [**$10,000 at a minimum and be**] in an amount sufficient to assure that the licensee faithfully performs the requirements of the act, the regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee, **BUT A MINIMUM OF $10,000**.

(d) Liability under the bond shall continue at a minimum for the duration of the license, any renewal thereof and for a period of 1 year after expiration, termination, revocation or surrender of the license. The 1-year extended period of liability shall include, and shall be automatically extended for, additional time during which administrative or legal proceedings are pending involving a violation by the transporter of the act, regulations promulgated thereunder, the terms or conditions of a license or a Department order.

(e) The Department may require additional bond amounts at any time if the methods of transporting wastes change, the kinds of wastes transported change or the Department determines the additional bond amounts are necessary to guarantee compliance with the act, regulations, the terms and conditions of the license or a Department order.

(f) Collateral bonds [**shall be**] **ARE** subject to the following conditions:

(1) The Department will obtain possession of and keep in custody all collateral deposited by the licensee until authorized for release as provided in this section.

(2) The Department will value collateral at its current market value.

(3) Collateral shall be in the name of the licensee, not in the name of third parties and shall be pledged and assigned to the Department free and clear of claims.

(g) Letters of credit [**shall be**] **ARE** subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of credit [**shall be**] **ARE** irrevocable. The Department may accept a letter of credit [**which is irrevocable**] **NOT REVOCABLE** for a term of 3 years if:

(i) The letter of credit is automatically renewable for additional terms, unless the bank gives at least 90 days prior written notice to the Department of its intent to terminate the credit at the end of the current term.

(ii) The Department has the right to draw upon the credit before the end of its term and convert it into a cash collateral bond if the licensee fails to replace the letter of credit with other acceptable collateral within 30 days of the banks notice to terminate the credit.

(3) The letter of credit shall be payable to the Department in part or in full upon demand of the Department in the case of a forfeiture or the failure of the **OWNER OR** operator to replace the letter of credit as provided in this section.

(4) The Department will not accept letters of credit from a bank for a licensee in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) All letters of credit [**shall be**] **ARE** subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 290, including amendments and successor publications.

(6) Letters of credit [**will**] provide that the bank will give prompt notice to the licensee and the Department of a notice received or action filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements [**which**] **THAT** could result in suspension or revocation of the bank's charter or license to do business.

[**(7)**] **(h)** Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the licensee [**shall be**] **IS** deemed to be without collateral bond coverage in violation of § 263a.13 (relating to licensing). The Department will issue a notice of violation against a licensee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days.

[**(h)**] **(i)** Bonds [**which are**] not declared forfeit in accordance with subsection [**(i)**] **(j)** [**shall be**] **ARE** released to the licensee [**1**] **ONE** year after expiration, termination, revocation or surrender of the license.

[**(j)**] **(j)** The Department will declare forfeit all [**the**] **A LICENSEE'S** bonds if the Department finds that the licensee [**has**] violated any [**of the**] requirements of the act, the regulations promulgated thereunder, terms and

conditions of a license or a Department order issued to the licensee[, **and if**] WHEN the Department [**also**] finds that the licensee [**has**] failed to remedy A VIOLATION promptly[**the violation**].

[(j)] (k) Remedies provided in law for violation of the act, the regulations adopted thereunder or the conditions of the license, are expressly preserved. Nothing in this section may be construed as an exclusive penalty or remedy for the violations of law. An action taken under this chapter does not waive or impair another remedy or penalty provided in law.

CHAPTER 264. (Reserved)

CHAPTER 264a. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchap.

Subchapter A. GENERAL

EDITOR'S NOTE: THE PROVISIONS OF SUBCHAPTER S ADOPTED (THE BLANK REFERS TO THE DATE OF ADOPTION OF THE FINAL RULEMAKING), EFFECTIVE UPON DELEGATION OF THE CORRECTIVE ACTION PROGRAM TO THE DEPARTMENT BY THE ENVIRONMENTAL PROTECTION AGENCY.

Sec.

§ 264a.1. Incorporation by reference, purpose, scope and reference.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 AND ITS APPENDICES (relating to standards for owners and operators of hazardous waste treatment, storage, and

disposal facilities) [**and the appendices to Part 264**]are incorporated by reference.

(b) [**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference:

(1) The requirements of 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs), **AND APPENDIX VI (RELATING TO POLITICAL JURISDICTIONS IN WHICH COMPLIANCE WITH § 264.18(a) MUST BE DEMONSTRATED)** are not incorporated [**herein**] **BY REFERENCE**.

(2) **INSTEAD OF 40 CFR 264.1(b),** the requirements of this chapter apply to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, [**or in**] Chapter 261a (relating to identification and listing of hazardous waste), **CHAPTER 266a (RELATING TO STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES) AND SECTION 270a.60 (RELATING TO PERMITS-BY-RULE)**.

(3) [**The requirements of this chapter do not apply to owners or operators of facilities specifically exempted from compliance with this chapter under 40 CFR 264.1 (relating to purpose, scope and applicability), except that those owners or operators of facilities which are authorized to treat, store or dispose of hazardous waste under a permit-by-rule established under Chapter 270a (relating to hazardous waste permit program) are required to comply with specified provisions of this chapter if an applicable permit-by-rule established in Chapter 270a expressly requires compliance with this chapter.**]
INSTEAD OF 40 CFR 264.1(g)(2), THE REQUIREMENTS OF THIS CHAPTER DO NOT APPLY TO THE OWNER OR OPERATOR OF A FACILITY MANAGING RECYCLABLE MATERIALS DESCRIBED IN 40 CFR 261.6(a)(2), (3) AND (4) (RELATING TO REQUIREMENTS FOR RECYCLABLE MATERIALS) EXCEPT TO THE EXTENT THE REQUIREMENTS ARE REFERRED TO IN CHAPTER 266a, SUBCHAPTERS C, E, F, G OR § 270a.60.

(4)[**This chapter does not apply to owners or operators of facilities authorized to treat, store or dispose of hazardous waste under a permit-by-rule and variance established under § 270a.60 (relating to permits by rule).**]**40 CFR 264.1(g)(6) (RELATING TO ELEMENTARY NEUTRALIZATION UNIT AND WASTEWATER TREATMENT UNIT) IS NOT INCORPORATED BY REFERENCE. THE OWNER OR OPERATOR OF AN ELEMENTARY NEUTRALIZATION UNIT OR WASTEWATER TREATMENT UNIT MAY SATISFY PERMITTING REQUIREMENTS BY COMPLYING WITH §270a.60(b)(1).**

(5) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal wastes).

[**(6) With respect to the specific requirements of Subchapters K and N (relating to surface impoundments and landfills), the Department may, upon written application from a person who is subject to either subchapter, grant a variance from one or more specific provisions of that subchapter in accordance with this paragraph. An application for a variance shall:**

(i) Identify the specific provisions from which a variance is sought.

(ii) Demonstrate that suspension of the identified provisions will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions.]

Subchapter B. GENERAL FACILITY STANDARDS

Sec.

§ 264a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an [**identification number from the**] EPA IDENTIFICATION NUMBER and a license from the Department, except as otherwise provided. [**This provision**] THE LICENSING REQUIREMENT does not apply to [**acceptance of waste generated by a small quantity generator or by a**] conditionally exempt small quantity generatorS TRANSPORTING THEIR OWN HAZARDOUS WASTE PROVIDED THAT THE CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR IS IN COMPLIANCE WITH § 261.5(d) (RELATING TO SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS), TRANSPORTERS TRANSPORTING RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY IN COMPLIANCE WITH § 266a.70(1) (RELATING TO APPLICABILITY AND REQUIREMENTS FOR RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY) OR UNIVERSAL WASTE TRANSPORTERS IN COMPLIANCE WITH § 266b.50 (RELATING TO APPLICABILITY OF STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS).

§264a.12 REQUIRED NOTICES.

THE SUBSTITUTION OF TERMS AS SPECIFIED AT 260a.3(a)(1) DOES NOT APPLY TO 40 CFR 264.12 (RELATING TO REQUIRED NOTICES).

§ 264a.13. General and generic waste analysis.

[(*Editor's Note*: **Most of the provisions proposed in § 264a.13 are in the existing text of § 264.12 and § 264.13.)**]

(a) In addition to the requirements incorporated by reference[:], **BEFORE AN OWNER OR OPERATOR OF A FACILITY THAT TREATS, STORES OR DISPOSES OF A SPECIFIC HAZARDOUS WASTE FROM A SPECIFIC GENERATOR FOR THE FIRST TIME, THE OWNER OR OPERATOR SHALL SUBMIT TO THE DEPARTMENT A NOTIFICATION THAT THE FACILITY INTENDS TO ACCEPT AN ADDITIONAL WASTE STREAM GENERATED BY THE SPECIFIED GENERATOR. THIS NOTIFICATION SHALL INCLUDE INFORMATION THAT IS SPECIFIED IN THE FACILITY'S PERMIT.**

(b) IF THE NOTIFICATION INFORMATION REQUIRED IN (a) IS NOT REQUIRED BY THE FACILITY'S PERMIT, THE OWNER OR OPERATOR SHALL SUBMIT THE INFORMATION REQUIRED BY §265a.13 (RELATING TO GENERAL AND GENERIC WASTE ANALYSIS) UNTIL SUCH TIME THAT THE PERMIT IS AMENDED TO REQUIRE THE NOTIFICATION INFORMATION.

[(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a report which the owner or operator shall retain for 20 years. The report shall include the following information:

(i) A detailed chemical and physical analysis of the waste.

(ii) A description of the waste and the process generating the waste.

(iii) The name and address of the hazardous waste management facility.

(iv) A description of the hazardous waste management facility's treatment, storage and disposal methods.

(v) Results of liner compatibility testing.

(vi) An assessment of the impact of the waste on the hazardous waste management facility.

(vii) A copy of the generator's source reduction strategy unless exempted under § 262a.100 (relating to source reduction strategy). For generators located outside of this Commonwealth, a copy of documentation that the generator has complied with section 3005(h) of the Solid Waste Disposal Act (42 U.S.C.A. § 6925(h)).

(viii) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:

(A) When necessary to ensure that it is accurate and up-to-date.

(B) When the owner or operator is notified, or has reason to believe, that the process or operation that generates the hazardous waste has changed.

(C) For offsite facilities or onsite facilities receiving waste from offsite sources, when the results of the inspection or analysis, or both, of each hazardous waste indicates that the waste received at the facility does not match the description of the waste on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan in compliance with 40 CFR 264.13 (relating to general waste analysis) which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility.

(3) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or landfill unless the approval to accept the waste is granted in the facility's permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of the evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(4) The Department may waive prior approval of the report specified in paragraph (1) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the report only if:

(i) The Department determines that such a waiver does not pose a potential threat to human health or the environment.

(ii) The management of the wastes is allowed in the permit for the facility and properly addressed in the approved waste analysis plan for the facility.

(iii) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(5) Prior Department approval of the report specified in paragraph (1) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation.

(6) In lieu of the waste and generator specific report required by paragraphs (1)–(3), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators.

(7) An application for a Generic Module I shall include:

(i) The information required by paragraph (1). Generator specific information shall be included for each generator identified in the application.

(ii) Criteria for determining whether the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(8) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department in writing, the generator specific information required by paragraph (1). The Department will not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(9) A permit modification and Generic Module I requested under this section shall be accompanied by a fee, as specified in § 270a.3 (relating to payment of fees).]

§ 264a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, OWNERS OR OPERATORS SHALL SUBMIT a schedule for construction of a hazardous waste management facility **[shall be submitted]** to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

§ 264a.18. Location standards.

In addition to the requirements incorporated by reference, the requirements of Chapter 269a (relating to siting) apply to hazardous waste treatment and disposal facilities.

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.

[§ 264a.52. Content of contingency plan.

In addition to the requirements incorporated by reference:

(1) The contingency plan and revisions and amendments thereto shall be prepared and implemented in accordance with the Department's guidance for contingency plans.

(2) The contingency plan shall be submitted to the Department for approval at the time in the application process that the Department prescribes.]

§ 264a.56. Emergency procedures.

In addition to the requirements incorporated by reference,

[(1) T]the emergency coordinator shall immediately notify the **APPROPRIATE REGIONAL OFFICE OF THE** Department **OR THE DEPARTMENT'S CENTRAL OFFICE** by telephone at (717) 787-4343 **[and the National Response Center at (800) 424-8802]**.

[(2) The report to the Department and the National response center shall include the following:

(i) The name and telephone number of the reporter.

(ii) The name and address of the facility.

(iii) The time and type of the incident (for example, release, fire).

(iv) The name and quantity of materials involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health, or the environment, outside the facility.

(3) Immediately after an emergency, the emergency coordinator shall provide for treating, storing or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire or explosion at the facility.]

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.

§ 264a.71. Use of the manifest system.

In addition to the requirements incorporated by reference:

(1) [**Except as otherwise provided in 40 CFR 262. 23(l) (relating to use of he manifest), an**] AN owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by [**a Pennsylvania manifest**] **A MANIFEST APPROVED BY THE DEPARTMENT, UNLESS A MANIFEST IS NOT REQUIRED BY 40 CFR 262.20(e) (RELATING TO THE MANIFEST GENERAL REQUIREMENTS).**

[**(2) The Pennsylvania manifest is a six-part hazardous waste manifest form that is obtained from the Department or is approved by the Department.**]

[**(3)**] (2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, [**unless it is known that the generator state does not desire the copies**] **AS REQUIRED.**

[**§ 264a.72. Manifest discrepancies.**

In addition to the requirements incorporated by reference, if a significant discrepancy is not resolved within 15 days, the owner or operator shall immediately notify the appropriate regional office of the Department by telephone and send a letter to the Department describing the discrepancy and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.]

§ 264a.75. Biennial report.

[**(a) Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA form 8700-13B, as modified **BY THE DEPARTMENT.**

[**(b) In addition to the requirements incorporated by reference, reports required by this section shall be maintained for the life of the facility as a part of the operating record.**]

§ 264a.78. Hazardous waste management fee.

(*Editor's Note*: The text of the existing § 264.78 (relating to hazardous waste management fee) is[**proposed to be**] renumbered as § 264a.78.)

§ 264a.79. Documentation of hazardous waste management fee submission.

(*Editor's Note*: The text of the existing § 264.79 (relating to documentation of hazardous waste management fee submission) is [**proposed to be**] renumbered as § 264a.79.)

§ 264a.80. Civil penalties for failure to submit hazardous waste management fees.

(*Editor's Note*: The text of the existing § 264.80 (relating to civil penalties for failure to submit hazardous waste management fees) is [**proposed to be**] renumbered as § 264a.80.)

§ 264a.81. Assessment of penalties; minimum penalties.

(*Editor's Note*: The text of the existing § 264.81 (relating to assessment of penalties; minimum penalties) is [**proposed to be**] renumbered as § 264a.81.)

§ 264a.82. Administration fees.

(*Editor's Note*: The text of the existing § 264.82 (relating to administration fees) is[**proposed to be**] renumbered as § 264a.82.)

§ 264a.83. Administration fees during closure.

(*Editor's Note*: The text of the existing § 264.113(b) (relating to administration fees–closure; time allowed for closure) is [**proposed to be**] renumbered as § 264a.83.)

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Sec.

§ 264a.9[6]7. [Compliance period] GENERAL GROUND-WATER MONITORING REQUIREMENTS.

In addition to the requirements incorporated by reference:

(1) The owner or operator shall keep records of analyses and evaluations of groundwater quality, surface elevations[,] and flow rate and direction determinations required under [**this subchapter**]**40 CFR PART 264, SUBPART F (RELATING TO RELEASES FROM SOLID WASTE MANAGEMENT UNITS)**.

(2) The owner or operator shall report the following information in writing to the Department:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in 40 CFR 264.98(a) (relating to detection monitoring program) for an upgradient groundwater monitoring well within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(ii) Quarterly after the first year: concentrations or values of the parameters in 40 CFR 264.98(a) and required under 40 CFR 264.97(g) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR 264.97(h) (relating to detection monitoring program), within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(iii) Annually: concentrations or values of those parameters for each well which are specified by the facility's permit within 15 days of completing the annual analysis.

(iv) Annually: those determinations for the groundwater flow rate and direction specified in 40 CFR 264.99(e) (relating to compliance monitoring).

(3) The owner or operator shall report the groundwater quality required by paragraph (2) above and 40 CFR 264.97 at a monitoring point established under 40 CFR 264.95 (relating to point of compliance) in a form necessary for the determination of statistically significant increases under 40 CFR 264.98 (relating to detection monitoring program).

264a.101 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS.

IN 40 CFR 264.101(b), THE REFERENCE TO SUBPART S DOES NOT APPLY UNTIL 40 CFR PART 264 SUBPART S IS EFFECTIVE IN PENNSYLVANIA.

Subchapter G. CLOSURE AND POSTCLOSURE

Sec.
264a.115. CERTIFICATION OF CLOSURE.
264a.120. CERTIFICATION OF COMPLETION OF POST-CLOSURE CARE.

§264a.115. CERTIFICATION OF CLOSURE

THE OWNER OR OPERATOR SHALL SATISFY §264a.166 (RELATING TO CLOSURE AND POST-CLOSURE CERTIFICATION) INSTEAD OF THE REFERENCE TO 40 CFR 264.143(i) (RELATING TO RELEASE OF THE OWNER OR OPERATOR FROM THE REQUIREMENTS OF THIS SECTION).

§264a.120. CERTIFICATION OF COMPLETION OF POST-CLOSURE CARE.

THE OWNER OR OPERATOR SHALL SATISFY §264a.166 (RELATING TO CLOSURE AND POST-CLOSURE CERTIFICATION) INSTEAD OF THE REFERENCE TO 40 CFR 264.145(i) (RELATING TO RELEASE OF THE OWNER OR OPERATOR FROM THE REQUIREMENTS OF THIS SECTION).

Subchapter H. FINANCIAL REQUIREMENTS

Sec.
264a.141. Definitions.
264a.143. Financial assurance for closure.

§ 264a.141. Definitions.

In addition to the terms defined in 40 CFR 264.141 (relating to definitions of terms as used in this subchapter), which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to hazardous waste management system: general) apply to this [**chapter**] **SUBCHAPTER**. The following words and terms, when used in this [**chapter**] **SUBCHAPTER**, have the following meanings, unless the context clearly indicates otherwise:

[***Amount of liability coverage***–**The insurance requirements of § 264a.147 (relating to liability requirements).**]

Applicant–An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

Collateral bond–A penal bond agreement in a sum certain, payable to the Department, executed by the [**permittee**] **FACILITY OWNER OR OPERATOR** and [**which**] is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

Final closure–Successful completion of requirements for closure and postclosure care as required by 40 CFR Part 264, Subpart G (relating to closure and postclosure).

Financial institutions–Banks **AND OTHER SIMILAR ESTABLISHMENTS** organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

Surety bond–A penal bond agreement in a sum certain, payable to the Department, executed by the [**permittee**] **FACILITY OWNER OR OPERATOR**, and [**which**] is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

***SURETY COMPANY*– A CORPORATION LICENSED TO DO BUSINESS AS A SURETY IN THIS COMMONWEALTH**

§ 264a.143. Financial assurance for closure.

[Notwithstanding the requirements incorporated by reference, only 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) is incorporated by reference. This subsection is incorporated by reference only to the extent that the instruments used for financial assurances for closure comply with the laws and regulations of the Commonwealth.]

40 CFR 264.143 (RELATING TO FINANCIAL ASSURANCE FOR CLOSURE) IS NOT INCORPORATED BY REFERENCE EXCEPT FOR 40 CFR 264.143(f) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE) AS REFERENCED IN §264a.156 (RELATING TO SPECIAL TERMS AND CONDITIONS FOR COLLATERAL BONDS AND BONDS PLEDGING CORPORATE GUARANTEE FOR CLOSURE.)

§ 264a.145. Financial assurance for post-closure care.

[Notwithstanding the requirements incorporated by reference,] 40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference **EXCEPT FOR 40 CFR 264.145(f) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR POST-CLOSURE CARE) AS REFERENCED IN §264a.156 (RELATING TO SPECIAL TERMS AND CONDITIONS FOR COLLATERAL BONDS AND BONDS PLEDGING CORPORATE GUARANTEE FOR CLOSURE.)**

§ 264a.147. Liability requirements.

THE SUBSTITUTION OF TERMS AS SPECIFIED AT 260a.3(a)(5) DOES NOT APPLY TO 40 CFR 264.147(g)(2) AND (i)(4).

[(a) Notwithstanding the requirements incorporated by reference, 40 CFR 264.147 (relating to liability

requirements) is incorporated by reference only to the extent that the demonstration of financial responsibility complies with the laws of the Commonwealth and the related regulations.

(b) In addition to the requirements incorporated by reference:

(1) A permit applicant, or permittee of a hazardous waste storage, treatment or disposal facility shall submit proof that the owner or operator has in force comprehensive general liability (ordinary public liability) insurance covering bodily injury and property damage to third parties.

(2) Insurance policies providing comprehensive general liability (ordinary public liability) insurance covering bodily injury and property damage to third parties shall follow the commercial or comprehensive forms approved by the Insurance Department and shall be one of the following:

(i) Per occurrence and aggregate limits apply separately to bodily injury and property damages.

(ii) Per occurrence and aggregate limits apply to bodily injury and property damage combined.

(3) The amount of coverage provided for bodily injury and property damage may be inclusive or exclusive of legal defense costs.

(4) For coverage where per occurrence and aggregate limits apply separately and where legal defense costs are included within the amount of coverage, the minimum amount of coverage for bodily injury shall be $1.5 million per occurrence, with an annual aggregate of $3 million and the minimum amount of coverage for property damage shall be $750,000 per occurrence, with an annual aggregate of $1.5 million.

(5) For coverage where per occurrence and aggregate limits apply separately and where legal defense costs are excluded from the face amount of coverage, the minimum amount of coverage for bodily injury shall be $1 million per occurrence, with an annual aggregate of $2 million and the minimum amount of coverage for property damage shall be $500,000 per occurrence, with an annual aggregate of $1 million.

(6) For coverage where per occurrence and aggregate limits apply to bodily injury and property damage combined, and where legal defense costs are included within the amount of coverage, the minimum amount of combined coverage for bodily injury and property damage shall be $2.25 million per occurrence, with an annual aggregate of $4.5 million.

(7) For coverage where per occurrence and aggregate limits apply to bodily injury and property damage combined and where legal defense costs are excluded from the amount of coverage, the minimum amount of combined coverage for bodily injury and property damage shall be $1.5 million per occurrence, with an annual aggregate of $3 million.

(8) The insurance policy shall provide for the payment of claims up to the full amount of coverage regardless of any deductible amount applicable to the policy. If the policy provides the insurer with a right of reimbursement by the insured for payment of the deductible amount, the insurer shall be liable for payment of the deductible amount. If the policy does not provide the insurer with a right of

reimbursement or similar methods of recoupment, the insured shall provide additional coverage amounts by the purchase of excess coverage for the deductible amount.]

§ 264a.148. Incapacity of owners or operators, guarantors or financial institutions.

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the regional administrator of the EPA.

§ 264a.149. Use of state-required mechanisms.

[**Notwithstanding the requirements incorporated by reference,**] 40 CFR 264.149 (relating to use of state-required mechanisms) is not incorporated by reference.

§ 264a.150. State assumption of responsibility.

[**Notwithstanding the requirements incorporated by reference,**] 40 CFR 264.150 (relating to state assumption of responsibility) is not incorporated by reference.

§ 264a.151. Wording of instruments.

[**Notwithstanding the requirements incorporated by reference,**] 40 CFR 264.151 (relating to wording of the instruments) is NOT incorporated by reference [**only to the extent consistent with the laws and regulations of the Commonwealth. Revisions to financial tests or wording of the standard instruments in 40 CFR 264.151 that are substantially similar to the intent of the Federal text may be approved by the Department as necessary to conform with state law and regulations**].

(*Editor's Note*: Proposed sections 264a.153–264a.169 include provisions of existing Chapter 267, Subchapter B (relating to bonding), which have been updated and conformed to Federal provisions.)

§ 264a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities [**which have been**] permitted under the act, or [**which are**] being treated as having [**been issued**] a permit under the act, shall file a bond in accordance with this subchapter **AND IN THE AMOUNT DETERMINED BY §264a.160 (RELATING TO BOND AMOUNT DETERMINATION)**, payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant [**has filed**] **FILES** with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond [**has been**] **IS** approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous

waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility [**which is**] permitted or [**is being**] treated as having [**been issued**] a permit, shall cease accepting hazardous waste unless the [**permittee**] **OWNER OR OPERATOR** [**has submitted**] **SUBMITS** a bond under this [**part**] **SUBCHAPTER**. The Department will review and determine whether or not to approve the bond within [1] **ONE** year [**after**] **OF THE** submittal. If, on review, the Department determines the [**permittee has**] **OWNER OR OPERATOR** submitted an insufficient bond amount, the Department will require the [**permittee**] **OWNER OR OPERATOR** to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

§ 264a.154. Form, terms and conditions of bond.

(a) The Department [**will accept one of**] **ACCEPTS** the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A bond pledging a corporate guarantee.

(4) A phased deposit collateral bond as provided in § 264a.157 (relating to phased deposits of collateral).

(b) The Department [**will prescribe**] **PRESCRIBES** and furnish**ES** the forms for bond instruments.

(c) Bonds [**shall be**] **ARE** payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.4c, 1396.4e and 1396.15c–1396.25), the Air Pollution Control Act (35 P. S. §§ 4001–4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. **AN OWNER OR OPERATOR OF A NEW FACILITY MUST SUBMIT THE BOND TO THE DEPARTMENT AT LEAST 60 DAYS BEFORE THE DATE THAT HAZARDOUS WASTE IS FIRST RECEIVED FOR TREATMENT, STORAGE OR DISPOSAL.**

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 264a.155. Special terms and conditions for surety bonds.

(a) The Department [**will**] **DOES** not accept the bond of a surety company [**which has**] **THAT** failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department [**will**] accept**S** only the bond of a surety authorized to do business in this Commonwealth[,]**AND WHICH IS LISTED IN CIRCULAR 570 OF THE UNITED STATES DEPARTMENT OF TREASURY**.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the [**permittee**] **OWNER OR OPERATOR** and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days [**after**] **OF** receipt of the notice of cancellation, the [**permittee**] **OWNER OR OPERATOR** shall provide the Department with a replacement bond under § 264a.158 (relating to replacement of bond). Failure of the [permittee] **OWNER OR OPERATOR** to provide a replacement bond within the 60-day period [**shall**] constitute**S** grounds for forfeiture of the existing bond under § 264a.168 (relating to bond forfeiture).

(d) The Department [**will**] **DOES** not accept surety bonds from a surety company for a [**permittee**] **OWNER OR OPERATOR**, on all [**permits held**] **FACILITIES OWNED OR OPERATED** by the [**permittee**] **OWNER OR OPERATOR**, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341–991), unless the surety has complied with the provisions of the Insurance Company Act of 1921 940 P. S. §§ 1–297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety, notwithstanding judicial or administrative appeal of the forfeiture, and that the amount [**shall be**] **IS** confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the [**permittee**] **OWNER OR OPERATOR** [**shall be jointly**] **ARE JOINT** and severally liable for payment of the bond amount.

§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.

(a) The Department [**will obtain**] **OBTAINS** possession [**of**] and [**keep in**] **KEEPS** custody **OF** collateral deposited by the [**permittee**] **OWNER OR OPERATOR** until authorized for release or replacement as provided in this subchapter.

(b) The Department [**will value**] **VALUES** governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department [**will use**] **USES** the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit [**shall be**] **ARE** subject to the following conditions:

(1) The Department [**will require**] **REQUIRES** that certificates of deposit [**be**] **ARE** assigned to the

Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for [**a denomination in excess of $100,000, or**] the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) [**or**] **AND WHICH** is otherwise secured under Pennsylvania law.

(3) The Department [**will require**] **REQUIRES** the issuing institution to waive all rights of setoff or liens [**which**] it has or might have against the certificates.

(4) The Department [**will**] only [**accept**] **ACCEPTS** automatically-renewable certificates of deposit.

(5) The Department [**will require**] **REQUIRES** that the certificates of deposit [**are**] **BE** assigned to the Department to assure that the Department [**will be able to**] **CAN** liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this [**chapter**] **SUBCHAPTER**.

(6) The Department [**will accept**] **ONLY ACCEPTS** certificates of deposit [**only**] from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.

(7) The Department [**will**] **DOES** not accept certificates of deposit from banks [**which have**] **THAT** failed or delayed in making payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a bank letter of credit [**shall be**] **ARE** subject to the following conditions:

(1) The letter of credit [**shall be**] **IS** a standby [**or guarantee**] letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a State or Federal agency and Federally insured or equivalently protected.

(2) The letter of credit may not [**have been**] **BE** issued without a credit analysis substantially equivalent to [**a credit analysis applicable to**] **THAT OF** a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the [**customer's**] **OWNER'S OR OPERATOR'S** unqualified obligation to reimburse the issuer for monies paid under the letter of credit.

(3) The letter of credit may not [**have been**] **BE** issued [**for a customer**] when the amount of the letter of credit, aggregated with other loans and credits extended to the [**customer**] **OWNER OR OPERATOR**, exceeds the issuer legal lending limits for that [**customer**] **OWNER OR OPERATOR** as defined in the United States Banking Code (12 U.S.C.A. §§ 21–220).

(4) The letter of credit [**shall be**] **IS** irrevocable and [**shall be**] **IS** so designated. The Department may accept a letter of credit for [**which a limited time**] **AT LEAST A ONE YEAR** period [**is stated**] if the following conditions are met and [**are**] stated in the credit:

(i) The letter of credit is automatically renewable for additional time periods **OF AT LEAST ONE YEAR**, unless the bank gives at least [**90**] **120** days prior written notice **BY CERTIFIED MAIL** to the Department and the customer of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.

(5) Letters of credit shall name the Department as the beneficiary and [**shall**] be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this [**chapter**] **SUBCHAPTER**.

(6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.

(7) The issuing bank [**shall waive**] **WAIVES** the rights to setoff or liens [**which**] it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank [**which has**] **THAT** failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) **AND 40 CFR 264.145(f) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR POST-CLOSURE CARE). INSTEAD OF THE PROVISIONS OF 40 CFR 264.143(f)(10)(i) (RELATING TO THE ESTABLISHMENT OF A TRUST FUND AS SPECIFIED IN §264.143(a)) AND 40 CFR 264.145(f)(11)(i) (RELATING TO THE ESTABLISHMENT OF A TRUST FUND AS SPECIFIED IN §264.145(a)), THE PROCEDURES OF §264a.168 (RELATING TO BOND FORFEITURE), APPLY TO BOND FORFEITURE.**

§ 264a.157. Phased deposits of collateral.

(a) [**A permit applicant or a permittee**] **AN OWNER OR OPERATOR** may post a collateral bond **IN PHASED DEPOSITS** for a hazardous waste storage, treatment or disposal facility [**which**] **THAT** will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The [**permittee**] **OWNER OR OPERATOR** [**shall submit**] **SUBMITS** a collateral bond **FORM** to the Department.

(2) The [**permittee**] **OWNER OR OPERATOR** [**shall deposit**] **DEPOSITS** $10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The [**permittee**] **OWNER OR OPERATOR** [**shall submit**] **SUBMITS** a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The [**permit applicant or permittee**] **OWNER OR OPERATOR** [**shall deposit**] **DEPOSITS** the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department [**will make**] **MAKES** the demand when one of the following occurs:

(1) The [**permittee**] **OWNER OR OPERATOR** [**has failed**] **FAILS** to make a deposit of bond amount when required by the schedule for the deposits.

(2) The [**permittee**] **OWNER OR OPERATOR** [**has violated**] **VIOLATES** the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit [**shall be accumulated**] **ACCUMULATES** and becomes part of the bond amount until the **OWNER OR** operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited [**shall be**] **IS** adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

§ 264a.158. Replacement of bond.

(a) The Department may allow [**permittees**] **OWNERS OR OPERATORS** to replace existing surety or collateral bonds with other surety or collateral bonds if the liability [**which has**] accrued against the [**permittee**] **OWNER OR OPERATOR** of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond [**will be**] **IS** determined under this chapter, but in no case may it be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the [**permittee**] **OWNER OR OPERATOR** [**has submitted**] **SUBMITS** and the Department [**has approved**] **APPROVES** acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this [**chapter**] **SUBCHAPTER**.

(c) Within 60 days [**after**] **OF** approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the [**permittee**] **OWNER OR OPERATOR**.

§ 264a.159. Reissuance of permits.

Before a permit is reissued to a new [**permittee**] **OWNER OR OPERATOR**, the new [**permittee**] **OWNER OR OPERATOR** shall post a new bond in an appropriate amount determined by the Department under this [**chapter**] **SUBCHAPTER**, but in no case less than the amount of bond on deposit with the Department, in the new [**permittee's**] **OWNER'S OR OPERATOR'S** name **AND** [**assuming**] **ASSUME** all accrued liability for the hazardous waste storage, treatment or disposal facility.

§ 264a.160. Bond amount determination.

(a) The Department [**will determine**] **DETERMINES** bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. **THIS IS DONE** in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this [**chapter**] **SUBCHAPTER**.

(b) This amount [**shall be**] **IS** based on the [**requirements of**] **PERMIT APPLICANT'S WRITTEN ESTIMATE SUBMITTED PURSUANT TO** 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

[§ 264a.161. Cost estimate for closure and postclosure care.

The permittee or permit applicant shall prepare a detailed written estimate of the cost of closing the facility and providing postclosure care in accordance with the provisions of 40 CFR 264.142 and 264.144 (relating to cost estimate for closure and cost estimate for post-closure care).]

§ 264a.162. Bond amount adjustments.

[**(a)**] The [**permittee**] **OWNER OR OPERATOR** shall deposit additional amounts of bond[**, at any time, upon demand of the Department. The Department will require a permittee to deposit additional amounts of bond if one**] **WITHIN 60 DAYS OF ANY** of the following [**occurs**]:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason [**which**] **THAT** requires an additional amount of bond determined under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

(2) Inflationary cost factors [**have exceeded**] **EXCEED** the estimate used for the original bond amount determination under 40 CFR 264.142 and 264.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, [**which requires**] **REQUIRING** an additional amount of bond determined under 40 CFR 264.142 and 264.144.

(4) [**The Department determines that an**] **AN** additional amount of bond is required as determined by 40 CFR 264.142 and 264.144 to meet the requirements of applicable statutes, this [**chapter**] **SUBCHAPTER** and the terms and conditions of the permit or orders of the Department.

[(b) A permit applicant or permittee may request reduction of the required bond amount upon submission of satisfactory evidence proving that the method of operation or other circumstances will significantly reduce the maximum estimated cost to the Department of completing final closure and taking necessary measures to prevent adverse effects on the environment. If the request is made after permit issuance, it will be considered a request for bond release.]

§ 264a.163. Failure to maintain adequate bond.

If a [**permittee**] **OWNER OR OPERATOR** fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 264a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 264a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the [**permittee**] **OWNER OR OPERATOR**, and if the [**permittee**] **OWNER OR OPERATOR** fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the [**permittee**] **OWNER OR OPERATOR** and take additional actions that may be appropriate, including suspending or revoking permits.

§ 264a.164. Separate bonding for a portion of a facility.

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department [**has determined**] **DETERMINES** that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 264a.162 (relating to bond amount adjustments).

§ 264a.165. Bond release.

(a) The [**permittee**] **OWNER OR OPERATOR** may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. **THE BOND RELEASE MAY BE REQUESTED** during the operation of the facility as part of a request for bond adjustment under § 264a.162 (relating to bond amount adjustments)[,]; upon completion of closure [of the facility] **FOR A STORAGE OR TREATMENT FACILITY** and upon expiration of the postclosure care period of liability, **FOR A DISPOSAL FACILITY** as specified in 40 CFR Part 264, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain all of the following:

(1) State the name of the [**permittee**] **OWNER OR OPERATOR** and identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) State the total amount of bond in effect for the facility and the amount for which release is sought.

(3) State in specific detail the reasons why bond release is requested including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of

part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and postclosure care in accordance with 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and postclosure care).

(5) CLOSURE OR POSTCLOSURE CERTIFICATION FOR FULL BOND RELEASE REQUESTS.

[**(5)**] **(6)** Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 264.142 and 264.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months [**after**] **of** receipt unless additional time is authorized by the [**permittee**] **OWNER OR OPERATOR**.

(f) The Department will not release a bond amount for a facility [**which is**] causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

§ 264a.166. Closure AND POST-CLOSURE certification.

(a) The [**permittee**] **OWNER OR OPERATOR** shall submit a request for closure **OR POST-CLOSURE** certification upon completion of closure **OR POST-CLOSURE** of the facility in accordance with **40 CFR 264.115 (RELATING TO CERTIFICATION OF CLOSURE OR POST-CLOSURE) OR** 40 CFR 264.120 (relating to certification of completion of post-closure care).

(b) Within 60 days after receipt of a written request for closure **OR POST-CLOSURE** certification, the Department will initiate an inspection of the facility to verify that closure **OR POST-CLOSURE** [**has been**] **WAS** effected in accordance with the approved facility closure [**and**] **OR** postclosure care plan and this article.

