

Regulatory Analysis Form		This space for use by IRRC RECEIVED 2002 OCT -8 PM 12:34 REGULATORY COMMISSION IRRC Number: 2239
(1) Agency Environmental Protection		
(2) I.D. Number (Governor's Office Use) 7-364		
(3) Short Title Amendments to the Hazardous Waste Regulations		
(4) PA Code Cite • 25 Pa Code Chapters 260a - 265a and 270a	(5) Agency Contacts & Telephone Numbers Primary Contact: Sharon Trostle 783-1303 Secondary Contact: John Hines, 783-1303	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Final Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. This regulation addresses issues that have emerged in the administration of the regulations such as inconsistencies or necessary clarifications. Many of these are restoration of provisions previously deleted from the RBI regulation modifications. Typographical errors and inaccurate cross-references or redundancies that have been identified are being corrected.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA), (35 P.S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (HSCA) (35 P.S. §§ 6020.303, 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P.S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-20). Under sections 105, 402 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 that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Sections 303 and 305(e)(2) of HSCA grant the Board the power and duty to promulgate regulations to carry out the provisions of that act. Sections 5, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are 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 that are necessary for the proper work of the Department.		

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(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.

There is no deadline or mandate for this particular amendment.

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

This regulation will provide changes necessary to apply for a U.S. EPA program authorization update and correct some minor problems with the existing regulation. No existing policies or regulations will be affected other than the regulation that is being amended.

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

As established by section 102 of the SWMA, proper management and regulation of hazardous waste is necessary to protect the public health, safety and welfare from the short and long term dangers of transportation, processing, treatment and disposal of hazardous waste.

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

This regulation will affect anyone who generates, transports, stores, treats or disposes of hazardous waste in Pennsylvania. The changes are clarifications and corrections; there are no new requirements (although some previously deleted requirements are restored). Because of this, the regulated entities should benefit from an improved and clearer set of requirements.

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(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.)

The regulation amendments are not expected to produce any adverse impacts.

(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 regulation will affect those entities that generate, transport, treat, store or dispose hazardous waste in Pennsylvania. There are approximately 1,500 large quantity generators, 12,000 small quantity generators, 20,000 conditionally exempt small quantity generators, 60 active permitted facilities and 270 licensed hazardous waste transporters.

(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 were involved, if applicable.

The Solid Waste Advisory Committee has been involved in the development of the proposed and final regulations.

During the 30-day public comment period on the proposed rulemaking, 23 comments were received from six companies and organizations.

For further information, see the commentator list in the attached Comment and Response document.

(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 changes are clarifying and corrections; there are no new requirements (although some previously deleted provisions are restored). Because of this, there are no additional costs imposed as a result. In some cases, such as the clarification that certain manifest copies do not need to be submitted to the department, there may be cost savings to the regulated community.

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(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.

This regulation will result in no additional costs or savings to local governments.

(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.

There will be no additional costs to state government as a result of these amendments.

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(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	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	
State Government	NA	NA	NA	NA	NA	
Total Savings	NA	NA	NA	NA	NA	
COSTS:	NA					
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Not applicable.

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

Program	FY-3 (FFY 99)	FY-2 (FFY 00)	FY-1 (FFY 01)	Current FY
Hazardous Waste (RCRA)	\$6,157,607*	\$6,158,739*	\$6,910,624*	

* State and Federal share combined (75% Federal; 25% State)

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

The regulatory changes will clarify some ambiguous provisions, eliminate redundant provisions, and eliminate typographical errors.

The changes are clarifying and corrections, there are no new requirements being proposed (although some previously deleted provisions are restored). Because of this, there are no additional costs.

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

No nonregulatory alternatives were considered. The rule is necessary to implement Pennsylvania statutory requirements and clarify existing regulatory requirements.

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

No other alternative regulatory schemes were considered.

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(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.

The provisions in this regulation that are more stringent than federal requirements include:

- The completion and submission of hazardous waste manifest documents. Pennsylvania requires the submission of manifests for compliance monitoring and reporting verification for fee submission. The fees are required by statute.
- Specific spill and discharge reporting requirements. The Solid Waste Management Act requires all hazardous waste handlers to notify the Department of spills and discharges. This provision clarifies when and how this notification should be done.

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

Most other states require the submission of manifest documents, so the submission of manifests does not put Pennsylvania at a competitive disadvantage with other states. The spill notification requirements only affect instances that occur within Pennsylvania.

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

No.

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

No public hearings or informal meetings are scheduled.

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(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.

These changes clarify existing hazardous waste manifest document requirements for transporters, generators and treatment, storage and disposal, facilities of hazardous waste. No changes to forms or reports will be required.

(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.

Due to the nature and purpose of the regulation, no special provisions are needed.

(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 regulations will go into effect upon publication in the Pa. Bulletin as final rulemaking. No new licenses, permits or other approvals will be required by these regulations.

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

The regulations will be reviewed in accordance with the Sunset review schedule published by the Department.

**HAZARDOUS WASTE PROGRAM
FINAL RULEMAKING AMENDMENTS
COMMENT AND RESPONSE DOCUMENT**

INTRODUCTION

In assembling this document, the Environmental Quality Board ("Board") has addressed all pertinent and relative 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 Board received approximately 23 comments from five industry organizations, the Pennsylvania Chamber of Business and Industry, and the Independent Regulatory Review Commission. The following table lists these organizations. The Commentator ID number is found in parenthesis following the comments in the comment/response document.

Table of Commentators

Commentator ID #	Name	Address	Requested Final Rule	Submitted One-Page Summary
1	Mr. Arthur E. Hall, P.E. Director, Environmental Affairs	Wheatland Tube Company Wheatland Division One Council Avenue Wheatland, PA 16161		
2	A. D. Smith, Manager Environmental Engineering	Bechtel Bettis, Inc. Bettis Atomic Power Laboratory P.O. Box 79 West Mifflin, PA 15122-0079		
3	Mr. Fred A. Sembach Vice President, Government Affairs	Pennsylvania Chamber of Business and Industry 417 Walnut Street Harrisburg, PA 17101-1902		
4	Mr. Lawrence M. Berger Director, Environmental Affairs	Mine Safety Appliances Company P.O. Box 426 Pittsburgh, PA 15230		X
5	Mr. James Hughes Environmental Health and Safety Manager	Onyx Environmental Services 3100 Hedley Street Pittsburgh, PA 19137		X
6	Mr. David A. Wagner Environment, Health and Safety Manager	Safety-Kleen 1140 Greenhill Road West Chester, PA 19830		X
7	Independent Regulatory Review Commission (IRRC)			

§261a.3 Definition of “Hazardous Waste” and §262a.11 Hazardous Waste Determination