(c) If the Department determines that the facility [**has been**] closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the [**permittee**] **OWNER OR OPERATOR** that closure **OR POST-CLOSURE** [**has been**] **WAS** effected in accordance with this [**chapter**] **SUBCHAPTER**. Closure **OR POST-CLOSURE** certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure **OR POST-CLOSURE** certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the [**permittee**] **OWNER OR OPERATOR** shall remain liable.

(e) The Department will not issue a closure **OR POST-CLOSURE** certification for a facility [**which is**] causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this article, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure **OR POST-CLOSURE**, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the [**permittee**] **OWNER OR OPERATOR** setting forth the schedule of measures [**which**] the [**permittee**] **OWNER OR OPERATOR** shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1-year liability period, the Department will require the [**permittee**] **OWNER OR OPERATOR** to deposit a separate bond under § 264a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond **IN ACCORDANCE WITH 264a.168 (RELATING TO BOND FORFEITURE)** on deposit with the Department.

§ 264a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure **OR POST-CLOSURE** certification shall be, for the purpose of providing public notice and comment, considered a [**major**] permit modification and shall [**satisfy**] **BE SUBJECT TO** the public notice and comment requirements for [**major**] **CLASS 3** permit modifications.

§ 264a.168. Bond forfeiture.

(a) The Department [**may**] **WILL** forfeit the bond for a hazardous waste storage, treatment or disposal facility [**when it**] **IF THE DEPARTMENT** determines that any of the following occur:

(1) The [**permittee**] **OWNER OR OPERATOR** [**has failed**] **FAILS** and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The [**permittee**] **OWNER OR OPERATOR** [**has abandoned**] **ABANDONS** the facility without providing closure or postclosure care, or [**has**] otherwise [**failed**] **FAILS** to properly close the facility in accordance with the requirements of this article, the act, the statutes set forth in section 505(a) of the act (35 P.

S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(3) The [**permittee**] **OWNER OR OPERATOR** [**has failed**] **FAILS**, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The [**permittee**] **OWNER OR OPERATOR** or financial institution [**has become**] **BECOMES** insolvent, [**failed**] **FAILS** in business, [**been**] **IS** adjudicated bankrupt, [**had**] a delinquency proceeding **IS** initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1–221.63), [**filed**] **FILES** a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or [**had**] **HAS** a receiver appointed by the court, or [**had**] **HAS** action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the [**permittee**] **OWNER OR OPERATOR** [**has attached**] **ATTACHES** or [**executed**] **EXECUTES** a judgment against the [**permittee's**] **OWNER'S OR OPERATOR'S** equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the [**permittee**] **OWNER OR OPERATOR** or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the [**permittee**] **OWNER OR OPERATOR**, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the [**permittee**] **OWNER OR OPERATOR** and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

§ 264a.169. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1 691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001–4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27), this article and the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sec.
264a.17[5]3. [Containment.] MANAGEMENT OF CONTAINERS.
264a.180. Weighing or measuring facilities.

§ 264a.17[5]3. [Containment.] MANAGEMENT OF CONTAINERS.

In addition to the requirements incorporated by reference:

[(1) For indoor storage of reactive or ignitable hazardous waste, the total maximum container height may not exceed 6 feet. The containers shall be grouped so that the maximum width and depth of a group is no greater than the area that would contain four 55-gallon drums wide by four 55-gallon drums deep approximately 8 feet by 8 feet or the containers shall be grouped so that the maximum width of a group is no greater than the area that would contain two 55-gallon drums deep, with the length of the group so limited that at least a 5-foot-wide aisle surrounds the group. Each 8-foot by 8-foot group shall be separated by at least a 5-foot-wide aisle.

(2) For outdoor storage of reactive or ignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of containers may not exceed the equivalent of eight 55-gallon drums wide by eight 55-gallon drums deep. Each group shall be separated by at least a 5-foot-wide aisle from any adjacent group. A main aisle or accessway at least 12 feet wide shall be maintained through a container storage area. A minimum 40-foot setback from a building shall be maintained for all outdoor container storage of reactive or ignitable hazardous wastes.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which insures access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application and shall be approved in writing by the Department.]

(1) FOR INDOOR STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE, THE CONTAINER HEIGHT, WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES. THE CONFIGURATION SHALL BE SPECIFIED IN THE PERMIT APPLICATION.

(2) FOR OUTDOOR STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE, THE CONTAINER HEIGHT, WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES. THE CONFIGURATION SHALL BE SPECIFIED IN THE PERMIT APPLICATION. IN ADDITION, A 40-FOOT SETBACK FROM A BUILDING SHALL BE MAINTAINED FOR ALL OUTDOOR CONTAINER STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE.

(3) FOR INDOOR OR OUTDOOR STORAGE OF NONREACTIVE OR NONIGNITABLE HAZARDOUS WASTE , THE CONTAINER HEIGHT, WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES. THE CONFIGURATION SHALL BE SPECIFIED IN THE PERMIT APPLICATION.

§ 264a.180. Weighing or measuring facilities.

Weighing or measuring facilities, if necessary or when required by the Department, shall [**be provided for**] [**weighing**] **WEIGH** all hazardous wastes brought to the TSD facility, except for captive facilities that handle liquids or flowable wastes–less that 20% solids–[**which are**] amenable to accurate flow measurements, or captive facilities that possess other waste inventory controls–volume controls. Weighing facilities shall be capable of weighing the maximum anticipated load plus the weight of the transport vehicle. The precision of weighing devices shall be certified by the Department of Agriculture. For offsite facilities or onsite facilities receiving waste from offsite sources, the hours of operation for the facility shall be prominently displayed on a sign at the entrance. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background.

Subchapter J. TANK SYSTEMS

Sec.

§ 264a.191. Assessment of existing tank system's integrity.

[**Notwithstanding**] **IN ADDITION TO** the requirements incorporated by reference, **BY JANUARY 17, 1994,** owners or operators of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity [**as of January 17, 1994, which is otherwise**] in accordance with the requirements of 40 CFR 264.191 (relating to assessment of existing tank system's integrity).

§ 264a.193. Containment and detection of releases.

[**Notwithstanding**] **IN ADDITION TO** the requirements incorporated by reference, owners or operators of existing tank systems shall comply with 40 CFR 264.193 (relating to containment and detection of release) by January 16, 1995, except that owners and operators of existing tank systems for which the age cannot be documented, shall comply with 40 CFR 264.193 by January 16, 1996.

§ 264a.194. General operating requirements.

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify the**IR** contents.

§ 264a.195. Inspections.

In addition to the requirements incorporated by reference, [**the owner or operator shall inspect**] the tank or tank system [**at least once each operating day, or**] **MUST BE INSPECTED** every 72 hours when not operating, if waste remains in the tank or tank system components.

Subchapter K. SURFACE IMPOUNDMENTS.

Sec.
264a.221. Design and operating requirements.

§ 264a.221. Design and operating requirements.

In addition to the requirements incorporated by reference:

(1) For surface impoundments subject to 40 CFR 264.221(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet shall be maintained between the bottom of the liner and seasonal high water table without the use of artificial or manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the top of the subbase and the regional water table shall be a minimum of 8 feet.

(2)[**For surface impoundments subject to 40 CFR 264.221(c), the requirement (relating to leak detection systems not located completely above the seasonal high water table) is not incorporated herein**]
THE DEPARTMENT MAY, UPON WRITTEN APPLICATION FROM A PERSON WHO IS SUBJECT TO THIS PROVISION, GRANT A VARIANCE FROM THIS PROVISION. AN APPLICATION FOR A VARIANCE SHALL IDENTIFY THE SPECIFIC PROVISION FROM WHICH A VARIANCE IS SOUGHT AND DEMONSTRATE THAT SUSPENSION OF THE IDENTIFIED PROVISION WILL RESULT IN A LEVEL OF PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH EQUIVALENT TO THAT WHICH WOULD HAVE RESULTED FROM COMPLIANCE WITH THE SUSPENDED PROVISION. ANY SUCH VARIANCE SHALL BE NO LESS STRINGENT THAN THE REQUIREMENTS OF SECTION 3010 OF THE RCRA (40 U.S.C.A. § 6930), AND REGULATIONS ADOPTED UNDER THE ACT.

Subchapter L. WASTE PILES

Sec.
264a.251. Design and operating requirements.

§ 264a.251. Design and operating requirements.

In addition to the requirements incorporated by reference:

(1) For a waste pile subject to the design and operating requirements of 40 CFR 264.251(a) or (c) (relating to design and operating requirements), a minimum distance of 20 inches between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table.

(2) [**For waste pile subject to the design and operating requirements of 40 CFR 264.221(c) (relating to design and operating requirements), the provisions**] 40 CFR 264.251(c)(5), (relating to leak detection systems not located completely above the seasonal high water table) [**are**] IS not incorporated [**herein**] BY REFERENCE.

Subchapter M. LAND TREATMENT

Sec.

§ 264a.273. Design and operating requirements.

In addition to the requirements incorporated by reference, land treatment of hazardous waste shall be subject to the following restrictions:

(1) The hazardous waste shall be mixed into or turned under the soil surface within 24 hours of application, unless it is spray irrigated and the spray irrigated hazardous waste:

(i) Is used for top dressing.

(ii) Has plant nutrient value.

(iii) Is applied with proper spray irrigation equipment and through proper spray irrigation methods.

(iv) Is not transported offsite by aerosol transport while being spray irrigated.

(2) Hazardous waste shall be spread or sprayed in thin layers to prevent ponding and standing accumulations of liquids or sludges.

(3) Hazardous waste may not be applied when the ground is saturated, covered with snow, frozen or during periods of rain.

(4) Hazardous waste may not be applied in quantities which will result in vector or odor problems.

(5) Hazardous waste shall only be applied to those soils which fall within the United States Department of Agriculture (USDA) textural classes of sandy loam, loam, sandy clay loam, silty clay loam and silt loam.

(6) The soils shall have sola with a minimum depth of 20 inches and at least 40 inches of soil depth.

§ 264a.276. Food chain crops.

In addition to the requirements incorporated by reference**[, the growth of food chain crops is subject to the following restrictions:]** **TOBACCO AND CROPS INTENDED FOR DIRECT HUMAN CONSUMPTION MAY NOT BE GROWN ON HAZARDOUS WASTE LAND TREATMENT FACILITIES.**

[(1) The Department may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. tobacco and crops intended for direct human consumption may not be grown on hazardous waste land treatment facilities. The Department will specify in the facility permit the specific food-chain crops which may be grown.

(2) Cadmium-containing waste may not be applied on land used for production of tobacco, leafy vegetables or root crops grown for human consumption. For other food-chain crops, the annual cadmium application rate may not exceed:

Time period	*Annual Cd application* rate (kilograms per hectare)
Present to June 30, 1984	**2.0**
July 1, 1984 to December 31, 1986	**1.25**
Beginning January 1, 1987	**0.5]**

Subchapter N. LANDFILLS

Sec.
264a.301. Design and operating requirements.

§ 264a.301. Design and operating requirements.

In addition to the requirements incorporated by reference:

(1) For a landfill subject to the design and operating provisions of 40 CFR 264.301(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the bottom of the liner and the regional groundwater table shall be a minimum of 8 feet.

(2) [**For landfills subject to 40 CFR 264.301(c), the provisions relating to leak detection systems not located completely above the seasonal high water table not incorporated herein.**]

THE DEPARTMENT MAY, UPON WRITTEN APPLICATION FROM A PERSON WHO IS SUBJECT TO THIS PROVISION, GRANT A VARIANCE FROM THIS PROVISION. AN APPLICATION FOR A VARIANCE SHALL IDENTIFY THE SPECIFIC PROVISION FROM WHICH A VARIANCE IS SOUGHT AND DEMONSTRATE THAT SUSPENSION OF THE IDENTIFIED PROVISION WILL RESULT IN A LEVEL OF PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH EQUIVALENT TO THAT WHICH WOULD HAVE RESULTED FROM COMPLIANCE WITH THE SUSPENDED PROVISION. ANY SUCH VARIANCE SHALL BE NO LESS STRINGENT THAN THE REQUIREMENTS OF SECTION 3010 OF THE RCRA (40 U.S.C.A. § 6930), AND REGULATIONS ADOPTED UNDER THE ACT.

(3) 40 CFR 264.301(l) (RELATING TO LANDFILLS LOCATED IN THE STATE OF ALABAMA) IS NOT INCORPORATED BY REFERENCE.

[Subchapter S. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

Sec.
264a.552. Applicability.

§ 264a.552. Applicability.

Notwithstanding the requirements incorporated by reference, 40 CFR Subpart S (relating to corrective action for solid waste management units) is not incorporated by reference herein.]

Subchapter W. DRIP PADS

Sec.
264a.570. Applicability.

§ 264a.570. Applicability.

[**Notwithstanding**] **INSTEAD OF 40 CFR 264.570(a), [the requirements incorporated by reference,]** this subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-off to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

[Subchapter X. MISCELLANEOUS UNITS

Sec.
264a.601. Environmental performance standards.

§ 264a.601. Environmental performance standards.

In addition to the requirements incorporated by reference, a permit for a miscellaneous unit shall contain applicable requirements of Chapter 270a (relating to hazardous waste permit program) that are appropriate for the miscellaneous unit being permitted.]

Subchapter DD. CONTAINMENT BUILDINGS

(*Editor's Note*: The requirements of this subchapter replace identical provisions in the existing text of Subchapter T, §§ 264.520–264.522.)

Sec.
264a.1100. Applicability.
264a.1101. Design and operating standards.

§ 264a.1100. Applicability.

[Notwithstanding the requirements incorporated by reference, this subchapter applies to owners or operators who store or treat hazardous waste in units designed and operated under the requirements of 40 CFR 264.1101 (related to design and operating standards) incorporated by reference herein.]
INSTEAD OF THE EFFECTIVE DATE OF FEBRUARY 18, 1993 FOUND IN 40 CFR 264.1100, THE EFFECTIVE DATE IS JANUARY 11, 1997.

§ 264a.1101. Design and operating standards.

[Notwithstanding] **IN ADDITION TO** the requirements incorporated by reference:

(1) Owners or operators of existing units described in 40 CFR 264.1101(b)(4) (relating to design and operating standards) seeking a delay in the secondary containment requirement for up to 2 years shall provide written notice to the Department by July 11, 1997. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment.

(2) For units placed into operation prior to January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)–(c) shall be placed in the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit.

(3) For units placed into operation after January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)–(c) will be required prior to operation of the unit.

CHAPTER 265. (Reserved)

CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

Subchap.

Subchapter A. GENERAL

Sec.

§ 265a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, **THE REQUIREMENTS OF** 40 CFR Part 265 **AND ITS APPENDICES** (relating to interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) [**and the appendices to Part 265**] are incorporated by reference.

(b) [**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference in this section:

(1) The provisions of 40 CFR 265.1(c)(4)(relating to purpose, scope and applicability) regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs), are not incorporated [**herein**] **TO THIS SECTION**.

(2) This chapter [**apply**] **APPLIES** to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, [**or in**] Chapter 261a (relating to identification and listing of hazardous waste), **CHAPTER 266a (RELATING TO STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES) OR § 270a.60 (RELATING TO PERMITS-BY-RULE) INSTEAD OF 40 CFR 265.1(b)**.

(3) [**This chapter does not apply to owners or operators of facilities specifically exempted from compliance with this chapter under 40 CFR 265.1, except that those owners or operators of facilities which are authorized to treat, store or dispose of hazardous waste under a permit-by-rule established in**

§270a.60 (relating to permits-by-rule) are required to comply with specified provisions of this chapter if an applicable permit-by-rule established in §270a.60 expressly requires compliance with provisions of this chapter.]

INSTEAD OF 40 CFR 265.1(c)(6), THE REQUIREMENTS OF THIS CHAPTER DO NOT APPLY TO THE OWNER OR OPERATOR OF A FACILITY MANAGING RECYCLABLE MATERIALS DESCRIBED IN 40 CFR 261.6(a)(2), (3) AND (4) (RELATING TO REQUIREMENTS FOR RECYCLABLE MATERIALS) EXCEPT TO THE EXTENT THEY ARE REFERRED TO IN CHAPTER 266a, SUBCHAPTERS C, E, F, G OR §270a.60.

(4) **[This chapter does not apply to owners of facilities authorized to treat, store or dispose of hazardous waste under a permit-by-rule and variance established under § 270a.60.]**

[(5)] This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to standards for universal waste management).

[(6) With respect to the specific requirements of Subchapters K and N (relating to surface impoundments; and landfills), the Department may, upon written application from a person who is subject to either subchapter, grant a variance from one or more specific provisions of that subchapter in accordance with this paragraph. An application for a variance shall:

(i) Identify the specific provisions from which a variance is sought.

(ii) Demonstrate that suspension of the identified provisions will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions.]

Subchapter B. GENERAL FACILITY STANDARDS

Sec.

§ 265a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter **[who has not received]** **WITHOUT** an **[identification number from the]** EPA **IDENTIFICATION NUMBER** and a license from the Department, except as otherwise provided. **[This provision]** **THE LICENSING REQUIREMENT** does not apply to **[acceptance of waste generated by a**

small quantity generator or by a] conditionally exempt small quantity [**generator**] **GENERATORS TRANSPORTING THEIR OWN HAZARDOUS WASTE PROVIDED THAT THE CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR IS IN COMPLIANCE WITH § 261.5(d) (RELATING TO SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS), TRANSPORTERS TRANSPORTING RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY IN COMPLIANCE WITH § 266a.70(1) (RELATING TO APPLICABILITY AND REQUIREMENTS FOR RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY) OR UNIVERSAL WASTE TRANSPORTERS IN COMPLIANCE WITH § 266b.50 (RELATING TO APPLICABILITY OF STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS)**

§ 265a.12 REQUIRED NOTICES.

THE SUBSTITUTION OF TERMS AS SPECIFIED AT 260a.3(a)(1) DOES NOT APPLY TO 40 CFR 265.12 (RELATING TO REQUIRED NOTICES).

§ 265a.13. General and generic waste analysis.

(*Editor's Note*: Most of the provisions proposed in § 265a.13 are in the existing text of § 265.12 and § 265.13.)

In addition to the requirements incorporated by reference:

(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the **OWNER OR** operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a report which the owner or operator shall retain for [**20**] **3** years. The report shall include the following information:

(i) A detailed chemical and physical analysis of the waste.

(ii) A description of the waste and the process generating the waste.

(iii) The name and address of the hazardous waste management facility.

(iv) A description of the hazardous waste management facility's treatment, storage and disposal methods.

(v) Results of liner compatibility testing.

(vi) An assessment of the impact of the waste on the hazardous waste management facility.

[(vii) A copy of the generator's source reduction strategy unless exempted under § 262a.100 (relating to source reduction strategy). For generators located outside of this Commonwealth, a copy of documentation that the generator has complied with section 3005(h) of the Solid Waste Disposal Act (42 U.S.C.A. § 6925(h)).]

[(viii)] (VII) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:

(A) When necessary to ensure that it is accurate and up-to-date.

(B) When the owner or operator is notified, or has reason to believe, that the process or operation that generates the hazardous waste has changed.

(C) For offsite facilities or onsite facilities receiving waste from offsite sources, when the results of the inspection or analysis, or both, of each hazardous waste indicates that the waste received at the facility does not match the description of the waste on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan in compliance with 40 CFR 265.13 (relating to general waste analysis) which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility.

(3) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or landfill unless the approval to accept the waste is granted in the facility's permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of the evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(4) The Department may waive prior approval of the report specified in paragraph (1) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the report only if:

(i) The Department determines that the waiver does not pose a potential threat to human health or the environment.

(ii) The management of the wastes is allowed in the permit for the facility and properly addressed in the approved waste analysis plan for the facility.

(iii) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(5) Prior Department approval of the report specified in paragraph (1) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation.

(6) In lieu of the waste and generator specific report required by paragraphs (1)–(3), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators.

(7) An application for a Generic Module I shall include:

(i) The information required by paragraph (1). Generator specific information shall be included for each generator identified in the application.

(ii) Criteria for determining whether the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(8) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department in writing, the generator specific information required by paragraph (1). The Department will not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(9) A permit modification and Generic Module I requested under this section shall be accompanied by a fee, as specified in § 270a.3 (relating to payment of fees).

§ 265a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, OWNERS OR OPERATORS SHALL SUBMIT a schedule for construction of a hazardous waste management facility [**shall be submitted**] to the Department for approval. At a minimum, the schedule [**shall**]MUST provide for inspection and approval by the Department of each phase of construction.

§ 265a.18. Location standards.

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.

[**§ 265a.52. Content of contingency plan.**

In addition to the requirements incorporated by reference:

(1) The contingency plan and revisions and amendments thereto shall be prepared and implemented in accordance with the Department's guidance for contingency plans.

(2) The contingency plan shall be submitted to the Department for approval at the time in the application process that the Department prescribes.]

§ 265a.56. Emergency procedures.

In addition to the requirements incorporated by reference[:],

[**(1) T**]the emergency coordinator shall immediately notify the **APPROPRIATE REGIONAL OFFICE OF THE** Department, **OR THE DEPARTMENT'S CENTRAL OFFICE** by telephone at (717) 787-4343[**and the National Response Center at (800) 424-8802**].

[**(2) The report to the Department and the National Response Center shall include the following:**

(i) The name and telephone number of reporter.

(ii) The name and address of facility.

(iii) The time and type of incident (for example, release, fire).

(iv) The name and quantity of materials involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health, or the environment, outside the facility.

(3) Immediately after an emergency, the emergency coordinator shall provide for treating, storing or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire or explosion at the facility.]

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.

§ 265a.71. Use of the manifest system.

In addition to the requirements incorporated by reference:

(1) [**Except as otherwise provided in 40 CFR 262. 23(l) (relating to use of he manifest), an**] AN owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by [**a Pennsylvania manifest**] **A MANIFEST APPROVED BY THE DEPARTMENT, UNLESS A MANIFEST IS NOT REQUIRED BY 40 CFR 262.20(e) (RELATING TO THE MANIFEST GENERAL REQUIREMENTS).**

[**(2) The Pennsylvania manifest is a six-part hazardous waste manifest form that is obtained from the Department or is approved by the Department.**]

[**(3)**] (2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, [**unless it is known that the generator state does not desire the copies**] **AS REQUIRED**.

[**§ 265a.72. Manifest discrepancies.**

In addition to the requirements incorporated by reference, if a significant discrepancy is not resolved within 15 days, the owner or operator shall immediately notify the appropriate regional office of the Department by telephone and send a letter to the Department describing the discrepancy and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.]

§ 265a.75. Biennial report.

[**(a) Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA form 8700-13B, as modified **BY THE DEPARTMENT.**

[**(b) In addition to the requirements incorporated by reference, reports required by this section shall be maintained for the life of the facility as a part of the operating record.**]

§ 265a.78. Hazardous waste management fee.

(*Editor's Note*: The text of the existing § 265.78 (relating to hazardous waste management fee) is [**proposed to be**] renumbered as § 265a.78.)

§ 265a.79. Documentation of hazardous waste management fee submission.

(*Editor's Note*: The text of the existing § 265.79 (relating to documentation of hazardous waste management fee submission) is [**proposed to be**] renumbered as § 265a.79.)

§ 265a.80. Civil penalties for failure to submit hazardous waste management fees.

(*Editor's Note*: The text of the existing § 265.80 (relating to civil penalties for failure to submit hazardous waste management fees) is [**proposed to be**] renumbered as § 265a.80.)

§ 265a.81. Assessment of penalties; minimum penalties.

(*Editor's Note*: The text of the existing § 265.81 (relating to assessment of penalties; minimum penalties) is [**proposed to be**] renumbered as § 265a.81.)

§ 265a.82. Administration fees.

(*Editor's Note*: The text of the existing § 265.82 (relating to administration fees) is [**proposed to be**] renumbered as § 265a.82.)

§ 265a.83. Administration fees during closure.

(*Editor's Note*: The text of the existing § 265.113(b) (relating to closure; time allowed for closure) is [**proposed to be**] renumbered as § 265a.83.)

Subchapter G. CLOSURE AND POST-CLOSURE

Sec.

§265a.115. CERTIFICATION OF CLOSURE

THE OWNER OR OPERATOR SHALL SATISFY 265a.166 (RELATING TO CLOSURE AND POST-CLOSURE CERTIFICATION) INSTEAD OF THE REFERENCE TO 40 CFR 265.143(h) (RELATING TO RELEASE OF THE OWNER OR OPERATOR FROM THE REQUIREMENTS OF THIS SECTION).

§265a.120. CERTIFICATION OF COMPLETION OF POST-CLOSURE CARE.

THE OWNER OR OPERATOR SHALL SATISFY 265a.166 (RELATING TO CLOSURE AND POST CLOSURE CERTIFICATION) INSTEAD OF THE REFERENCE TO 265.145(h) (RELATING TO RELEASE OF THE OWNER OR OPERATOR FROM THE REQUIREMENTS OF THIS SECTION).

Subchapter H. FINANCIAL REQUIREMENTS

Sec.

§ 265a.141. Definitions.

In addition to the terms defined in 40 CFR 265.141 (relating to definitions of terms as used in this subpart) which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to definitions and requests for determination) apply to this [**chapter**] **SUBCHAPTER**. The following words and terms, when used in this [**chapter**] **SUBCHAPTER**, have the following meanings, unless the context clearly indicates otherwise:

[***Amount of liability coverage***–**The insurance requirements of § 265a.147 (relating to liability requirements).**]

Applicant–An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

Collateral bond–A penal bond agreement in a sum certain, payable to the Department, executed by the [**permittee**] **FACILITY OWNER OR OPERATOR** and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

Final closure–Successful completion of requirements for closure and postclosure care as required by 40 CFR Part 265, Subpart G (relating to closure and postclosure).

Financial institutions–Banks **AND OTHER SIMILAR ESTABLISHMENTS** organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

Surety bond–A penal bond agreement in a sum certain, payable to the Department, executed by the [**permittee**] **FACILITY OWNER OR OPERATOR**, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

***SURETY COMPANY*– A CORPORATION LICENSED TO DO BUSINESS AS A SURETY IN THIS COMMONWEALTH**

§ 265a.143. Financial assurance for closure.

[Notwithstanding the requirements incorporated by reference, only subsection (e) of 40 CFR 265.143 (relating to financial test and corporate guarantee for closure) is incorporated by reference. This subsection is incorporated by reference only to the extent that the instruments used for financial assurances for closure comply with the laws and regulations of the Commonwealth.]

40 CFR 265.143 (RELATING TO FINANCIAL ASSURANCE FOR CLOSURE) IS NOT INCORPORATED BY REFERENCE EXCEPT FOR 40 CFR § 265.143(e) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE) AS REFERENCED IN § 265a.156 (RELATING TO SPECIAL TERMS AND CONDITIONS FOR COLLATERAL BONDS AND BONDS PLEDGING CORPORATE GUARANTEE FOR CLOSURE.)

§ 265a.145. Financial assurance for post-closure care.

[Notwithstanding the requirements incorporated by reference,] 40 CFR 265.145 (relating to financial assurance for post-closure care) is not incorporated by reference **EXCEPT FOR 40 CFR 265.145(e) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR POST-CLOSURE CARE) AS REFERENCED IN § 265a.156 (RELATING TO SPECIAL TERMS AND CONDITIONS FOR COLLATERAL BONDS AND BONDS PLEDGING CORPORATE GUARANTEE FOR CLOSURE.)**

§ 265a.147. Liability requirements.

THE SUBSTITUTION OF TERMS AS SPECIFIED AT 260a.3(a)(5) DOES NOT APPLY TO 40 CFR 265.147(g)(2) AND (i)(4).

[(a) Notwithstanding the requirements incorporated by reference, 40 CFR 265.147 (relating to liability requirements) is incorporated by reference only to the extent that the demonstration of financial responsibility complies with the laws of the Commonwealth and the related regulations.

[(b) In addition to the requirements incorporated by reference:

(l) A permit applicant, or permittee of a hazardous waste storage, treatment or disposal facility shall submit proof that the owner or operator has in force comprehensive general liability (ordinary public liability) insurance covering bodily injury and property damage to third parties.

(2) Insurance policies providing comprehensive general liability (ordinary public liability) insurance covering bodily injury and property damage to third parties shall follow the commercial or comprehensive forms approved by the Insurance Department and shall be one of the following:

(i) Per occurrence and aggregate limits apply separately to bodily injury and property damages.

(ii) Per occurrence and aggregate limits apply to bodily injury and property damage combined.

(3) The amount of coverage provided for bodily injury and property damage may be inclusive or exclusive of legal defense costs.

(4) For coverage where per occurrence and aggregate limits apply separately and where legal defense costs are included within the amount of coverage, the minimum amount of coverage for bodily injury shall be $1.5 million per occurrence, with an annual aggregate of $3 million and the minimum amount of coverage for property damage shall be $750,000 per occurrence, with an annual aggregate of $1.5 million.

(5) For coverage where per occurrence and aggregate limits apply separately and where legal defense costs are excluded from the face amount of coverage, the minimum amount of coverage for bodily injury shall be $1 million per occurrence, with an annual aggregate of $2 million and the minimum amount of coverage for property damage shall be $500,000 per occurrence, with an annual aggregate of $1 million.

(6) For coverage where per occurrence and aggregate limits apply to bodily injury and property damage combined, and where legal defense costs are included within the amount of coverage, the minimum amount of combined coverage for bodily injury and property damage shall be $2.25 million per occurrence, with an annual aggregate of $4.5 million.

(7) For coverage where per occurrence and aggregate limits apply to bodily injury and property damage combined and where legal defense costs are excluded from the amount of coverage, the minimum amount of combined coverage for bodily injury and property damage shall be $1.5 million per

occurrence, with an annual aggregate of $3 million.

(8) The insurance policy shall provide for the payment of claims up to the full amount of coverage regardless of any deductible amount applicable to the policy. If the policy provides the insurer with a right of reimbursement by the insured for payment of the deductible amount, the insurer shall be liable for payment of the deductible amount. If the policy does not provide the insurer with a right of reimbursement or similar methods of recoupment, the insured shall provide additional coverage amounts by the purchase of excess coverage for the deductible amount.]

§ 265a.148. Incapacity of owners or operators, guarantors or financial institutions.

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the regional administrator of the EPA.

§ 265a.149. Use of State-required mechanisms.

[Notwithstanding] **RELATIVE TO** the requirements incorporated by reference, 40 CFR 265.149 (relating to use of State-required mechanisms) is not incorporated by reference.

§ 265a.150. State assumption of responsibility.

[Notwithstanding] **RELATIVE TO** the requirements incorporated by reference, 40 CFR 265.150 (relating to State assumption of responsibility) is not incorporated by reference.

(*Editor's Note*: **[Proposed]** §§ 265a.153–265a.169 include provisions of existing Chapter 267, Subchapter B (relating to bonding requirements), which have been updated and conformed to Federal provisions.)

§ 265a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities **[which have been]** permitted under the act, or **[which are]** being treated as having **[been issued]** a permit under the act, shall file a bond in accordance with this subchapter **AND IN THE AMOUNT DETERMINED BY §265a.160 (RELATING TO BOND AMOUNT DETERMINATION)**, payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant **[has filed]** **FILES** with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond has been approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility [**which is**] permitted or [**is being**] treated as [**having been**] issued a permit, shall cease accepting hazardous waste unless the [**permittee**] **OWNER OR OPERATOR** has submitted a bond under this [**part**] **SUBCHAPTER**. The Department will review and determine whether or not to approve the bond within [**1**] **ONE** year [**after**] **OF THE** submittal. If, on review, the Department determines the [**permittee**] **OWNER OR OPERATOR** has submitted an insufficient bond amount, the Department will require the [**permittee**] **OWNER OR OPERATOR** to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

§ 265a.154. Form, terms and conditions of bond.

(a) The Department [**will accept**] **ACCEPTS** the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A phased deposit collateral bond as provided in § 265a.157 (relating to phased deposits of collateral).

(b) The Department [**will prescribe**] **PRESCRIBES** and [**furnish**] **FURNISHES** the forms for bond instruments.

(c) Bonds [**shall be**] **ARE** payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001–4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. **AN OWNER OR OPERATOR OF A NEW FACILITY MUST SUBMIT THE BOND TO THE DEPARTMENT AT LEAST 60 DAYS BEFORE THE DATE THAT HAZARDOUS WASTE IS FIRST RECEIVED FOR TREATMENT, STORAGE, OR DISPOSAL.**

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 265a.155. Special terms and conditions for surety bonds.

(a) The Department [**will**] **DOES** not accept the bond of a surety company [**which has**] **THAT** failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department [**will accept**] ACCEPTS only the bond of a surety authorized to do business in this Commonwealth AND WHICH IS LISTED IN CIRCULAR 570 OF THE UNITED STATES DEPARTMENT OF TREASURY.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the [permittee] OWNER OR OPERATOR and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of cancellation, the [**permittee**] OWNER OR OPERATOR shall provide the Department with a replacement bond under § 265a.158 (relating to replacement of bond). Failure of the [**permittee**] OWNER OR OPERATOR to provide a replacement bond within the 60-day period [**shall constitute**] CONSTITUTES grounds for forfeiture of the existing bond under § 265a.168 (relating to bond forfeiture).

(d) The Department [**will**] DOES not accept surety bonds from a surety company for [**a permittee**] AN OWNER OR OPERATOR, on all [**permits held**] FACILITIES OWNED OR OPERATED by the [permittee] OWNER OR OPERATOR, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341–991), unless the surety has complied with the provisions of the Insurance Company Act of 1921 (40 P. S. §§ 1–297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety notwithstanding judicial or administrative appeal of the forfeiture and that the amount [**shall be**] IS confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the [permittee] OWNER OR OPERATOR [**shall be jointly**] ARE JOINT and severally liable for payment of the bond amount.

§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.

(a) The Department [**will obtain**] OBTAINS possession [**of**] and [**keep in**] KEEPS custody OF collateral deposited by the [**permittee**] OWNER OR OPERATOR until authorized for release or replacement as provided in this subchapter.

(b) The Department [**will value**] VALUES governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department [**will use**] USES the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit [**shall be**] ARE subject to the following conditions:

(1) The Department [**will require**] REQUIRES that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for [**a denomination in excess of**

$100,000, or] the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) **[or as]** **AND WHICH IS** otherwise secured under Pennsylvania law.

(3) The Department **[will require]** **REQUIRES** the issuing institution to waive all rights of setoff or liens which it has or might have against the certificates.

(4) The Department **[will]** only **[accept]** **ACCEPTS** automatically-renewable certificates of deposit.

(5) The Department **[will require]** **REQUIRES** that the certificates of deposit **[are]** **BE** assigned to the Department to assure that the Department **[will be able to]** **CAN** liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this **[chapter]** **SUBCHAPTER**.

(6) The Department **[will]** **ONLY** **[accept]** **ACCEPTS** certificates of deposit only from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.

(7) The Department **[will]** **DOES** not accept certificates of deposit from banks **[which have]** **THAT** failed or delayed **[in making]** **TO MAKE** payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a **[bank]** letter of credit **[shall be]** **ARE** subject to the following conditions:

(1) The letter of credit **[shall be]** **IS** a standby **[or guarantee]** letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a state or Federal agency and Federally insured or equivalently protected.

(2) The letter of credit may not **[have been]** **BE** issued without a credit analysis substantially equivalent to **[a credit analysis applicable to]** **THAT OF** a potential borrower in an ordinary loan situation. A letter of credit so issued **[shall be]** **IS** supported by the customer's unqualified obligation to reimburse the issuer for monies paid under the letter of credit.

(3) The letter of credit may not **[have been]** **BE** issued **[for a customer]** when the amount of the letter of credit, aggregated with other loans and credits extended to the **[customer]** **OWNER OR OPERATOR**, exceeds the issuer legal lending limits for that **[customer]** **OWNER OR OPERATOR** as defined in the United States Banking Code (12 U.S.C.A. §§ 21–220).

(4) The letter of credit **[shall be]** **IS** irrevocable and **[shall be]** **IS** so designated. The Department may accept a letter of credit for which **[a limited time]** **AT LEAST A ONE YEAR** period is stated if the following conditions are met and are stated in the credit:

(i) The letter of credit is automatically renewable for additional time periods **OF AT LEAST ONE YEAR**, unless the bank gives at least **[90]** **120** days prior written notice **BY CERTIFIED MAIL** to the Department and the customer of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to

terminate the credit.

(5) Letters of credit shall name the Department as the beneficiary and **[shall]** be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this **[chapter]** **SUBCHAPTER**.

(6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.

(7) The issuing bank **[shall waive]** **WAIVES** the rights to setoff or liens **[which]** it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank **[which has]** **THAT** failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure) **AND 40 CFR 265.145(e) (RELATING TO FINANCIAL TEST AND CORPORATE GUARANTEE FOR POST-CLOSURE CARE) EXCEPT FOR THE PROVISION OF 40 CFR 265.143(e)(10)(i) (RELATING TO THE ESTABLISHMENT OF A TRUST FUND) AS SPECIFIED IN §264.143(a). THIS IS REPLACED BY THE PROCEDURES OF §265a.168 (RELATING TO BOND FORFEITURE).**

§ 265a.157. Phased deposits of collateral.

(a) A permit applicant, or **[a permittee]** **AN OWNER OR OPERATOR** may post a collateral bond **IN PHASED DEPOSITS** for a hazardous waste storage, treatment or disposal facility **[which]** **THAT** will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The **[permittee]** **OWNER OR OPERATOR** **[shall submit]** **SUBMITS** a collateral bond **FORM** to the Department.

(2) The **[permittee]** **OWNER OR OPERATOR** **[shall deposit]** **DEPOSITS** $10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The **[permittee]** **OWNER OR OPERATOR** **[shall submit]** **SUBMITS** a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The permit applicant or **[permittee]** **OWNER OR OPERATOR** **[shall deposit]** **DEPOSITS** the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department **[will make]** **MAKES**

the demand when one of the following occurs:

(1) The [**permittee**] OWNER OR OPERATOR [**has failed**] FAILS to make a deposit of bond amount when required by the schedule for the deposits.

(2) The [**permittee**] OWNER OR OPERATOR [**has violated**] VIOLATES the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit [**shall be accumulated**] ACCUMULATES and becomes part of the bond amount until the OWNER OR operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited [**shall be**] IS adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

§ 265a.158. Replacement of bond.

(a) The Department may allow [**permittees**] OWNERS OR OPERATORS to replace existing surety or collateral bonds with other surety or collateral bonds if the liability [**which has**] accrued against the [**permittee**] OWNER OR OPERATOR of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond [**will be**] IS determined under this chapter, may not be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the [**permittee**] OWNER OR OPERATOR [**has submitted**] SUBMITS and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this [**chapter**] SUBCHAPTER.

(c) Within 60 days [**after**] OF approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the [**permittee**] OWNER OR OPERATOR.

§ 265a.159. Reissuance of permits.

Before a permit is reissued to a new [**permittee**] OWNER OR OPERATOR, the new [**permittee**] OWNER OR OPERATOR shall post a new bond in an appropriate amount determined by the Department under this [**chapter**] SUBCHAPTER but in no case less than the amount of bond on deposit with the Department, in the new [**permittee's**] OWNER'S OR OPERATOR'S name, assuming all accrued liability for the hazardous waste storage, treatment or disposal facility.

§ 265a.160. Bond amount determination.

(a) The Department [**will determine**] DETERMINES bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete

final closure of the facility. **THIS IS DONE** in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this [**chapter**] **SUBCHAPTER**.

(b) This amount [**shall be**] **IS** based on the [**requirements of**] **OWNER'S OR OPERATOR'S WRITTEN ESTIMATE SUBMITTED PURSUANT TO** 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

[**§ 265a.161. Cost estimate for closure and postclosure care.**

The permittee or permit applicant shall prepare a detailed written estimate of the cost of closing the facility and providing postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimates for closure; and cost estimates for postclosure care).]

§ 265a.162. Bond amount adjustments.

[**(a)**] The [**permittee**] **OWNER OR OPERATOR** shall deposit additional amounts of bond[**, at any time, upon demand of the Department The Department will require a permittee to deposit additional amounts of bond if one**] **WITHIN 60 DAYS OF ANY** of the following [**occurs**]:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason [**which**] **THAT** requires an additional amount of bond determined under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for postclosure care).

(2) Inflationary cost factors [**have exceeded**] **EXCEED** the estimate used for the original bond amount determination under 40 CFR 265.142 and 265.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, [**which requires**] **REQUIRING** an additional amount of bond determined under 40 CFR 265.142 and 265.144.

(4) [**The Department determines that an**] **AN** additional amount of bond is required as determined by 40 CFR 265.142 and 265.144 to meet the requirements of applicable statutes, this [**chapter**] **SUBCHAPTER** and the terms and conditions of the permit or orders of the Department.

[**(b) A permit applicant or permittee may request reduction of the required bond amount upon submission of satisfactory evidence proving that the method of operation or other circumstances will significantly reduce the maximum estimated cost to the Department of completing final closure and taking necessary measures to prevent adverse effects on the environment. If the request is made after permit issuance, it will be considered a request for bond release.**]

§ 265a.163. Failure to maintain adequate bond.

If [**a permittee**] **AN OWNER OR OPERATOR** fails to post additional bond within 60 days after receipt of a

request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 265a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the [**permittee**] **OWNER OR OPERATOR**, and if the [**permittee**] **OWNER OR OPERATOR** fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the [**permittee**] **OWNER OR OPERATOR** and take additional actions that may be appropriate, including suspending or revoking permits.

§ 265a.164. Separate bonding for a portion of a facility.

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department [**has determined**] **DETERMINES** that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 265a.162 (relating to bond amount adjustments).

§ 265a.165. Bond release.

(a) The [**permittee**] **OWNER OR OPERATOR** may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. **THE BOND RELEASE MAY BE REQUESTED** during the operation of the facility as part of a request for bond adjustment under § 265a.162 (relating to bond amount adjustments)[,]; upon completion of closure [**of the facility**] **FOR A STORAGE OR TREATMENT FACILITY** and upon expiration of the postclosure care period of liability, **FOR A DISPOSAL FACILITY** as specified in 40 CFR Part 265, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain the following:

(1) The name of the [**permittee**] **OWNER OR OPERATOR** and shall identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested, including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and postclosure care).

(5) CLOSURE OR POST-CLOSURE CERTIFICATION FOR FULL BOND RELEASE REQUESTS.

[(5)] **(6)** Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 265.142 and 265.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the **[permittee]** **OWNER OR OPERATOR**.

(f) The Department will not release a bond amount for a facility which is causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this chapter, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505).

§ 265a.166. Closure AND POST-CLOSURE certification.

(a) The **[permittee]** **OWNER OR OPERATOR** shall submit a request for closure certification upon completion of closure of the facility in accordance with the provisions of **40 CFR 265.115 (RELATING TO CERTIFICATION OF CLOSURE) AND** 40 CFR 265.120 (relating to certification of completion of post-closure care).

(b) Within 60 days after receipt of a written request for closure **OR POST-CLOSURE** certification, the Department will initiate an inspection of the facility to verify that closure **[has been]** **WAS** effected in accordance with the approved facility closure **[and]** **OR** postclosure care plan and this article.

(c) If the Department determines that the facility **[has been]** closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the **[permittee]** **OWNER OR OPERATOR** that closure **OR POST-CLOSURE** **[has been]** effected in accordance with this **[chapter]** **SUBCHAPTER**. Closure **OR POST-CLOSURE** certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure **OR POST-CLOSURE** certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the **[permittee]** **OWNER OR OPERATOR** shall remain liable.

(e) The Department will not issue a closure **OR POST-CLOSURE** certification for a facility [**which is**] causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this article, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure **OR POST-CLOSURE**, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the [**permittee**] **OWNER OR OPERATOR** setting forth the schedule of measures which the [permittee] **OWNER OR OPERATOR** shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1 year liability period, the Department will require the [**permittee**] **OWNER OR OPERATOR** to deposit a separate bond under § 265a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond **IN ACCORDANCE WITH 264a.168 (RELATING TO BOND FORFEITURE)** on deposit with the Department.

§ 265a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure **OR POST-CLOSURE** certification shall be, for the purpose of providing public notice and comment, considered a [**major**] permit modification and shall [**satisfy**] **BE SUBJECT TO** the public notice and comment requirements for [**major**] **CLASS 3** permit modifications.

§ 265a.168. Bond forfeiture.

(a) The Department [**may**] **WILL** forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

(1) The [**permittee**] **OWNER OR OPERATOR** [**has failed**] **FAILS** and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The [**permittee**] **OWNER OR OPERATOR** [**has abandoned**] **ABANDONS** the facility without providing closure or postclosure care, or [**has**] otherwise [**failed**] **FAILS** to properly close the facility in accordance with this article, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The [**permittee**] **OWNER OR OPERATOR** [**has failed**] **FAILS**, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The [**permittee**] **OWNER OR OPERATOR** or financial institution [**has become**] **BECOMES** insolvent, [**failed**] **FAILS** in business, [**been**] **IS** adjudicated bankrupt, [**had**] a delinquency proceeding **IS** initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1–221.63), [**filed**] **FILES** a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or [**had**] **HAS** a receiver appointed by the court, or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the [**permittee**] **OWNER OR OPERATOR** [**has attached or executed**] **ATTACHES OR EXECUTES** a judgment against the [**permittee's**] **OWNER'S OR OPERATOR'S** equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the [**permittee**] **OWNER OR OPERATOR** or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the [**permittee**] **OWNER OR OPERATOR**, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the [**permittee**] **OWNER OR OPERATOR** and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

§ 265a.169. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1–691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.19c), the Air Pollution Control Act (35 P. S. §§ 4001–4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27), this article, the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

Subchapter I. Use and Management of Containers

Sec.

§ 265a.17[5]3. [Containment and collection systems.] MANAGEMENT OF CONTAINERS.

In addition to the requirements incorporated by reference:

[(1) For indoor storage of reactive or ignitable hazardous waste, the total maximum container height may not exceed 6 feet. The containers shall be grouped so that the maximum width and depth of a group is no greater than the area that would contain four 55-gallon drums wide by four 55-gallon drums deep approximately 8 feet by 8 feet or the containers shall be grouped so that the maximum width of a group is no greater than the area that would contain two 55-gallon drums deep, with the length of the group so limited that at least a 5-foot-wide aisle surrounds the group. Each 8-foot by 8-foot group shall be separated by at least a 5-foot-wide aisle.

(2) For outdoor storage of reactive or ignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of the containers may not exceed the equivalent of eight 55-gallon drums wide by eight 55-gallon drums deep. Each group shall be separated by at least a 5-foot-wide aisle from any adjacent group. A main aisle or accessway at least 12 feet wide shall be maintained through a container storage area. A minimum 40-foot setback from a building shall be maintained for all outdoor container storage of reactive or ignitable hazardous wastes.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which insures access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application and shall be approved in writing by the Department.]

(1) FOR INDOOR STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE, THE CONTAINER HEIGHT WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES.

(2) FOR OUTDOOR STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE , THE CONTAINER HEIGHT, WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES. IN ADDITION A 40-FOOT SETBACK FROM A BUILDING SHALL BE MAINTAINED FOR ALL OUTDOOR CONTAINER STORAGE OF REACTIVE OR IGNITABLE HAZARDOUS WASTE.

(3) FOR INDOOR OR OUTDOOR STORAGE OF NONREACTIVE OR NONIGNITABLE HAZARDOUS WASTE, THE CONTAINER HEIGHT, WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACING WHICH INSURES SAFE MANAGEMENT AND ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES.

§ 265a.179. Containment [and collection system].

[(*Editor's Note*: The provisions of existing § 265.178 (relating to containment and collection system) are proposed to be renumbered as § 265a.175)]. **40 CFR 264.175 (RELATING TO CONTAINMENT) IS INCORPORATED BY REFERENCE.**

Subchapter J. TANK SYSTEMS

Sec.

§ 265a.191. Assessment of existing tank system's integrity.

[Notwithstanding] **IN ADDITION TO** the requirements incorporated by reference, **BY JANUARY 17, 1994** owners or operators of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity **[as of January 17, 1994, which is otherwise]** in accordance with the provisions of 40 CFR 265.191 (relating to assessment of existing tank system's integrity).

§ 265a.193. Containment and detection of releases.

[Notwithstanding] **IN ADDITION TO** the requirements incorporated by reference, owners or operators of existing tank systems shall comply with 40 CFR 265.193 (relating to containment and detection of releases) by January 16, 1995, except that owners and operators of existing tank systems for which the age cannot be documented, shall comply with 40 CFR 265.193 by January 16, 1996.

§ 265a.194. General operating requirements.

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify the**IR** contents.

§ 265a.195. Inspections.

In addition to the requirements incorporated by reference, **[the owner or operator shall inspect]** the tank or tank system **[at least once each operating day, or]** **MUST BE INSPECTED** every 72 hours when not operating, if waste remains in the tank or tank system components.

Subchapter P. THERMAL TREATMENT

Sec.

§ 265a.382. Open burning; waste explosives.

In addition to the requirements incorporated by reference, the open burning of waste explosives as specified in 40 CFR 265.382 (relating to open burning; waste explosives) is not permitted in air basins as defined in § 121.1 (relating to definitions).

CHAPTER 266. (Reserved)

CHAPTER 266a. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchap.

Subchapter C. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

Sec.

§ 266a.20. Incorporation by reference and applicability.

[**(a)**] Except as expressly provided in this chapter, 40 CFR Part 266 and its Appendices (relating to standards for the management of specific hazardous wastes; and specific types of hazardous waste management facilities) are incorporated by reference.

[(b) Notwithstanding the requirements incorporated by reference, producers of a product that is not presently subject to regulation and that is to be used by the general public in a manner that constitutes disposal and that contains recyclable materials, shall demonstrate, by obtaining the Department's written approval, that the recyclable materials have undergone the chemical reaction described in 40 CFR 260.20(b) (relating to general).]

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

[(*Editor's Note*: This subchapter contains the existing text in Chapter 266, Subchapter E. The text is being relocated and renumbered only)]

Sec.

§ 266a.40. Applicability.

(a) *General.* **UNLESS OTHERWISE STATED IN THIS SECTION,** [T]this subchapter applies to waste oil that is burned for energy recovery in a [**boiler or industrial furnace**] **UNIT** that is not regulated under **40 CFR PART 264, SUBPART 0; 40 CFR PART 265, SUBPART 0;** Chapter 264a, Subchapter O or Chapter 265a, Subchapter O (relating to incinerators), except as provided by subsections (c) and (e). The waste oil is termed "waste oil fuel." Waste oil fuel includes fuel produced from waste oil by processing, blending or other treatment.

(b) *Heating value and permit requirements.*

(1) Waste oil having less than 8,000 Btus per pound is not a fuel, and if hazardous, may be burned only in a hazardous waste incinerator, or [**an EPA permitted**]A boiler or industrial furnace **REGULATED UNDER 40 CFR PART 266, SUBPART H OR CHAPTER 266a, SUBCHAPTER H.**

(2) Except as provided in subsection (d), the blending or mixing of waste oils that are hazardous under Chapter 261a (relating to criteria, identification and listing of hazardous waste) is allowed only under a hazardous waste treatment permit. This does not preclude a generator from storing compatible waste oils in a single tank prior to disposal or recycling. Waste oil that is either nonhazardous or that is identified in subsection (d) may be blended or mixed with other nonhazardous waste oil under a residual waste processing permit.

(c) *Waste oil mixed with hazardous waste.* Except as provided by subsection (d)(2), waste oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under [**Subchapter D (relating to hazardous waste burned for energy recovery)**] **40 CFR PART 266, SUBPART H OR CHAPTER 266a, SUBCHAPTER H.**

(d) *Waste oil burned for energy recovery.* Waste oil burned for energy recovery is subject to regulation under this subchapter rather than as hazardous waste fuel [**under Subchapter D**] if it is a hazardous waste solely because it does one of the following:

(1) Exhibits a characteristic of hazardous waste identified in **40 CFR PART 261, SUBPART C OR** Chapter 261a, Subchapter C (relating to characteristics of hazardous waste), if it is not mixed with a hazardous waste.

(2) Contains hazardous waste generated only by a person subject to the special requirements for conditionally exempt small quantity generators under **40 CFR 261.5 OR** §261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators).

(e) Waste oil burned for energy recovery, and fuel produced from waste oil by processing, blending or other treatment, is subject to this subchapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Waste oil fuel that does not exceed the specifications in the following table is termed "on-specification waste oil fuel" and is subject only to the requirements of this section and the analysis and recordkeeping requirements under §266a.43(b)(1) and (6) (relating to standards applicable to marketers of waste oil burned for energy recovery). Waste oil fuel that exceeds any specification level is termed "off-specification waste oil fuel" and subject to the requirements of this subchapter. Applicable standards for burning used oil containing PCBs are imposed by 40 CFR 761.20(e) (relating to prohibitions for PCBs).

Constituent/Property	*Allowable Level*
Arsenic	Maximum 5 ppm
Cadmium	Maximum 2 ppm
Chromium	Maximum 10 ppm
Lead	Maximum 100 ppm
Total halogens	Maximum 1,000 ppm
Flash point	Minimum 100°F (38°C)

(f) Storage and transportation of waste oil fuel shall comply with Chapter 299 (relating to the storage and transportation of residual waste).

(g) Burners of waste oil fuel shall comply with the applicable residual waste permitting requirements for the burning of waste oil IN [(]Chapter 287 (relating to residual waste management—general provisions)[)].

§ 266a.41. Prohibitions.

(a) A person may market off-specification waste oil for energy recovery only to burners:

(1) Or other marketers who have notified the EPA and the Department of their waste oil management activities stating the location and general description of the activities, and who have an EPA identification number

(2) Who burn the waste oil in an industrial furnace or boiler identified in subsection (b) and have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality Control, or written approval from the Bureau of Air Quality Control if the fuel is burned in Allegheny or Philadelphia Counties if Allegheny or Philadelphia County is issued first.

(b) Off-specification waste oil may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in **40 CFR 260.10 OR** § 260a.[2]10 (relating to definitions).

(2) Boilers, as defined in **40 CFR 260.10 OR** § 260a.[2]10, that are identified as one of the following:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) Utility boilers used to produce electric power, steam or heated or cooled air or other gases or fluids for sale.

([iii]3) Waste oil-fired space heaters if:

([A]i) The heater burns only waste oil that the owner or operator generates or waste oil received from do-it-yourself oil changers who generate waste oil as household waste.

([B]ii) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.

([C]iii) The combustion gases from the heater are vented to the ambient air.

§ 266a.42. Standards applicable to generators of waste oil burned for energy recovery.

(a) Except as provided in subsections (b) and (c), generators of waste oil are not subject to this subchapter.

(b) Generators who market waste oil directly to a burner are subject to § 266a.43 (relating to standards applicable to marketers of waste oil burned for energy recovery).

(c) Generators who burn waste oil are subject to §266a.44 (relating to standards applicable to burners of waste oil burned for energy recovery).

§ 266a.43. Standards applicable to marketers of waste oil burned for energy recovery.

(a) Persons who market waste oil fuel are termed "marketers." Except as provided in this section, marketers include generators who market waste oil fuel directly to a burner, persons who receive waste oil from generators and produce, process or blend waste oil fuel from these waste oils, including persons sending blended or processed waste oil to brokers or other intermediaries, and persons who distribute but do not process or blend waste oil fuel. The following persons are not marketers subject to this subchapter:

(1) Waste oil generators[,] and collectors who transport waste oil received only from generators, unless the generator or collector markets the waste oil directly to a person who burns it for energy recovery. Persons who burn some waste oil fuel for purposes of processing or other treatment to produce waste oil fuel for marketing are considered to be burning incidentally to processing. Generators and collectors who market to incidental burners are not marketers subject to this subchapter.

(2) Persons who market only waste oil fuel that meets the specification under §266a.40(e) (relating to applicability) and who are not the first person to claim the oil meets the specification; that is, marketers who do not receive waste oil from generators or initial transporters and marketers who neither receive nor market off-specification waste oil fuel.

(b) Marketers are subject to the following requirements:

(1) *Analysis of waste oil fuel.* Waste oil fuel is subject to this subchapter unless the marketer obtains analyses or other information documenting that the waste oil fuel meets the specification provided under §266a.40(e).

(2) *Prohibitions.* The prohibitions under §266a.41(a) (relating to prohibitions) apply.

(3) *Notification.* Notification **SHALL BE MADE** to the EPA and the Department stating the location and general description of waste oil management activities. **[Even if]IF** a marketer has previously notified the EPA or the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an EPA identification number, the marketer shall **[renotify] RE-NOTIFY** to identify his waste oil management activities.

(4) *Invoice system.*

(i) When a marketer initiates a shipment of off-specification waste oil, the marketer shall prepare and send the receiving facility an invoice containing the following information:

(A) An invoice number.

(B) The marketer's own EPA identification number and the EPA identification number of the receiving facility.

(C) The names and addresses of the shipping and receiving facilities.

(D) The quantity of off-specification waste oil to be delivered.

(E) The dates of shipment or delivery.

(F) The following statement: "This waste oil is subject to Pennsylvania Department of Environmental **[Resources] PROTECTION** regulation under 25 Pa. Code 266a and/or U.S. EPA regulation under 40 CFR Part 266."

(ii) Waste oil that meets the definition of "hazardous material" in 49 CFR 171.8 (relating to definitions and abbreviations) shall be shipped in accordance with the applicable United States Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 171—180 (relating to research and special programs administration, Department of Transportation).

(5) *Required notices.*

(i) Before a marketer initiates the first shipment of off-specification waste oil to a burner or other marketer, the marketer shall obtain a one-time written and signed notice from the burner or marketer certifying that:

(A) The burner or marketer has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(B) If the recipient is a burner, the burner will burn the off-specification waste oil only in an industrial furnace or boiler identified in § 266a.41(b).

(ii) Before a marketer accepts the first shipment of off-specification waste oil from another marketer subject to the requirements of this section, the marketer shall provide the marketer with a one-time written and signed notice certifying that the marketer has notified the EPA and the Department of his waste oil management activities.

(6) *Recordkeeping.*

(i) *Waste oil fuel that meets the specification.* A marketer who first claims under subsection (b)(1) that waste oil fuel meets the specification shall keep copies of analyses, or other information relied upon to make the determination, of waste oil for 3 years. The waste oil fuel is not subject to further regulation[,] unless it is subsequently mixed with hazardous waste or [**unless it is**] mixed with waste oil so that it no longer meets the specification. The marketers shall also record in an operating log and keep for 3 years the following information on each shipment of waste oil fuel that meets the specification:

(A) The name and address of the facility receiving the shipment.

(B) The quantity of waste oil fuel delivered.

(C) The date of shipment or delivery.

(D) A cross reference to the record of waste oil analysis, or other information relied upon to make the determination that the oil meets the specification, required under this subparagraph.

(ii) *Off-specification waste oil fuel.* A marketer who receives or initiates an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received or prepared. In addition, a marketer shall keep a copy of each certification notice that the marketer receives or sends for 3 years from the date the marketer last engages in an off-specification waste oil fuel marketing transaction with the person who sends or receives the certification notice.

§ 266a.44. Standards applicable to burners of waste oil burned for energy recovery.

Owners and operators of facilities that burn waste oil fuel are "burners" and are subject to the following requirements:

(1) *Prohibition.* The prohibition under § 266a.41(b) (relating to prohibitions) apply.

(2) *Notification.* Burners of off-specification waste oil fuel[,] and burners of waste oil fuel who are the first to claim that the oil meets the specification provided under § 266a.40(e) (relating to applicability), except burners who burn specification oil that they generate, shall notify the EPA and the Department stating the location and general description of waste oil management activities. Burners of waste oil fuel that meets the specifications who receive the oil from a marketer that previously notified the EPA and the Department are not required to notify. Owners and operators of waste oil-fired space heaters that burn waste oil fuel under § 266a.41(b)(2) are exempt from this notification requirement. Even if a burner has previously notified the EPA

and the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an identification number, the burner shall [**renotify**]**RE-NOTIFY** to identify his waste oil management activities.

(3) *Required notices.* Before a burner accepts the first shipment of off-specification waste oil fuel from a marketer, the burner shall provide the marketer a one-time written and signed notice certifying that:

(i)The burner has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(ii) The burner will burn the waste oil only in an industrial furnace or boiler identified in § 266**a**.41(b).

(4) *Waste oil fuel analysis.*

(i) Waste oil fuel burned by the generator is subject to this Subchapter unless the burner obtains analysis (or other information) documenting that the waste oil meets the specification provided under § 266**a**.40(e).

(ii) Burners who treat off-specification waste oil fuel by processing, blending or other treatment to meet the specification provided under § 266**a**.40(e) shall obtain analyses[,] or other information[,] **THAT** document[**ing**]**S** [**that**] the waste oil meets the specification.

(5) *Recordkeeping.* A burner who receives an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received. Burners shall also keep [**for 3 years**] copies of analyses of waste oil fuel as may be required by paragraph (4) **FOR 3 YEARS**. In addition, the burner shall keep a copy of each certification notice that he sends to a marketer for 3 years from the date the burner receives off-specification waste oil from that marketer.

SUBCHAPTER F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

Sec.
266a.70. APPLICABILITY AND REQUIREMENTS.

§ 266a.70. APPLICABILITY AND REQUIREMENTS.

IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE:

(1) A TRANSPORTER TRANSPORTING RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY IN ACCORDANCE WITH 40 CFR PART 266, SUBPART F IS DEEMED TO HAVE A LICENSE FOR THE TRANSPORTATION OF THOSE MATERIALS IF THE TRANSPORTER COMPLIES WITH:

(i) THE EPA IDENTIFICATION NUMBER REQUIREMENTS OF 40 CFR 263.11.

(ii) THE HAZARDOUS WASTE TRANSPORTATION FEE REQUIREMENTS OF § 263a.23.

(2) OWNERS OR OPERATORS OF FACILITIES THAT TREAT RECYCLABLE MATERIALS TO

MAKE THE MATERIALS SUITABLE FOR RECLAMATION OF ECONOMICALLY SIGNIFICANT AMOUNTS OF THE PRECIOUS METALS IDENTIFIED IN 40 CFR PART 266, SUBPART F ARE SUBJECT TO THE REQUIREMENTS OF § 261a.6(c) (RELATING TO REQUIREMENTS FOR RECYCLABLE MATERIALS) UNLESS THE OWNER OR OPERATOR IS ELIGIBLE FOR A PERMIT-BY-RULE FOR THE TREATMENT UNDER § 270a.60(b)(6) (RELATING TO PERMITS-BY-RULE).

SUBCHAPTER G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Sec.
266a.80. APPLICABILITY AND REQUIREMENTS.

§ 266a.80. APPLICABILITY AND REQUIREMENTS.

(a) IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE, THE OWNER OR OPERATOR OF A FACILITY TREATING SPENT, LEAD-ACID BATTERIES PRIOR TO THE RECLAMATION OF SPENT LEAD-ACID BATTERIES IS SUBJECT TO THE REQUIREMENTS OF § 261a.6(c) UNLESS THE OWNER OR OPERATOR IS ELIGIBLE FOR A PERMIT-BY-RULE FOR THE TREATMENT OF THE BATTERIES UNDER § 270a.60(b)(3) (RELATING TO PERMITS-BY-RULE).

(b) THE REQUIREMENTS OF §270a.3 (RELATING TO PAYMENT OF FEES.), §264a.82 AND §265a.82 (RELATING TO ADMINISTRATION FEES) DO NOT APPLY TO FACILITIES THAT STORE SPENT BATTERIES BEFORE RECLAIMING THEM.

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Sec.
266a.100. APPLICABILITY.
[266a.103. Interim status standards for burners.
266a.108. Small quantity onsite burner exemption.]

§ 266a.100. APPLICABILITY.

THE REFERENCE TO "PART 279 OF THIS CHAPTER" IN 40 CFR 266.100(b)(1) IS REPLACED WITH CHAPTER 266a, SUBCHAPTER E (RELATING TO WASTE OIL BURNED FOR ENERGY RECOVERY).

[§ 266a.103. Interim status standards for burners.

Notwithstanding the requirements incorporated by reference:

(1) An 8,000 Btu/lb. minimum heating value requirement is substituted for the Federal 5,000 Btu/lb. minimum heating value requirement.

(2) "Existing or in existence" means a boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. For sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, "existing or in existence" means that on or before _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal), these units are either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and one of the following applies:

(i) A continuous onsite, physical construction program has begun.

(ii) The owner or operator has entered into contractual obligations–which cannot be canceled or modified without substantial loss–for physical construction of the facility to be completed within a reasonable time.

(c) Hazardous waste may be burned under the exceptions of the restrictions contained in 40 CFR 266.103(a)(6) (relating to interim status standards for burners) if the Department has documentation to show that, prior to August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and prior to _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators the following apply:

(1) The boiler or industrial furnace is operating under the interim status standards for incinerators provided by 40 CFR Part 265, Subpart O (relating to incinerators), or the interim status standards for thermal treatment units provided by 40 CFR Part 265, Subpart P and Chapter 265, Subchapter P (relating to thermal treatment).

(2) The boiler or industrial furnace met the interim status eligibility requirements under 40 CFR Part 265, Subpart O or Chapter 265a, Subchapter P.

(3) Hazardous waste with a heating value less than 8,000 Btu/lb. was burned prior to that date.

(d) The owner or operator shall provide the Department with the certification of precompliance required by 40 CFR 266.103(b). The owner or operator shall submit the certification by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(e) The owner or operator shall submit to the Department a complete and accurate certification of compliance under 40 CFR 266.103(c). The owner or operator shall submit the certification by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared

incinerators, and plasma arc incinerators and on or before _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(f) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of 40 CFR 266.104–266.107 by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and by _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, the owner or operator shall do one of the following:

(1) Stop burning hazardous waste and begin closure activities under 40 CFR 266.103(c)(1).

(2) Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and, for the period of time beginning _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators. Submit a notification to the director by August 21, 1992, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators or submit a notice to the Department by _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993 for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, or by _____ (*Editor's Note*: The blank refers to a date 2 years after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(3) Obtain a case-by-case extension of time under 40 CFR 266.103(c)(7)(ii).]

[§ 266a.108. Small quantity onsite burner exemption.

Notwithstanding the requirements incorporated by reference, the hazardous waste burned in an onsite boiler or industrial furnace have a minimum heating value of 8,000 Btu/lb. to be exempt from this subchapter.]

CHAPTER 266b. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

(*Editor's Note*: All of the existing text of Chapter 266 Subchapters J–O is being relocated to Chapter 266b.)

Subchap.

B. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE
C. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE
D. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS
E. STANDARDS FOR DESTINATION FACILITIES

Subchapter A. GENERAL

Sec.
266b.1. Incorporation by reference and scope.

§ 266b.1. Incorporation by reference and scope.

Except as expressly provided in this chapter, the requirements of 40 CFR Part 273 (relating to standards for universal waste management) are incorporated by reference.

Subchapter B. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

Sec.
266b.10. Applicability.

§ 266b.10. Applicability.

In addition to the requirements incorporated by reference, a small quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

Subchapter C. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTES

Sec.
266b.30. Applicability.

§ 266b.30. Applicability.

(a) In addition to the requirements incorporated by reference, a large quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

(b) THE SUBSTITUTION OF TERMS IN 260a.3(a)(3) DOES NOT APPLY TO 40 CFR 273.32(a)(3) AND 273.40(b) AND (c).

Subchapter D. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS

Sec.

§ 266b.50. Applicability.

(a) In addition to the requirements incorporated by reference, a universal waste transporter complying with this subchapter is deemed to have a license for the transportation of universal wastes.

(b) THE SUBSTITUTION OF TERMS IN 260a.3(a)(3) DOES NOT APPLY TO 40 CFR 273.56.

Subchapter E. STANDARDS FOR DESTINATION FACILITIES

§ 266b.60. Applicability.

[**Notwithstanding**] RELATIVE TO the requirements incorporated by reference, 40 CFR 273.60(b) (relating to applicability) is not incorporated by reference.

CHAPTER 267. (Reserved)

(*Editor's Note*: All of the existing text of Chapter 267 is [**proposed to be**] deleted and the financial responsibility requirements are [**proposed to be**] relocated to Subchapter H of Chapters 264a and 265a.)

CHAPTER 268a. LAND DISPOSAL RESTRICTIONS

Subchapter A. GENERAL

§ 268a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 268 (relating to land disposal restrictions), except for 40 CFR 268.5, 268.6, 268.13, 268.42(b) and 268.44 and its appendices are incorporated by reference.

(b) [**Notwithstanding**] RELATIVE TO the requirements incorporated by reference, the substitution of the term "EPA" in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to

40 CFR 268.1(e)(3) (relating to purpose, scope and applicability), **AND THE TERM "ADMINISTRATOR" IN 260a.3(a)(1) DOES NOT APPLY TO 40 CFR 268.40(b) (RELATING TO APPLICABILITY OF TREATMENT STANDARDS).**

CHAPTER 269. (Reserved)

CHAPTER 269a. SITING

(*Editor's Note*: All of the existing text of Chapter 269 is being renumbered as Chapter 269a. No changes, except citation changes, are being proposed to the existing text of Chapter 269. All citations contained within the existing text of Chapter 269 are also being renumbered to reflect the numbering changes proposed in this regulation.)

CHAPTER 270. (Reserved)

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchap.

Subchapter A. GENERAL INFORMATION

Sec.

§ 270a.1. Incorporation by reference, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its Appendices (relating to hazardous waste permit program) are incorporated by reference.

(b) REGARDING THE REQUIREMENTS INCORPORATED BY REFERENCE, THE REQUIREMENTS OF THIS CHAPTER DO NOT APPLY TO OWNERS OR OPERATORS OF

FACILITIES SPECIFICALLY EXEMPTED UNDER 40 CFR 270.1 (c) (2) (RELATING TO PURPOSE AND SCOPE OF THESE REGULATIONS) UNLESS THE FACILITIES ARE REGULATED UNDER §270a.60 (b) (RELATING TO PERMITS-BY-RULE)

(c) OWNERS OR OPERATORS OF FACILITIES ELIGIBLE TO OPERATE PURSUANT TO §270a.60(b) (RELATING TO PERMITS-BY-RULE) ARE DEEMED TO HAVE A HAZARDOUS WASTE MANAGEMENT PERMIT IF THEY SATISFY THE APPLICABLE REQUIREMENTS OF §270a.60(b) (RELATING TO PERMITS-BY-RULE).

§ 270a.2. Definitions.

[**Notwithstanding the requirements incorporated by reference:**]

([1] **a**) The definitions for "disposal," [**"hazardous waste,"**] "person[,]" **AND** "storage" [**and "treatment"**] are not incorporated by reference.

([**2**] **b**) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply for the terms "Administrator," "Director," "Environmental Protection Agency" and "Regional Administrator" found in 40 CFR 270.2 (relating to definitions).

§ 270a.3. Payment of fees.

[**Notwithstanding the requirements incorporated by reference,**] 40 CFR 270.3 is not incorporated by reference and the following fees are established:

(1) Applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(i) Land disposal facilities–commercial–$125,000.

(ii) Land disposal facility–captive–$71,400.

(iii) Surface impoundments:

(A) Commercial–$36,000.

(B) Captive–$14,000.

(iv) Post-closure permits–$25,000.

(v) Treatment facilities:

(A) Commercial–$36,000.

(B) Captive–$14,000.

(vi) Storage facilities:

(A) Commercial–$36,000.

(B) Captive–$14,000.

(vii) Incinerators:

(A) Commercial–$93,000.

B) Captive–$54,000.

[(viii) For applications for determination of applicability under § 266.100 (relating to applicability and requirements)–$1,125.]

(2) If more than one permitted activity is located at a site, or more than one activity occurs, the fees [**shall be]ARE** cumulative.

(3) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(i) Module I and Generic Module I applications:

(A) Module I–$300.

(B) Generic Module I–$1,500.

(ii) Class 2 and Class 3 permit modifications–50 % of fees listed in subsection (1).

(iii) Class 1 permit modifications–$700.

[(4) An application for a permit modification shall be considered a major modification if the application involves one or more of the following:

(i) A change in the site volume-waste capacity.

(ii) A change in excavation contours, including final elevations and slopes.

(iii) A change in permitted acreage.

(iv) A change in the approved groundwater monitoring plan, except for the addition of wells or parameters.

(v) A change in approved leachate collection and treatment plan.

(vi) A change in gas monitoring or management plan, or both.

(vii) A change in the approved type, amount, origin or application of daily, intermediate or final cover materials.

(viii) A change in the approved closure plan.

(ix) A change in approved design.]

(*Editors Note*: The language contained in § 270a.3 of this rulemaking is the language that is being deleted from § 265.447 by this rulemaking.)

(*Editor's Note*: The Department is deleting the existing text at 25 Pa. Code § 270.4 (relating to research, development and demonstration permits) and adopting the Federal 40 CFR 270.65 (relating to research, development and demonstration permits) by reference.).

§ 270a.4. Effect of permit.

[Notwithstanding the requirements incorporated by reference, 40 CFR 270.4 (relating to effect of a permit) is not incorporated by reference.] **REGARDING THE REQUIREMENTS INCORPORATED BY REFERENCE, NOTHING CONTAINED IN 40 CFR 270.4 PROHIBITS THE DEPARTMENT FROM TAKING AN ENFORCEMENT ACTION PURSUANT TO § 602 OF THE SOLID WASTE MANAGEMENT ACT 35 P.S.§ 6018.602.**

§ 270a.5. Noncomplying and program reporting by Director.

[Notwithstanding the requirements incorporated by reference, 40 CFR 270.5 (relating to noncompliance and program reporting by the Director) is not incorporated by reference.] **THE SUBSTITUTION OF TERMS IN §260a.3 (REGARDING TERMINOLOGY AND CITATIONS RELATED TO FEDERAL REGULATIONS) DO NOT APPLY TO 40 CFR 270.5 (REGARDING NONCOMPLIANCE AND PROGRAM REPORTING TO THE DIRECTOR).**

§ 270a.6. References.

[Notwithstanding] **REGARDING** the requirements incorporated by reference, the term "*Federal Register*"

[**shall**] retainS its meaning and [**may**]IS not [**be**] replaced by the term "*Pennsylvania Bulletin*" when used in 40 CFR 270a.6 (relating to references).

Subchapter B. PERMIT APPLICATION

Sec.

§ 270a.10. General application requirements AND PERMIT ISSUANCE PROCEDURES.

(a) [**Notwithstanding**] REGARDING the requirements incorporated by reference:

(1) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the terms "administrator," "*Federal Register*" and "EPA" does not apply to 40 CFR 270.10([**c**]e)(2) (relating to general application requirements).