1) **Comment:** The EQB has proposed to add as 25 Pa. Code 261a.3(b) a requirement creating a presumption that where a hazardous waste determination in connection with a particular waste is not immediately performed, the waste must be managed as a hazardous waste until the waste is classified as a non-hazardous waste. This provision mirrors a component of Pennsylvania’s hazardous waste regulations that was deleted as part of the extensive amendments to Pennsylvania’s hazardous waste program pursuant to the Regulatory Basics Initiative in May 1999. The commentator believes that the proposed version of 25 Pa. Code 261a.3(b) should be deleted for the following reasons:

- It is overly prescriptive and unnecessary.
- It imposes costs that do not result in any significant environmental benefits.
- It is impractical because it would:
 - (a) invoke other requirements such as requiring a hazardous waste label and code for an as yet unknown material and
 - (b) require materials such as contaminated soils from remedial activities to be managed as hazardous waste while the results of laboratory analyses are being performed. (3)

2) **Comment:** Another commentator questioned:

- Whether waste has been mismanaged as a result of the 1999 deletion of the provisions of subsection (b).
- Whether reinstating this provision impose new requirements and costs on the regulated community? If so, what are the requirements and their estimated costs?
- Is a label required before the composition of the waste is determined? If so, what requirements would a label have to meet? (7)

Response: (to comments 1 and 2). The proposal does not add any new requirements to the regulations; it merely clarifies the existing requirement for a waste to be properly managed. “Properly managed” in this case means that the waste must be managed as a hazardous waste to protect human health and the environment by using proper tanks or containers and, if required, secondary containment. Certain administrative requirements, such as labeling, are not appropriate until the waste determination has been conducted to properly classify the waste. 40 CFR §262.11, as incorporated into 25 Pa Code 262a.10, allows a generator to apply “generator knowledge” to the waste, or test the waste to determine whether or not it is hazardous. Application of generator knowledge adds no new costs to a determination. There are significant environmental benefits associated with management of an “undetermined” waste as a hazardous waste. Improper management of a hazardous waste can cause significant harm to human health and the environment, and add substantial costs to the generator if the waste must later be remediated. The requirement is intended to affect newly generated waste and not waste in place subject to remediation activities. The Department is not aware of any waste mismanagement that resulted directly from the 1999 deletion of the provisions.

3) **Comment:** Changes in the hazardous waste definition and determination issues proposed at 25 Pa. Code 261a.3(b) and 262a.11 do not appear to be justified. Existing federal regulations provide an adequate structure for these issues. (4)

Response: Proposed §§261a.3 (b) and 262a.11 do not place additional or new requirements on waste generators. These sections merely clarify the Department's statutory authority to make independent waste determinations. As noted in the preamble to the proposed rulemaking, since the May 1999 rulemaking deleted this provision from Pennsylvania's hazardous waste regulations, there have been several problems noted by the regulated community and Department regional office staff due to the absence of this previously long-standing provision. The Department feels that reinstatement of clarifying provisions is justified in instances where problems have been noted during implementation of the May 1999 regulatory revisions.

§262a.12(b)(1)(iv) EPA Identification Numbers (Change of Generator Status)

4) **Comment:** The EQB has proposed to add to Pennsylvania's hazardous waste regulations the requirement that a hazardous waste generator notify DEP any time the generator's facility class changes. The distinction between facility classes is based on the amount of hazardous waste generated in a single month. (3, 7)

5) **Comment:** Under the proposed regulations, it is unclear whether SQGs or LQGs that become CESQGs would need to notify DEP. In addition, it is unclear whether LQGs that become SQGs for a particular month would need to notify DEP of a change in their status. We recommend that the EQB clarify how precisely the proposed requirements for subsequent notification are actually intended to work. Where a generator's operations change such that the generator's status permanently changes, notification is appropriate. However, the proposed requirement could also be interpreted to mandate that an LQG notify DEP during any month in which its hazardous waste generation levels drop below the LQG thresholds. Such a requirement would needlessly create additional paperwork for both the regulated community and DEP with no related environmental benefits. (3)

6) **Comment:** Because more stringent requirements apply to LQGs than SQGs, there may be reasons to retain the subsequent notification requirement for an SQG that becomes an LQG. A regulated entity may also choose to classify itself as an LQG and comply with the applicable requirements for LQGs even if during some months, the amount of hazardous waste generated by the regulated entity might fall below applicable thresholds thereby rendering the generator an SQG. (3)

7) **Comment:** Would notices of a temporary fluctuation in the amount of hazardous waste generated serve a useful purpose? (7)

Response: (to comments 4, 5, 6 and 7). The proposal does not add any new requirements to the regulations but is only an attempt to clarify the meaning of the existing rules. The requirements listed in the existing rules are taken directly from the Federal Notification of Regulated Waste Activity form. The way the requirements are written has led to a substantial number of inquiries concerning subsequent notifications. This provision has been added to clarify that when a generator changes status (e.g. SQG to LQG), they must submit a subsequent notification. This does not refer to an "episodic" change where, for example, a SQG cleans out a tank once over a period of several years, and becomes a LQG for a single month, or where an LQG generates less

than the LQG amount in a single month. A subsequent notification is not required in these instances. A subsequent notification is required, however, when a generator's status changes permanently. The Department sees no value in requiring paperwork from episodic status changes. If an LQG's status changes permanently to that of an SQG or a conditionally exempt small quantity generator, then a subsequent notification should be submitted.

§ 262a.23 Use of Manifest

8) **Comment:** Amendments to Sections 263a.20 (a)(1) and 264a.83(a)(2) use gender-neutral language. However, we note that Section 262a.23 (a)(1) and Section 263a.12 (4)(iii) use the word "his." Gender-neutral language should be used consistently throughout the regulation. (7)

Response: This has been corrected in the final-form rulemaking.

§262a.34 Generator Accumulation Time

9) **Comment:** LQGs are authorized to store hazardous wastes onsite for up to 90 days without a permit provided that certain requirements are satisfied including complying with the applicable requirements of 40 C.F.R. Part 265, Subpart I for hazardous wastes that are stored in containers. In the 1999 revisions to Pennsylvania's hazardous waste program, the EQB incorporated by reference the requirements of 40 C.F.R. Part 265, Subpart I (relating to storage of hazardous wastes in containers at interim status facilities) and also included extensive additional requirements relating to (1) secondary containment for such storage areas, (2) aisle spacing and configuration of stored containers, and (3) closure of container storage areas. Not only did the EQB include in 25 Pa. Code Chapter 265, Subchapter I specific requirements relating to secondary containment but also incorporated by reference the secondary containment requirements set forth at 40 CFR 264.175. See 25 Pa.Code § 265a.179. The EQB is now proposing to impose these same additional requirements on all LQGs that store hazardous waste onsite in Pennsylvania (with the exception of the secondary containment requirements set forth at 25 Pa. Code § 265a.175, which the EQB is proposing to delete as redundant with the Federal secondary containment requirements incorporated by reference). (3)