(2) IN 40 CFR 270.10(e)(3), "DEPARTMENT" IS SUBSTITUTED FOR "ADMINISTRATOR" AND "35 P.S. SECTIONS 602 AND 610 OF THE SOLID WASTE MANAGEMENT ACT" ARE SUBSTITUTED FOR "SECTION 3008 OF RCRA."

([**2**]3) The substitution of terms in § 260a.3 for the term "administrator" does not apply to 40 CFR 270.10[**(e) and**] (f)(3).

([**3**]4) **[Applicants are only required to submit the application to the Department under 40 CFR 270.10(f)(2) and (g)(1)(i).]** APPLICATIONS SUBMITTED PURSUANT TO 40 CFR 270.10(f)(2) AND (g)(1)(i) SHALL BE SUBMITTED TO THE DEPARTMENT AND NOT TO EPA.

(b) In addition to the requirements incorporated by reference, an application [**shall**]MUST include the application fees required by § 270a.3 (relating to payment of fees).

(c) THE FOLLOWING PROCEDURES ARE USED IN ISSUING A PERMIT:

(1) A PERSON WHO REQUIRES A PERMIT UNDER THE HAZARDOUS WASTE PROGRAM SHALL COMPLETE, SIGN AND SUBMIT TO THE DEPARTMENT AN APPLICATION FOR A HAZARDOUS WASTE PERMIT.

(2) THE DEPARTMENT WILL NOT BEGIN THE PROCESSING OF A PERMIT UNTIL THE APPLICANT COMPLIES WITH THE APPLICATION REQUIREMENTS FOR THAT PERMIT AND THE SIGNATURE AND CERTIFICATION REQUIREMENTS OF 40 CFR 270.11 (RELATING TO CERTIFICATION BY RESPONSIBLE OFFICIAL).

(3) THE DEPARTMENT REVIEWS FOR COMPLETENESS EVERY HAZARDOUS WASTE PERMIT APPLICATION FOR A NEW OR EXISTING HAZARDOUS WASTE MANAGEMENT FACILITY. UPON COMPLETING THE REVIEW, THE DEPARTMENT NOTIFIES THE APPLICANT IN WRITING WHETHER THE APPLICATION IS COMPLETE. IF THE APPLICATION IS INCOMPLETE, THE DEPARTMENT LISTS THE INFORMATION NECESSARY TO MAKE THE APPLICATION COMPLETE. WHEN THE APPLICATION IS FOR AN EXISTING HAZARDOUS WASTE MANAGEMENT FACILITY, THE DEPARTMENT SPECIFIES IN THE NOTICE OF DEFICIENCY A DATE FOR SUBMITTING THE NECESSARY INFORMATION. IF THE APPLICANT THEREAFTER SUBMITS A COMPLETE APPLICATION, THE DEPARTMENT NOTIFIES THE APPLICANT THAT THE APPLICATION IS COMPLETE. AFTER THE APPLICATION IS COMPLETED, THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION FROM AN APPLICANT IF NECESSARY TO CLARIFY, MODIFY OR SUPPLEMENT PREVIOUSLY SUBMITTED MATERIAL. REQUESTS FOR ADDITIONAL INFORMATION DO NOT RENDER AN APPLICATION INCOMPLETE.

(4) IF AN APPLICANT FAILS OR REFUSES TO CORRECT DEFICIENCIES IN THE APPLICATION, THE PERMIT MAY BE DENIED AND APPROPRIATE ENFORCEMENT ACTIONS TAKEN UNDER APPLICABLE STATUTORY PROVISIONS.

(5) IF THE DEPARTMENT DECIDES THAT A SITE VISIT IS NECESSARY IN CONJUNCTION WITH THE PROCESSING OF AN APPLICATION, IT WILL NOTIFY THE APPLICANT. THE APPLICANT SHALL PROVIDE THE DEPARTMENT ACCESS FOR A SITE VISIT AT A REASONABLE TIME.

(6) THE EFFECTIVE DATE OF AN APPLICATION IS THE DATE ON WHICH THE DEPARTMENT NOTIFIES THE APPLICANT THAT THE APPLICATION IS COMPLETE AS PROVIDED IN PARAGRAPH (3).

(7) ONCE AN APPLICATION IS COMPLETE, THE DEPARTMENT TENTATIVELY DECIDES WHETHER TO PREPARE A DRAFT PERMIT OR TO DENY THE APPLICATION.

(8) IF THE DEPARTMENT TENTATIVELY DECIDES TO DENY THE PERMIT APPLICATION, IT WILL ISSUE A NOTICE OF INTENT TO DENY THE APPLICATION. A NOTICE OF INTENT TO DENY THE PERMIT APPLICATION IS A TYPE OF DRAFT PERMIT WHICH FOLLOWS THE SAME PROCEDURES AS A DRAFT PERMIT PREPARED UNDER THIS SECTION. IF, AFTER ISSUING A NOTICE OF INTENT TO DENY, THE DEPARTMENT'S FINAL DECISION IS TO ISSUE THE PERMIT, THE NOTICE OF INTENT TO DENY IS WITHDRAWN AND THE DEPARTMENT WILL PROCEED TO PREPARE A DRAFT PERMIT UNDER PARAGRAPH (9).

(9) A DRAFT PERMIT PREPARED BY THE DEPARTMENT CONTAINS THE FOLLOWING INFORMATION:

(i) CONDITIONS UNDER THIS CHAPTER AND 40 CFR 270.30 AND 270.32 (RELATING TO CONDITIONS APPLICABLE TO ALL PERMITS AND ESTABLISHING PERMIT CONDITIONS).

(ii) PROPOSED COMPLIANCE SCHEDULES UNDER 40 CFR 270.33 (RELATING TO SCHEDULES OF COMPLIANCE).

(iii) MONITORING REQUIREMENTS UNDER CHAPTERS 264a AND 265a; 40 CFR PARTS 264 AND 265 AND 40 CFR 270.[14]31.

(10) A DRAFT PERMIT PREPARED UNDER THIS SECTION MUST BE ACCOMPANIED BY A STATEMENT OF BASIS, UNDER PARAGRAPH (11) OR A FACT SHEET UNDER PARAGRAPH (12), PUBLICLY NOTICED UNDER § 270a.80 (RELATING TO PUBLIC NOTICE AND COMMENT REQUIREMENTS) AND MADE AVAILABLE FOR PUBLIC COMMENT UNDER § 270a.81(2) (RELATING TO PUBLIC HEARINGS). THE DEPARTMENT GIVES NOTICE OF THE OPPORTUNITY FOR A PUBLIC HEARING UNDER § 270a.81(2) AND RESPONDS TO COMMENTS UNDER PARAGRAPH (13).

(11) THE DEPARTMENT PREPARES A STATEMENT OF BASIS FOR EVERY DRAFT PERMIT FOR WHICH A FACT SHEET UNDER PARAGRAPH (12) IS NOT PREPARED. THE STATEMENT OF BASIS DESCRIBES THE DERIVATION OF THE CONDITIONS OF THE DRAFT PERMIT AND THE REASONS FOR THEM OR, IN THE CASE OF NOTICES OF INTENT TO DENY OR REVOKE, REASONS SUPPORTING THE TENTATIVE DECISION. THE STATEMENT OF BASIS IS SENT TO THE APPLICANT AND, ON REQUEST, TO OTHER PERSONS.

(12) PREPARATION OF FACT SHEETS COMPLIES WITH THE FOLLOWING:

(i) A FACT SHEET IS PREPARED BY THE DEPARTMENT FOR EVERY DRAFT PERMIT FOR A MAJOR HAZARDOUS WASTE MANAGEMENT FACILITY OR ACTIVITY, AND FOR EVERY DRAFT PERMIT WHICH THE DEPARTMENT DETERMINES IS THE SUBJECT OF WIDESPREAD PUBLIC INTEREST OR RAISES MAJOR ISSUES. THE FACT SHEET BRIEFLY SETS FORTH THE PRINCIPAL FACTS AND THE SIGNIFICANT FACTUAL, LEGAL, METHODOLOGICAL AND POLICY QUESTIONS CONSIDERED IN PREPARING THE DRAFT PERMIT. THE DEPARTMENT SENDS THIS FACT SHEET TO THE APPLICANT AND, ON REQUEST, TO OTHER PERSONS.

(ii) THE FACT SHEET INCLUDES THE FOLLOWING WHEN APPLICABLE:

(A) A BRIEF DESCRIPTION OF THE TYPE OF FACILITY OR ACTIVITY WHICH IS THE SUBJECT OF THE DRAFT PERMIT.

(B) THE TYPE AND QUANTITY OF WASTES PROPOSED TO BE OR BEING TREATED, STORED OR DISPOSED.

(C) A BRIEF SUMMARY OF THE BASIS FOR THE DRAFT PERMIT CONDITIONS, INCLUDING REFERENCES TO APPLICABLE STATUTORY OR REGULATORY PROVISIONS.

(D) REASONS WHY REQUESTED VARIANCES OR ALTERNATIVES TO REQUIRED STANDARDS DO OR DO NOT APPEAR JUSTIFIED.

(E) A DESCRIPTION OF THE PROCEDURES FOR REACHING A FINAL DECISION ON THE DRAFT PERMIT INCLUDING THE FOLLOWING:

(I) THE BEGINNING AND ENDING DATES OF THE COMMENT PERIOD UNDER § 270a.8[1]0 AND THE ADDRESS WHERE COMMENTS WILL BE RECEIVED.

(II) PROCEDURES FOR REQUESTING A HEARING AND THE NATURE OF THAT HEARING.

(III) OTHER PROCEDURES BY WHICH THE PUBLIC MAY PARTICIPATE IN THE FINAL DECISION.

(IV) THE NAME AND TELEPHONE NUMBER OF A PERSON TO CONTACT FOR ADDITIONAL INFORMATION.

(13) AT THE TIME THAT A FINAL PERMIT IS ISSUED, THE DEPARTMENT ALSO ISSUES A RESPONSE TO COMMENTS. THE RESPONSE DOES THE FOLLOWING:

(i) SPECIFIES WHICH PROVISIONS, IF ANY, OF THE DRAFT PERMIT CHANGED IN THE FINAL PERMIT DECISIONS, AND THE REASONS FOR THE CHANGE.

(ii) BRIEFLY DESCRIBES RESPONSES TO SIGNIFICANT COMMENTS ON THE DRAFT PERMIT RAISED DURING THE PUBLIC COMMENT PERIOD OR DURING A HEARING.

(14) THE DEPARTMENT MAKES ITS RESPONSE TO PUBLIC COMMENTS AVAILABLE TO THE PUBLIC.

[§ 270a.11. Signatories to permit applications and reports.

Notwithstanding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term "administrator" does not apply to 40 CFR 270.11(a)(3) (relating to signatories to permit applications and reports).]

§ 270a.12. Confidentiality of information.

[Notwithstanding the requirements incorporated by reference] 40 CFR 270.12 IS NOT INCORPORATED BY REFERENCE. THE confidentiality of information **[shall be]**IS as follows:

(1) Information submitted to the Department under this subsection may be claimed as confidential by the applicant. Any claim shall be asserted at the time of submission in the manner prescribed in paragraph (2) and the application form or instructions by stamping the words "confidential business information" on each page containing the information. If a claim is not made at the time of submission, the Department will make the

information available to the public without further notice.

(2) Claims of confidentiality for permit application information shall be substantiated at the time the application is submitted and shall address the following:

(i) The portions of the information claimed to be confidential.

(ii) The length of time the information is to be treated as confidential.

(iii) The measures taken to guard against undesired disclosure of the information to others.

(iv) The extent the information has been disclosed to others and the precautions taken in connection with that disclosure.

(v) A copy of any pertinent confidentiality determinations by EPA or another Federal agency.

(vi) The nature of the substantial harm to the competitive position by disclosure of the information, the reasons it should be viewed as substantial and the relationship between the disclosure and the harm.

(3) The Department [**will**] keep**S** confidential information in a secure repository and [**will**]**DOES** not make the information available for inspection by the general public.

(4) The Department [**will**] make**S** confidential information available to any State or Federal agency for the purpose of administration of any State or Federal law.

(*Editors Note*: The language contained in § 270a.12 of this rulemaking is the language that is being deleted from § 265.446 by this rulemaking.)

§ 270a.13. Contents of Part A of the permit application.

In addition to the requirements incorporated by reference, Part A of the permit application [**shall**] include**S** information to demonstrate compliance with the siting criteria in Chapter 269a (relating to siting).

§ 270a.14. ADDITIONAL APPLICANT REQUIREMENTS.

(a) IN ADDITION TO THE REQUIREMENTS INCORPORATED BY REFERENCE, PERMIT APPLICANTS MUST ALSO COMPLY WITH §270a.83 (RELATING TO PRE-APPLICATION PUBLIC MEETING AND NOTICE).

(b) 40 CFR 270.14(b)(20) (RELATING TO CONTENTS OF PART B: GENERAL REQUIREMENTS) IS NOT INCORPORATED BY REFERENCE.

§ 270a.29. Permit denial.

(a) [Notwithstanding the requirements incorporated by reference, in] 40 CFR 270.29 (relating to permit denial), IS NOT INCORPORATED BY REFERENCE.[the phrase "25 Pa. Code, Chapter 270a, Subchapter H" shall be substituted for the phrase "Part 124."]

(b) IF THE DEPARTMENT TENTATIVELY DECIDES TO DENY THE PERMIT APPLICATION, IT WILL ISSUE A NOTICE OF INTENT TO DENY THE APPLICATION. A NOTICE OF INTENT TO DENY THE PERMIT APPLICATION IS A TYPE OF DRAFT PERMIT WHICH FOLLOWS THE SAME PROCEDURES AS A DRAFT PERMIT PREPARED UNDER § 270a.10(c). IF, AFTER ISSUING A NOTICE OF INTENT TO DENY, THE DEPARTMENT'S FINAL DECISION IS TO ISSUE THE PERMIT, THE NOTICE OF INTENT TO DENY IS WITHDRAWN AND THE DEPARTMENT PROCEEDS TO PREPARE A DRAFT PERMIT IN ACCORDANCE WITH §270a.10(c).

SUBCHAPTER C. PERMIT CONDITIONS

SEC.
270a.32. ESTABLISHING PERMIT CONDITIONS.

§ 270a.32. ESTABLISHING PERMIT CONDITIONS.

40 CFR SECTIONS 270.32(a) AND (c) ARE NOT INCORPORATED BY REFERENCE. IN 40 CFR 270.32(b)(2), THE TERM "SECTION 3005" IS REPLACED WITH "35 P.S. SECTIONS 501, 502 AND 503 OF THE SOLID WASTE MANAGEMENT ACT" AND THE TERM "STATE DIRECTOR" IS DELETED.

Subchapter D. CHANGES TO PERMITS

Sec.
270a.41. Modification, TERMINATION or revocation and reissuance of permits.

§ 270a.41. PROCEDURES FOR Modification, TERMINATION or revocation and reissuance of permits.

INSTEAD OF THE PROCEDURES REQUIRED IN 40 CFR PART 124 (RELATING TO PROCEDURES FOR DECISION MAKING), PERMITS ARE MODIFIED, TERMINATED OR REVOKED AND REISSUED IN ACCORDANCE WITH THE FOLLOWING:

[The Department will follow the following procedures if it modifies, revokes and reissues, or revokes a permit:]

([i] 1) The Department may modify, revoke and reissue, or [revoke] TERMINATE a permit either at the request of an interested person[–], including the permittee[–], or upon the Department's initiative for reasons specified in 40 CFR 270.41 (RELATING TO MODIFICATION OR REVOCATION AND REISSUANCE), 270.42 (RELATING TO PERMIT MODIFICATION AT THE REQUEST OF THE

PERMITTEE) AND 270.43 (relating to modification or revocation and reissuance of permits, **AND TERMINATION OF PERMITS**) **[and] OR** for a reason authorized under the act, this article or the terms and conditions of the permit. A request shall be in writing and contain facts or reasons supporting the request.

([ii] 2) If the Department decides the request is not justified, the Department **[will]** sendS a brief written response giving a reason for the decision to the requester. The Department's refusal to modify, **OR** revoke and reissue **[or revoke]** a permit under a request is not subject to public notice, comment or hearings.

([iii] 3) If the Department tentatively decides to modify, **TERMINATE,** or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41 **(RELATING TO MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS), 270.42(c) (RELATING TO PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE) OR 270.43 (RELATING TO TERMINATION OF PERMITS) [it will] THE DEPARTMENT** prepareS a draft permit under **270a.10(c) (7—10) [paragraphs (7)–(9)]** incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits, the Department **[will]** requireS the submission of a new application. The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

([iv] 4) In a permit modification under this section, only those conditions to be modified **[shall be] ARE** reopened when a new draft permit is prepared. Other aspects of the existing permit **[shall]** remain in effect for the duration of the permit. When the permit is revoked and reissued, the entire permit is reopened just as if the permit **[had]** expired and **[was being] IS** reissued. During a revocation and reissuance proceeding**[.]**, **[T]**the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

([v] 5) If the Department tentatively decides to **[revoke] TERMINATE** a permit in accordance with the incorporated provisions of 40 CFR 270.4**[1] 3 (RELATING TO TERMINATION OF PERMITS)**, it **[will]** issueS a notice of intent to **[revoke] TERMINATE**. A notice of intent to **[revoke] TERMINATE** is a type of draft permit which follows the same procedures as a draft permit prepared under **[paragraphs (7)–(9)] SECTION 270a.10(c) (7—10)**.

([vi] 6) Class 1 modifications, as listed in the Appendix I to 40 CFR 270.42 (relating to classification of permit modification), are not subject to the requirements of this section.

[In addition to the requirements incorporated by reference:

(1) A person who requires a permit under the hazardous waste program shall complete, sign and submit to the Department an application for a hazardous waste permit.

(2) The Department will not begin the processing of a permit until the applicant has complied with the application requirements for that permit and complied with the signature and certification requirements of § 270a.11 (relating to signatories to permit applications and reports) and 40 CFR 270.11 (relating to certification by responsible official).

(3) The Department will review for completeness every hazardous waste permit application for a new or existing hazardous waste management facility–both Parts A and B of the application. Upon completing the review, the Department will notify the applicant in writing whether the application is complete. If the application is incomplete, the Department will list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Department will specify in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department will notify the applicant that the application is complete. After the application is completed, the Department may request additional information from an applicant if necessary to clarify, modify or supplement previously submitted material. Requests for additional information will not render an application incomplete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under applicable statutory provisions.

(5) If the Department decides that a site visit is necessary in conjunction with the processing of an application, it will notify the applicant. The applicant shall provide the Department access for a site visit at a reasonable time.

(6) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in paragraph (3).

(7) Once an application is complete, the Department will tentatively decide whether to prepare a draft permit or to deny the application.

(8) If the Department tentatively decides to deny the permit application, it will issue a notice of intent to deny the application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as a draft permit prepared under this section. If, after issuing a notice of intent to deny, the Department's final decision is to issue the permit, the notice of intent to deny will be withdrawn and the Department will proceed to prepare a draft permit under paragraph (9).

(9) A draft permit prepared by the Department will contain the following information:

(i) Conditions under 40 CFR Subpart C (relating to conditions applicable to all permits.

(ii) Proposed compliance schedules under 40 CFR 270.33 (relating to schedules of compliance).

(iii) Monitoring requirements under Chapters 264a and 265a; 40 CFR Parts 264 and 265 and 40 CFR 270.[14]31.

(iv) Hazardous waste permit standards for treatment, storage and disposal and other permit conditions under this chapter and 40 CFR Subpart C (relating to permit conditions).

(10) A draft permit prepared under this section shall be accompanied by a statement of basis, under paragraph (11) or a fact sheet under paragraph (12), publicly noticed under § 270a.80 (relating to public

notice and comment requirements) and made available for public comment under § 270a.81(2) (relating to public hearings). The Department will give notice of the opportunity for a public hearing under § 270a.81(2) and respond to comments under paragraph (13).

(11) The Department will prepare a statement of basis for every draft permit for which a fact sheet under paragraph (12) is not prepared. The statement of basis will briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or revoke, reasons supporting the tentative decision. The statement of basis will be sent to the applicant and, on request, to other persons.

(12) Preparation of fact sheets shall comply with the following:

(i) A fact sheet will be prepared by the Department for every draft permit for a major hazardous waste management facility or activity, and for every draft permit which the Department determines is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department will send this fact sheet to the applicant and, on request, to other persons.

(ii) The fact sheet shall include the following when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit.

(B) The type and quantity of wastes which are [proposed to be] or are being treated, stored or disposed of.

(C) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

(D) Reasons why requested variances or alternatives to required standards do or do not appear justified.

(E) A description of the procedures for reaching a final decision on the draft permit including the following:

(I) The beginning and ending dates of the comment period under § 270a.8[1]0 and the address where comments will be received.

(II) Procedures for requesting a hearing and the nature of that hearing.

(III) Other procedures by which the public may participate in the final decision.

(IV) The name and telephone number of a person to contact for additional information.

(13) At the time that a final permit is issued, the Department will also issue a response to comments. The response will state the following:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decisions, and the reasons for the change.

(ii) Briefly describe the response to significant comments on the draft permit raised during the public comment period or during a hearing.

(14) The Department will make available to the public its response to public comments.]

§ 270a.42 PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE

(a) INSTEAD OF COMPLYING WITH THE REQUIREMENTS OF 40 CFR PART 124.10(c)(ix) (RELATING TO PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD) THE PERMITTEE SHALL SEND A NOTICE TO THOSE PERSONS LISTED IN §270a.80(d)(iv).
(b) INSTEAD OF THE APPEAL PROCEDURE SET FORTH IN 40 CFR 124.19 (RELATING TO APPEAL OF RCRA, UIC, NPDES PERMITS). THE DEPARTMENT'S DECISION TO GRANT OR DENY PERMIT MODIFICATIONS MAY BE APPEALED TO THE ENVIRONMENTAL HEARING BOARD PURSUANT TO SECTION 4 OF THE ENVIRONMENTAL HEARING BOARD ACT, 35 P.S. SECTION 7514.
(c) APPLICATIONS SEEKING CLASS 2 AND 3 PERMIT MODIFICATIONS SHALL COMPLY WITH SECTION 270a.83 (RELATING TO PRE-APPLICATION PUBLIC MEETING AND NOTICE.

§270a.43 PERMIT TERMINATION.

THE PROCEDURES FOR PERMIT TERMINATION ARE FOUND IN 270a.41.

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

Sec.
270a.51. Continuation of existing permits.

§ 270a.51. Continuation of existing permits.

[Notwithstanding the requirements incorporated by reference,] 40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

Subchapter F. SPECIAL FORMS OF PERMITS

Sec.
270a.60. Permits-by-rule.
[270a.61. **Emergency permits.**]
270a.64. Interim permits for UIC wells.

§ 270a.60. Permits-by-rule.

(a) [**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the following [**shall be**] **ARE** substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule):

[**Notwithstanding**] **IN ADDITION TO** other provisions of this chapter, the activities listed in this section [**shall be**]**ARE** deemed to have a hazardous waste management permit if the conditions listed are met. The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain, an individual permit when the facility is not in compliance with the applicable requirements or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(b) In addition to the requirements incorporated by reference, the following requirements apply:

(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit-by-rule, if **THE OWNER OR OPERATOR COMPLIES WITH** the following requirements [**are complied with**]:

(i) The facility [**is a captive facility and the only**] **TREATS HAZARDOUS** waste [**treated is**] generated onsite[**, or was a captive facility prior to September 4, 1982, and the only waste treated is generated onsite or on an interconnected adjacent site which was previously part of an integrated facility**].

(ii) The facility has an NPDES permit, if required, and complies with the conditions of that permit.

(iii) Section 264a.11 (relating to identification number and transporter license) and 40 CFR 264.11 (relating to identification number).

(iv) Chapter 264a, Subchapter D and 40 CFR Subparts C and D (relating to [**standards for owners and operators of hazardous waste treatment, storage and disposal facilities; transfer of permits; and**] preparedness and prevention, and [**preparedness, prevention and**] contingency [**(PPC)**] plan and emergency procedures).

(v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).

[**(vi) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous via dilution by merely mixing it with nonhazardous material.**]

(vi) FOR THE PURPOSES OF THIS SUBSECTION, THE OWNER OR OPERATOR OF AN

ELEMENTARY NEUTRALIZATION UNIT OR WASTEWATER TREATMENT UNIT PERMIT-BY-RULE FACILITY MAY TREAT WASTES GENERATED AT OTHER FACILITIES OPERATED OR OWNED BY THE SAME GENERATOR, IF THE GENERATOR PROVIDES PRIOR WRITTEN NOTICE TO THE DEPARTMENT AND THE WASTES ARE SHIPPED UNDER A MANIFEST IN COMPLIANCE WITH § 262a.20 (RELATING TO GENERAL REQUIREMENTS) AND 40 CFR 262.20 (RELATING TO MANIFEST).

(vii) THE DEPARTMENT MAY, UNDER SPECIAL CIRCUMSTANCES, APPROVE ON A CASE-BY-CASE BASIS THE RECEIPT AND TREATMENT OF WASTES GENERATED OFFSITE BY A DIFFERENT GENERATOR FOR TREATMENT AT A FACILITY REGULATED UNDER THIS SUBSECTION WITHOUT THE TREATMENT OF THE WASTES RESULTING IN THE LOSS OF PERMIT-BY-RULE STATUS UNDER THIS SUBSECTION.

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if **THE OWNER OR OPERATOR COMPLIES WITH** the following requirements [**are complied with**]:

(i) The facility is a captive facility and the only waste treated is generated onsite.

(ii) The notification requirements of 40 CFR 264.11(relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A–D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.

(iii) The applicable requirements of 40 CFR 262.34 (relating to accumulation).

(iv) EXCEPT FOR THE CHARACTERISTIC OF IGNITABILITY, THE HAZARDOUS WASTE IS NOT BEING RENDERED NONHAZARDOUS VIA DILUTION.

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit-by-rule **FOR TREATMENT PRIOR TO THE RECLAMATION OF THE SPENT, LEAD - ACID BATTERIES**, if **THE OWNER OR OPERATOR COMPLIES WITH** the following requirements [are complied with]:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A–E, [**and**] I–L **AND DD** and Chapter 264a, Subchapters A, B, D, E, [**and**] I-L **AND DD**.

[(4) The owner or operator of a petroleum refining facility refining hazardous waste along with normal process streams to produce petroleum products is deemed to have a permit-by-rule, if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A–E, I–L and Chapter 264a,

Subchapters A, B, D, E and I–L.]

([5]4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a **[recycling permit]** PERMIT BY RULE for TREATMENT PRIOR TO the reclamation, if THE OWNER OR OPERATOR COMPLIES WITH the following requirements **[are complied with]**:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, **[and]** I[–L], J AND DD and 40 CFR Part 262 and 264, Subparts A–E and I[–L], J AND DD.

(iii) For the purposes of this subsection, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 (relating to general requirements) and 40 CFR Part 262.20 (relating to manifest).

(iv) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subsection without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subsection.

[(6) The owner or operator of a facility storing hazardous waste onsite in tanks, containers or containment buildings under paragraph (5) is deemed to have a hazardous waste storage permit for the storage of hazardous waste prior to reclamation if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A–D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.]

(6) THE OWNER OR OPERATOR OF A FACILITY THAT TREATS RECYCLABLE MATERIALS TO MAKE THE MATERIALS SUITABLE FOR RECLAMATION OF ECONOMICALLY SIGNIFICANT AMOUNTS OF THE PRECIOUS METALS IDENTIFIED IN 40 CFR PART 266, SUBPART F IS DEEMED TO HAVE A PERMIT-BY-RULE IF THE OWNER OR OPERATOR COMPLIES WITH THE FOLLOWING:

(i) THE NOTIFICATION REQUIREMENTS OF 40 CFR 264.11.

(ii) THE APPLICABLE REQUIREMENTS OF CHAPTER 264a, SUBCHAPTERS A, B, D, E, I, J AND DD AND 40 CFR PART 264, SUBPARTS A-D, I, J AND DD.

(c) In addition to the requirements incorporated by reference:

(1) With respect to any permit-by-rule facility under paragraphs (b)(3)-(6) of this section, the Department may,

upon written application from any person subject to these paragraphs, grant a variance from one or more specific provision of those paragraphs in accordance with this subsection.

(2) In granting a[**n**] variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity [**will**] result**S** in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions. Any variance granted under this section [**shall**]**WILL** be no less stringent than the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

[§ 270a.61. Emergency permits.

In addition to the requirements incorporated by reference, the Department may waive the procedural requirements for a hazardous waste management permit under section 504(g) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.504(g)), for site cleanup response actions conducted entirely on the site. For the purposes of this paragraph "site" is as defined in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).]

§270a.62 HAZARDOUS WASTE INCINERATOR PERMITS.

INSTEAD OF THE NOTIFICATION REQUIRED BY 40 CFR 124.10 (RELATING TO PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD), THE DEPARTMENT SENDS NOTICE TO ALL PERSONS LISTED IN §270a.80(4)(i)((D)(E)AND (F).

§ 270a.64. Interim permits for UIC wells.

[Notwithstanding the requirements incorporated by reference, the requirements at] 40 CFR 270.64 (relating to interim permits for UIC wells) **[are]** **IS** not incorporated by reference.

§ 270a.66. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE.

INSTEAD OF THE NOTIFICATION REQUIRED BY 40 CFR 124.10 (RELATING TO PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD), THE DEPARTMENT SENDS NOTICE TO ALL PERSONS LISTED IN §270a.80(4)(i)((D)(E)AND (F).

Subchapter G. INTERIM STATUS

Sec.
270a.72. Changes during interim status.

§ 270a.72. Changes during interim status.

[**Notwithstanding**] **RELATIVE TO** the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term "EPA" does not apply to 40 CFR 270.72(a)(5) and (b)(5) (relating to changes during interim status).

Subchapter H. PUBLIC NOTICE AND HEARINGS

Sec.

§ 270a.80. Public notice and comment requirements.

[In addition to the requirements incorporated by reference:]

([1]a) The Department [**will**] giveS public notice [**that**]**OF** the following actions [**have occurred**]:

([i]1) [**A permit**] **AN** application **FOR A PERMIT OR A CLASS 2 OR CLASS 3 PERMIT MODIFICATION** [**has been**]**IS** tentatively denied under § 270a.29 (relating to permit denial), 40 CFR 270.29 (relating to permit denial) and **40CFR 270.41 AND** § 270a.41 (relating to modification or revocation and reissuance of permits).

([ii]2) A draft permit [**has been**]**IS** prepared under **§270a.10(c) (RELATING TO GENERAL APPLICATION REQUIREMENTS)** [**§ 270a.41(9)**].

([iii]3) A hearing [**has been**]**IS** scheduled under § 270a.81([2]b) (relating to public hearings).

([iv]4) A closure/postclosure plan [**has been**]**IS** received in accordance with the incorporated requirements of 40 CFR 264.112[**(d)**], **265.112,** [**or**] 264.118[**(a),**] **OR 265.118** (relating to closure plan; amendment of plan; and postclosure plan; amendment of plan).

([2]b) A public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under paragraph ([1]a) [**will**]**MUST** provide for at least 45 days for public comment.

([3]c) The Department [**will**] giveS public notice of a public hearing at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two notices may be combined.

([4]d) The Department [**will**] giveS public notice of activities described in paragraph ([1]a) by the following methods:

([i]1) By mailing a copy of a notice to the following (persons otherwise entitled to receive notice under this paragraph may waive the right to receive notice for classes and categories of permits):

([A]i) The applicant.

([B]ii) An agency which the Department knows has issued or is required to issue a[n] RCRA, underground injection control, prevention of significant deterioration **(OR OTHER PERMIT UNDER THE CLEAN AIR ACT)**, NPDES, [or] 404, **SLUDGE MANAGEMENT** permit, **OR OCEAN DUMPING PERMIT UNDER THE MARINE RESEARCH PROTECTION AND SANCTUARIES ACT** for the same facility or activity, including EPA.

([C]iii) An appropriate Federal or State agency with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, State historic preservation officers, advisory council on historic preservation and other appropriate government authorities, including affected states.

([D]iv) A person on a mailing list developed by the Department, [**which will**]**THAT** includeS a person who submits to the Department a request in writing to be on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State-funded newsletters, environmental bulletins or State law journals. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

([E]v) [**A u**]UnitS of local government having jurisdiction over the area where the facility is [**proposed to be**] located.

([F]vi) [A] State agenc[y]IES having authority under State statute with respect to the construction or operation of the facility.

([ii]2) Publication of a notice **IN THE PENNSYLVANIA BULLETIN AND** in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

([iii]3) In a manner constituting legal notice to the public under State statute.

([iv]4) By other methods reasonably calculated to give actual notice of the action in question to a person potentially affected by it, including press releases or another [**form**] **FORUM** or medium to elicit public participation.

([5]e) [**The content of a**]A public notice issued under this section shall contain the following minimum information:

([i]1) The name and address of the office processing the permit action for which notice is being given.

([ii]2) The name and address of the permittee or permit applicant and, if different, of the facility or activity

regulated by the permit.

([iii]3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit.

([iv]4) The name, address and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, the statement of basis or fact sheet, and the application.

([v]5) A brief description of the comment procedures required by § 270a.81 (relating to public hearings), [**and**] the time and place of a hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision.

([vi]6) Additional information which the Department considers necessary or proper.

([6]f) In addition to the general public notice described in paragraph ([5]e), the public notice of a hearing under § 270a.81(b) shall contain the following information:

([i]1) A reference to the date of previous public notices relating to the permit.

([ii]2) The date, time and place of the hearing.

([iii]3) A brief description of the nature and purpose of the hearing, including the applicable procedures.

([7]g) In addition to the general public notice described in paragraph ([5]e), a person identified in paragraph [(4)(i)(A)– (C)] (d)(1)(i—ii)will be mailed a copy of the fact sheet or statement of basis, the draft permit and, if applicable, the permit application.

§ 270a.81. Public hearings.

[In addition to the requirements incorporated by reference:]

([1]a) During the public comment period provided under § 270a.80 (relating to public notice and comment requirements), an interested person may submit written comments on the draft permit and may request a public hearing, if a hearing [**has**]IS not already [**been**] scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Department [**will**] considerS comments in making its final decision and [**will**] answerS these comments as provided in § 270a.[**41(13)**]10(c) (relating to [**modification or revocation and reissuance of permits**] **GENERAL APPLICATION REQUIREMENTS AND PERMIT ISSUANCE PROCEDURES**).

([2]b) The Department [**will**] followS the following procedures in a public hearing held under this subchapter:

([i]1) The Department [**will**] holdS a public hearing whenever, on the basis of requests received under

paragraph ([1]a), it determines that a significant degree of public interest in a draft permit exists.

([ii]2) The Department may hold a public hearing whenever a hearing might clarify issues involved in the permit decision.

([iii]3) The Department [will] holdS a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice, under § 270a.80 **(RELATING TO PUBLIC NOTICE AND COMMENT REQUIREMENTS)**.

([iv]4) The Department [will]SCHEDULES, when possible, [schedule] a hearing under this section at a location convenient to the nearest population center to the proposed facility.

([v]5) The Department [will] giveS public notice of the hearing under § 270a.8[0]1(a).

([vi]6) A person may submit oral or written statements and data concerning the draft permit before, during or after the public hearing, **AS LONG AS THE DEPARTMENT RECEIVES THE STATEMENTS AND DATA DURING THE PUBLIC COMMENT PERIOD**. The Department may set reasonable limits upon the time allowed for oral statements and may require the submission of statements in writing. The public comment period under § 270a.80 **(RELATING TO PUBLIC NOTICE AND COMMENT REQUIREMENTS)** [will] IS automatically [be] extended to the close of a public hearing under this section. The Department's hearing officer may also extend the comment period by so stating at the hearing.

([vii]7) The Department [will] makeS a tape recording or written transcript of the hearing available to the public.

§ 270a.82. Public availability of information.

[In addition to the requirements incorporated by reference:]

([1]a) Information provided to the Department under this article [will be]IS made available to the public in accordance with the current Departmental policy on public information. The Department [will] makeS every effort to respond to written requests in a timely manner by providing the materials requested or a written response explaining why the request cannot be honored.

([2]b) The Department [will] releaseS material obtained regarding facilities and sites for the treatment, storage and disposal of hazardous waste, unless the material is subject to a claim of confidentiality under § 270a.12 (relating to confidentiality of information) or other law or regulation. These records include:

([i]1) Permit applications and modifications.

([ii]2) Annual reports.

([iii]3) Closure plans.

([iv]4) Notification of facility closure.

([v]5) Contingency plan incidence reports.

([vi]6) Delisting petitions and other petitions for variances or waivers.

([vii]7) Financial responsibility instruments.

([viii]8) Environmental monitoring data, such as groundwater monitoring data.

([ix]9) Transporter spill reports.

([x]10) International shipment reports.

([xi]11) Manifest exception, discrepancy and unmanifested waste reports.

([xii]12) EPA facility identification numbers.

([xiii]13) General correspondence with the facility.

([xiv]14) Enforcement orders.

([xv]15) Inspection reports.

([xvi]16) Results of corrective action investigations.

§ 270a.83. PRE-APPLICATION PUBLIC MEETING AND NOTICE.

(a) APPLICABILITY. THE REQUIREMENTS OF THIS SECTION APPLY TO ALL RCRA PART B APPLICATIONS SEEKING INITIAL PERMITS FOR HAZARDOUS WASTE MANAGEMENT UNITS OVER WHICH THE DEPARTMENT HAS PERMIT ISSUANCE AUTHORITY. THE REQUIREMENTS OF THIS SECTION ALSO APPLY TO RCRA PART B APPLICATIONS SEEKING RENEWAL OF PERMITS FOR SUCH UNITS, WHERE THE RENEWAL APPLICATION IS PROPOSING A SIGNIFICANT CHANGE IN FACILITY OPERATIONS. FOR THE PURPOSES OF THIS SECTION, A "SIGNIFICANT CHANGE" IS ANY CHANGE THAT WOULD QUALIFY AS A CLASS 2 OR CLASS 3 PERMIT MODIFICATION UNDER 40 CFR 270.42 (RELATING TO PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE) AND §270a.42 (RELATING TO PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE). THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO PERMIT MODIFICATIONS UNDER 40 CFR 270.42 AND §270a.42 OR TO APPLICATIONS THAT ARE SUBMITTED FOR THE SOLE PURPOSE OF CONDUCTING POST-CLOSURE ACTIVITIES OR POST-CLOSURE ACTIVITIES AND CORRECTIVE ACTION AT A FACILITY.

(b) PRIOR TO THE SUBMISSION OF A PART B RCRA PERMIT APPLICATION FOR A FACILITY, THE APPLICANT MUST HOLD AT LEAST ONE MEETING WITH THE PUBLIC IN ORDER TO SOLICIT QUESTIONS FROM THE COMMUNITY AND INFORM THE COMMUNITY OF PROPOSED HAZARDOUS WASTE MANAGEMENT ACTIVITIES. THE APPLICANT SHALL POST A SIGN-IN SHEET OR OTHERWISE PROVIDE A VOLUNTARY OPPORTUNITY FOR ATTENDEES TO PROVIDE THEIR NAMES AND ADDRESSES.

(c) THE APPLICANT SHALL SUBMIT A SUMMARY OF THE MEETING, ALONG WITH THE LIST OF ATTENDEES AND THEIR ADDRESSES DEVELOPED UNDER PARAGRAPH (b) OF THIS SECTION, AND COPIES OF ANY WRITTEN COMMENTS OR MATERIALS SUBMITTED AT THE MEETING, TO THE DEPARTMENT AS A PART OF THE PART B APPLICATION, IN ACCORDANCE WITH 40 CFR 270.14(b).

(d) THE APPLICANT MUST PROVIDE PUBLIC NOTICE OF THE PRE-APPLICATION MEETING AT LEAST 30 DAYS PRIOR TO THE MEETING. THE APPLICANT MUST MAINTAIN, AND PROVIDE TO THE DEPARTMENT UPON REQUEST, DOCUMENTATION OF THE NOTICE.

(1) THE APPLICANT SHALL PROVIDE PUBLIC NOTICE IN ALL OF THE FOLLOWING FORMS:

(i) A NEWSPAPER ADVERTISEMENT. THE APPLICANT SHALL PUBLISH A NOTICE, FULFILLING THE REQUIREMENTS IN PARAGRAPH (d)(2) OF THIS SECTION, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR EQUIVALENT JURISDICTION THAT HOSTS THE PROPOSED LOCATION OF THE FACILITY. IN ADDITION, THE DEPARTMENT SHALL INSTRUCT THE APPLICANT TO PUBLISH THE NOTICE IN NEWSPAPERS OF GENERAL CIRCULATION IN ADJACENT COUNTIES OR EQUIVALENT JURISDICTIONS, WHERE THE DEPARTMENT DETERMINES THAT SUCH PUBLICATION IS NECESSARY TO INFORM THE AFFECTED PUBLIC. THE NOTICE MUST BE PUBLISHED AS A DISPLAY ADVERTISEMENT.

(ii) A VISIBLE AND ACCESSIBLE SIGN. THE APPLICANT SHALL POST A NOTICE ON A CLEARLY MARKED SIGN AT OR NEAR THE FACILITY, FULFILLING THE REQUIREMENTS IN PARAGRAPH (d)(2) OF THIS SECTION. IF THE APPLICANT PLACES THE SIGN ON THE FACILITY PROPERTY, THEN THE SIGN MUST BE LARGE ENOUGH TO BE READABLE FROM THE NEAREST POINT WHERE THE PUBLIC WOULD PASS BY THE SITE.

(iii) A BROADCAST MEDIA ANNOUNCEMENT. THE APPLICANT SHALL BROADCAST A NOTICE, FULFILLING THE REQUIREMENTS IN PARAGRAPH (d)(2) OF THIS SECTION, AT LEAST ONCE ON AT LEAST ONE LOCAL RADIO STATION OR TELEVISION STATION. THE APPLICANT MAY EMPLOY ANOTHER MEDIUM WITH PRIOR APPROVAL OF THE DEPARTMENT.

(iv) A NOTICE TO THE DEPARTMENT. THE APPLICANT SHALL SEND A COPY OF THE NEWSPAPER NOTICE TO THE DEPARTMENT AND TO THE APPROPRIATE UNITS OF STATE AND LOCAL GOVERNMENT.

(2) THE NOTICES REQUIRED UNDER PARAGRAPH (d)(1) OF THIS SECTION MUST INCLUDE:

(i) THE DATE, TIME AND LOCATION OF THE MEETING;

(ii) A BRIEF DESCRIPTION OF THE PURPOSE OF THE MEETING;

(iii) A BRIEF DESCRIPTION OF THE FACILITY AND PROPOSED OPERATIONS, INCLUDING THE ADDRESS OR A MAP (FOR EXAMPLE, A SKETCHED OR COPIED STREET MAP) OF THE FACILITY LOCATION;

(iv) A STATEMENT ENCOURAGING PEOPLE TO CONTACT THE FACILITY AT LEAST 72 HOURS BEFORE THE MEETING IF THEY NEED SPECIAL ACCESS TO PARTICIPATE IN THE MEETING; AND

(v) THE NAME, ADDRESS AND TELEPHONE NUMBER OF A CONTACT PERSON FOR THE APPLICANT.

§ 270a.84. INFORMATION REPOSITORY.

(a) APPLICABILITY. THE REQUIREMENTS OF THIS SECTION APPLY TO ALL APPLICATIONS SEEKING HAZARDOUS WASTE MANAGEMENT PERMITS FOR HAZARDOUS WASTE MANAGEMENT UNITS OVER WHICH THE DEPARTMENT HAS PERMIT ISSUANCE AUTHORITY.

(b) THE DEPARTMENT ASSESSES THE NEED, ON A CASE-BY-CASE BASIS, FOR AN INFORMATION REPOSITORY. WHEN ASSESSING THE NEED FOR AN INFORMATION REPOSITORY, THE DEPARTMENT CONSIDERS A VARIETY OF FACTORS, INCLUDING: THE LEVEL OF PUBLIC INTEREST; THE TYPE OF FACILITY; THE PRESENCE OF AN EXISTING REPOSITORY; AND THE PROXIMITY TO THE NEAREST COPY OF THE ADMINISTRATIVE RECORD. IF THE DEPARTMENT DETERMINES, AT ANY TIME AFTER SUBMITTAL OF A PERMIT APPLICATION, THAT THERE IS A NEED FOR A REPOSITORY, THEN THE DEPARTMENT NOTIFIES THE FACILITY THAT IT MUST ESTABLISH AND MAINTAIN AN INFORMATION REPOSITORY. (SEE 40 CFR 270.30(m) FOR SIMILAR PROVISIONS RELATING TO THE INFORMATION REPOSITORY DURING THE LIFE OF A PERMIT).

(c) THE INFORMATION REPOSITORY SHALL CONTAIN ALL DOCUMENTS, REPORTS, DATA AND INFORMATION DEEMED NECESSARY BY THE DEPARTMENT TO FULFILL THE PURPOSES FOR WHICH THE REPOSITORY IS ESTABLISHED. THE DEPARTMENT HAS THE DISCRETION TO LIMIT THE CONTENTS OF THE REPOSITORY.

(d) THE INFORMATION REPOSITORY SHALL BE LOCATED AND MAINTAINED AT A SITE CHOSEN BY THE FACILITY. THE DEPARTMENT SPECIFIES A MORE APPROPRIATE SITE IF, DUE TO PROBLEMS WITH THE LOCATION, HOURS OF AVAILABILITY, ACCESS OR OTHER RELEVANT CONSIDERATIONS, THE DEPARTMENT FINDS THE SITE UNSUITABLE FOR THE PURPOSES AND PERSONS FOR WHICH IT WAS ESTABLISHED.

(e) THE DEPARTMENT SPECIFIES REQUIREMENTS FOR INFORMING THE PUBLIC ABOUT THE INFORMATION REPOSITORY. AT A MINIMUM, THE FACILITY SHALL PROVIDE A

WRITTEN NOTICE ABOUT THE INFORMATION REPOSITORY TO ALL INDIVIDUALS ON THE FACILITY MAILING LIST.

(f) THE FACILITY OWNER OR OPERATOR IS RESPONSIBLE FOR MAINTAINING AND UPDATING THE REPOSITORY WITH APPROPRIATE INFORMATION THROUGHOUT A TIME PERIOD SPECIFIED BY THE DEPARTMENT. THE DEPARTMENT MAY CLOSE THE REPOSITORY BASED ON THE FACTORS IN PARAGRAPH (b) OF THIS SECTION.

FINAL RULEMAKING
HAZARDOUS WASTE AMENDMENTS
COMMENT AND RESPONSE DOCUMENT

INTRODUCTION

In assembling this document, the Department has addressed all pertinent comments associated with this package. For the purposes of this document, comments of similar subject material have been grouped together and responded to accordingly.

During the public comment period, the Department received approximately 240 comments from twenty companies, four organizations representing industry, two private citizens, the US EPA, the US Navy, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission and the Independent Regulatory Review Commission.

Following is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation during the official comment period. The ID number identifies each commentator who submitted a particular comment. That number is found in parentheses following the comment in the comment response document.

This is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation.

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
1	Mr. W. Lloyd Balderston President Chemclene Corporation 258 N. Phoenixville Pike Malvern, PA	19355-1126			✓
2	Stephen T. Smith, Manager Environmental Compliance Dept. Koppers Industries, Inc. 436 7th Ave. Pittsburgh, PA	15219-1800			
3	Richard H. Hanewald, President INMETCO 245 Portersville Road P.O. Box 720 Ellwood City, PA	16117	S		✓
4	Mr. William P. Gotschall General Counsel World Resources Company 1600 Anderson Road McLean, VA	22102			
5	Mr. Denver A. McDowell, Chief Division of Environmental Planning and Habitat Protection Bureau of Land Management Pennsylvania Game Commission 2001 Elmerton Avenue Harrisburg, PA	17110-9797			✓
6	Mr. Scott K. Rodgers PEA Solid Waste Subcommittee 301 APC Building 800 North Third Street Harrisburg, PA	17102			
7	Mr. James K. Cool Manager, Environmental Affairs Duquesne Light 411 Seventh Avenue P.O. Box 1930 Pittsburgh, PA	15230-1930	S		
8	Mr. Robert J. Garner Chemcentral Corporation 7050 W. 71st Street P.O. Box 730 Bedford Park, IL	60499-0730			
9	Mr. John M. Boyle Bethlehem Resource Recovery Division 890 Front St. P.O. Box Y Hellertown, PA	18055			

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
10	Mr. Robert D. Fox Safety Kleen Corp c/o Manko, Gold and Katcher Suite 500 401 City Avenue Bala Cynwyd, PA	19004			
11	Mr. Eugene M. Barr Executive Director Associated Petroleum Industries of Pennsylvania 240 N. Third Street P.O. Box 925 Harrisburg, PA	17108			
12	Manufacturers Association of Tri-County c/o Mr. John McN. Cramer Reed Smith Shaw and McClay LLP 213 Market Street, Ninth Floor Harrisburg, PA	17101-2132			
13	Mr. David Sumner Assistant General Counsel Pennsylvania Gas Association 800 North Third Street Harirsburg, PA	17102-2025			
14	David W. Patti, President Pennsylvania Chemical Industry Council 25 N. Front Street, Suite 100 Harrisburg, PA	17101		T	
15	Richard B. Hoyt, Chairman Specialty Steel Industry of Pennsylvania Allegheny Ludlum Corporation 1000 Six PPG Place Pittsburgh, PA	15222			
16	Mr. Ronald W. Skinner Air Products and Chemicals, Inc. 7201 Hamilton Boulevard Allentown, PA	18195-1501	S		
17	Mr. Charles D. Barksdale Jr., P.E. Sun Company, Inc. Ten Penn Center 1801 Market STreet Philadelphia, PA	19103-1699	S		
18	Mr. John F. Warren 233 Ridge Avenue Pittsburgh, PA	15202	S		
19	East Penn Manufacturing Co., Inc. c/o Mr. Louis A. Naugle Reed Smith Shaw and McClay LLP 435 Sixth Avenue Pittsburgh, PA	15219-1886	S		

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
20	Mr. Richard Klawunn Environmental Engineer Tosco Refining Company 1400 Park Avenue Linden, NJ	07036			
21	Accurate Recovery Systems, Inc. c/o Mark A. Stevens, Esquire Langsam Stevens and Morris LLP 1616 Walnut Street, Suite 812 Philadelphia, PA	19103-5308			
22	Mr. John J. Humphries, III, Chief State Programs Branch United States Environmental Protection Agency Region III 841 Chestnut Building Philadelphia, PA	19107-4431			
23	Mr. Fred A. Sembach Vice President, Government Affairs Pennsylvania Chamber of Business and Industry 417 Walnut Street Harrisburg, PA	17101-1902		T	
24	Regulatory Comment Group c/o Brian J. Clark Buchanan Ingersoll 30 North Third Street, Eighth Floor Harrisburg, PA	17101	S		
25	Horsehead Resource Development Company, Inc. c/o Mr. John N. Moore Akin, Gump, Strauss, Hauer and Feld, LLP Suite 400 1333 New Hampshire Ave, NW Washington, DC	20036	S		
26	Steven G. Olson, Director Regional Environmental Coordination Naval Base 1530 Gilbert Street, Suite 2200 Norfolk, VA	23511-2797			
27	Mr. John Onuska MATCO P.O. Box 807 Beaver Falls, PA	15010	S		
28	Mr. Gaylord H. Magoon Environmental/Safety Specialist American Meter Company 920 Payne Avenue Griswold Plaza Branch P.O. Box 1251 Erie, PA	16512-1251			

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
29	John A. Arway, Chief Division of Environmental Services Pennsylvania Fish & Boat Commission 450 Robinson Lane Bellefonte, PA	16823-9620			
30	Lisa Graves Marcucci Jefferson Action Group 123 Oakwood Drive Clairton, PA	15025		T	
31	Independent Regulatory Review Commission 333 Market Street 14th Floor Harrisburg, PA	17101			

COMMENT RESPONSE DOCUMENT

GENERAL

General: Regulatory Basics Initiative and "Compelling state interest"

1. **Comment:** The department should include criteria from the Governor's Executive Order in the regulation and have the burden of proof to show there is a compelling state interest for sections of the regulations being more stringent than the federal regulations. The department should be required to show and give details of why and how such a compelling state interest exists. (14, 24, 25, 27)

   Response: This regulation was developed under the Governor's Executive Order 1996-1 entitled "Regulatory Review and Promulgation". The General Requirements section states that "Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." The Executive Order provides a procedure for review of a final-form rule by the Governor's Office to assure that the regulation is consistent with the regulatory principals and overall policies of the Administration. This final-form rule is subject to and will conform to all requirements of the Executive Order. The Department is obligated to perform the requirements of the Executive Order and therefore, it is unnecessary to include the Executive Order provisions in the regulations.

2. **Comment:** The Commonwealth does not give a date for its incorporation by reference because it uses prospective incorporation by reference. EPA's comments are based on Federal regulations promulgated as of July 1, 1997. (22)

   Response: A provision of the final form rule at 260a.3(c) states that the incorporated Federal regulations will be those in effect on the date of publication in the *Pennsylvania Bulletin.*

3. **Comment:** In several instances, the Commonwealth has made extensive modifications to requirements that it has incorporated by reference. This is usually accomplished with the following language: "Notwithstanding the requirements incorporated by reference,..." This language is followed by language modifying the incorporation by reference. This is an acceptable format for specific changes to provisions that are easily applied to the Federal code. However, when the Commonwealth uses this format for major and substantive modifications to the code it can be confusing to the regulated community. (22)

   Response: The Department agrees. The "notwithstanding" terminology was replaced throughout the entire proposed regulations with more appropriate terminology, including terminology suggested by the commentator.

4. **Comment:** The commentator suggests not using the phrase "in addition to" in the incorporation process. (22)

Response: The final form rule includes the phrase "in addition to" where appropriate, for clarity.

5. **Comment:** Pennsylvania should always state whether or not the incorporation by reference applies to the appendices. (22)

   Response: The final form rule includes incorporation by reference of all appropriate and applicable appendices. When a particular appendix is not incorporated, the affected Chapter states the exception.

6. **Comment:** When stating an amendatory provision to a federal regulation that Pennsylvania has incorporated by reference, Pennsylvania does not usually indicate which Federal provision is affected or relevant. (22)

   Response: The Department has attempted to clarify how each amendatory provision affects the federal regulation incorporated by reference. A descriptive term is used in place of the term "Notwithstanding" at the beginning of each chapter part affected by an amendment.

7. **Comment:** The Commonwealth should reprint the existing regulations that were proposed to be renumbered only as they would appear when renumbered. (22)

   Response: Pennsylvania's regulatory amendment process is such that only those portions of the regulations proposed to be changed are published. When the regulations are finalized, the Department will print a complete version of the Code.

8. **Comment:** It is implied in Section 260a.3(b) of the proposed regulations that Pennsylvania may not have the authority needed to carry out a hazardous waste program. EPA requires that certain Commonwealth authorities be in place for both the non-HSWA and HSWA programs. If the Commonwealth has these authorities, it should have the authority to carry out all of the provisions required for authorization and would not need the last sentence at 25 Pa. Code 260a.3(b). (22)

   Response: The statement which appeared at Section 260a.3(b) of the proposed rulemaking has been deleted in the final-form rule.

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Section 260a.2. Subchapter A. General

9. **Comment:** Section 260a.2. Several commentators are concerned about the lack of a transition mechanism for existing and proposed coproduct determinations to ensure that they continue to be excluded from the definition of "solid waste" under the incorporated federal requirements. One commentator recommended maintaining coproduct determinations in Pennsylvania. (3, 4, 12, 14, 25, 27, 31)

Response: The coproducts that the Department has concurred with would not be regulated as hazardous waste under the federal regulations because they either fit one of the exclusions found in *40 CFR 261.2,* or they meet the criteria for one of the variances found in *40 CFR Part 260 Subpart C* (Rulemaking Petitions). The Department agrees that a transition period is necessary for those who will be seeking a variance, or for those who may be handling materials as coproducts that have not requested a Department concurrence and will require a variance. The Department has, therefore, included a transition mechanism at Section 260a.30 to provide the opportunity for those operators who generate coproducts which are not excluded as a solid waste in the federal regulations at 40 CFR §261.2, 261.3, 261.4, or elsewhere to obtain a variance from classification as a solid waste. The final form regulation also includes a 90-day notification period during which time any person producing, selling, transferring, possessing or using a material as a coproduct that is not exempt from regulation in other parts of these final regulations must notify the Department so that the person can qualify for the transition period.

Section 260a.3. Terminology and citations related to Federal regulations.

10. **Comment:** 40 CFR 262.11 should not be excluded from the blanket substitution of terms because Pennsylvania has adopted all of the rulemaking petitions at 40 CFR Part 260 Subpart C, including the petitions for equivalent testing or analytical methods. (22)

    Response: The Department has made the appropriate change to the regulations.

11. **Comment:** Section 260a.3. The Commonwealth should exclude all of 40 CFR Part 262, Subpart E from its blanket substitution of terms. These are non-delegable provisions for which EPA retains authority. (22)

    Response: The Subpart has been excluded from the blanket substitution.

12. **Comment:** Section 260a.3(a) of the regulations refers to incorporation, scope and terminology used in the regulations. Specific requirements in 40 CFR 263.20(a),(c),(e)(2) &(f)(2) make reference to manifest requirements for exports which are reserved for EPA. Therefore the blanket substitution of terms should not apply. (22)

    Response: The regulation has been modified to ensure that the incorporation by reference of 40 CFR 263.20 does not include the substitution of terms.

13. **Comment:** Section 260a.3, Pennsylvania should include a provision that explicitly indicates that any reference to the "Department of Transportation" or "DOT" means the U.S. Department of Transportation as opposed to an analogous Pennsylvania agency. (22)

    Response: The provision has been included in the final form rule.

14. **Comment:** Section 260a.3(a)(1), Pennsylvania has included a blanket substitution of "Administrator" and "Regional Administrator" with "Department". The Commonwealth should

include "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", and "State Director" with this blanket substitution. The Commonwealth should address those instances where the blanket substitution should not apply, or would apply to a particular provision of the Federal code. (22)

Response: The Department agrees and has made the appropriate changes in the final form rule.

15. **Comment:** Section 260a.3(a)(3), The Department should exclude the terms "EPA form", "EPA identification number", "EPA hazardous waste number", "EPA test methods" and "EPA guidance" from the blanket substitutions in 25 Pa. Code (22)

Response: The suggested change has been made in the final form rule.

16. **Comment:** Section 260a.3(a)(3), Pennsylvania has included a blanket substitution of "Environmental Protection Agency" with "Department of Environmental Protection". The Commonwealth should include all names and associated acronyms (e.g. EPA Headquarters, EPA Regions, etc.) with this blanket substitution. The Commonwealth should address those instances where the blanket substitution should not apply, or would apply to a particular provision of the Federal code. (22)

Response: The final form regulation includes all names and associated acronyms and notes in the sections identified by the commentator (EPA Region 3) where the blanket substitutions should not apply.

17. **Comment:** Section 260a.3(c), For clarity and convenience of the regulated community, the Commonwealth has included this provision which describes the role of Federal statutes and regulations not adopted by reference. It is unclear why Pennsylvania chose not to include Parts 273 and 279 in this clarifying provision. (22)

Response: 40 CFR Part 273 (Standards for Universal Waste Management) is incorporated at 25 Pa. Code Chapter 266b because 25 Pa. Code Chapter 273 currently is in use for Pennsylvania's municipal waste regulations. It was deemed to be too disruptive to the municipal waste program to relocate those requirements simply to accommodate parallel numbering with the federal regulation.

40 CFR Part 279 (Standards for the Management of Used Oil) was not incorporated by reference because the Department is developing a separate regulatory amendment to address used oil. This regulation is scheduled to be proposed in the next few months. In the meantime, these regulations reference Pennsylvania's existing parallel provisions currently found in 25 Pa. Code Chapter 266 Subchapter E, which has been relocated as 25 Pa. Code Chapter 266a. Subchapter E in the final form rule.

18. **Comment:** Section 260a.3(a)(4), Pennsylvania should not substitute "Pennsylvania Bulletin" for "Federal Register" except at its analogs to 40 CFR 260.20 (c) and (e). The Commonwealth should specifically reference the provisions to be affected by the substitution. (22)

Response: The Department agrees and has made the appropriate changes.

19. **Comment:** Section 260a.3(a)(6), Pennsylvania has included a blanket substitution of "State (s)", "Authorized state", "approved state", and "approved program" with "Commonwealth of Pennsylvania". There are certain places in the regulations where this substitution should not be made. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

Subchapter B. DEFINITIONS

20. **Comment:** Section 260a.10(a)(1)(i), the Commonwealth's regulations exclude "Act" from incorporation by reference. In the Federal code "Act" is defined along with "RCRA". This is acceptable, but the Commonwealth should include in its substitution of terms that its references to"the Act", imply a reference to the Commonwealth's analogous statutes. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

21. **Comment:** Section 260a.10(a)(1)(i), it is not clear if Pennsylvania is excluding the term "Act" or the entire definition of "Act" or "RCRA". A definition of RCRA is needed because there are certain references to RCRA (e.g., RCRA §3008) which should not be substituted with Commonwealth analogs. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

Section 260a.10. Definitions.

22. **Comment:** Proposed Section 260a.10 is broken into three separate categories related to definitions. Subsection (a)(1) lists definitions not incorporated by reference, Subsection (a)(2) contains definitions whose dates are modified, and Subsection (b) provides definitions for terms that do not appear in the Code of Federal Regulations (CFR). The proposed format requires a reader to review all three subsections to determine how a term is defined, or whether it differs from the CFR. It may be clearer to consolidate these provisions into one list of definitions. The individual definitions can provide all of the important details regarding a particular term. Using a consolidated format, the reader could determine whether and how a term varies from the CFR by reviewing one subsection. We recommend that the EQB consider consolidating the definitions into one subsection. (17, 23, 31)

Response: The Department has modified the definition section, §260a.10 of the final form regulation so that all of the definitions are contained within one section rather than in several subsections. The definition section is now in alphabetical order and includes every term that modifies a federal definition, adds to a federal definition or is excluded from the incorporation by reference of the federal definitions. The final form regulation does not incorporate by reference

any federal definition that is defined by the SWMA since the regulation should be read in conjunction with the Act.

23. **Comment:** The federal definitions for "act", "disposal", "management", "storage", and "transportation" are specifically excluded from incorporation by reference. The commentators suggest that if the Department intends to use the verbatim definitions found in the SWMA, then the text of these regulations should be included in the regulations. (14, 17, 23, 24, 31)

Response: The final form regulation includes the text of definitions from the Solid Waste Management Act.

24. **Comment:** The proposed definition for "disposal" includes "abandonment of solid waste with the intent of not asserting or exercising control over, or title or interest in the solid waste." This additional wording is not found in the federal regulations nor in the SWMA and therefore should be eliminated. (14, 22, 23, 24, 31)

Response: The definition of "disposal" has been eliminated and the final form rule at §260a.10 now clearly states that the federal definition is not incorporated by reference. Disposal is defined in Section 103 of the Solid Waste Management Act, and that definition is included in the final form rule.

25. **Comment:** The Federal definition of "disposal" includes situations where the waste or any constituent thereof "**may** enter the environment or be emitted into the air or discharged into any waters". The Commonwealth's definition is limited to situations where the waste or any constituent thereof "**enters** the environment, **is** emitted into the air, or **is** discharged to the waters". Pennsylvania's definition is less stringent than its Federal analog. It does not include situations where there is a potential for waste entering the environment but has not actually done so. (22)

Response: The term "disposal" is defined by statute in the SWMA and, therefore, can not be modified by regulation.

26. **Comment:** The proposed definition for "hazardous waste management unit" is virtually identical to the definition found in the federal regulations and should, therefore, be eliminated. The federal definition should be incorporated by reference. (22, 23, 31)

Response: The separate definition has been eliminated and the federal definition has been incorporated by reference in the final form rule.

27. **Comment:** The Commonwealth's regulations exclude "management" from the incorporation by reference. In the Federal code, "management" is defined with "hazardous waste management". It is not clear whether the Commonwealth is excluding this entire definition or just the term from the definition. (22)

Response: The term "management" is defined by statute in the SWMA and, therefore, can not be modified by regulation. The term "hazardous waste management" is included in the definition as it is in the current regulations.

28. **Comment:** The term "processing" is not defined under Section 260a.10. (23, 14)

Response: The term is defined in the SWMA, the definition is included in the final form rule..

29. **Comment:** The commentator maintains that the definition for "responsible official" in the proposed regulations, as worded, is unclear as to whether the responsible official for corporations and partnerships is any officer or partner, or all officers and partners. The commentator recommends that, in order to clarify the definition, the word "any" be inserted before these classes of individuals. The revised relevant part would read "for corporations, any corporate officer; for limited partnerships, any partner; for all other partnerships, any partner...." (23)

Response: The definition is clarified in the final form rule.

30. **Comment:** The proposed definition of in-transit storage requires that the hazardous waste remain in containers that conform with 40 CFR 262.30 and 262.33. This would preclude bulking of compatible wastes at in-transit storage facilities which is presently permissible under both federal and state regulations. This also conflicts with the amendments adopted on January 11, 1997, commonly referred to as PK-5. (10, 22, 23)

Response: The definition of in-transit storage has been removed from the definitions section of the final form rule. The incorporated regulations at 40 CFR 263.12 stipulate the in-transit storage requirements.

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Section 261a.3(c)(2)(ii) Definition of Hazardous Waste

31. **Comment:** Section 261a.3(c)(2)(ii)(C). HTMR slags that meet health-based criteria should not be excluded from the regulations. If this is not done and the Board eliminates coproducts, beneficial uses of HTMR slag (which are currently allowed in PA and fed regs) would be eliminated. The exclusion of these materials should be incorporated into the regulations. HTMR slags being shipped for beneficial use should not be subject to hazardous waste transportation licensing or fee requirements. Through discussions with the department we have learned that the intention is to prohibit disposal in Subtitle D landfills. (3, 25, 27, 23, 15, 24, 31)

Response: *40 CFR261.3(c)(2)(ii)(C)* provides an exemption for high temperature metals reclamation (HTMR) slags that meet certain criteria that are disposed in "subtitle D units". The term "subtitle D units" refers to RCRA Subtitle D which is the section of the Resource

Conservation and Recovery Act that addresses municipal and nonhazardous industrial waste. The Department reviewed this provision and found that even if the Board did adopt the federal exclusion for these HTMR slags, the recycling of this waste would still be subject to all of the Pennsylvania regulations that apply to the storage or treatment of hazardous wastes. Furthermore, the Department believes that the absence of the exemption will encourage recycling of these slags, since recycling tends to be a more economical alternative than disposal of these slags in accordance with hazardous waste disposal requirements but may not be more economical than disposal in a municipal or residual landfill.

The Board also bases its decision to prohibit these slags from going to subtitle D landfills, because the Department received many comments from the public opposing a proposal to allow conditionally exempt small quantity generator (CESQG) hazardous waste to go to hazardous waste landfills. Like HTMR slags, EPA was not concerned about CESQG wastes going to subtitle D landfills but the public was concerned. Since EPA exempts HTMR slags from the definition of hazardous waste only to allow for its disposal in subtitle D landfills, the Board believes that the public would not approve of this exemption any more than it approved of the exemption to allow CESQG waste to go to subtitle D landfills.

The beneficial uses of HTMR slag will not be affected by the Board's decision to exclude from incorporation the federal exemption. Beneficial uses do not involve "disposal in subtitle D units", which is the specific exemption in *40 CFR 261.3(c)(2)(ii)(C),* and therefore, beneficial uses are authorized by the current hazardous waste regulations as well as by the final form regulations. Since the final form regulations do not amend the existing hazardous waste regulations with regard to this exemption, the regulated community will experience no additional costs as a result of the final form regulations. In addition, HTMR slags that have been determined to be coproducts or that are beneficially used are HTMR slags that are residual wastes. The beneficial use or coproduct status of residual waste HTMR slags is unaffected by these hazardous waste regulations.

32. **Comment:** Section 261a.3(c)(2)(ii)(D) The proposed regulations incorporate 40 CFR 261.3(c)(2)(ii)(D), (sludge for the biological treatment of organic carbonate and carbamoyl oxide production wastes, and wastewaters from the production of carbonate and carbamoyl oxide production). Yet the department intends to regulate these wastes due to it's lack of experience with them. Such lack of experience cannot constitute a state interest sufficiently compelling to justify departure from the federal regulatory scheme. (23, 31)

Response: The exemption at *40 CFR 261.3(c)(2)(ii)(D)* for certain listed wastes from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156 and K157) was not included as an exclusion in the proposal because the federal listings and the exclusion were relatively new, controversial and had been challenged in a lawsuit (*Dithiocarbamate Task Force v. EPA,* 98 F.3d 1394). In addition, when the proposal was being developed, the waste listing was so recent that the Department was not able to verify if any hazardous waste handlers for EPA hazardous waste numbers K156 and K157 exist in Pennsylvania. This lack of information with the newly listed waste prompted concern for automatically adopting by reference the exemption and its effect in Pennsylvania. The Department has researched whether

any entities exist in Pennsylvania that have been affected by this exemption and determined that no entities within Pennsylvania would be affected by this exemption at this time. The Department has also conducted a detailed review of the preamble of the carbamate rule, and has determined that including the exemption at *40 CFR 261.3(c)(2)(ii)(D)* is consistent with other provisions the proposal includes on the "carbamate rule". The Department has reviewed the extensive research and analysis conducted by EPA on the carbamate rule and believes that the exemption would be protective of human health and the environment were such a facility to be developed in Pennsylvania. The final form rule incorporates the federal exemption with no additional requirements.

Section 261a.4 Exclusions

33. **Comment:** The Board should incorporate the federal exclusions found at 40 CFR 261.4 without any modifications. Under the Commonwealth's current verbiage, an entity wishing to recycle or reuse materials completely excluded under the federal regulations is still dealing with a solid waste as the material is only excluded from being a hazardous waste in PA. The Board should adopt the federal exclusions unchanged. (2, 14, 27, 31)

Response: The Department has re-evaluated the proposed manner of adopting *40 CFR 261.4,* related to exclusions. After closer examination of the materials excluded from classification as solid wastes under *40 CFR 261.4(a),* the Department agrees that there are no compelling environmental or human health needs justifying further regulation of these materials as solid wastes in Pennsylvania. The final form regulation will adopt the entire *40 CFR 261.4* by reference so that the materials identified have been excluded as solid wastes.

Section 261a.5. Special requirements for hazardous waste generated by small quantity generators.

34. **Comment:** Sections 261a.3, 261a.5, (existing) 25 Pa. Code 261.5(g)(3)(iv) and 40 CFR 279. The currently proposed amendments to the hazardous waste regulations do not incorporate by reference EPA's used oil regulation at 40 CFR 279 which expressly favors the recycling of used oil and used oil mixed with conditionally exempt small quantity generators (CESQG) waste. Proposed Section 261a.3 directly conflicts with the provisions of existing 25 Pa. Code Section 261.5(g)(3)(iv) and the goals of both the federal and state hazardous waste programs because it provides for a reduced regulation of waste oil which is recycled or reused only where the waste oil has not been mixed with <u>any</u> hazardous waste, even the waste of a CESQG. By contrast, the mixture of the same waste oil and CESQG waste which is burned for energy recovery has been subject to less stringent requirements. The commentator recommends that proposed Section 261a.3 be amended by inserting after the clause "has not been mixed with hazardous waste," the phrase "<u>except for a conditionally exempt small quantity generator's waste.</u>" This amendment will again "level the playing field." Proposed Section 261a.5 deletes in its entirety the relevant portions of existing Section 261.5(g)(3)(iv) which were added to the hazardous waste regulations, effective January 11, 1997, to treat mixtures of CESQG waste and waste oil destined for reuse and recycling as residual or municipal waste. The commentator recommends that these provisions be retained as 261a.5(3)(iii). (10)

Response: The Board has incorporated by reference 40 CFR 261.5(j). This federal provision, as incorporated into the Pennsylvania program, applies Pennsylvania's waste oil regulations found at Chapter 266a, Subchapter E to mixtures of CESQG hazardous waste and waste oil only if the mixture is destined to be burned for energy recovery. This is the same as the federal equivalent waste oil provision found at 40 CFR Part 279, although EPA has proposed to broaden the class of mixtures subject to Part 279 to include CESQG waste mixed with waste oil that is not destined to be burned for energy recovery. Mixtures of CESQG waste and waste oil should be regulated in the same manner as any other conditionally exempt small quantity generator hazardous waste if the mixtures are not destined to be burned for energy recovery. It is the Department's intent to develop a draft chapter of waste oil regulations and to present it to the Board as a proposed rulemaking in the near future. The issue regarding mixtures of waste oil and CESQG generator waste has been addressed in that proposed rulemaking, which will also consider the final outcome of the May 6, 1998, EPA proposed/direct final rule regarding recycling of such mixtures.

Section 261a.6 Requirements for recyclable materials

35. **Comment:** The commentator contends that the Board should make clear that Section 261a.6 should be read to require a permit for owners and operators of facilities that are reclaiming or are otherwise treating materials; permits should not be required for owners and operators of facilities that are storing such materials prior to treatment. (10)

Response: Federal regulations at 40 CFR 261.6(c)(1) specifically require permits for storing recyclable materials before they are recycled. The term "recyclable materials" is defined in 40 CFR 261.6(a)(1) as "hazardous wastes that are recycled." The federal regulations at 40 CFR 261.6, except 261.6(c), have been adopted by reference with this regulatory package. Section 261a.6 adds the requirement for a permit to be obtained for hazardous waste treatment activities that occur prior to the actual recycling process.

36. **Comment:** Facilities that recycle hazardous wastes should not be required to obtain an expensive recycling permit. This is not a federal requirement. If the department feels that certain recycling activities require a permit they should permit only those activities and state why. The SWMA does not regulate the recycling of materials, but regulates the storage, treatment and disposal of hazardous waste. Pennsylvania would also have permits for scrap metals and other recyclables. (17, 24, 23, 27, 31)

Response: The proposal to require permits for recycling activities was not intended to include all recycling and reclamation activities. The Department has incorporated most of the federal regulations that exempt from permitting most recycling and reclamation activities that occur within Pennsylvania. Specifically, the Department has incorporated the federal definition of solid waste at 40 CFR 261.2; the federal exclusions at 40 CFR 261.4; the federal provisions on recyclable materials at 40 CFR 261.6 (with the exception of 40 CFR 261.6(c)), and the federal provisions for reduced management standards for certain recycling activities contained in

Part 266. These incorporated provisions reduce or eliminate regulation of most of the recycling activities involving hazardous waste in Pennsylvania.