10) **Comment:** We believe that expanding the requirements for LQGs is unnecessary, inconsistent with the Federal hazardous waste program and will impose significant regulatory burdens on significant numbers of hazardous waste generators across the Commonwealth. We believe the existing requirements are adequate and there is no justification to add new requirements. Many LQGs may incur extensive capital costs to comply with the secondary containment requirements. Accordingly, we recommend that the proposed changes to 25 Pa. Code § 262a.34 be eliminated. (3)

11) **Comment:** Is this provision needed in light of existing requirements, and how did the EQB conclude there are no additional costs imposed by this provision? (7)

Response: (to comments 9, 10 and 11). The regulations have always required secondary containment for 90-day generator storage of hazardous waste in Pennsylvania. Unfortunately, the changes made in 1999 resulted in the regulations becoming confusing and more difficult to

understand in this area – as noted by this comment. The proposed change attempts to clarify the existing regulations. The existing regulations (40 CFR 262.34 as incorporated into 25 Pa. Code § 262a.10) direct the generator to 40 CFR Part 265, Subpart I. However, the Federal regulations are not a stand-alone regulation in Pennsylvania, but are rather a portion of the Pennsylvania program. The Commonwealth’s parallel regulations at 25 Pa. Code Chapters 260a through 270a must be read in conjunction with the CFR. 25 Pa. Code Chapter 265, Subchapter I (§§ 265a.173–265a.179, which relates to Use and Management of Containers), as it currently exists, requires a generator to comply with the containment and collection requirements for hazardous waste (which includes secondary containment) when using 90-day storage provisions. Existing 25 Pa. Code § 265a.179 also requires the generator to comply with 40 CFR 264.175, which mandates secondary containment for container storage. The proposal deletes the existing regulations at Section 265a.175 as redundant, but retains Section 265a.179. The result is that the overall regulation in this area is less stringent than the existing regulation because it removes the secondary containment requirement for hazardous waste that is in solid form. It does, however, retain the secondary containment requirements for generator storage of hazardous waste that is a liquid, or has liquids contained in it. There are no additional costs imposed because this requirement has been in place since the beginning of Pennsylvania’s hazardous waste program.

§262a.43 Additional Reporting

12) **Comment:** As part of the proposed amendments to Pennsylvania’s hazardous waste program, the EQB has included extensive new requirements governing notification, reporting and response actions that must be followed in the event that there is a spill or discharge of reportable quantities of “hazardous materials.” See Section 262a.43a (proposed). The proposed reportable quantity thresholds are extremely low (5 gallons of liquids and as low as 10 pounds of solids). The proposed provisions are similar to those that had been part of Pennsylvania’s hazardous waste regulations (Section 262.46 (deleted)) but which were deleted as part of the changes made to implement the Regulatory Basics Initiative. Nothing has occurred since those changes were made in 1999 that would warrant reversing the results of the Regulatory Basics Initiative by reinserting the proposed provisions in Pennsylvania’s hazardous waste regulations.

The Federal hazardous waste program does not include the same type of prescriptive requirements proposed by the EQB. Instead, generators of hazardous waste are generally required to have in place emergency contingency plans that describe the steps that will be followed to minimize hazards from releases of hazardous wastes. In addition, the facility must maintain equipment to respond to emergencies involving releases of hazardous wastes. See 40 C.F.R. Part 265, Subparts C and D (incorporated by reference through Section 262.34(a)(4)). These requirements apply to hazardous waste generators in Pennsylvania. Section 262.a.10.

The Department has no statutory authority to require the reporting of spills and releases of all hazardous substances. Moreover, spills and releases of hazardous substances (which include hazardous wastes) are subject to notification requirements under Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §9603. If a spill or release of hazardous waste impacts or threatens to impact surface waters or groundwater in Pennsylvania, notification requirements under the Pennsylvania Clean Streams Law are also applicable.

The existing statutory and regulatory framework already provides sufficient safeguards and protections to address the circumstances where hazardous wastes are spilled or released. Commenters therefore do not believe that the proposed regulatory provisions are warranted. (1, 2, 3, 4)

13) **Comment:** We question the statutory basis for using the term “hazardous material” and how the regulated community will know what materials are considered “hazardous materials.” The EQB should further explain the need for this provision and the additional costs it will impose. (7)

Response: (to comments 12 and 13). Based on this and other comments received regarding proposed § 262a.43, the scope of this section has been changed in the final rulemaking by revising the applicability from "reportable quantities of hazardous materials" to "reportable quantities of hazardous wastes or materials that become hazardous waste when spilled or discharged." It was never the Department's intent to require the reporting of spills or releases of all hazardous materials. As noted in the preamble to the proposed rulemaking, since the May 1999 rulemaking deleted this provision from Pennsylvania's hazardous waste regulations, there have been many inquiries from the regulated community and Department regional office staff regarding the absence of spill reporting requirements in the hazardous waste regulations. The Department agrees, in part, with the commentators' position that spill reporting requirements exist outside of the State hazardous waste regulations; however, those requirements are broader statutory provisions that have prompted uncertainty with respect to hazardous waste releases. To simplify the spill reporting requirements, several changes were made to Section 262a.43 in the final-form rulemaking. Table 1 (Reporting Requirements and Hazard Codes) has been removed, and the requirements for solids and liquids have been standardized. In addition, the final-form rule establishes CERCLA reportable quantities as the notification limits, with the modification of including caps. The caps have been established to ensure that the Department receives notification of large spills or discharges of hazardous wastes, which might go unreported because of higher CERCLA requirements for reportable quantities. The Department believes that this notification is important for proper oversight of hazardous waste management in Pennsylvania. The notification provides the Department with basic information to determine whether the appropriate field office should follow up with a site visit. One of the reasons that the Federal regulations do not include this reporting requirement is because of an insufficient availability of Federal field investigators. Because of these factors, the Department believes that reinstatement of the provisions within the scope of the hazardous waste regulations, as modified, is warranted.

14) **Comment:** Subsection (3) allows waiver of identification numbers, licenses and manifests in the event of an emergency. However, this subsection does not specify any follow-up after the emergency. After the immediate threat to safety is over, how is the hazardous waste that was moved during emergency accounted for? (7)

Response: The vast majority of spill cleanups are manifested. During an emergency cleanup, the Department's emergency response staff will obtain a temporary site identification number (Provisional I.D. Number) so that the waste can be manifested, and the waste is tracked with the manifest. The actual shipment of the waste is often delayed a day until a Temporary I.D. number can be obtained and the shipment manifested. On very rare occasions the situation requires immediate removal for health, safety or environmental protection reasons. In such cases the Department allows the movement of cleanup waste without use of a manifest, but employs

known transporters to deliver waste to known waste management facilities. The waste is then tracked by telephone and paperwork is completed subsequent to the removal.

§263a.12(3) Transfer Facility Requirements

15) **Comment:** The proposed version of 25 Pa. Code §263a.12 (3) mandates that transfers of hazardous wastes at in-transit storage facilities occur only in areas protected by secondary containment. This provision goes well beyond the requirements of the federal hazardous waste regulations. Hazardous wastes that are being managed at in-transit storage facilities are subject to transporter contingency plans (for transportation activities) and in-transit storage preparedness, prevention and contingency plans (for in-transit storage of hazardous wastes for greater than three days but no more than ten days). These wastes are generally stored in containers that meet the strict requirements of USDOT. We are not aware of events in Pennsylvania that suggest that spills or releases of hazardous wastes are prevalent during truck-to-truck or truck-to-loading dock transfers at in-transit storage facilities. Most in-transit storage facilities where such transfers occur are also paved to some degree. This paving itself provides a level of containment to prevent hazardous wastes from migrating to soils if such a spill were to occur. Accordingly, we believe that there is no justification to warrant imposing secondary containment requirements of those that operate in-transit storage facilities, particularly in light of the safeguards that are already in place. (3, 5, 6)

16) **Comment:** We question why the subsection is needed and what the economic impact of these requirements is on transfer facilities. The regulation should specify the “secondary containment” requirements a transfer facility must meet either by reference to Federal regulations or by putting them in Pennsylvania’s regulation. (7)

Response: (to comments 15 and 16). Many safeguards are already in place in the regulations to prevent pollution during in-transit storage, such as the transporter contingency plan, the in-transit storage contingency plan and the fact that most areas where in-transit transfers of hazardous waste typically take place are already paved. Therefore, this requirement has been deleted from the final-form rulemaking. The Department intends to vigorously prosecute any instance where mismanagement of waste during in-transit activities results in harm to human health or safety, or environmental contamination.

§263a.21 Compliance with the Manifest

17) **Comment:** The language in Subsection (3) is confusing because it could be read to prohibit “preprinted Manifest Document Numbers.” Is the intent to prohibit a manifest if an alteration was made by anyone other than the printer of the manifest to a preprinted Manifest Document Number or a Manifest Tracking Number? Item 19 of the manifest is designated as the Discrepancy Indication Space. The instructions for completion of Item 19 state “The Designated Facility’s authorized representative must note in this space any significant discrepancy between the waste types or quantities described on the Manifest and those actually received. If waste is rejected, so indicate in this space. The concern is the actual quantity received would not be a discrepancy in most instances. Hence, entering the actual quantity received in the Discrepancy

Indication Space is contrary to the form's instruction. The regulation should be amended to make the requirements consistent with the manifest. (7)

Response: The Department agrees and has modified the final-form regulation to clarify the requirement.

18) **Comment:** Who is the printer of the manifest? (7)

Response: Manifests are printed by commercial printing firms who are authorized by the state to print the official state hazardous waste manifest form.

§ 264a.71 Use of the Manifest System

19) **Comment:** Subsection (3) requires the facility to state the "actual quantity received in bulk shipment" in the "Discrepancy Indication Space...on the manifest." This requirement is inconsistent with the instructions for the EQB's Official Pennsylvania Manifest form (Form 2500-FM-LRWM-0051 Rev 7/99 also titled "Uniform Hazardous Waste Manifest"). (7)

Response: Waste quantities on manifests are frequently inaccurate for bulk shipments because they are based on hazardous waste generator estimates or container capacity. Generators often do not have scales to accurately weigh the shipments at the origin point. By marking on the manifest actual measured quantities received, the facility will confirm the amount shipped. Most hazardous waste treatment, storage or disposal facilities currently do this. The manifest instructions will be changed to reflect the regulatory change.

§264a.97(1) Groundwater Monitoring Requirements

20) **Comment:** The proposed amendments to 25 Pa. Code §264a.97(1) should be eliminated because they will unnecessarily restrict flexibility in performing groundwater monitoring at solid waste management units. While quarterly monitoring may be appropriate in many instances, there also may be circumstances where monitoring over longer sequences is warranted. We suggest that the regulations be tailored so that DEP and the regulated entity conducting the groundwater monitoring can utilize sound technical judgment and flexibility in designing an appropriate groundwater-monitoring program. (3)

21) **Comment:** Subsection (1) will limit flexibility in designing appropriate groundwater monitoring programs. They claim that there are instances where a longer time period between each monitoring is more appropriate. Are strictly defined monitoring periods needed for all locations where groundwater is monitored? Should the regulation allow different periods to be specified in the permit? (7)

Response: (to comments 20 and 21). The monitoring and reporting requirements proposed in Section 264a.97 are authorized by the incorporated provisions found at 40 CFR 264.97. The federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. The Department believes 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 regulation rather than permit conditions.

The Department has also determined that the proposed monitoring and reporting requirements found in § 264a.97 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 seasonal, temporal and spatial variability and climatological variations that 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 so that it can be analyzed and assessed in the early stages of any environmental problem. This provides a prophylactic 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 that require groundwater monitoring as a condition of their permit. For facilities that have completed 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 or annual was implemented. The regulation, by incorporation of federal language found at 40 CFR 264.117 and 118, provides this flexibility.

§270a.60(a)(1) Permits-by-Rule

22) **Comment:** The requirement that an owner or operator of a facility seeking to utilize one or more of the permit-by-rule authorizations available under Pennsylvania's hazardous waste regulations must submit prior notification to DEP on a form provided by DEP. For regulated entities already operating under the permit-by-rule authorizations, it is unclear whether notification would be required. If such facilities are not "grandfathered" and notification is required, the commentator recommends that the regulations provide a transition period following the effective date of the amendments so that regulated entities are not faced with the need to submit notifications to DEP simultaneously with the publication of the final version of the amendments in the Pennsylvania Bulletin in order to remain in compliance with Pennsylvania's hazardous waste program. (3)

23) **Comment:** The EQB is adding a requirement to Subsection (a)(1) for the owner or operator using a permit-by-rule to give "prior notification to the Department ..." Does the EQB intend to

grandfather current permit-by-rule operators or will current operators be required to submit notice? If notice is required, will current permit-by-rule operators be given time to comply with this requirement after the regulation becomes effective? (7)

Response: (to comments 22 and 23). The Department agrees with the commentator and will include a one-year transition period in the final regulation for owners or operators of existing permit-by-rule facilities to comply with the subject notification requirement.

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. #7-364

DATE OF ADOPTION: _____

BY: David E. Hess

TITLE: DAVID E. HESS, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

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ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

AMENDMENTS TO THE HAZARDOUS WASTE REGULATIONS

25 PA Code, Chapters 260a-265a and 270a

**Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code Chapters 260a-265a, 270a)
(Hazardous Waste Management)**

Order

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapters 260a (relating to Hazardous Waste Management System: General), 261a (relating to Identification and Listing of Hazardous Waste), 262a (relating to Standards Applicable to Generators of Hazardous Waste), 263a (relating to Transporters of Hazardous Waste), 264a (relating to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities), 265a (relating to Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) and 270a (relating to the Hazardous Waste Permit Program) to update the hazardous waste management program. These amendments are set forth in Annex A.