The only federal provision regarding recycling exemptions that the Department has not incorporated by reference is 40 CFR 261.6(c), which includes a parenthetical phrase that states that the recycling process is exempt from regulation. In retaining the exclusion of 40 CFR 261.6(c) from Pennsylvania's regulations, Pennsylvania does not intend to regulate all recycling activities. Because reclamation and recovery processes tend to resemble or replace a manufacturing process, the permit requirement is not intended to apply to the recovery process itself. Operation of the recovery process such as feed rates, temperature, residence time, and the construction of the recovery unit are dictated by the specific process and properly used should not be regulated in the same manner as a waste management unit. The Department intends to regulate only those activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery. Consequently, the Department does not intend to regulate the actual recovery process.

The Department does intend to regulate more extensively than the federal government certain hazardous waste activities that occur prior to the actual recycling process. The Department believes that it is responsible for ensuring that hazardous waste is properly managed before it enters the recycling process so that it poses a minimal risk to human health and the environment. The Department believes that including 40 CFR 261.6(c) in Pennsylvania's regulations adds confusion since the Department has been presented with an argument that 40 CFR 261.6(c) exempts all non-storage related recycling activities, including non-storage activities that occur prior to the actual recycling or reclamation process. Therefore, the Department is not incorporating by reference 40 CFR 261.6(c). This is not a substantive change from the proposed rulemaking, but it simply clarifies a point which the commentators found confusing.

After these regulations were proposed, the Department reviewed all of the hazardous waste recycling activities that occur in Pennsylvania to determine how many facilities are impacted by its recycling regulations and whether the recycling regulations were essential to assuring proper management of hazardous waste that is destined for recycling or reclamation. As a result of this review, the Department has identified approximately sixty hazardous waste recycling facilities in Pennsylvania that are currently subject to recycling requirements that are more stringent than the federal requirements. Of these, six are required to receive individual permits, the remainder operate pursuant to a permit by rule. Onsite solvent recovery accounts for the greatest number of the activities subject to a permit by rule.

Regarding the individually permitted facilities, the six facilities are subject to the storage permit requirements at 40 CFR 261.6(c). In addition to the storage permit requirement, the Department found that the following processes that occur prior to reclamation were regulated at these facilities: physical treatment, chemical/physical treatment and thermal treatment. The Department has determined that it is necessary to continue to regulate these facilities with individual permits because these activities that make the waste suitable for recovery are identical to activities that would occur for hazardous waste at a facility where the end result is to neutralize

the waste, render the waste nonhazardous, less hazardous, safer to transport, store, or dispose of (all of which are included in the definition of treatment).

Regarding the facilities regulated by permit by rule, the Department determined that the permits by rule ensure adequate protection of human health and the environment without being overly burdensome on the facilities' operations. Permit by rule is a self implementing process where the facility is deemed to have a permit as long as it complies with the requirements specified for that process. There is no requirement for submission of a permit application, no financial assurance requirement, and record keeping and reporting are minimal. The Department uses the permit by rule approach for those activities that are mandated by statute to be permitted, but are not so technically complex that a full written permit is justified. The permit by rule provisions for hazardous waste recycling facilities are: 1) battery manufacturing facilities that treat spent, lead acid batteries prior to reclaiming them, 2) facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of precious metals, and 3) facilities that treat hazardous waste onsite prior to reclaiming the hazardous waste. The permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed Section 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

Examples of activities conducted at battery manufacturing facilities reclaiming spent lead acid batteries that are covered by a permit by rule include: 1) breaking of the battery cases to remove the acid, 2) physical separation of the lead components from the plastic cases, and 3) physical mixing of the lead component with flux materials, limestone, coke or other additives to prepare the materials for charging to the secondary lead smelter. The smelter is the reclamation unit and is not subject to a permit. The other activities described meet the definition of treatment.

Examples of activities conducted at facilities that reclaim economically significant amounts of precious metals that are covered by a permit by rule include: 1) various physical, chemical or electrochemical methods used to extract silver metal from x-ray or photographic film fixers, and 2) drying silver recovery media prior to charging to the secondary smelter. The smelter is the reclamation unit not subject to a permit. The other activities described meet the definition of treatment.

Examples of activities conducted at facilities that reclaim hazardous waste onsite can be extremely varied. The most common onsite reclamation is solvent recovery. Physical separation of the spent solvent and water or sludge would constitute an activity subject to permit-by-rule. In some cases the spent solvent can be placed directly into a distillation unit. In this case there is no treatment prior to reclamation and the permit-by-rule would not be applicable. The distillation unit is the reclamation unit not subject to a permit. Other onsite reclamation activities that require a physical, chemical or thermal process prior to placing the recyclable materials in any of the various reclamation units for onsite recovery would be subject to permit by rule rather than a full hazardous waste treatment permit.

- As stated in the Pennsylvania Hazardous Waste Facilities Plan, the Department supports the hierarchy of preferred waste management practices in order to promote more effective methods of hazardous waste management. To promote the improved operation of existing hazardous waste recycling facilities and to encourage the development of new improved technologies for hazardous waste reclamation, the final-form regulation eliminates the requirement for permit application, modification and administration fees for hazardous waste recycling permits and for research, development and demonstration permits (40 CFR §270.65) that employ new improved technologies for hazardous waste reclamation.

  Finally, permitted reclamation facilities will no longer be required to submit Module 1's. The final form regulation eliminates the prescriptive requirements of the existing Section 264.12 (General requirements for hazardous waste management approvals and analysis of a specific waste from a specific waste generator.)and Section 264.13 (Generic Module I applications.). The final form rule Section 264a.13 (General and generic waste analysis.) specifies that before a permitted facility accepts a new waste for the first time, notification will be provided to the Department including information as specified in the permit. The requirements of the notification will be established for existing permitees by a modification to the permit and will be established at new facilities during the permitting process.

Section 261a.7. Residues of hazardous waste in empty containers.

37. **Comment:** The proposed regulations appear to classify all containers or container liners "being transported to a facility for processing ... or disposal" as a residual waste, regardless of whether the containers can be reused or otherwise qualify as coproducts under the residual waste program. It is also unclear whether the status of such containers and container liners as residual waste apply only during transportation, or during other stages of management. Section 261.7(b) requires that the residue removed from a container or container liner "be managed in compliance with the act and the regulations thereunder." This provides no real guidance to the regulated community on how these residues are to be managed. (23,14)

    Response: The Department agrees that the proposed regulation is confusing. Therefore the final form regulation clarifies the intent of the proposed regulation. The final form regulation specifically states that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners. The final form regulation focuses on the residues rather than on the containers that hold the residues. As intended by the proposed regulation, the containers, tanks and inner liners will not be subject to hazardous waste regulation unless the containers, tanks or inner liners satisfy the criteria used to determine whether or not a solid waste is a hazardous waste.

Section 261a.41(b)(7) Notification of hazardous waste activities

38. **Comment:** Eliminate the notification requirements for small quantity generators who must notify the state each time they have a temporary change in generator status. This is not a requirement of the federal regs. (16)

Response: The proposed rule proposed to delete this section, as described in the Editor's Note at the beginning of Annex A. The final form rule also eliminates the notification requirements for conditionally exempt small quantity generators.

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Section 262a.10 Incorporation by reference, purpose, scope and applicability.

39. **Comment:** Pennsylvania should add its own analog to the federal reference RCRA §3008 in this provision. (22)

Response: The appropriate section of the Solid Waste Management Act has been added to Section 262a.10.

40. **Comment:** Section 262a.10, The Commonwealth should modify these federal provisions to make it clear that these requirements do not apply to Commonwealth-only wastes. (22)

Response: The Department has incorporated the federal hazardous and solid waste definitions and listings from 40 CFR Part 261 and, there are no longer any "Commonwealth-only" wastes.

41. **Comment:** 40 CFR 262.11 should not be excluded from the blanket substitution of terms because Pennsylvania has adopted all of the rulemaking petitions at 40 CFR 260 Subpart C, including the petitions for equivalent testing or analytical methods. (22)

Response: The Department has made the appropriate change to the final form rule.

Subchapter B. THE MANIFEST

Section 262a.20 Manifest

42. **Comment** For clarity, the Commonwealth should specifically exclude 40 CFR 262.20(b)&(c). (22)

Response: The appropriate changes have been made to the final form rule.

Section 262a.10; 262a.23(1); 262a.23(2) Incorporation by reference and Use of the manifest

43. **Comment:** This provision is less stringent than the corresponding federal provision because it does not require the generator to distribute copies of the manifest to the transporter(s). (22)

Response: Section 262a.20 has been changed to reflect the proper distribution of the manifest copies.

44. **Comment:** The Department should exclude the phrase "for the Region in which the generator is located" from its incorporation by reference of 40 CFR 262.42. That language is only relevant in the context of the Federal program. (22)

Response: The suggested change has been made in the final form rule.

Section 262a.22. Number of copies.

45. **Comment:** EPA is considering revising the manifest system to streamline reporting efforts. If Pennsylvania adopts Section 262a.22 as proposed, generators in Pennsylvania would receive no benefit. Also, the proposed 6-part manifest addresses an administrative concern and doesn't serve any health, safety or environmental protection related purpose. (6, 7, 13, 14, 23, 31)

Response: In addition to a generator tracking hazardous waste, the federal manifest system was designed as a paperwork reduction effort, so that it was not necessary for EPA to receive a copy of each manifest from each shipment in each of the 50 states. However, if the regulatory agency does not receive a manifest copy, there is no way it can track the movement of the waste.

The Pennsylvania program presently requires a manifest distribution system which has been reduced in the proposed regulation. If the generator and the TSD were both located in Pennsylvania, with only 1 transporter, then five copies of the manifest would be required. In the case where the waste is shipped to an out-of-state TSD, or if two transporters are necessary, then six copies of the manifest would be required. As the number of transporters for a shipment increases, the number of manifest copies will also increase accordingly. If the TSD is located in one of the states that uses the 8-part manifest, then the generator would be required to use the 8-part manifest of that state as required by 40 CFR 262.

In addition to tracking the movement of the waste in Pennsylvania, the state copy is used to verify payment of fees as required by Act 108. The biennial report only supplies data for the previous year of the report. The manifest data is also used in developing the Hazardous Waste Facilities plan.

EPA and DEP are considering promoting electronic data interchange. This will not take the place of manifests, but will provide an additional option to satisfy the reporting requirements, resulting in less paperwork and faster more accurate data transmission. The Department is currently exploring this option with several companies.

Section 262a.34(a)(1)(ii)(A-B). Accumulation.

46. **Comment:** These sections should be deleted from the regulations. They are unduly specific and require unnecessary paperwork. (16)

Response: The final-form rule will incorporate 40 CFR 262.34 by reference, which does not have provisions such as those at existing 25 Pa. Code Section 262.34(a)(1)(ii)(A) & (B).

Section 262a.34(a)(3). Accumulation.

47. **Comment:** The existing container packing, labeling and marking requirements that apply to accumulation in containers should be deleted from the regulations. (16)

    Response: The proposal incorporates 40 CFR 262.34 by reference, which does not have provisions such as those at existing 25 Pa. Code Section 262.34(a)(3).

Section 262a.34(e)(5). Accumulation.

48. **Comment:** This section should be deleted from the regulations. The section requires PPC plans from small quantity generators and imposes unnecessary paperwork when considering the amount of waste involved. (16)

    Response: The proposed rulemaking, as well as the final-form rule will incorporate 40 CFR 262.34 by reference, which does not have provisions for PPC plans for SQG.

Section 262a.41. Biennial report.

49. **Comment:** The Department should review the more stringent provisions of the regulations including quarterly reporting by generators. (13)

    Response: The regulations presently do not contain the quarterly reporting requirement for generators. The generator requirements for quarterly reporting were replaced prior to this proposed rule, and the Department has no intention of reinstituting them. The reporting requirements contained in the federal regulations have been incorporated into Pennsylvania's regulations.

CHAPTER 263a. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

Sections 263a.10(a), 263a.12(1) Incorporation by reference and scope and Transfer facility requirements

50. **Comment:** The requirement for a preparedness, prevention and contingency plan for transporters utilizing in-transit storage of hazardous waste for periods of not more than 10 days but greater than 3 days is broader in scope than the federal regulations. (22)

    Response: The requirement is broader in scope than the federal regulations, but the department feels there is a clear and compelling need for such a plan. In-transit storage facilities are not

subject to siting criteria, and therefore could be located in almost any commercial area and subject the public in that area to possible hazardous waste spills or other accidents. This requirement only requires the transporter to have a plan ready and to be prepared for such an occurrence.

Section 263a.12. Transfer facility requirements.

51. **Comment:** The proposed regulations require approval of the in-transit storage PPC plan and the normal transporter contingency plan in writing, but do not provide a deadline for Department review and approval of PPC plans. The Department should be allowed 30 days to complete the review, and if the review is not approved in that time-frame, then the plan should be considered approved. (10, 31)

Response: The Department agrees that the time-frame for the review of an administratively complete plan should be limited. The in-transit storage PPC plan approval will be added to the list of authorizations covered by the DEP Money-Back Guarantee Permit Review Program. The DEP will have a maximum of forty-five days to process the PPC Plan in accordance with the guidelines of the Money-Back Guarantee Program.

52. **Comment:** Because of the inconsistency between the definition of in-transit storage and the incorporated requirements at 40 CFR 263.12, one could argue that an in-transit contingency plan is not necessary for storage of 4-10 days. (22)

Response: Section 263a.12(1) has been modified in the regulations to clarify that the plan must be approved in writing prior to initiation of storage for greater than 3 days.

Sections 263a.23; 264a.78; 265a.78 Hazardous waste transportation and management fees

53. **Comment:** The charges (fees) sought to be collected from transporters and TSDs under Sections 263a.23, 264a.78 and 265a.78 are impermissible taxes as they would be applied against federal government activities. The regulations should be modified to exempt federal facilities from the need to pay these particular charges. (26)

Response: The hazardous waste transportation and management fees are a statutory requirement imposed by the Hazardous Sites Cleanup Act (Act 108) and cannot be changed by regulation.

Section 263a.30 Immediate action

54. **Comment:** The Commonwealth requires that a transporter immediately notify the Department by telephone in the event of a discharge or spill during transporting. This is more stringent than the federal requirement. (22)

Response: The requirement is more stringent than the corresponding federal requirement, but the Department feels that in order to assure that a discharge or spill is adequately remediated, the Department must be made aware of the discharge or spill.

Subchapter D. BONDING

Sections 263a.32. Bonding.

55. **Comment:** Hazardous waste transporter bonds are unnecessary. First, the requirement is unenforceable due to a USDOT ruling which preempts it. Second, the environmental impairment risk of transporting hazardous waste is financially covered with liability insurance. (1)

Response: In Massachusetts versus US DOT, 93 F.3rd 890, the D.C. Circuit Court found that the Massachusetts bonding requirements for hazardous waste transporters were not preempted by Federal law. Pennsylvania's bonding requirements are similar to Massachusetts's and therefore the Department believes that Pennsylvania's bonding requirements are not preempted by federal law. The Circuit Court decision is expected to be appealed to the Supreme Court by industry; therefore, the Department will use enforcement discretion until a final determination is reached.

The bond is required by the Solid Waste Management Act. In addition, it has helped the Department to receive timely and accurate paperwork and fee submission from the regulated community. It has also provided the Department with leverage in collecting civil penalties when they are assessed.

56. **Comment:** The provision requires transporters to file a collateral bond payable to the department. Such a requirement is broader in scope than the federal program. (22)

Response: The provision is required by the SWMA and has aided the Department in the past for the collection of civil penalties and the timely submission of fees and required reports.

CHAPTER 264a. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES and CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter A. GENERAL

57. **Comment:** Section 264a.1(a) and 40 CFR Part 264, Appendix VI. This appendix is only applicable to the States listed in the appendix. The Commonwealth should not incorporate this appendix by reference. (22)

Response: The Department agrees and has changed the incorporation by reference language of Section 264a.1.

58. **Comment:** Section 264a.1(a) and 40 CFR 264.1030(c). Pennsylvania incorporates by reference 40 CFR 264.1030(c). This Federal provision includes an internal reference to 40 CFR 124.15. Pennsylvania does not have an analog to 40 CFR 124.15 in its hazardous waste regulation as that

provision is not required for authorization. However, the Commonwealth should make certain that the reference to this Federal provision is not inconsistent with the Commonwealth's own procedures relating to the issuance and effective date of a permit. If the text at 40 CFR 124.15 is inconsistent with such procedures, then Pennsylvania should exclude the internal reference to 40 CFR 124.15 from its incorporation by reference of 40 CFR 264.1030(c) and replace it with a reference to 40 CFR 124.5 or its analog to that section. (22)

Response: Section 260.3 of the regulations clarifies and defines how references to Part 124 are substituted with Pennsylvania procedures.

Subchapter B. GENERAL FACILITY STANDARDS

59. **Comment:** Sections 264a.13 and 265a.13. Several commentators oppose requiring owners or operators of TSD facilities to submit Module 1 forms in accordance with Sections 264a.13 and 265a.13. The commentators stated that the requirement to obtain Department approval before accepting new waste streams exceeds federal requirements, adds unnecessary costs and delays their ability to accept new wastes and customers. The commentators feel that this requirement is unnecessary since it duplicates approvals granted through the permitting process. One commentator also expressed concern about the safety of confidential business information which might need to be submitted as part of the Source Reduction Strategy submission requirement under this section. Recent failures by EPA to keep track of confidential business information further points to the need for confidentiality of sensitive process information. (3, 12, 13, 14, 23, 27, 31)

Response: As an alternative to the Module 1, Section 264a.13 has been modified to allow a facility to incorporate a facility specific procedure in the waste analysis plan in its permit to characterize a new waste prior to acceptance of the waste for the first time. The facility will then only be required to provide the information specified in the permit to the Department when they are going to accept a new waste stream for the first time. The requirement for generators to submit their Source Reduction Strategy to the Department as part of this approval process has been eliminated.

The requirements found in Section 265a.13 are for interim status facilities. These facilities may not have approved waste analysis plans in place, so the Module I and Generic Module I requirements in this section will remain.

60. **Comment:** Section 264a.13(1)(viii), The commentator opposes the open-ended empowerment the proposed rulemaking would grant DEP to require "other information which the department may prescribe for the department to determine whether the waste has been treated, stored or disposed of in accordance with this chapter." (14)

Response: In response to this and other comments on Section 264a.13, the final-form rule incorporates by reference the federal requirements and specifies in addition to the federal requirement that the permit contain the details for the information required to be submitted to the Department before a TSD accepts a new waste from a generator for the first time. In this way,

each TSD can address only those chemical or physical characteristics that are important to assure that the waste can be safely accepted and appropriately handled by the permitted facility.

61. **Comment:** Sections 264a.13(6) and 265a.13(6)of the proposed regulations, The Generic Module I process, or an equivalent process should be retained in the regulations to expedite an owner and operator's ability to receive new waste streams and to reduce burdens on the owner and operator who receives consistent waste from various generators. (10)

Response: The final form rule provides that permitted facilities may establish equivalent customized Module I requirements in their facility specific permits. Those permitted facilities that accept wastes previously addressed by the Generic Module I process will now have the ability to address those wastes. The Generic Module I process for interim status facilities subject to Chapter 265a requirements has been retained with the exception of the requirement for the generator to submit the source reduction strategy.

Section 264a.15 General inspection and construction inspection

62. **Comment:** EQB proposes retaining prior approval and a step-by-step inspection/approval process of construction without any justification. The commentator believes that general inspection authority is well provided for elsewhere in law and regulation. There is no compelling need to micro-manage the construction schedule. Waiting for approvals will extend the time and cost of construction without commensurate benefit. (14)

Response: The intent is not to manage the construction schedule but rather for the Department to be fully aware of the proposed schedule. This permits the Department to plan for and have the opportunity to be on-site for critical phases of construction, for example installation of the liner, drilling of monitoring wells, etc. To help ensure that the facility is constructed in accordance with the approved permit application.

Sections 264a.52 and 265a.52 Content of contingency plan

63. **Comment:** Several commentators stated that requiring contingency plans submitted pursuant to Sections 264a.52 and 265a.52 to be in accordance with "DEP guidance for contingency plans" is unclear because it does not identify the Department guidance for contingency plans. If this requirement is retained, the commentator suggested that the Department should include the guidance as part of the regulation. The commentators also believed that this provision is vague since it requires the plan to be submitted "at the time in the application process the Department prescribes." In addition, commentators stated that the federal "Integrated Contingency Plans" are adequate and the commentators requested that the Department explain the insufficiency of the federal requirements. Finally, one commentator asked the Department to include an estimate of the economic impact that the Department contingency plan will have on the regulated community. (6, 7, 31, 22, 31)

Response: The Department's "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" is a guidance document which has been prepared to

assist the regulated facilities in consolidating all required emergency response plans into one single document. These guidelines are updated periodically with input from the various Department programs which require emergency response plans.

The EPA, as the chair of the National Response Team (NRT), published the Integrated Contingency Plan Guidance in the June 5, 1996 Federal Register. The intent of EPA's Guidance is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations, into a functional emergency response plan or integrated contingency plan (ICP). Emergency response plans prepared from either guidance would contain very similar information but with different formats.

The Department has proposed to adopt by reference the regulations relating to contingency plans found in 40 CFR 264.51-264.55 and 265.51-265.55, which are identical to the current PA regulations, with the exception that current Pennsylvania regulations require operators to incorporate into their contingency plans Pennsylvania Guidelines for Emergency Response Plans. Subsequent to this rulemaking plans will be required to satisfy regulatory requirements.

The requirements for submitting contingency plans with permit applications are clearly defined in other areas of the regulations; therefore, the Department will delete Sections 264a.52(2) and 265a.52(2).

Sections 264a.56 and 265a.56. Emergency procedures.

64. **Comment:** Several commentators stated that the emergency procedure requirements in Sections 264a.56 and 265a.56 are unauthorized by state law, to the extent that they require an emergency coordinator to notify a federal agency. In addition, several commentators noted that the Federal law requires notice to either a designated government official or the National Response Center, while the state provision requires notification to both the Department and the National Response Center. The commentators believe that notification should be given to the Department's regional offices rather than the Department's Central Office in Harrisburg, as the proposed regulation requires. Other commentators suggested that it is more efficient to notify the Department's Central Office rather than requiring emergency coordinators to figure out which regional office to call. The commentators suggested reviewing the selection of the phone numbers to assure that the Department is not duplicating the services and equipment of other Commonwealth entities. Finally, one commentator stated that the proposed regulation duplicated Federal language and that the duplicative language should be eliminated. (6, 7, 13, 14, 22, 23, 31)

Response: The Department has reviewed the emergency notification requirements proposed in Sections 264a.56 and 265a.56 and 40 CFR 264.56 and 265.56 and agrees that it is unnecessary to include the requirement to notify the National Response Center given the incorporation by reference of 40 CFR 264.56(d)(2) and 265.56(d)(2).

The requirements found in Sections 264a.56(1) and 265a.56(1), that the emergency coordinator will notify the Department by telephone, will remain. The proposed regulations have been

changed to provide the option of contacting the appropriate regional office of the Department or Central Office.

The requirements proposed in Sections 264a.56(2) & (3) and 265a.56(2)&(3) are duplicative of federal requirements that the Department will incorporate; therefore, the proposed Pennsylvania requirements have been deleted in the final regulation.

Section 264a.71. Use of the manifest system.

65. **Comment:** Sections 264a.71 and 265a.71. The use of the term six-part manifest is confusing due to the fact that the number of copies depends on the number of transporters. (22)

Response: The proposed regulations at Sections 264a.71 and 265a.71 have been revised by deleting the term "six-part" and instead simply requiring the use of the Department's manifest or a manifest approved by the Department. The number of copies ("parts") will be dictated by the requirements of distribution and will vary.

66. **Comment:** Sections 264a.71 and 265a.71. Pennsylvania prohibits a TSD facility in the Commonwealth from accepting hazardous waste unless it is accompanied by a Pennsylvania manifest, except as otherwise provided in 40 CFR 262.23. Pennsylvania incorrectly cites 40 CFR 262.23(1). The Commonwealth incorporates by reference 40 CFR 264.71(b) which permits a facility to accept rail and water shipments accompanied by a shipment paper. It is unclear whether a facility would violate Section 264a.71(l) if the facility later received the manifest form for such a shipment that is not a Pennsylvania manifest. The Commonwealth should clarify this as well as modify its incorporation of 40 CFR 264.71(b) if a shipment paper is unacceptable. Currently, the requirements are unclear and potentially confusing to the regulated community. (22)

Response: The incorrect citation 40 CFR 262.23(l) has been changed to 40 CFR 262.20(e), which exempts from manifesting, waste from small quantity generators which is reclaimed under contractual agreement as described in the regulation.

Regarding bulk rail and water shipments, 40 CFR 262.21(a), requires the generator to use the receiving state's manifest, if the state supplies and requires its use. As per 40 CFR 262.23(c) and (d), for bulk rail and water shipments the generator must send three copies of the manifest to the destination facility. Therefore, it would be a violation to use a manifest that is not the Department's or a manifest not approved by the Department if the receiving facility is located within Pennsylvania.

Section 264a.75 and 265a.75. Biennial Reports.

67. **Comment:** The proposed rule requires biennial reports to be kept for the life of the facility while EPA only requires them to be kept for three years. The additional requirement creates more paperwork and does not serve any practical purpose. (14, 15, 23, 31)

Response: The final form rule incorporates the three-year retention period.

Section 264a.83. Administration fees during closure.

68. **Comment:** Sections 264a.78-264a.83 and 265a.78-265a.83. The hazardous waste management fees should be retained. (18)

Response: The Department agrees. The fees will be retained. Fees for recycling permits will be eliminated to encourage hazardous waste recycling facilities.

69. **Comment:** Sections 264a.78-264a.83 and Sections 265a.78-265a.83. Pennsylvania hazardous waste management fees are not required by EPA. (22)

Response: The Hazardous Waste Management fees are required by the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, ("HSCA"), 35 P.S. 6020.101 et seq.

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Section 264a.94. Concentration Limits.

70. **Comment:** The use of Alternate Concentration Limits (ACL's) is a questionable step because of the potential for abuse. The preamble states that a background standard for groundwater remediation has often been "unattainable". In dealing with operators, DEP should make a greater effort to distinguish between the inability to attain the standard, and the unwillingness to attain the standard. (18)

Response: For existing facilities with groundwater contamination problems, the norm has been, and continues to be compliance with background. Because of technological and monetary limitations many facilities are unable to achieve the background standard. However, the Federal regulation allows a facility to obtain an Alternate Concentration Limit ("ACL") for the site. To obtain an ACL for the site, a permit applicant must demonstrate that the hazardous waste constituents detected in the groundwater will not pose a substantial present or potential hazard to human health and the environment.

Because a facility that wishes to obtain an ACL must undergo considerably more expense to perform a detailed evaluation of the site using a number of environmental criteria, it is anticipated that the Department will receive very few requests for the use of an ACL.

Section 264a.96. Compliance Period.

71. **Comment:** To provide clarity, the Commonwealth should replace the reference to "Subchapter F" with "40 CFR Part 264, Subpart F, as incorporated by reference at Section 264a.1(a)". (22)

Response: The Department agrees and has made the change in the final form rule.

72. **Comment:** Several commentators stated that compliance and monitoring reports required by Section 264a.96 exceed Federal requirements and add unnecessary costs on the regulated community. In addition, it was noted that there are no exemptions from these requirements; and therefore, the proposed regulations, unlike the federal regulations, lack flexibility that is necessary to deal with different conditions that exist at different sites.(13, 14, 15, 23, 31)

Response: The monitoring and reporting requirements that the Department proposed in Section 264a.96 are also authorized by the incorporated federal regulations provisions found at 40 CFR 264.91, 264.97, 264.98 and 264.99, but the federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. The Department feels that permit conditions are appropriate for requirements that are determined on a case-by-case basis rather than for requirements that are applicable to an entire class of facilities. In this case, Pennsylvania's seasonal, climatological and hydrological features, including a high water table, make it necessary to require all surface impoundments, land treatment units, landfills and, in some cases, waste piles operating in Pennsylvania to conduct the same type of groundwater monitoring and reporting. Consequently, the Department has determined that these requirements should be included in a regulation rather than a permit condition.

The Department has determined that the proposed monitoring and reporting requirements found in Section 264a.96 are necessary for the protection of human health and the environment for the following reasons:

1. A quarterly interval between sampling events would allow for early detection of a potential problem and for the operator to respond to and correct a problem before significant wide-spread contamination would occur.
2. The frequency established provides a basis for valid statistical evaluation of groundwater data.
3. Quarterly data generated considers Pennsylvania's seasonal, temporal and spatial variablity and climatological variations which are not adequately taken into account with less frequent monitoring.
4. These reporting requirements allow the Department to receive the data in a timely fashion. It can be analyzed and assessed in the early stages of any environmental problem. This provides a pro-active rather than a remedial response which is the purpose of the hazardous waste regulations.

These monitoring and reporting requirements should be required of all active facilities which require groundwater monitoring as a condition of their permit. For facilities that have gone through closure and are in post-closure care, some flexibility may be warranted. The Department has provided flexibility on the issue of monitoring and reporting frequency: where the owner or operator of a facility has demonstrated that the facility is secure, a reduction of the monitoring

frequency from quarterly to semi-annual was implemented. The proposal, by incorporation of federal language found at 40 CFR 264.117 and 118, provides this flexibility.

CHAPTER 264a & 265a Subchapter H. FINANCIAL REQUIREMENTS

Sections 40 CFR 264.143, 264.145, 265.143 and 265.145 relating to Financial Assurance for Closure and Post-closure Care.

73. **Comment:** Pennsylvania is less stringent than the federal program because it does not have the requirement for an owner or operator who uses a surety bond to satisfy the financial requirement to also establish a standby trust fund. (22)

Response: The Solid Waste Management Act specifies that forfeited bond funds are to be placed in Pennsylvania's Solid Waste Abatement fund. The final form regulation replaces the establishment of a standby trust fund with the existing requirements in Pennsylvania's regulations for bond forfeiture, since the standby trust is a mechanism that would place forfeited bond dollars in a trust rather than in the Solid Waste Management Abatement Fund.

74. **Comment:** Pennsylvania is less stringent than the federal rules because at Section 264a.168(a) the Commonwealth states that the Department may forfeit the bond, while the federal code states that the surety will perform closure. Pennsylvania should replace "may" with "shall". (22)

Response: The final form rule has replaced "may" with "shall" to respond to the intent of the commentator's remark.

Section 264a.145. Financial assurance for post-closure care.

75. **Comment:** Several commentators noted that Pennsylvania's failure to incorporate 40 CFR 264.145 puts Pennsylvania's facilities at a competitive disadvantage, since Pennsylvania's closure and post-closure RCRA requirements foreclose all of the financial instrument options available under 40 CFR 264.145. The commentators recommended either incorporating 40 CFR 264.145 into Pennsylvania's regulations or explain why all of the mechanisms in that section are inappropriate or insufficient. (12, 14, 23, 31)

Response: The Department intended to incorporate by reference 40 CFR 264.145 in the same manner as 40 CFR 264.143 and its failure to do so was an oversight. The final form rule incorporates both 40 CFR 264.143(f) and 40 CFR 264.145(f) to provide for the use of the financial test and corporate guarantee for both closure and post-closure financial assurances.

Section 264a.147. Liability requirements.

76. **Comment:** Several commentators noted that Section 264a.147 contains liability insurance requirements that exceed federal requirements. The preamble to the proposed rulemaking contained an explanation that the higher amounts are required because the SWMA requires an ordinary public liability insurance policy in an amount prescribed by rules and regulations promulgated under the SWMA. Commentators expressed opinions that the federal requirements are sufficient and should be adopted by reference. (13, 14, 23, 31)

Response: The requirement for an ordinary public liability policy, including the amounts required, exists in the current regulatory requirements at Section 267.42. The proposal anticipated the need to continue to differentiate between environmental impairment and ordinary public liability coverage . Upon further review, the Department has determined that the federal requirements satisfy the Solid Waste Management Act (SWMA) requirement. Changes have been made to the federal insurance requirements since Pennsylvania last amended its hazardous waste insurance requirements, which now include comprehensive general (ordinary public liability) coverage, and consequently, the federal insurance requirements now satisfy the SWMA requirements. The final rulemaking will incorporate the federal requirement, and the separate requirement for comprehensive general liability (ordinary public liability) coverage has been removed.

Section 264a.151. Wording of instruments.

77. **Comment:** Section 264a.151 would incorporate federal requirements for wording of financial instruments only to the extent that those requirements are consistent with the laws and regulations of the Commonwealth. Commentators suggested that the wording of this section be revised to specifically state which existing federal laws or regulations are inconsistent with the laws of this Commonwealth. (31)

Response: The proposed regulation incorporated by reference 40 CFR 264.151 and 265.151(relating to wording of instruments). The Board has decided not to incorporate this federal provision since Pennsylvania will review each instrument on a case by case basis to determine if it complies with Pennsylvania law and if it is appropriate for the facility that is submitting the financial instrument. Many of the financial instruments are not available to Pennsylvania because of limitations on types of bonds in the Solid Waste Management Act.

Section 264a.154(a). Form, terms and conditions of bond.

78. **Comment:** Pennsylvania is less stringent than the federal rule because the Commonwealth does not require the owner or operator to submit a bond at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. (22)

Response: The 60 day requirement is incorporated into the final form rule at 264a.154(d).

79. **Comment:** Pennsylvania is less stringent than the federal rule because the Commonwealth does not require that the bond must be effective before the initial receipt of hazardous waste. (22)

Response: The Department disagrees. Pennsylvania regulations are not less stringent than the federal regulations because the regulations require a bond in place before a permit can be issued, and a permit must be issued before waste can be accepted.

80. **Comment:** Section 264a.155(b). Pennsylvania is less stringent than the federal rule because the Commonwealth does not specify that the surety company be among those listed in circular 570 of the U.S. Department of Treasury as acceptable sureties on Federal Bonds. (22)

Response: This requirement is contained in the existing regulations at 25 Pa. Code Section 267.13(b), which has been relocated to 264a.155(b) in the final form regulation. The reference to circular 570 was inadvertently omitted in the proposal and has been restored in the final form rule.

Sections 264a.162, 163, 165. Bond amount adjustments, adequate bond and bond release.

81. **Comment:** Section 264a.162. The responsibility for determining if a bond amount change is needed rests with the permittee under the Federal requirements and with the Department under the Commonwealth's requirements. This could make the Commonwealth less stringent if the Department fails to demand that the permittee increase the bond amount in the same circumstances where the permittee would have to do so under the Federal code. (22)

Response: The language in Section 264a.162 will be modified to reflect 40 CFR 264.143(c)(7), which places the requirement on the owner or operator.

82. **Comment:** Section 264a.154(d). Unlike the Federal requirements, the Commonwealth does not require the owner or operator to submit the letter of credit at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. (22)

Response: The Department agrees. The language of Section 264a.154(d) has been modified to reflect the 60 day requirement in the Federal rule.

83. **Comment:** At Section 264a.156(d)(1) Pennsylvania specifies that the letter of credit shall be a standby or guarantee letter of credit. The Federal code only specifies a standby letter of credit and does not appear to allow a guarantee letter of credit. Depending on the Commonwealth's interpretation of "standby letter of credit" and "guarantee letter of credit", Pennsylvania could be less stringent than the Federal rule. (22)

Response: Section 264a.156(d)(1) has been modified to eliminate the phrase "or guarantee".

84. **Comment:** Pennsylvania is less stringent than the federal rule because it does not require an owner or operator who uses a letter of credit to satisfy the financial assurance requirement to establish a standby trust fund. (22)

Response: The Solid Waste Management Act specifies that forfeited bond funds are to be placed in Pennsylvania's Solid Waste Abatement fund. The final form regulation replaces the establishment of a standby trust fund with the existing requirements in Pennsylvania's regulations for bond forfeiture, since the standby trust is a mechanism that would place forfeited bond dollars in a trust rather than in the Solid Waste Abatement Fund.

85. **Comment:** The Federal code at 40 CFR 264.143(d)(5) requires that the letter of credit must be issued for at least 1 year, be automatically extended for a period of at least 1 year, and provide for a 120 day cancellation notice submitted to the agency by certified mail. Pennsylvania is less stringent because it does not require the 1 year minimum, provides for a 90 day cancellation notice and does not specify that the cancellation notice must be submitted by certified mail. (22)

Response: Section 264a.156(d)(4) has been modified to reflect the 1 year minimum. Section 264a.156(d)(4)(i) has been modified to require automatic extensions of at least 1 year, the cancellation notice has been changed from 90 days to 120 days, and the requirement to provide cancellation notice by certified mail has been added. The same changes have been made to Section 265a.156 in the final form rule.

86. **Comment:** At Section 264a.156(d), Pennsylvania does not have direct analogs to 40 CFR 264.143(d)(7) or 264.145(d)(7) regarding adjustments to the amount of the credit. (22)

Response: The Pennsylvania analog to this requirement is found at 264a.162 (Bond amount adjustments) for all types of bonds including letters of credit.