This order was adopted by the Board at its meeting of September 17, 2002.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

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 Kurt Klapkowski, 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 that are 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 that are 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 that are necessary for the proper work of the Department.

D. Background and Summary

The hazardous waste management regulations were amended in May 1999 (29 Pa.B. 2367) in accordance with the Regulatory Basics Initiative (RBI) and Executive Order 1996-1. Since that time, Pennsylvania's hazardous waste management program received final authorization for changes made to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) from the United States Environmental Protection Agency (65 FR 57734). This final rulemaking provides the opportunity to make all changes necessary to update that program authorization.

In addition, the Department now has over three years experience implementing these regulations. Several of the changes contained in this final rulemaking were developed to address issues raised since the RBI rulemaking and correct problems identified over the past three years.

On May 9, 2002, the Solid Waste Advisory Committee (SWAC) reviewed the draft final rulemaking and voted to submit it to the Environmental Quality Board for consideration as final rulemaking pending resolution of three issues. Two of the issues were resolved with minor wording changes to the final rule. The third issue involves reporting of spills and discharges of hazardous waste by generators. The Department compared the final rule with reporting requirements for discharges under the federal Comprehensive Environmental Response, Compensation, and Liability Act (Superfund or CERCLA), Department of Transportation release reporting requirements and reporting requirements of other states. This review resulted in modification of the final rule to ensure consistency with these other requirements.

A list of members of the SWAC may be obtained from the agency contacts identified in Section B of this order.

The final amendments generally fall into one of five categories: codification of SWMA requirements that differ from or are broader than the federal requirements incorporated by reference; restoration of regulatory provisions that were inadvertently deleted in the RBI rulemaking; clarification of ambiguous requirements; clarification of manifesting requirements; and correction of typographical errors. The specific changes in these categories are summarized below.

1. Codification of statutory requirements.

The Department has a general policy not to duplicate statutory definitions or provisions in regulations unless a compelling reason exists to do so. The hazardous waste regulations contain provisions that incorporate by reference large portions of the federal hazardous waste regulations. The controlling statutory authority in the Commonwealth is the SWMA. However, where the SWMA and the federal regulations touch on the same subject, the SWMA governs that subject in the Commonwealth. As a result, the Pennsylvania hazardous waste regulations contain some provisions that duplicate SWMA requirements where the federal regulations vary from the commands of the SWMA. In addition, there are some subjects that the SWMA explicitly regulates, and on which the federal regulations are silent. These amendments duplicate SWMA provisions in two instances. This duplication is necessary to eliminate confusion over the incorporation by reference of contradictory federal regulations and to establish requirements where the federal regulations are silent. The first instance is in Section 260a.10 (relating to definitions) where the rulemaking adds the definition of "treatment." The term is defined differently in section 103 of the SWMA (35 P.S. § 6018.103) and 40 CFR 260.10. The definition follows the SWMA language.

The second instance is in Section 263a.13(b)(4) and (j) (relating to licensing). In accordance with section 403(b) of the SWMA (35 P.S. § 6018.403(b)), the final rulemaking adds the requirement that a transporter of hazardous waste prepare and carry a preparedness, prevention and contingency plan (PPC plan) to address potential discharges or spills of hazardous waste. The incorporated federal regulations do not contain such a requirement.

2. Restoration of provisions that were deleted in the May 1999 RBI rulemaking.

Several of the changes reinstate requirements that were part of the Pennsylvania hazardous waste program prior to the May 1999 RBI rulemaking. Because of the general approach of broadly incorporating the federal hazardous waste regulations by reference, some existing regulations that helped to clarify how the program operates were inadvertently deleted. Generally speaking, these requirements remain in effect based on the requirements of the SWMA and the Department's interpretation of the hazardous waste regulations. Having them reinstated in the regulations serves to clarify the Department's approach to the hazardous waste program and inform the regulated community of proper compliance methods. In several cases the regulated community and regional Department staff have noted the problems caused by the absence of these long-standing provisions.

An excellent example of this category of changes is in Section 261a.3 (relating to definition of "hazardous waste"). The final rule reinstates the requirement to manage waste as hazardous until a waste determination is completed. 40 CFR 262.11 (relating to hazardous waste generation) requires generators of solid waste to make a determination as to whether or not the waste is hazardous. It is silent, however, on the issues of when the determination must be complete and management of the waste until the determination

is complete. Reinstating this requirement in the regulation establishes a firm position to what would otherwise be an ambiguous provision in the regulations.

Another good example concerns when spills and discharges of hazardous waste must be reported. Section 403(b)(12) of the SWMA requires “any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to...immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge” of hazardous waste. 35 P.S. § 6018.403(b)(12). Section 262a.43 (relating to additional reporting) re-establishes the conditions, amounts, standards, and procedures for reporting spills and discharges of hazardous waste. This section also restores the provision that a Department official may authorize immediate removal of spilled hazardous wastes or materials if necessary to protect the health and safety of the public and the environment.

Reinstating the following provisions accomplishes similar goals: Section 262a.11 (relating to hazardous waste determination) clarifies that the Department retains the independent authority to make a waste determination; Section 262a.12(b)(1)(iv) (relating to EPA identification numbers) requires subsequent notification when a generator’s facility class changes; Section 262a.12(b)(2) explicitly states that a generator is only allowed to offer hazardous waste to a Department-licensed transporter; Section 263a.13(j) (relating to licensing) requires a copy of the contingency plan to be on a hazardous waste transport vehicle; Section 263a.26(c) (relating to assessment of penalties) notes that the penalty for falsification is a minimum of \$1,000 (rather than a flat \$1,000); Section 265a.13 (relating to general and generic waste analysis) clarifies that the report that must be submitted is a “Module 1” report; and Section 270a.60(a) (relating to permits-by-rule) notes that an owner or operator must give notice to the Department prior to operating under a permit-by-rule.

3. Clarification of ambiguous requirements.

The third broad category of changes addresses ambiguous requirements identified during the implementation of the RBI regulations over the past two years. These changes do not, however, have pre-RBI counterparts that the Department can reinstate.

Several of the changes in this category relate to containment and contingency plans. Section 403(b) of the SWMA (35 P.S. § 6018.403(b)) states:

(b) It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:

* * * * *

(10) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.

(11) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(12) Immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the department and take immediate steps to contain and clean up the spill or discharge.

The Department has received several inquiries from regulated entities regarding compliance with these requirements. Therefore, this final rulemaking contains new language that clarifies how a person can comply with the containment and contingency plan requirements of the SWMA.

First, a new Section 262a.34 (relating to accumulation time) is added to require secondary containment for generator storage of hazardous waste in containers. Second, Section 263a.12 (relating to transfer facility requirements) adds requirements for Preparedness, Prevention and Contingency plan (PPC plans) preparation for hazardous waste transfer facilities. The amendment accomplishes this through reference to Section 263a.13(b)(4) (discussed above).

The amendment to Section 264a.97 (relating to general groundwater monitoring requirements) specifies the frequency of the analyses required by that section. This rulemaking eliminates setback requirements contained in Section 264a.173(2) (relating to management of containers) for reactive or ignitable waste. This provision, which is not mandated, created an arbitrary distance requirement where safe management could allow a closer storage distance and duplicated certain fire safety requirements (see, e.g., 37 Pa.Code § 13.1 relating to relative location to property).

The final rule eliminates Section 265a.175 (relating to containment and collection system). This section is redundant since containment and collection system requirements are already incorporated by reference for interim status facilities in Section 265a.179 (relating to containment).

The final rulemaking adjusts the fee schedule for permit modifications by amending Section 270a.3 (relating to payment of fees). The section is amended because Class 2 permit modifications are generally much less complex than Class 3 modifications and therefore demand less time and resources from the Department for review. Appendix I to 40 CFR 270.42 (relating to permit modification at the request of the permittee) contains tables classifying the various types of permit modifications as Class 1, 2 or 3. These tables are incorporated by reference in the regulation in Section 270a.1(a) (relating to incorporation by reference, scope and applicability).

New language is added to Section 270a.51 (relating to continuation of existing permits) to clarify when an expired permit continues in effect. This language is needed since the federal counterpart in 40 CFR 270.51 (relating to continuation of expired permits) explicitly applies only to permits issued by EPA. The language added matches the federal regulation and clarifies this issue with regard to Department-issued permits.

Section 270a.60 (relating to permits-by-rule) is amended to eliminate the application of siting criteria for permit-by-rule facilities. These changes are contained in Section 270a.60(b)(2)(ii), (3)(ii), (4)(ii) and (5)(ii). Permits-by-rule are generally intended to assure proper management of hazardous waste without causing overly burdensome regulation. If an issue arises regarding siting of a particular permit-by-rule facility, the Department retains the authority in Section 270a.60(a) to require an owner or operator to obtain an individual permit for the facility. Under Section 264a.18 (relating to location standards), the siting criteria would apply to that permit.

Finally, the incorporation by reference of 40 CFR Part 262, Subpart E (relating to exports of hazardous waste), in Section 262a.10 (relating to incorporation by reference, purpose, scope and applicability) is simplified. The final rule eliminates the separate exceptions to the “blanket substitution of terms” contained in Sections 262a.55 (relating to exception report), 262a.56 (relating to annual reports) and 262a.57 (relating to recordkeeping) by deleting those sections and replacing them with a new Section 262a.50 (relating to applicability) that contains the blanket exclusion of terms.

4. Manifest completion requirements or clarifications.

The fourth category of changes in this rulemaking is changes addressing the administration of the manifest program for tracking the movement of hazardous waste in the Commonwealth. This is a series of changes designed to clarify ambiguous requirements for all parties involved, streamline the manifesting process and ensure that the Department receives proper notification in a timely fashion.

First, the amendment to Section 262a.20(1) (relating to general requirements) clarifies that a generator does not need to send a generator copy of the manifest to the Department unless specifically required to do so. Section 262a.21 (relating to acquisition of manifests) requires Pennsylvania generators of hazardous waste to use a Pennsylvania manifest if the destination state for the hazardous waste does not require use of a manifest. This change is important for tracking the waste while it remains within the Commonwealth. Several changes are made to Section 262a.23 (relating to use of the manifest). These changes require legible information on the manifest, clarify submission requirements for Pennsylvania generators when the destination facility is out of state and prohibit alteration of the Manifest Tracking Number.

The amendment to Section 263a.12(3) (relating to transfer facility requirements) clarifies the responsibilities of hazardous waste transporters when a shipment is

transferred from one transporter to another at a transfer facility. This is another change identified as necessary through field implementation of the hazardous waste program.

The final rule amends Section 263a.20 (relating to manifest system) to give specific manifest handling guidance to subsequent transporters of hazardous waste. Section 263a.21 (relating to compliance with the manifest) is amended to require a transporter to accept only complete manifests from a hazardous waste generator and prohibits alteration of the Manifest Tracking Number. Finally, Section 264a.71 (relating to use of the manifest system) requires use of a Pennsylvania manifest, accounts for bulk shipment discrepancies and requires legible information by a permitted facility; the final rule amends Section 265a.71 (relating to use of the manifest system) to add the same requirements for an interim status facility.

5. Typographical errors

Finally, several sections of the 1999 RBI rulemaking contained minor typographical errors and omissions. Rather than submit a separate rulemaking for such minor corrections, the Department decided to wait to make these minor changes until a broader rulemaking package was developed to update the hazardous waste program. These errors and omissions are corrected by this final rulemaking. The final rulemaking contains corrections for the following sections: 263a.24(b), 264a.83(a)(2) and (3), 270a.3(3), 270a.42, 270a.60(b)(1)(iv), 270a.60(b)(5), 270a.62, 270a.66, 270a.81 and 270a.83.

F. Summary of Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking

This rulemaking was published as proposed on December 15, 2001 with a 30-day comment period (31 Pa.B. 6814). The Department received twenty-three public comments from six commentators. The Department also received written comments from the Independent Regulatory Review Commission (IRRC). The major comments and responses, as well as any changes to the proposed rulemaking, are discussed below:

1. Section 261a.3.

Several public commentators requested deletion of the proposed rulemaking's requirement in Section 261a.3 that solid waste be managed as hazardous waste until a proper waste determination is made. IRRC also questioned the necessity for this amendment. Among the concerns raised were that the requirement was overly prescriptive and unnecessary, imposed costs that do not result in any significant environmental benefits, was impractical because it would invoke other requirements such as requiring a hazardous waste label and code for an as yet unknown material and require materials such as contaminated soils from remedial activities to be managed as hazardous waste while the results of laboratory analyses are being performed.

The Department believes that the proposed rule does not add any new requirements to the regulations; it merely clarifies the existing requirement for a waste to be properly managed. “Properly managed” in this case means that if a waste is hazardous, it must be managed as a hazardous waste. Determining if a material is a hazardous waste does not always require laboratory analysis of the material. The existing regulation, at 40 CFR 262.11, as incorporated by 25 Pa. Code § 262a.10, allows a generator to apply “generator knowledge” to the waste or provides the option to test the waste to determine whether or not it is hazardous. Application of generator knowledge adds no new costs or time to a hazardous waste determination. Additionally, the environmental benefits associated with management of an “undetermined” waste as a hazardous waste are substantial. To improperly manage a hazardous waste stream can cause substantial harm to human health and the environment and add substantial costs to the generator if the waste must later be removed. The amendment is intended to affect newly generated waste and not waste in place subject to remediation activities; language was added to this subsection to clarify that intent.