87. **Comment:** In Section 264a.165(e) the Department has 6 months within which to make a decision on a bond release application. Under the Federal code the Regional Administrator has 60 days to make a decision and notify the owner. This can make the Commonwealth less stringent than the Federal rule. (22)

Response: By having 6 months to reach a decision on bond release, the Department has the time necessary to make a correct decision on bond release. Limiting the time period to a 60 day maximum could force a decision which is based on time rather than on accurate and complete site information. This provision makes Pennsylvania more stringent than the federal rule because the bond can be held for a longer period prior to making a determination for release.

88. **Comment:** Section 264a.157(a)(3) gives the operator 10 years to complete a bond pay in period. Under the federal code the permittee has 10 years or the life of the permit if the permit is for less than 10 years. This makes Pennsylvania less stringent than the federal rule. (22)

Response: Section 264a.157(a) requires that a facility be operated continuously for at least 10 years or this option is not available to the permittee. This makes Pennsylvania more stringent than the Federal rule and is specified by the Solid Waste Management Act.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sections 264a.173 and 265a.173. Management of Containers.

89. **Comment:** We recommend the Department incorporate by reference 40 CFR 264.173 and 265.173, relating to the management of containers without further restrictions on the labeling of containers. Federal regulations require that any hazardous waste being accumulated in a satellite area be placed in a container labeled as hazardous waste. The containers that are used must be DOT approved containers. Containers placed in a storage area (including< 90 days) must, according to Federal regulations, require containers have the proper labels in a storage area. Information required includes type of waste, waste codes, and date placed in storage area. With labeling requirements already in place, additional requirements are not necessary and place a burden on the generator to maintain multiple systems for labeling. (23)

    Response:. The proposed regulation never included a labeling requirement, although the preamble inaccurately stated that the labeling requirement was being proposed. The final form rule does not include a labeling requirement for containers other than what is required by federal regulation.

Sections 264a.175 and 265a.175. Containment.

90. **Comment:** Proposed Sections 264a.175 and 265a.175 contain detailed provisions applicable to storage of hazardous waste containers. Specific requirements for maximum container height, width and depth of container groups, and aisle widths are given. Comparable federal regulations do not contain such exact requirements. Commentators stated that the proposed State provisions do not accommodate newer containers known as "totes" and suggest that the final form regulation be more performance oriented. (6, 7, 9, 14, 16, 31)

    Response: The final form rule modified Sections 264a.173 and 265a.173 to exclude the prescriptive nature of the requirements and replace them with performance-based requirements directed toward the use of best management practices. For example; operaators will simply be required to maintain appropriate aisle spacing, container heights and configurations to facilitate inspections and unobstructed movement of emergency equipment and personnel.

Subchapter J. TANK SYSTEMS

Section 264a.191 and 265a.191. Existing tank systems.

91. **Comment:** The Commonwealth should make a distinction between HSWA and non-HSWA tanks with regard to effective/compliance dates. (22)

    Response: The Department's authority to implement these regulations only became effective on the dates included in the current regulation.

Sections 264a.194 and 265a.194. General operating requirements.

92. **Comment:** As proposed, the tank labeling requirements should be retained. (18)

Response: The final form regulation retains the tank labeling requirement.

Section 264a.195 and 265a.195. Inspections.

93. **Comment:** Delete the requirement at Section 265a.195 to inspect hazardous waste tanks every 72 hours when the facility is not operating. Site specific Best Management Practices can be employed to replace inspection requirements when the facility is not operating. (16)

Response: The State regulations at Sections 264a.195 and 265a.195 requires an additional inspection for facilities once every 72 hours when not in operation. The Federal regulations are silent on this issue. EPA assumes that if a facility is not operating there is no waste in the tanks and system components. The rationale for the retention of this language is that a facility might not be operating, but as long as waste remains in the tank and system components, there is a potential for leaks and spillage to occur. Including this requirement in the regulations eliminates the need to include it as a standard permit condition in all permits issued. The Department feels this is a best management practice that adds a minimal burden on the facility, while extending additional protection to human health and the environment.

94. **Comment:** As proposed, the requirement to inspect tanks every 72 hours when the facility is not operating should be retained. (18)

Response: The final form rule contains the requirement as explained above.

95. **Comment:** A more direct approach would be to add the following sentence to the 40 CFR 264.195(b) requirements incorporated by reference at Section 264a.1: "The Tank must be inspected every 72 hours when not operating if waste remains in the tank or tank system components." (22)

Response: The clarifying language has been added to the final form rule.

Subchapter K. Surface impoundments.

Section 264a. 221. Design and operating requirements.

96. **Comment:** Section 264a.221. The Commonwealth incorporates by reference 40 CFR 264.221(c) at Section 264a.1(a) and then excludes the requirement relating to leak detection systems not located completely above the seasonal high water table. Effectively, this exclusion applies to 40 CFR 264.221(c)(4). For clarity, Pennsylvania should explicitly cite the provision to be excluded. Pennsylvania has a minimum groundwater separation distance requirement which is more stringent than the Federal requirements relating to the seasonal high water table; the Commonwealth requires all surface impoundments to be located above the seasonal high water table. (22)

Response: The Department agrees and has revised the proposed regulations to exclude specifically the provision at 40 CFR 264.221(c)(4) relating to leak detection systems not located completely above the seasonal high water table.

Subchapter L. Waste piles

Section 264a.251 Design and operating requirements.

97. **Comment:** Section 264a.251. The Commonwealth incorporates by reference 40 CFR 264.251(c) at Section 264a.1(a). It then excludes from the incorporation by reference the requirement relating to leak detection systems not located completely above the seasonal high water table. Effectively, this exclusion applies to 40 CFR 264.251(c)(5). For clarity, Pennsylvania should explicitly cite the provision to be excluded. The exclusion of this requirement is acceptable because Pennsylvania has a minimum groundwater separation distance requirement which makes the Commonwealth more stringent. The Commonwealth does not allow waste piles which are not located above the seasonal high water table. [Note that "264.221(c)" is a typographical error.] (22)

Response: The Department agrees and has revised the proposed regulations to exclude the provision at 40 CFR 264.251(c)(5) and corrected the noted typographic error.

98. **Comment:** Section 264a.251. The commentator favors proposed requirements for groundwater monitoring and design requirements for run-on control measures for waste piles. (18)

Response: The final form rule includes the requirements.

Subchapter M. Land Treatment

Section 264a.276. Food chain crops.

99. **Comment:** Section 264a.276. The Commonwealth includes a provision at Section 264a.276(1) that prohibits tobacco and crops intended for direct human consumption from being grown on hazardous waste land treatment facilities. In Section 264a.276(2), the Commonwealth prohibits the application of cadmium-containing waste on land used for tobacco, leafy vegetables, or root crops grown for human consumption. It is unclear why the second provision is needed when the general prohibition in paragraph (1) encompasses the activities described in paragraph (2), unless Pennsylvania intended a less stringent standard for cadmium-containing wastes. In fact, the language of paragraph (2) contradicts the text in paragraph (1) because there are more crops used for human consumption than just leafy vegetables and root crops. Since paragraph (2) prohibits leafy vegetables and root crops from being grown on land treated with cadmium containing wastes, it appears that other types of crops used for human consumption may be grown on land treated with cadmium wastes if the levels in the table are met. However, paragraph (1) says that no crop intended for direct human consumption can be grown on hazardous waste treated land. In any case, the strict prohibitions of these paragraphs are more stringent than the Federal program. (22)

Response: The proposed regulations have been revised to clarify the overall intent of Sections 264a.276(1) and (2), which was to prohibit the growing of tobacco and crops intended for direct human consumption on hazardous waste land treatment facilities.

100. **Comment:** Section 264a.276. The commentator favors the proposed prohibition on growing food chain crops intended for direct human consumption on Hazardous Waste Land Treatment Facilities. (18)

Response: The final form rule includes the prohibition.

Subchapter S. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

101. **Comment:** Section 264a.552 and 40 CFR 264 Subpart S. The exclusion of 40 CFR Part 264, Subpart S from the incorporation by reference makes the Commonwealth's program more stringent. However, the Commonwealth should also make revisions in other portions of its incorporation by reference to take into account the other revisions made by the CAMU rule. (22)

Response: The Department has incorporated 40 CFR Part 264, Subpart S by reference in the final form rule, and will consider requesting authorization of the corrective action program by US EPA when preparing the program authorization update. The regulation will become effective upon EPA's delegation to DEP of the corrective action program.

Subchapter W. DRIP PADS

102. **Comment:** Sections 264a.1(a), 264a.570, and 40 CFR 264.570(a). The Commonwealth has replaced the Federal date of "December 6, 1990" with "January 11, 1997". The wood preserving waste regulations were promulgated pursuant to both HSWA and non-HSWA authority dependent upon the type of waste generated at the drip pad. The Commonwealth should make a distinction between HSWA and non-HSWA drip pads with regard to the effective/compliance dates. The requirements relative to HSWA drip pads should retain the Federal date, as the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date for HSWA drip pads may generate confusion within the regulated community and has enforcement implications. The Commonwealth may only enforce the requirements after January 11, 1997. Any enforcement for activities that occurred between December 6, 1990 and January 11, 1997 will have to be conducted by the EPA. If the Commonwealth uses the Federal date for HSWA drip pads, then it can enforce back to December 6, 1990. (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific drip pad provisions prior to the date that they were promulgated in the State regulations.

Subchapter DD. CONTAINMENT BUILDINGS

103. **Comment:** Sections 264a.1(a) and 264a.1100. The Commonwealth has included language at 25 Pa. Code Section 264a.1100 that affects the incorporation by reference of 40 CFR 264.1100 at Section 264a.1(a). This language states that the provisions of Section Chapter 264a, Subchapter DD (related to containment buildings) apply to units designed and operated under the requirements of 40 CFR 264.1101. It is unclear why the Commonwealth included this provision as it is unnecessary and inconsistent with the format used in other subchapters. It also incorrectly states that the incorporation by reference occurs "herein", evidently referring to the subchapter. The incorporation by reference actually occurs in Section Chapter 264a. Subchapter A. (22)

Response: The language in Section 264a.1100 (relating to applicability) was included because certain provisions applicable to containment buildings operating prior to the effective date of Pennsylvania's provisions (January 11, 1997) must continue to be addressed by the State. These provisions are listed in Section 264a.1101 and include requests for delays in the secondary containment requirement and recordkeeping requirements for engineer certifications. Use of the phrase "incorporated by reference" is consistent throughout this regulatory package. The term "herein" has been removed from the regulations.

104. **Comment:** Sections 264a.1(a) and 264a.1101(1), and 40 CFR 264.1101(b)(4)(i). Pennsylvania has changed the date in this Federal provision from "November 16, 1992" to "July 11, 1997". This regulation was promulgated pursuant to HSWA authority. Therefore, the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date may generate confusion within the regulated community. Non-retention also has enforcement implications as explained in Comment 26 (relating to drip pads). (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific containment building provisions prior to the date that they were promulgated in the State regulations.

105. **Comment:** Sections 264a.1(a) and 264a.1101(2)&(3). Pennsylvania has changed the dates in this Federal provision from "February 18, 1993" to "January 11, 1997". This regulation was promulgated pursuant to HSWA authority. Therefore, the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date may generate confusion within the regulated community. Non-retention also has enforcement implications as explained in Comment 26 (relating to drip pads). (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific containment building provisions prior to the date that they were promulgated in the State regulations.

CHAPTER 265a. Subchapter A. GENERAL

106. **Comment:** Sections 265a.1(b)(4), 270a.60 and 40 CFR Part 270. In Section 265a.1(b)(4), Pennsylvania reiterates that the requirements of Chapter 265a do not apply to facilities covered by a permit-by-rule. The provision specifically mentions that variances from permits-by-rule granted under Section 270a.60 do not affect this exemption. It is unclear whether or not Section

265a.1(b)(4) is equivalent to and consistent with the Federal program. Pennsylvania includes various permits-by-rule in 25 Pa. Code Chapter 270a that are not included in the Federal regulations in 40 CFR Part 270. The Federal program also lacks analogs to the variance provisions of Section 270a.60. This provision seems inconsistent with Section 265a.1(b)(3) because it does not include language addressing situations when certain provisions of 25 Pa. Code Chapter 265a may be applicable, as specified by the permit-by-rule. (22)

Response: The final form rule includes clarifying language in Section 265a.1(b)(3) and the variance referenced in 265a.1(b)(4) has been removed.

CHAPTER 266a. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZAROUS WASTE MANAGEMENT FACILITIES

107. **Comment:** Section 266a. The first paragraph of the Preamble discussion concerning precious metal recovery states that Subpart F has been incorporated by reference. Subpart F provides reduced regulatory requirements for certain handlers of hazardous waste. The second paragraph explains that recycling facilities are still subject to the permitting requirements under the Solid Waste Management Act. Therefore, the language that has been incorporated by reference is not consistent with the fact that handlers who are eligible for the reduced requirements may actually be subject to additional requirements. For clarity, the Commonwealth should include language in its regulations that specifically addresses this issue instead of only explaining this inconsistency in the preamble. (22)

Response: The reduced requirements discussed in the first paragraph of the subject preamble discussion are applicable to generators, transporters or storers, not to the actual precious metal reclamation activity. Provisions have been included in the final form regulations whereby facility owners or operators reclaiming precious metals from hazardous wastes may operate under permit-by-rule. This permit-by-rule will satisfy the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste treatment facilities.

Section 266a.20(b) Waste derived products applied to the land

108. **Comment:** Prior department written approval for waste-derived products to be beneficially reused on the land should be waived for HTMR slags that have received a coproduct determination. Prior written department approval is unnecessary when the federal rule is self-implementing. Most states do not have this requirement. (2, 14, 27, 31)

One commentator stated that prior written approval should be required before products containing or derived from hazardous waste are applied to the land and that this is a minimal and obvious precaution. (18)

Response: Some HTMR slags that have Department concurrence as coproducts would otherwise be residual waste and not hazardous waste. The provision at Section 266a.20(b) will not affect those coproduct determinations. Coproducts that would otherwise be hazardous wastes

and are not excluded by the regulatory definition of solid waste are subject to the provisions of 260a.30, coproduct transition scheme.

The Department believes that requiring written approval prior to applying or placing products produced from hazardous waste on the land would provide an extra level of human health and environmental protection. At the May 14, 1998 Solid Waste Advisory Committee meeting, the Department stated that it would conduct a detailed review to determine how many other States require such prior written approval. In the time available for that research, the Department did not find any other state that requires prior written approval. Similarly, the Department did not identify any specific problems that have resulted from placing products that contain or are produced from hazardous waste on the land. The Department will adopt by reference 40 CFR 266.20 with no additional requirements.

Note: EPA has launched a major effort to assess whether or not contaminants in fertilizers may be causing harmful effects, and whether additional government actions to safeguard public health and the environment may be warranted. Possible actions that could be taken include: (1) issuing guidance or regulations on labeling fertilizer ingredients; (2) further restricting the use of hazardous waste in fertilizers; or (3) issuing comprehensive new regulations for contaminants in all fertilizers and soil conditioners. Any such actions has been incorporated into Pennsylvania's implementation of the hazardous waste program. Additional information can be found on the Internet at http:/www.epa.gov/oswer/hazwaste.

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

109. **Comment:** 40 CFR Part 279, 40 CFR Part 266, Subpart E and 25 Pa. Code Chapter 266a, Subchapter E. The Commonwealth should perform a computer search of the electronic CFR to determine where the references are to provisions within 40 CFR Part 279 and amend these provisions, at each appropriate incorporated by reference of the 40 CFR Part, to appropriately reflect and reference the old authorization checklist 19 requirements adopted at 25 Pa. Code Chapter 266a, Subchapter E. The Commonwealth may need to go back to an older version of the provision containing the 40 CFR Part 279 internal reference to determine if the wording can be used without jeopardizing authorization for other checklists. It is strongly recommended that the Commonwealth adopt and seek authorization for the 40 CFR Part 279 requirements at the same time it applies for authorization of the rest of its RCRA requirements. (22)

Response: The Department agrees and has made changes to the final form rule to refer to Chapter 266a, Subchapter E in each case that a reference to 40 CFR Part 279 is contained in a Federal regulation adopted by reference (40 CFR Sections 261.5(c)(4), 261.5(j), 261.6(a)(4), 264.1(g)(2), 265.1(c)(6) and 266.100(b)(1)). The Department is developing a draft chapter of waste oil regulations which is scheduled to be presented to the Board as a proposed rulemaking in September, 1998. That rulemaking has been patterned after the Federal used oil provisions at 40 CFR Part 279 and will replace the existing 25 Pa. Code Chapter 266a, Subchapter E.

110. **Comment:** 25 Pa. Code Chapter 266, Subchapter E. The current Pennsylvania program does not include requirements for generators, transporters, and processor/re-refiners of used oil that are used for other purposes. In addition, there are no requirements for collection centers. (22)

Response: Presently, waste oil generators, transporters, and processor/re-refiners are regulated under Pennsylvania's Residual Waste Management Regulations at 25 Pa. Code Article IX. As stated in the above response, the Department is developing a draft chapter of waste oil regulations which is scheduled to be presented to the Board as a proposed rulemaking by the end of 1998.

111. **Comment:** 25 Pa. Code, Chapter 266a, Subchapter E. 25 Pa. Code, Chapter 266a, Subchapter E is misnumbered. It should be 25 Pa. Code, Chapter 266a, Subchapter D because the subchapter numbering jumps from "C" to "E". (22)

Response: The existing text of Chapter 266, Subchapter D is being deleted and the existing Subchapter E text is being retained and relocated as Chapter 266a, Subchapter E. To minimize confusion, the Subchapter E title has been retained resulting in the absence of a Subchapter D. As described in the above responses, when Pennsylvania's waste oil regulation is promulgated, Chapter 266a, Subchapter E will be deleted resulting in the absence of both Subchapters D and E as in the federal 40 CFR Part 266.

112. **Comment:** 25 Pa. Code, Chapter 266a, Subchapter E. There are internal references to regulations which no longer exist in Pennsylvania's regulations because of the switch to incorporation by reference. Thus, the current Pennsylvania regulations are internally inconsistent. The Commonwealth should change these internal references. (22)

Response: The Department agrees and has reprinted the text of Subchapter E in the final form rule with appropriately revised references.

113. **Comment:** Section 266a.41(a) & 266a.41(a)(1). Because Pennsylvania places the phrase "to burners" in Section 266.41(a) rather than in Section 266.41(a)(1), as it is found in the Federal code, Pennsylvania does not require that burners notify the EPA and have an EPA identification number to be eligible to buy off-specification waste oil. (22)

Response: The Department disagrees. When Section 266a.41(a) is read together with Section 266a.41(a)(1), burners desiring to accept off-specification waste oil must first notify the Department and EPA and have an EPA identification number.

114. **Comment:** Section 266.41(b)(2)(iii). The numbering for this paragraph is incorrect. It should be "(3)" rather than "(2)(iii)". This numbering makes it appear that space heaters are a type of boiler. (22)

Response: The appropriate change has been made in the final form rule.

115. **Comment:** Section 266.43(b)(4)(i)(F). Under what circumstances would off-specification waste oil be subject to EPA rather than Pennsylvania regulation? (22)

Response: Until Pennsylvania receives EPA authorization of the boiler and industrial furnace regulations, burning of off-specification waste oil in boilers or industrial furnaces will be subject to both Federal and State regulations. When Pennsylvania's waste oil regulations, which are scheduled to be presented to the Board as a proposed rulemaking by the end of 1998, are promulgated, the existing 25 Pa. Code Chapter 266a., Subchapter E will be deleted.

Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

116. **Comment:** 40 CFR 266.70. Any permit-by-rule that is placed in the final rule should not require silver recyclers to obtain hazardous waste transporter licenses. Based on all of the above considerations, DEP and EQB should include a permit-by-rule that allows silver recyclers to be regulated consistently with, but no more stringently than the federal rule governing the Management of Recyclable Materials Utilized for Precious Metals Recovery as set forth under Subpart F of 40 CFR Part 266. (21)

Response: The Federal regulations (40 CFR Part 266, Subpart F) adopted by reference at Section 266a.20 only subject transporters of materials utilized for precious metal recovery to manifesting requirements (40 CFR 263.20 and 263.21). The Department will include a provision in the final form rule whereby transporters of such material are deemed to have a license to transport if they comply with the other provisions of 40 CFR Part 266, Subpart F and obtain an EPA identification number. It should be noted that the hazardous waste transportation fees required by the Hazardous Sites Cleanup Act, 35 P.S. § 6020.903 will apply even though a transporter is deemed to have a license under this provision. Also, many precious metal containing materials being reclaimed may not be defined as hazardous waste in accordance with the new definition of hazardous waste contained at 25 Pa. Code Chapter 261a (for example sludges or byproducts exhibiting a characteristic of hazardous waste that are reclaimed).

117. **Comment:** Sections 266.80(b), 266.70(a)(1), and 270a.60(3). Unless the proposed regulations are modified - either by clarifying that the permit-by-rule provision for "reclaiming" spent lead-acid batteries ("SLABs") includes storage prior to reclamation or by including a separate permit-by-rule provision for the storage of SLABs prior to reclamation - the facility which the commentator is associated with has been required to undergo the substantial burdens and expense (around $100,000) of obtaining a full Resource Conservation and Recovery Act Part B permit for the storage of SLABs at a battery manufacturing facility. The commentator urges the Environmental Quality Board (EQB) to revise the December 1997 proposed regulations to include, under the permit-by-rule provisions of Chapter 270a, a specific permit-by-rule provision for the storage of SLABs prior to reclamation. This can be simply and easily accomplished by including the language of the present permit-by-rule in Section 266.80(b) as an additional permit-by-rule provision in Chapter 270a of the proposed regulations. Before any final action by the EQB which would delete the PBR provisions of Section 266.80(b), the EQB and the Department should provide an express statement of the rationale behind this deletion. (19)

technique is consistent throughout the regulatory package and is explained in Section E, Summary of Regulatory Requirements, of the preamble to the proposed rulemaking.

As stated in an above response, the Department has determined that substituting 8,000 Btu/lb for the Federal 5,000 Btu/lb minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The 8,000 Btu/lb minimum heating value substitutions proposed in Section 266a.103 will not be included in the final form rule.

120. **Comment:** Sections 266a.20(a), 266a.103(b) & (c) and 40 CFR 266.103(a)(1)(ii) & (a)(6)(iii). The non-HSWA units—sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators – are all incinerators and are not affected by the 40 CFR 266.103 requirements. Therefore, the Commonwealth would not modify the language of this provision to make a distinction between HSWA and non-HSWA units. The Federal date should be retained because all units affected by the 40 CFR 266.103 requirements are HSWA units. (22)

Response: The Department agrees and has made appropriate changes to the regulatory language. The HSWA vs. non-HSWA distinction was included in the proposed rulemaking based on an outdated copy of US EPA's Guidelines for State Adoption of Federal RCRA Regulations by Reference.

121. **Comment:** Sections 266.103(a), 266a.20(a), 40 CFR 266.103(a)(5)(ii)(B), and 266.103(a)(6). The change that Pennsylvania makes in 25 Pa. Code § 266a.103(a), replacing the 5,000 Btu/lb heating value minimum with an 8,000 Btu/lb minimum, would make Pennsylvania less stringent because hazardous wastes that have a heating value of 5,000 to 8,000 Btu/lb that are not burned for destruction would not be subject to the special requirements listed in 40 CFR 266.103(a)(5). Yet, the change would also make Pennsylvania more stringent because hazardous wastes that have a heating value of 5,000 to 8,000 Btu/lb would now be subject to the restrictions on burning in 40 CFR 266.103(a)(6). (22)

Response: The Department agrees that the 5,000 Btu/lb heating value contained in 40 CFR 266.103(a)(5)(ii)(B) should not be raised to 8,000 Btu/lb since the value establishes a minimum heating value which triggers additional controls applicable to interim status facilities that burn hazardous waste for destruction purposes (as opposed to feeding hazardous waste solely as an ingredient).

As described above, the Department has determined that substituting 8,000 Btu/lb for the Federal 5,000 Btu/lb minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The 8,000 Btu/lb minimum heating value substitutions proposed in 25 Pa. Code 266a.103 will not be included in the final form rule.

122. **Comment:** Sections 266a.20(a), 266a.103(c)(1) & (2) and 40 CFR 266.103(a)(6)(iii)(A) & (B). Because the Commonwealth incorporates by reference, it should retain Federal internal references and refer to the appropriate Commonwealth incorporation reference. (22)

Response: The Department agrees, however, as described above, the final-form rule adopts 40 CFR 266.103 by reference.

CHAPTER 266b. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Section 266b. Universal waste.

123. **Comment:** Other materials such as mercury switches or light bulbs should be added to the universal waste program. (14)

Response: The Department agrees that other materials could be added to the Universal Waste program. The regulations contain a petition process for adding additional wastes to the list of wastes managed as universal wastes in Pennsylvania. The Department presently has two such petitions under consideration – one for mercury-containing lighting devices, and the other for other mercury-containing devices.

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

124. **Comment:** In 25 Pa. Code Chapter 270a., Pennsylvania has included regulations which are analogous to the 40 CFR Part 124 requirements. However, the Commonwealth has incorporated by reference 40 CFR Part 270, which contains internal references to 40 CFR Part 124. The Commonwealth has not established in its regulations how the internal references relate to the numbering and placement of the 40 CFR Part 124 requirements in 25 Pa. Code Chapter 270a. In addition, the structure of Pennsylvania's analog to 40 CFR Part 124 does not resemble the organization of these provisions in the Federal Code. (22)

Response: Pennsylvania is not incorporating Part 124 by reference, but instead has included regulations which are analogous to the Part 124 requirements. Therefore, the internal references to Part 124 in 40 CFR Part 270 are not applicable in the Pennsylvania RCRA Program.

125. **Comment:** 25 Pa. Code Chapter 270a. Pennsylvania has substituted "termination" with "revocation" in its analog to 40 CFR Part 124. This is inconsistent with the provisions of 40 CFR Part 270, which the Commonwealth adopts by reference. The Federal Code made a distinction between "termination" and "revocation and reissuance". (22)

Response: The Department agrees. The Department has added the term "termination" to Chapter 270a. of the final regulations to maintain the distinction contained in the federal regulations.

126. **Comment:** 25 Pa. Code Chapter 270a, Subchapter D contains analogs to 40 CFR 124.3, 124.5, 124.6, 124.7, 124.8, and 124.17. The title of that subchapter is "Changes to Permits", and the only section in the subchapter is titled "Modification or Revocation and Reissuance of Permits". These titles are inconsistent with the substance of the requirements contained in that subchapter. Only 40 CFR 124.5 exclusively addresses changes to permits. Pennsylvania should place the analogs to the other Federal sections under headings which reflect the substance of the provisions

contained within them. Also, note that in the listing of the subchapters at the beginning of 25 Pa. Code Chapter 270a, the title of 25 Pa. Code Chapter 270a, Subchapter D is "Transfer of Permits". (22)

Response: The listing of Subchapters at the beginning of Chapter 270a has been corrected from "Transfer of Permits" to "Changes to Permits".

127. **Comment:** Pennsylvania's code does not contain definitions for "disposal", "hazardous waste", "person", "storage", and "treatment", applicable to the 25 Pa. Code Chapter 270a requirements. The Commonwealth specifically excluded the Federal definitions from its incorporation by reference of 40 CFR Part 270, but did not include its own definitions in 25 Pa. Code Chapter 270a. It is unclear why these definitions were excluded. For clarity and the convenience of the regulated community, the Commonwealth should either include the terms in its incorporation by reference or add it's own equivalent definitions into its code. (22)

Response: Pennsylvania definitions are found in the Solid Waste Management Act. The governor's executive order 1996—1 directs the Department not to repeat statutory definitions in the regulations.

128. **Comment:** The provisions at 25 Pa. Code Chapter 270a.3 address the fee schedule for TSD facility permit applications. The Federal code does not contain analogous provisions; therefore, Pennsylvania is broader in scope. (22)

Response: Application fees are mandated by the Solid Waste Management Act.

129. **Comment:** Pennsylvania has excluded 40 CFR 270.4 from its incorporation by reference of 40 CFR Part 270. This provision addresses the effect of a permit. The Federal section is required for authorization; therefore, the Commonwealth is less stringent. (22)

Response: Including this provision in Pennsylvania's regulations would violate the SWMA and, without this provision, the Department has more enforcement power than EPA, because it is not limited to enforcing the requirements of the permit. Specifically, section 602 of the SWMA, 35 P.S. § 6018.602 authorizes the Department to issue orders to require compliance with any provision of the act, without limiting the violations to noncompliance with the terms of a permit.

130. **Comment:** Pennsylvania has excluded 40 CFR 270.5 from its incorporation by reference of 40 CFR Part 270. 40 CFR 270.5 addresses reporting by the State Director. (22)

Response: All necessary reporting is done through the RCRA Grant procedures and does not need to be duplicated.

131. **Comment:** 40 CFR 270.5 should be excluded from the blanket substitutions of terms at 25 Pa. Code Chapter 260a. 3. (22)

Response: The Department agrees and has made this change.

132. **Comment:** Section 270a.10(a)(2). The Commonwealth is correct in indicating that these terms should not be replaced. However, "Department" and a State analog to RCRA 3008 need to be inserted into this paragraph. (22)

Response: In the final form rule "Department" has been substituted for "Administrator" and "Sections 602 and 610" of the SWMA have been substituted for "Section 3008 of RCRA".

133. **Comment:** The provision at Section 270a.10(a)(3) could be misinterpreted as implying that the only applications required are those under 40 CFR 270.10(f)(2) and (g)(1)(i). A clearer approach would be to exclude 40 CFR 270.10(f)(2) and (g)(1)(i) from the IBR and replace them with paragraphs in which the Federal phrasing regarding the optional submittal is removed, which appears to be the Commonwealth's intent. (22)

Response: The Department drafted new language that it believes will not be misinterpreted.

134. **Comment:** The Commonwealth should remove the phrase "if the facility is located in a State which has obtained interim authorization or final authorization" from its incorporation by reference of CFR 270.10(g)(1)(i). (22)

Response: The Department has added language to Section 270a.10 of the regulations which clarifies that permit applications are submitted to the Department rather than to the EPA.

135. **Comment:** The Commonwealth incorporates by reference 40 CFR 270.12 (relating to confidentiality of information). In section 270a.12, Pennsylvania has modified the incorporation by reference; however, due to the general text of the modification, it is unclear how the modification impacts the regulations incorporated by reference. It appears that the text at 25 Pa. Code 270a.12 does not directly change the requirements of 40 CFR 270.12, but merely clarifies the requirements. Also, Pennsylvania has added informational requirements to the submission of a confidentiality claim at 25 Pa. Code 270a.12(2)(iii)-(vi) which the Federal code does not contain in 40 CFR Part 2. (22)

Response: The Department clarified this section by deleting the incorporation by reference and listing its requirements.

136. **Comment:** Section 270a.3. Since the Commonwealth has not incorporated by reference 40 CFR 270.3, it should exclude the provision at 40 CFR 270.14(b)(20) from its incorporation by reference as well. (22)

Response: The Department agrees and has made the necessary change.

137. **Comment:** Section 270a.29. Pennsylvania has substituted the phrase "25 Pa. Code Chapter 270a, Subchapter H" for "Part 124". However, this replacement does not take into account that several of the Commonwealth's analogs to the 40 CFR Part 124 procedures are located in 25 Pa. Code Chapter 270a, Subchapter D. In addition, this type of substitution must be corrected for

other references to 40 CFR Part 124 provisions in 40 CFR Part 270 and in all of the Federal provisions incorporated by reference. (22)

Response: Section 260a.3 of the final form rule contains language which clarifies the replacement of Part 124 procedures.

138. **Comment:** The Commonwealth should exclude 40 CFR 270.32(a)&(c) from the blanket substitution of "EPA" or modify these provisions to remove non-applicable wording. (22)

Response: The Department agrees and has made the necessary changes.

139. **Comment:** The Commonwealth should exclude 40 CFR 270.32(b)(2) from the blanket substitution of "Administrator". An alternative would be to modify this paragraph to replace RCRA §3005 with the appropriate Commonwealth analog and remove "Administrator". (22)

Response: The appropriate analog to RCRA §3005 is sections 501, 502 and 503 of the SWMA. The correct language has been inserted. The blanket substitution of terms with respect to "Administrator" and "Department" now correctly applies.

140. **Comment:** Section 270a.61. This provision clarifies that the Department has other authorities under which the permit requirements can be waived. However, it is unknown if these conditions are consistent with those addressed by 40 CFR 270.61. If they are not consistent, then the Commonwealth is potentially less stringent than the Federal requirements. (22)

Response: Section 270a.61 has been removed from the final form regulation.

141. **Comment:** Section 270a.64. Pennsylvania excludes 40 CFR 270.64 from its incorporation by reference. (22)

Response: There are no class 1 UIC wells in Pennsylvania and Pennsylvania does not have an approved UIC program.

142. **Comment:** Section 270a.41(1). Pennsylvania does not specify that a permit application must be submitted for each required permit. (22)

Response: The requirement has been added at 270a.10(c) in the final form rule.

143. **Comment:** Section 270a.41(3). The Commonwealth's regulations do not set time limits for the Department's review for completeness. Under the Federal program, an application submitted by an existing facility must be reviewed for completeness within 60 days, and an application submitted by a new facility must be reviewed for completeness within 30 days. (22)

Response: While the time limits are not set in the regulations, they are in Pennsylvania's "Money Back Program". The Department has 20 days to do a completeness review under that program. 40 CFR 124.3(c) is not required for authorized programs in 40 CFR 271.14.

144. **Comment:** Pennsylvania does not reference 40 CFR 270.43 which deals with reasons for termination of a permit. For clarity, the Commonwealth should include this internal reference. (22)

Response: The internal reference has been added to the final form rule in Section 270a.41.

145. **Comment:** Section 270a.80(1)(iv). The Commonwealth requires the Department to give public notice whenever a closure/postclosure plan has been received in accordance with 40 CFR 264.112(d) and 264.118(a). (Note that it appears that the reference to 40 CFR 264.112(d) should be to 264.112(a).) Pursuant to those 40 CFR Part 264 requirements, a facility must include a closure/postclosure plan within its permit application. Therefore, by the requirements at 25 Pa. Code 270a.80(1)(iv), the Department must give public notice whenever a permit application is received. This is more stringent than Federal Code. (22)

Response: The reference to 40 CFR 264.112(d) has been changed to 40 CFR 264.112(a). Pennsylvania regulations at 264a.112 also require the closure plan / postclosure plan to be included in the permit application. Public notification of the receipt of a permit application has been included in Pennsylvania's regulations for many years. The Department feels that the public should be kept informed as to the receipt of all permit applications which could affect the surrounding area. Public input could be invaluable in supplying information necessary to make an informed decision concerning a permit.

146. **Comment:** Commonwealth regulations do not contain analogous language to the Federal notification provision regarding sludge management permits and ocean dumping permits. This modification has the potential to make Pennsylvania less stringent; however, the Commonwealth is only less stringent if these types of activities are allowed in Pennsylvania. (22)

Response: The notice provision has been added in the final form rule at 270a.80(d)(1)(ii).

147. **Comment:** The Commonwealth has replaced "any unit of government" with "A unit of local government". Under the Commonwealth's requirements, only one unit of government needs to be notified. Under the Federal requirements, all units of government in the affected areas must be notified. Thus, Pennsylvania is less stringent. (22)

Response: The Department agrees and has made the change in the final form rule.

148. **Comment:** The Commonwealth has replaced "each state agency" with "A State Agency". Under the Commonwealth's requirements, only one State agency needs to be notified. Under the Federal requirements, each State agency having any jurisdiction must be notified. Thus, Pennsylvania is less stringent. (22)

Response: The Department agrees and has made the change in the final form rule.

149. **Comment:** The Commonwealth has added the language "before, during or after the public hearing" to clarify when oral and written statements and data may be submitted. The Federal analog does not specifically indicate that comments may be submitted before, during or after the hearing. It appears to be inconsistent with the structure of the public hearing provision to allow comments to be submitted outside of the comment period, which normally ends at the close of the public hearing unless extended by the Department. Pennsylvania should address this inconsistency. If comments are allowed after the close of the public hearing without an extension of the comment period, then the Commonwealth may be more stringent. (22)

Response: The Department allows for a 45 day comment period, but the Department can schedule a public hearing 30 days after public notice which leaves 15 days after the close of the public hearing. The Department has clarified this in the regulations.

150. **Comment:** Pennsylvania's code does not include any of the requirements of Revision Checklist 148, which provide for extended public participation. Thus, the Commonwealth is less stringent. The extended public participation language can now be found at 270a.83. (22)

Response: The Department has included equivalent language in Chapter 270a, Subchapter H, Section 270a.83 (Public Notice and Hearings) in the final form rule.

Appendix I for 40 CFR 270.42. Classification of Permit Modification.

151. **Comment:** This provision of the preamble (obtained through the DEP web site) refers to "an appendix that classifies permit modifications as Class 1, Class 2, or Class 3 modifications." That appendix could not be found in the accompanying document containing the actual language of the proposed regulations (obtained through the DEP web site). The appendix was also missing from the corresponding issue of the Pennsylvania Bulletin (12/6/97-Vol.27,No. 49, Part II). (18)

Response: This appendix was proposed to be adopted by reference and can be found at 40 CFR 270.42. This regulation adopts Appendix I and will expand our conformance with the federal program by adopting the classifications for permit modifications.