2. Section 262a.12(b)(1)(iv).

Several commentators and IRRC raised concerns about the proposal requiring notice to the Department when the generator’s status changes. The existing state and Federal regulations provide for “Small Quantity Generators” (SQG), “Conditionally Exempt Small Quantity Generators” (CESQG) and “Large Quantity Generators” (LQG). Generator status is based on the volume of waste produced by a generator during a single month, and the requirements placed on each category of generator vary accordingly. Primarily, the commentators were concerned about the clarity of this requirement and whether a temporary change in status would require notification to the Department.

The proposed rulemaking contained this provision to clarify that when a generator changes status (e.g., SQG to LQG), they must submit a subsequent notification. This was not intended to require notification based on an “episodic” change. Examples of situations where notification was not intended to be required include where a small quantity generator cleans out a tank once every several years and becomes a large quantity generator for a single month, or where an LQG generates less than the LQG amount in a month. A subsequent notification is required, however, when a generator’s status changes permanently. The final rule clarifies this point in new subsection (b)(v).

3. Section 262a.43.

The proposal to reinstate reporting requirements for spills and discharges of hazardous materials garnered the most comments during the public comment period. The commentators primarily focused on the proposed rulemaking’s requirement that spills and discharges of hazardous materials be reported to the Department. The intent of the Department was to require reporting only of spills or discharges of hazardous wastes or of hazardous materials that become hazardous wastes when spilled or discharged. The final rule clarifies that intent throughout the section.

Several commentators also commented on this provision from the standpoint of the relationship between state and Federal law on this issue. The commentators noted that the reporting provision was deleted as part of the changes made to implement the Regulatory Basics Initiative and argued that nothing has occurred since those changes were made in 1999 that would warrant reversing those results. They further noted that the federal hazardous waste program does not include the same type of reporting requirements as the proposed rulemaking. Instead, generators of hazardous waste are generally required to have in place emergency contingency plans that describe the steps that will be followed to minimize hazards from releases of hazardous wastes. In addition, the facility must maintain equipment to respond to emergencies involving releases of hazardous wastes.

As noted above, section 403(b)(12) of the SWMA states that it “shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge” of hazardous waste. 35 P.S. § 6018.403(b)(12). There have been many inquiries from the regulated community and Department regional staff regarding the absence of spill reporting requirements in the hazardous waste regulations. The Department agrees, in part, with the commentators’ position that spill reporting requirements exist outside of the State hazardous waste regulations; however, those requirements are broader statutory provisions that have prompted uncertainty with respect to hazardous waste releases. To simplify the spill reporting requirements, several changes were made to Section 262a.43 in the final-form rulemaking. Table 1 (Reporting Requirements and Hazard Codes) has been removed, and the requirements for solids and liquids have been standardized. In addition, the final-form rule establishes CERCLA reportable quantities as the notification limits, with the modification of including caps. The caps have been established to ensure that the Department receives notification of large spills or discharges of hazardous wastes, which might go unreported because of higher CERCLA requirements for reportable quantities. The Department believes that this notification is important for proper oversight of hazardous waste management in Pennsylvania. The notification provides the Department with basic information to determine whether the appropriate field office should follow up with a site visit. One of the reasons that the Federal regulations do not include this reporting requirement is because of an insufficient availability of Federal field investigators. Because of these factors, the Department believes that reinstatement of the provisions within the scope of the hazardous waste regulations, as modified, is warranted.

Finally, for clarity and consistency across program lines, the phrase “surface or groundwater” in Section 262a.43(1) and (3) has been changed to “waters of the Commonwealth.”

4. Section 263a.12(3).

The proposed requirement to add secondary containment at in-transit storage facilities where the hazardous waste would be moved off of the original vehicle to another vehicle or a loading area for temporary storage generated several comments. Generally, the commentators felt that this provision was redundant, unnecessary and beyond the scope of the Federal program given the other protective measures that are in place at in-transit storage facilities (e.g., container requirements and preparedness, prevention and contingency plans for both the transporter and the facility).

After consideration of these comments and recognizing the additional cost for in-transit storage facility owners to install secondary containment, the Department has deleted the secondary containment requirement from Section 263a.12 in the final rulemaking.

5. Section 264a.97(1).

One commentator questioned the necessity of requiring groundwater monitoring at particular frequencies in the hazardous waste regulations as limiting flexibility to design an appropriate groundwater monitoring program.

The incorporated provisions at 40 CFR 264.97 authorize the monitoring and reporting requirements that were proposed in Section 264a.97. The federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. The Department believes 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. As a result, the Department believes that these requirements should be included in regulations rather than in permit conditions.

6. Section 270a.60(a)(1).

A commentator and IRRC raised concerns about those regulated entities who are operating under permits-by-rule on the effective date of the amendments. While not opposing the concept of notification, they noted that it was unclear whether notification would be required for such facilities. If notification was required, the commentator recommended that the regulations provide a transition period following the effective date of the amendments so that regulated entities are not faced with the need to submit notifications to the Department simultaneously with the publication of the final version of the amendments in the *Pennsylvania Bulletin*.

The Department's intent was to receive notifications from existing facilities operating under permits-by-rule as well as from facilities that will operate under permits-by-rule in the future. The Department concedes the commentator's point regarding the need for a phase-in period for existing permit-by-rule facilities. The final rule establishes a one-year phase-in period after the effective date of the rulemaking for notification by existing permit-by-rule facilities.

G. Benefits, Costs and Compliance

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

Benefits

These amendments clarify ambiguous provisions and eliminate redundant provisions and typographical errors. These changes should help to minimize confusing aspects of a complex program, enabling regulated entities to understand and meet their regulatory obligations regarding hazardous waste management. The amendments concerning release reporting will provide the Department with timely and accurate information regarding spills and releases of hazardous wastes, which will allow the Department to properly manage staff resources for release response. The clarification that certain manifest copies do not need to be submitted to the Department should also result in cost savings to the regulated community. Finally, the Department believes that the provision that materials must be managed as hazardous waste until a proper determination is made will provide the benefit of avoiding improper management of waste.

Compliance Costs

Since the amendments primarily clarify and correct the existing regulations, the Department believes that there should be no additional costs imposed on the regulated community. For example, as noted above, the regulation concerning release reporting merely clarifies an existing requirement in the Solid Waste Management Act to "immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge" of hazardous waste. 35 P.S. § 6018.403(b)(12).

Compliance Assistance Plan

As with previous hazardous waste management regulations, the Department's compliance assistance efforts will take three forms. Following promulgation as final rulemaking the Department will prepare fact sheets specifically addressing certain changes made by this regulatory amendment. The Department will also continue to work with the regulated community to explain impacts from these amendments and any necessary operational changes to remain in compliance. Information concerning these

amendments and any necessary technical guidance documents will also be available on the Department's web site.