152. **Comment:** Appendix I would increase the scope of permit changes that could be instituted by Department and the permittee, with no effective public participation. Based on the general trend of Department's conduct in recent years, there is ample reason for concern that this provision would be abused. (18)

Response: All three classes of permit modifications require the permittee to notify everyone on the facility mailing list (including local and county government) of the proposal. In the minor modification (Class1), anyone can request the Secretary of the Department to review and deny the modification request. Class 2 and 3 modifications procedures call for full public participation, including publishing the notice in a major local newspaper, announcement of at least a 45-day comment period, and announcement of a public meeting and a public hearing, if requested. The Department believes that adopting this appendix by reference will increase

public participation. The current regulations do not require the Department or the permittee to notify the public of a minor permit modification.

Subchapter F. SPECIAL FORMS OF PERMITS

Section 270a.60. Permits-by-rule.

153. **Comment:** Section 270a.60. Permits-by-Rule. In practice, permit-by-rule serves the permitted industries by providing the illusion of regulation, instead of serving the public by providing effective regulation. It might be better to abolish permit-by-rule. (18)

Response: In general, permit-by-rule is available, under Pennsylvania's regulations, to the owners or operators of certain hazardous waste management facilities that are exempt from permit and other requirements under federal hazardous waste regulations. Permit-by-rule satisfies the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste storage, treatment or disposal facilities and provides a reasonable level of regulatory oversight. The owners or operators of permit-by-rule facilities must notify the Department of their activity and meet some basic facility standards. The notification requirement alone is important to the Department in order that inspectors may schedule and prioritize periodic visits to a permit-by-rule facility. In situations where a facility is not in compliance with the applicable permit-by-rule requirements, particularly to the extent that harm or threat of harm to people or the environment is present, the Department may require the owners or operators of such facilities to obtain an individual permit.

154. **Comment:** Section 270a.60(b)(1) and 40 CFR 270.1(c)(2)(v). Pennsylvania should adopt the Federal regulation at 40 CFR 270.1(c)(2)(v) which specifically excludes wastewater treatment units that treat hazardous waste, from RCRA permitting and RCRA permit-by-rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. A commentator stated that the federal exclusion from permitting and permit-by-rule requirements for units regulated under the Clean Water Act eliminates duplication of effort by different departments of the federal agency and allows the regulated community to focus its compliance efforts on the regulations that are most appropriate to the operating unit. Concern was also expressed over the additional recordkeeping requirements for operators as well as additional inspection requirement for state hazardous waste inspectors. A commentator stated that if Pennsylvania statute requires permit-by-rule for units such as elementary neutralization and wastewater treatment units, the regulations should clarify that wastes to such units do not count in determining if site is large quantity generator. (14, 16, 17)

Response: Permit-by-rule is available to wastewater treatment units, and certain other hazardous waste management facilities, in order to satisfy the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste storage, treatment, or disposal facilities. Pennsylvania's Regulatory Basics Initiative provided for retention of regulations that are more stringent than federal regulations if such requirements are the result of a state statute. The Department has examined the permit-by-rule provisions of proposed 25 Pa. Code § 270a.60 and will reduce or streamline many of the specific requirements in the final form regulation. Existing

regulations at 25 Pa. Code § 261.5(c)(2) and federal regulations at 40 CFR 261.5(c)(2), which has been incorporated by reference with this rulemaking, clearly state that generator quantity determinations do not need to include hazardous wastes that are managed in onsite elementary neutralization or wastewater treatment units.

155. **Comment:** Section 270a.60(b)(1)(i). This section retains Pennsylvania's prohibition against intracompany shipments of hazardous wastes to an elementary neutralization or wastewater treatment permit-by-rule facility. This limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. The prohibition does not exist in neighboring states; for instance, member companies can send hazardous wastes from their Pennsylvania plants to Ohio plants for treatment, but cannot receive intracompany shipments from either Ohio or Pennsylvania. This type of exception to the Federal rules is typical of the discrepancies between Pennsylvania's rules and the federal rules that were intended to be eliminated by the regulatory basics effort. This section should be consistent with Federal regulations and allow intracompany shipments of wastes for treatment. Conforming to the Federal elementary neutralization/wastewater treatment unit provisions will afford Pennsylvania business the opportunity to use existing investment to reduce operating costs, and reduce risks associated with transporting such wastes to neighboring states. It should be noted that the rules do permit intracompany transfers for reclamation. (15, 17, 23, 31)

Response: Changes have been made to the elementary neutralization and wastewater treatment unit permit-by-rule provisions to allow receipt of off-site hazardous waste shipments for treatment at such facilities, provided the conditions of the permit-by-rule are not violated (e.g. compliance with an NPDES permit or pretreatment requirements is maintained). To prevent classification as a commercial hazardous waste treatment facility and consequential application of the siting, fee assessment, and other requirements of the Hazardous Sites Cleanup Act, such permit-by-rule facilities must be limited to receipt of wastes from other facilities operated or owned by the same generator. Limiting off-site wastes in this manner will also provide additional assurance that the owner or operator of the permit-by-rule facility has a better knowledge of the physical and chemical character and composition of the wastes being treated at the facility.

156. **Comment:** Section 270a.60. The commentator questions whether they would continue to be allowed to recycle oily wastewaters from other facilities they own and operate as the proposed regulations do not define on-site as including materials generated at facilities owned and operated by the same generator. If this is the case, the commentator requests that a provision allowing recycling of materials generated at facilities owned and operated by the same generator be included in the new regulations. (20)

Response: As proposed, section § 270a.60(b)(5)(iii) provided for the reclamation of materials generated at other facilities operated or owned by the same generator at an onsite reclamation permit-by-rule facility. This is included in the final-form regulation as well.

157. **Comment:** Sections §§ 260a.3(b) and 270a.60(b)(3), and 40 CFR 266.80. Despite the provisions at section § 260a.3(b), it is confusing to have provisions in one part of the

Commonwealth regulations stating that a facility is exempt from the regulations while provisions in another part of the code state that the facility is subject to certain requirements under those regulations. The Commonwealth should modify its incorporation by reference of 40 CFR 266.80 to take into account the permit-by-rule requirements at 25 Pa. Code § 270a.60(b)(3). (22)

Response: The permit-by-rule available to battery manufacturing facilities that reclaim spent lead-acid batteries is for those activities associated with the reclamation activity that will satisfy the State specific requirement for permitting non-storage hazardous waste recycling activities. To clarify this issue further, the Department has made changes to the incorporation by reference of 40 CFR 266.80 which will refer to the permit-by-rule provision of 25 Pa. Code §270a.60(b)(3).

158. **Comment:** Sections §§ 270a.60(b)(4), 260a.3(b), 261a.6, and 40 CFR 261.6(a)(3)(iii). This provision is inconsistent with the incorporation by reference of 40 CFR 261.6. At 40 CFR 261.6(a)(3)(iii), these types of facilities are excluded from the permit requirements. Therefore, it is unclear why such a unit would need a permit-by-rule. If these facilities are subject to a permit-by-rule, then Pennsylvania should modify its incorporation by reference of 40 CFR 261.6(a)(3)(iii) to take into account this requirement. Relying on 25 Pa. Code § 260a.3(b) to handle this situation may be confusing to the regulated community. If Pennsylvania intended to require compliance with the permitting requirements, then the Commonwealth's requirements are more stringent than the Federal requirements. It may be that Pennsylvania intended for the modifying text at 25 Pa. Code § 261a.6 to exclude these facilities from the exemption of 40 CFR 261.6(a)(3); however, it is unclear. Additionally, the text of 40 CFR 261.6(a)(3)(iii) requires the waste to result from "normal petroleum refining, production, and transportation practices" in order to qualify for exclusion. If these conditions are not met, this practice is not exempt from the permitting requirements. Because the Commonwealth makes no such qualification, it is less stringent for these wastes which do not meet the qualification, since by the operation of 25 Pa. Code § 260a.3(b), these wastes would be subject only to a permit-by-rule. (22)

Response: The method of incorporating 40 CFR Part 261 by reference has been revised in the final form regulation. 25 Pa. Code 261a.6 now specifically states that 40 CFR 261.6(c) is not being incorporated by reference. The Department interprets the exemption in 40 CFR 261.6(a)(3)(iii) as applicable only to fuels produced from refining oil-bearing hazardous wastes (and then only if the hazardous wastes resulted from normal petroleum refining, production and transportation practices). The permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed 25 Pa. Code § 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

159. **Comment:** Section § 270a.60(a) and 40 CFR 270.60. Pennsylvania has added language which gives the Department the authority to require a facility which qualifies for a permit-by-rule to obtain an individual permit under certain circumstances. This is implied in the Federal regulations. (22)

Response: This language was not included to provide the Department with authority to require an individual permit; such authority is provided under the Pennsylvania Solid Waste Management Act. Rather, the language has been included to provide general notice to the owners or operators of permit-by-rule facilities that an individual permit could be required under certain circumstances of non-compliance or endangerment to human health or the environment.

160. **Comment:** Section § 270a.60(b)(1) and 40 CFR 270.1(c)(2)(v). This provision is inconsistent with the incorporation by reference of 40 CFR 270.1(c)(2)(v) without modification. At 40 CFR 270.1(c)(2)(v), these types of facilities are excluded from the permit requirements. Therefore, it is unclear why such a unit would need a permit-by-rule. If Pennsylvania intended to require compliance with the permitting requirements, then the Commonwealth is broader in scope, but it should exclude 40 CFR 270.1(c)(2)(v) from the incorporation by reference. (22)

Response: The Department has revised the incorporation by reference language of proposed 25 Pa. Code § 270a.1 to reflect that the owners or operators of facilities excluded from permit requirements under 40 CFR 270.1(c)(2) may be subject to the permit-by-rule provisions of 25 Pa. Code § 270a.60. The need for these facilities to operate under a permit-by-rule is based on the Pennsylvania Solid Waste Management Act requirement for all hazardous waste treatment, storage or disposal facilities to operate under a permit issued by the Department.

161. **Comment:** Section § 270.60(b)(3) and 40 CFR 266.80(b)(4), and Parts 270 and 124. Under the requirements at 40 CFR 266.80(b)(4), the Federal code subjects facilities which store batteries prior to reclaiming them to the full permit requirements of 40 CFR Parts 270 and 124. Therefore, the Commonwealth is less stringent. However, the Federal requirements exclude facilities which reclaim batteries without storing them from the RCRA requirements. Because these facilities must meet permit-by-rule requirements for the Commonwealth, Pennsylvania is more stringent. (22)

Response: The permit-by-rule available to battery manufacturing facilities that reclaim spent lead-acid batteries is for treatment conducted prior to the actual reclamation of the batteries and will satisfy the State specific requirement for permitting hazardous waste treatment activities that occur prior to recycling processes (25 Pa. Code § 261a.6). Federal regulations at 40 CFR 261.6(c)(1) exempt recycling processes from regulation (permitting). Since Pennsylvania is incorporating 40 CFR Part 266, Subpart G by reference, battery manufacturing facilities that store spent lead-acid batteries before reclaiming them has been subject to full permit requirements for the storage. To clarify this issue further, the Department has made changes to the incorporation by reference of 40 CFR 266.80 which will refer to the permit-by-rule provision of 25 Pa. Code § 270a.60(b)(3). Battery manufacturing facilities that reclaim batteries without storing them will only be subject to the permit-by-rule provision of 25 Pa. Code § 270a.60(b)(3).

162. **Comment:** Sections §§ 270a.60(b)(5), 261a.6 and 40 CFR 261.6(c). The Commonwealth has included a permit-by-rule for facilities that reclaim hazardous waste onsite, at the site where it is generated. According to 40 CFR 261.6(c)(2), the recycling process is exempt from the permitting requirements in the situation where there is no storage prior to recycling or

reclamation; however, the Commonwealth requires permits for reclamation pursuant to 25 Pa. Code § 261a.6. Therefore, Pennsylvania is more stringent because these facilities would not normally require a permit for recycling. Under 25 Pa. Code § 270a.60(5), onsite reclamation can obtain a permit-by-rule if certain conditions are met. The Commonwealth remains more stringent for those facilities which do not store prior to reclamation. (22)

Response: The onsite reclamation permit-by-rule provision of 25 Pa. Code § 270a.60(b)(5), as well as most of the other permit-by-rule provisions of 25 Pa. Code § 270a.60, are designed to satisfy the permitting requirements of Pennsylvania's Solid Waste Management Act. With respect to facilities that treat hazardous waste before it is recycled, this statutory permit requirement is reflected in 25 Pa. Code § 261a.6.

163. **Comment:** Section § 270a.60(b)(6), 40 CFR 261.6(c)(1), 261.6(a)(3), and 262.34. The Commonwealth has a permit-by-rule for facilities storing hazardous waste onsite in tanks, containers or containment buildings and reclaiming hazardous waste onsite, at the site where it is generated. According to 40 CFR 261.6(c)(1), such facilities are subject to the permitting requirements unless specifically exempted pursuant to 40 CFR 261.6(a)(3). Therefore, the availability of the permit-by-rule makes Pennsylvania less stringent, unless the recyclable material is one listed in 40 CFR 261.6(a)(3). In that situation, Pennsylvania is more stringent. (22)

Response: The Department agrees that the permit-by-rule at 25 Pa. Code § 270a.60(b)(6) for storage of hazardous waste onsite prior to reclamation under the onsite reclamation permit-by-rule provisions of 25 Pa. Code § 270a.60(b)(5) could be less stringent than Federal storage permit requirements. The storage permit-by-rule provision has been dropped from the final form rule.

164. **Comment:** Sections §§ 270a.60(c) and 270a.60(b)(3)-(6). The variance from any permits-by rule described in 25 Pa. Code § 270 a.60(b)(3)-(6) has made the Commonwealth less stringent if it applies to requirements which are equivalent to or less stringent than the Federal code. Pennsylvania may only grant a variance from more stringent requirements. Because the provision gives the Commonwealth the discretion to issue a variance from requirements which may be equivalent to the Federal code, it is recommended that Pennsylvania remove this provision or reword it so as to guarantee that the result of its applications is no less stringent than the Federal code. (22)

Response: The permit-by-rule provisions of proposed 25 Pa. Code § 270a.60 has been revised as described in above responses to insure that they only apply to hazardous waste activities that are exempt from Federal permit requirements. Therefore, the variance provisions of proposed 25 Pa. Code § 270a.60(c), which are only applicable to certain recycling facilities operating under permit-by-rule, should not result in requirements that are less stringent than Federal requirements.

Miscellaneous.

165. **Comment:** The hazardous waste amendments will relax our environmental laws. (30)

Response: The Department has extensively reviewed existing regulations and where appropriate has modified the regulation to reflect the federal counterpart. In doing so the Department has determined where the federal counterpart to be protective of human health and the environment.

In those instances where the Department felt the federal regulatory counterpart did not address Pennsylvania's needs, the Department retained its current requirements or modified the federal requirements to address these needs.

166. **Comment:** Commentator expressed concern about the reclassification of Coal Combustion By-Products from a hazardous waste to a residual waste. (30)

Response: Coal Refuse as defined in the Act of September 24, 1968 (P.L. 1040, No. 318), (The "Coal Refuse Disposal Act.") is specifically excluded from being a hazardous waste by state law (the Solid Waste Management Act of July 7, 1980).

167. **Comment:** We have reviewed the proposed amendments and concur with the Department's proposal to include the federal regulations by reference. (5)

Response: No response necessary.

168. **Comment:** We believe none of the proposed regulation changes would weaken the Commonwealth's ability to protect aquatic resources and therefore PFBC supports the amendments as submitted.

Response: No response necessary.

Summary of Hazardous Waste Management Regulation Comments
of The International Metals Reclamation Company, Inc. (INMETCO)

INMETCO, located in Ellwood City, Pennsylvania, operates the only high temperature metals recovery (HTMR) process in the United States designed to recover nickel, chromium, iron, and cadmium from metal-bearing secondary materials. Because it conserves non-renewable resources and provides a variety of other environmental benefits, INMETCO's HTMR process has been recognized by U.S. EPA as the Best Demonstrated Available Technology for the treatment of metal-bearing hazardous wastes.

While INMETCO has accommodated itself to operating under two separate regulatory regimes, we can appreciate the potential advantages of a system in which the State hazardous waste program mirrors the Federal program. To realize these advantages, the Pennsylvania regulations must closely track the Federal rules and go beyond Federal requirements only where more stringent State rules are justified by "an identified compelling State interest." Several provisions of the proposed Amendments do not meet this test. They impose regulatory requirements and paperwork burdens that exceed Federal requirements and are not justified by a compelling State interest. This would discourage desirable recycling and place Pennsylvania businesses at a competitive disadvantage. Our principal concerns are as follows:

- "Coproduct" determinations should continue to be available under the Pennsylvania rules. At a minimum, those materials for which "coproduct" determinations have been made under the current regulations should be "grandfathered" under the new regulations.

- 40 CFR § 261.3(c)(2)(ii)(C)(*1*), which exempts from hazardous waste regulation HTMR slags that meet health-based exclusion levels and are managed in a specified way, should be incorporated into the Pennsylvania regulations. If this is not done (and the Board eliminates "coproduct" determinations), beneficial land-based uses of HTMR slag -- which currently are allowed under both Pennsylvania and Federal rules -- could effectively be banned in the Commonwealth. This would raise the costs of HTMR processing substantially, making it more difficult for this important form of recycling to compete with landfilling of metal-bearing wastes.

- The Board should make clear that HTMR slags being shipped for beneficial use within the Commonwealth do not have to be carried by a licensed hazardous waste transporter and are not subject to hazardous waste transportation fees.

- The Module I pre-approval requirement should be eliminated or narrowed, at least for recycling facilities. Moreover, to the extent it is retained, DEP regional offices should be given the discretion to waive the requirement for individual facilities where the regional office concludes that its approval of Module I forms is not necessary in order to ensure that the facility accepts only wastes it is able to manage properly.

- If the Board retains a requirement for prior DEP approval before a waste-derived product can be used beneficially on the land under 25 Pa. Code § 266a.20(b), the requirement should be waived in the case of HTMR slags for which the Department has concurred in a "coproduct" determination.

Proposed Changes to Hazardous Waste Regulations
(25 PA Code Chapters 260-270)
25 PA Bulletin - Volume 27 (December 6, 1997)
Duquesne Light Company
Comments to the PA Environmental Quality Board
January 28, 1998

Duquesne Light Company is an electric utility serving approximately 565,000 customers in the Pittsburgh area and has six (6) small quantity and one (1) large quantity generator of hazardous waste and no treatment storage and disposal facilities. The Company agrees that alignment of Pennsylvania's hazardous waste program with the federal program is a necessary and positive development. However, we cannot agree with certain provisions that place Pennsylvania at an economic disadvantage with other states and have no real benefit to environmental health and safety. The following comments are provided with respect to the proposed regulation;

1. Proposed 25 PA Code §262a.22 - Number of Manifest Copies

   The Department should adopt the federal four part manifest rather than the proposed six part manifest in order to realize benefits from EPA's manifest streamlining initiatives (i.e. commercial software preparation and/or submittal).

2. Proposed 25 PA Code §265a.52 - Content of Contingency Plan

   The Department should revise the DEP PPC guidelines to follow the EPA Integrated Contingency Plan (40 CFR 264.52 & 265.52) with additional state requirements as a supplement or appendix.

3. Proposed 25 PA Code §265a.175 - Container Spacing in Containment

   The proposal should reference a national code on storage requirement or as an alternative only require container storage that would allow unobstructed movement of emergency equipment and personnel into all storage areas where waste is accumulated or stored.

4. Proposed 25 PA Code §265a.56910 - Emergency Reporting

   Emergency notification should be to the appropriate DEP regional office instead of the Harrisburg office. This would be consistent with other emergency notification requirements.

Summary of Comments on 6 December 1997 Hazardous Waste Management Amendments Submitted by Air Products and Chemicals, Inc.

Air Products generally supports the proposed hazardous waste management rule changes. The changes reduce paperwork, without sacrificing environmental protection. Elimination of unneeded state-only requirements eliminates the need for special training and compliance systems to meet unique state requirements and reduces the quantity of paper processed by DEP.

Air Products suggests these additional changes to the regulations to remove requirements for which the environmental benefit is not commensurate with the cost and paperwork:

- The requirements regarding container storage and aisle spacing (25 PAC 265.178) should be removed. This is unduly specific to satisfy the need that all drums be readily accessible.

- Delete the state-specific tank accumulation requirements at 25 PAC 262.34(a)(1)(ii)(A) and 25 PAC 262.34(a)(1)(ii)(B). These sections are unduly specific and require unnecessary paperwork. The generator should be allowed to determine how to demonstrate compliance with the 90-day accumulation rule.

- Delete the requirement at 25 PAC 265a.195 to inspect hazardous waste tanks every 72 hours when the facility is not operating. Site specific Best Management Practices can be employed to replace inspection requirements when the facility is not operating.

- Delete the container packing, labeling, and marking requirements at 25 PAC 262.34(a)(3) that apply to accumulation in containers. The referenced Department of Transportation requirements apply only when the container is shipped and provide no added protection during accumulation. The requirements are difficult to impossible to comply with, when different compatible wastes are accumulated in the same drum. In this case, the proper DOT labeling and marking requirements will change as the drum is filled and the percentage of various constituents changes. Accumulation of Lab Pack chemicals also cannot strictly meet requirement.

- Adopt EPA language on elementary neutralization and wastewater treatment exemptions (40 CFR 270.60) instead of permit by rule. This provides more flexibility and incentives to manage waste appropriately on-site in lieu of off-site shipments. If Pennsylvania statute requires PBR in these cases, clarify that wastes to wastewater treatment and elementary neutralization do not count in determining if site is large quantity generator. Also, reduce specific regulatory requirements (25 PAC 270a.60).

- Eliminate the requirement (25 PAC262.34 (e)(5)) for small quantity generators to comply with the Chapter 265 Subchapter D requirements covering PPC plans. Subchapter D imposes an undue paperwork burden considering the quantity of waste involved.

- Eliminate requirement (25 PAC 261.41(b)(7)) for small quantity generators to notify the state of temporary change to large-quantity generator status.

SUMMARY COMMENTS
SUN COMPANY, INC.
HAZARDOUS WASTE MANAGEMENT
DECEMBER 6, 1997 PROPOSED RULEMAKING

The following is a one page summary of comments prepared by Sun Company, Inc. on the Proposed Rulemaking on Hazardous Waste Management that were published in the **Pennsylvania Bulletin** on December 6, 1997.

§260a.10 Definitions

The PaDEP has failed to adopt of definition for several key terms, including processing and storage. Definitions for these terms are needed to avoid confusion.

§261a.6 Requirements for recyclable materials

Sun is very concerned about this proposed section. The burden of obtaining a permit will add cost, administrative complications and discourage recycling. Absent a compelling showing, Pennsylvania industries should not be subjected to this burden. Sun believes there is no need for a permit; however, if the Department feels that certain recycling activities must be permitted, than the Department should propose to permit those activities and state reasons for it.

§270a.60 Permit-by-rule

Federal regulations at 40 CFR 270.1(c)(2)(v) specifically exclude wastewater treatment units that treat hazardous waste from RCRA permitting and RCRA permit-by-rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. This exclusion was established to avoid duplication of effort from different departments of the Federal Agency (or their authorized state agency). The proposed regulations continue to require a permit-by-rule for these activities. By continuing to make wastewater treatment units subject to hazardous waste permit-by-rule regulations, these units are subject to unnecessary paperwork requirements and unnecessary restrictions not in place in the Federal program. This continues to put Pennsylvania wastewater treatment units, particularly at industrial facilities, at a disadvantage. Sun recommends a complete adoption of the Federal program.

Although Sun believes that the complete exemption offered by the Federal regulations should be adopted, Sun offers the following additional comments if the permit-by-rule requirements are retained. Section (b) of the proposed regulations retains the existing permit-by-rule restriction that limits the permit-by-rule to wastewater treatment units that only accept wastewaters generated on-site. This restriction limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. (The only way to accept the wastes is to obtain a full hazardous waste permit for these facilities, a very costly option.) This causes these small facilities to dispose of these wastewaters at commercial hazardous wastewater treatment facilities at significantly higher costs not required for similar non-Pennsylvania facilities. In addition, many of these small facilities only generate these wastewaters as a result of remedial activities. Unfortunately, these remediation wastewaters must be sent to a commercial wastewater treatment facility at a significant cost. To avoid these unnecessary costs, Sun recommends that the proposed regulations be modified to allow the acceptance of company owned (captive) hazardous wastewaters. The PaDEP has already established this practice for on-site reclamation permit-by-rule facilities as well as residual waste permit-by-rule wastewater treatment facilities.

Summary of Comments on Notice of Proposed Rulemaking
Hazardous Waste Management
(25 Pa. Code, Chapters 260a-266a, 266b, 268a-270a)

In response to the notice of proposed rulemaking, I am submitting three pages of comments. I submit these comments as an individual citizen. I have no affiliation with any of the industries that would be subject to these proposed regulations. The first section of this document summarizes my comments on specific provisions of the proposed regulations. That section is followed by some general comments.

Comments on Specific Provisions

Support for provisions of proposed regulations:

- Hazardous Waste Management and Administrative Fees – retention of fees
- Tanks -- retaining labeling requirements
- Tanks -- inspecting even if facility is not operating
- Waste Piles – no exemption for periodic removal
- Waste Piles – "25-year storm" design standard
- Land Treatment – restrictions on food crops
- Land Treatment – prior written approval for land application
- BIF Waste Burning – 8000 BTU/lb. minimum heating value

Concern about provisions of proposed regulations:

- Groundwater – ACL creates enforcement loophole
- Permit Modification – effect is to curtail public scrutiny and participation
- Permit-by-Rule – existing DEP program is a fig leaf for permitted industries

General Comments

The practice of making the text of proposed regulations available through the DEP web site is commendable. However, the appendix containing the changes to the permit modification regulations was apparently not included.

Other procedural aspects of the proposed rulemaking have had the effect – perhaps intentional – of discouraging public comment on this subject. The three public hearings were held at 1 p.m. on weekdays – a time most convenient for the professional representatives of the regulated community, but certainly not for members of the general public. The comment period of 60 days – **90 days would have been appropriate** – straddled the Christmas holidays. To professional representatives of the regulated community, the holiday season poses no significant problem. That is not the case for members of the general public.

John F. Warren
233 Ridge Avenue
Pittsburgh, PA 15202
February 1, 1998

SUMMARY OF COMMENTS OF **EAST PENN MANUFACTURING COMPANY, INC.** ON THE PROPOSED DELETION OF THE PERMIT-BY-RULE PROVISIONS OF 25 PA. CODE § 266.80(b) IN THE DECEMBER 6, 1997 NOTICE OF PROPOSED RULEMAKING

The December 6, 1997 proposed revisions to Pennsylvania's hazardous waste program delete the existing provisions of 25 Pa. Code § 266.80(b) which allow the storage of spent lead acid batteries (SLABs) prior to reclamation under a permit-by-rule (PBR).

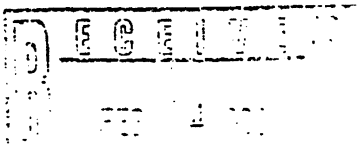
- The effect of this change is that East Penn will be required to obtain a full RCRA hazardous waste storage permit for its storage of SLABs, resulting in increased costs to East Penn estimated to be in the neighborhood of $100,000, including the permit application fee of $36,000. Requiring the storage of SLABs to be covered by full permit rather than permit-by-rule will also increase paperwork and Department staff time in reviewing the application.

- Since 1982, the storage of SLABs prior to reclamation has been regulated under the Commonwealth's hazardous waste regulations, but full Part B permitting has not been required. The 1993 amendments to the hazardous waste regulations specifically authorized the storage of SLABs prior to reclamation under PBR.

- The PBR provisions of existing § 266.80(b) of the Commonwealth's hazardous waste regulations require East Penn to comply with the same substantive hazardous waste requirements as do the federal regulations at 40 C.F.R. § 266.80(b), except that Pennsylvania's regulations provide that compliance with these standards gives a permit-by-rule to the owner or operator of a facility that stores SLABs prior to reclaiming them, while the federal regulations do not.

- Deletion of the PBR provision of 25 Pa. Code § 266.80(b) is inconsistent with the spirit and intent of the Regulatory Basics Initiative and Executive Order 1996-1; will not result in any added environmental protection benefit; directly contradicts the EQB's expressed rationale in adopting the PBR provisions of § 266.80(b) in 1993; and is not required in order for Pennsylvania to receive authorization for its regulations under the federal program.

- Neither the EQB nor the Department has provided any explanation of the rationale for the deletion of § 266.80(b). Before any final action by the EQB which would delete the PBR provisions of § 266.80(b), the EQB and the Department should provide an express statement of the rationale behind this deletion so that East Penn may respond specifically rather than speculate as to reason for this ill-considered deletion.



SUMMARY OF COMMENT OF THE REGULATORY COMMENT GROUP ON THE PROPOSED HAZARDOUS WASTE MANAGEMENT REGULATIONS
27 Pa. B. 6407-6453 (December 6, 1997)

The Regulatory Comment Group ("Group")[1] submits the following comments on the proposed hazardous waste management regulations. As approved by the Environmental Quality Board ("EQB"), the proposed regulations adopt many of the fundamental comments submitted in the Group's January 11, 1996 memorandum (a copy attached hereto as Appendix A). The Group believes many of these comments have been addressed in this proposed package and applaud the Department for its fine work in bringing this package to the rulemaking stage. Many of the important regulatory provisions that have previously discouraged or impeded Pennsylvania recyclers have been removed, particularly Pennsylvania's definition of "waste." However, the Group remains concerned with several provisions which are inconsistent with and more stringent than the federal rules, which will inhibit competitive participation in the national recycling market by Pennsylvania industries.

As a result, the Group recommends the following revisions to further promote recycling by conforming with the federal RCRA rules.

1. Recyclable materials requirements in §261a.6 should be consistent with federal provisions in 40 CFR §261.6.

2. The regulations should incorporate the federal treatment definition and regulate treatment activities not recycling per se.

a. The proposed rules regulate recycling activities as treatment inconsistent with the federal rules.

b. The SWMA does not regulate the recycling of materials, but regulates the storage, treatment and disposal of hazardous waste.

- The Group recommends adoption of the federal language in 40 C.F.R. §261.6. As an acceptable alternative, the Group recommends that the §261.6(c) recyclable materials be limited in a PBR governing storage and staging of materials for recycling.

3. Revise the proposed hazardous waste exemption to fully incorporate the federal exemptions in 40 C.F.R. §261.3(c)(2)(ii).

4. The proposed definitions should be revised to incorporate additional federal definitions for clarity and uniformity.

5. The proposed regulations should be amended to include criteria from the Governor's Executive Order for adopting regulations more stringent than federal rules.

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[1] For purposes of this set of comments, the Group consists of Exide Corporation and Fry Metals, Inc. and Pennsylvania Chemical Industry Council. The Group was formed in 1995 to address impediments to recycling under the Pennsylvania hazardous waste program. The objective of the Group is to stimulate recycling in a cost-effective and environmentally safe manner through the development of a state hazardous waste program consistent with the federal program.

SUMMARY OF COMMENTS

Horsehead Resource Development Company ("HRD") welcomes the opportunity to comment on the Environmental Quality Board's ("Board") 1997 proposed comprehensive amendments to the Pennsylvania Hazardous Waste Management Regulations, and provides the following recommendations:

PENNSYLVANIA'S REGULATIONS SHOULD BE NO MORE STRINGENT THAN THE FEDERAL REGULATIONS

Although the purpose of the Board's proposal is to conform State regulations to Federal law, many of the proposed regulations are more stringent than the Federal regulations. These additional requirements are contrary to the Department of Environmental Protection's ("DEP") Regulatory Basics Initiative ("RBI") and Governor Ridge's Executive Order 1996-1, which prohibit more stringent State regulations unless justified by a "compelling and articulable" State interest. Moreover, the Board must support the more stringent requirement with an analysis of the costs and benefits of the regulation. The Board has not provided either a sufficient explanation or a cost/benefit analysis for the more stringent requirements, as required by the RBI and Executive Order 1996-1. HRD therefore recommends that the Board withdraw the more stringent requirements from the final rulemaking, thereby truly creating a "level playing field."

INCORPORATE THE HTMR GENERIC EXCLUSION BY REFERENCE

Although HRD recommends that the Board incorporate all of the Federal regulations by reference, HRD particularly urges the Board to adopt the Federal high temperature metals recovery ("HTMR") generic exclusion from the definition of hazardous waste (codified at 40 C.F.R. § 261.3(c)(2)(ii)(C)). Failure to incorporate this exclusion could inadvertently call into question the regulatory status of HTMR slag products. The Board has not identified any compelling reason why State law should be more stringent than Federal law in this regard. (The only explanation offered by the Board -- lack of experience with HTMR products -- plainly is incorrect.) Accordingly, the Board should incorporate the Federal generic exclusion by reference.

COPRODUCTS SHOULD BE EXCLUDED FROM REGULATION

HRD also requests that the Board reaffirm that materials which DEP previously has determined to be coproducts are excluded from the definition of solid waste. The Board's proposal to eliminate the coproduct definition threatens to render useless the coproduct concurrences already issued by the DEP, confuse the regulated community, and increase the administrative burden on DEP. HRD therefore recommends that the Board exclude these coproducts by regulation.

EXECUTIVE SUMMARY

The Manufacturers Association of Tri-County ("MATCO"), founded over 100 years ago, is a diverse group of regional manufacturers in Western Pennsylvania. MATCO's members support product stewardship, use, reuse and recycling, and they are committed to environmental excellence. MATCO endorses the Board's proposal to conform the Pennsylvania Hazardous Waste Regulations to the Federal regulations, subject to the following three important qualifications and recommendations:

1. Pennsylvania's Regulations Should Be No More Stringent than Federal Law.

MATCO respectfully objects to the Board's proposal to include many more stringent State law requirements in Pennsylvania's regulations. The Department of Environmental Protection's ("DEP") Regulatory Basics Initiative ("RBI") and the Governor's Executive Order 1996-1 establish a strong presumption in favor of complete conformity with the Federal regulations. If the Board deviates from this presumption, it is required to identify, with specificity, the "compelling State interest" that justifies more stringent State regulations. The Board also must support the more stringent regulations with a cost/benefit analysis. Since the Board has neither articulated any compelling State interest nor performed the cost/benefit analysis for the proposed more stringent regulations, the Board should withdraw them.

2. In Particular, the Board Should Adopt the Following Environmentally Protective Federal Requirements:

- HTMR generic exclusion (40 CFR § 261.3(c)(2)(ii)(C));
- Fourteen solid waste exclusions (40 CFR § 261.4(a));
- Recycling permit exclusion (40 CFR § 261.6(c));
- Self-implementing waste acceptance procedure (40 CFR §§ 264.13(a),265.13(a);
- Self-implementing waste-derived product exclusion (40 CFR § 266.20(b)).

These are only some of Federal regulations that the Board should incorporate. MATCO discusses them in detail to demonstrate that the Board has not identified a compelling State interest for not adopting them, thereby making Pennsylvania law improperly more stringent.

3. Confirm that Coproducts Are Excluded from Regulation.

The Board should confirm that those materials for which the DEP has issued coproduct concurrences under the current regulations are excluded from the definition of solid waste. MATCO recommends that the Board "grandfather" these coproducts by, for example, listing them in an appendix to the regulations. Preserving their protected status is consistent with Federal law, since DEP's concurrences cannot render the regulations, "as applied," less stringent than Federal law. Excluding these coproducts under the new regulations also will avoid the adverse consequences that otherwise could occur if the Board deletes the coproduct definition without recognizing the numerous coproduct concurrences issued by DEP.

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 23, 1999

The Secretary

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101

RE: Final Rulemaking – Comprehensive Hazardous Waste Amendments (#7-328)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This rulemaking was approved by the Environmental Quality Board (EQB) for final rulemaking on February 16, 1999.

This final rulemaking was developed as a result of the Regulatory Basics Initiative (RBI) and more closely aligns Pennsylvania's hazardous waste program with the federal program. The rulemaking largely incorporates by reference the applicable federal hazardous waste regulations and will maintain future consistency as the federal program evolves. There are a number of areas where these regulations are more stringent than federal requirements. These more stringent requirements have been retained because of state law or a compelling state need.

The regulation will affect the approximately 25,000 entities that generate, accumulate, reclaim, treat, store, dispose, and/or transport hazardous wastes in Pennsylvania. Many of the new requirements in this rulemaking are already effective under federal regulation. When these regulations are finalized, the dual state/federal compliance and permitting requirements will be eliminated.

The proposed rulemaking was adopted by the EQB on September 16, 1997, and published December 6, 1997. Three public hearings were held during the 60-day public comment period. There were 31 commentators to the proposal. The Solid Waste Advisory Committee (SWAC) reviewed and supported a draft of the final rulemaking on July 9, 1998.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,

James M. Seif
Secretary

Enclosure

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

RECEIVED

99 FEB 23 AM 10: 16

INDEPENDENT REGULATORY REVIEW COMMISSION

I.D. NUMBER:	7-328
SUBJECT:	Comprehensive Hazardous Waste Amendments
AGENCY:	DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/23/99		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/23/99		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
2/23/99		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

February 16, 1999