Paperwork Requirements

This regulation will result in a net reduction of paperwork requirements because of the clarifying provision that a hazardous waste generator is no longer required to submit generator copies of manifests to the Department. Section 262a.43 does require additional reporting to the Department in response to certain releases; however, the Department feels that the situation of the spill or discharge of hazardous waste warrants the additional paperwork. The requirement to notify the Department when generator status changes permanently (Section 262a.12(b)(1)(iv)) and the requirement for notification to the Department when a facility seeks to operate under a permit-by-rule (Section 270a.60(a)(1)) also require minor amounts of paperwork to be submitted to the Department. Because of the importance of those issues in determining the proper regulatory requirements that apply to a facility, the Department believes that such notification is necessary for it to fulfill its obligations under the SWMA. Other changes do not affect paperwork requirements.

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)), on November 29, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 6814, (December 15, 2001), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), on _____, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulations.

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 31 *Pennsylvania Bulletin* 6814 (December 15, 2001).
- (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 260a-265a and 270a, are amended by amending those Chapters to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Chairperson 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 Chairperson 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 Chairperson 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.

DAVID E. HESS
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

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchapter B. DEFINITIONS

§ 260a.10. Definitions.

A term defined in this section replaces the definition of the term in 40 CFR 260.10, or, in situations for which no term exists in 40 CFR 260.10, the term shall be defined in accordance with this section. The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporated definition of "EPA region," "State," "United States," "Administrator" and "Regional Administrator."

* * * * *

Treatment--A method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume. The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

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

(a) 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.

(b) In addition to the requirements incorporated by reference, EXCEPT WHEN THE WASTE IS CONTAMINATED MEDIA SUBJECT TO REMEDIATION, when it is not [immediately] PROMPTLY possible to determine if a [waste] MATERIAL will be a hazardous waste, the [waste] MATERIAL shall be managed as a hazardous waste until the determination is made that indicates it is not a hazardous waste.

§ 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) In addition to the requirements incorporated by reference, a conditionally exempt **small** quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

* * * * *

**CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS
WASTE**

Subchapter A. GENERAL

§ 262a.11. Hazardous waste determination.

In addition to the requirements incorporated by reference, a determination that a waste is not hazardous under 40 CFR 262.11 (relating to hazardous waste determination) does not preclude the Department from determining the waste to be hazardous, using the characteristics and testing methods set forth in 40 CFR Part 261 (relating to identification and listing of hazardous waste).

§ 262a.12. EPA identification numbers.

* * * * *

(b) In addition to the requirements incorporated by reference[,];

[(a)] **(1) A** generator shall submit a subsequent notification to the Department if:

[(1)] **(i)** * * *

[(2)] **(ii)** * * *

[(3)] **(iii)** * * *

[(4)] **(iv)** The type of regulated activity that takes place at the generator facility changes~~[,or the generator's facility class changes].~~

(v) THE GENERATOR'S FACILITY CLASS CHANGES, EXCEPT WHEN THE FACILITY CLASS CHANGE IS TEMPORARY.

(2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.

Subchapter B. MANIFEST

§ 262a.20. General requirements.

40 CFR 262.20[(a) –] **(b) and** (c) (relating to general requirements) is not incorporated by reference. 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] for the manifest[.], except that generators need not submit copies of manifests to the Department unless required by § 262a.23(a)(2) (relating to use of the manifest).**

* * * * *

§ 262a.21. Acquisition of manifests.

(a) The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.21 (relating to acquisition of manifests).

(b) In addition to the requirements incorporated by reference, a generator shipping hazardous waste to a facility in a state that does not require use of its own state manifest shall use the Department's manifest.

§ 262a.23. Use of the manifest.

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

(1) The generator shall **print or type [his] THE GENERATOR'S name and** enter the date of shipment in the designated space on the manifest.

(2) If the out-of-state manifest does not include a generator-state [copies which would] copy to be submitted to the Department by the out-of-State designated facility, the generator shall submit [copies] a complete, legible copy, such as [photocopies] a photocopy, of the manifest as signed by the generator [and first transporter], all transporters and [as signed upon receipt by] the designated facility. This copy shall be sent within 10 days of the generator's receipt of its signed copy from the designated facility.

(3) The generator shall obtain the printed or typed name of the transporter on the manifest.

(4) A generator may not use a hazardous waste manifest which has EITHER a preprinted Manifest Document Number or PREPRINTED Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

* * * * *

Subchapter C. PRETRANSPORT REQUIREMENTS

§ 262a.34. Accumulation time.

In addition to the requirements incorporated by reference, a generator who accumulates hazardous waste onsite as specified in 40 CFR 262.34(a)(1)(i) (relating to accumulation time) shall also comply with Chapter 265a, Subchapter I (relating to use and management of containers).

Subchapter D. RECORDKEEPING AND REPORTING

§ 262a.43. Additional reporting.

In addition to the requirements incorporated by reference:

(1) Spills and discharges which are in amounts less than the reportable quantities, which do not result in discharges into [surface or groundwater] WATERS OF THE COMMONWEALTH, and which are managed according to an approved contingency plan, need not be reported.

(2) THE REPORTABLE QUANTITIES ARE:

(i) LIQUID[*] HAZARDOUS WASTE OR LIQUIDS[*] THAT BECOME HAZARDOUS WASTE WHEN SPILLED OR DISCHARGED SHALL BE REPORTED TO THE DEPARTMENT WHEN THE QUANTITY SPILLED OR DISCHARGED EQUALS OR EXCEEDS THE REPORTABLE QUANTITY FOR THE WASTE CONTAINED IN 40 CFR 302.4 (RELATING TO DESIGNATION OF HAZARDOUS SUBSTANCES) OR 10 GALLONS, WHICHEVER IS MORE STRINGENT. LIQUIDS ARE FLOWABLE SUBSTANCES WHICH CONTAIN LESS THAN 20% SOLIDS BY DRY WEIGHT. FLOWABLE REFERS TO FLOW IN THE SENSE OF POURABLE AS A LIQUID.

(ii) SOLID HAZARDOUS WASTE OR SOLIDS THAT BECOME HAZARDOUS WASTES WHEN SPILLED OR DISCHARGED SHALL BE REPORTED TO THE DEPARTMENT WHEN THE QUANTITY SPILLED OR DISCHARGED EQUALS OR EXCEEDS THE REPORTABLE QUANTITY FOR THE WASTE CONTAINED IN 40 CFR 302.4 (RELATING TO DESIGNATION OF HAZARDOUS SUBSTANCES) OR 500 POUNDS, WHICHEVER IS MORE STRINGENT.

[The reportable quantities of the hazardous materials spilled or discharged onsite are set forth in Table 1. For any material with more than one hazard code, the most stringent reportable quantity applies.]

(3) A discharge or spill into [surface water or groundwater] WATERS OF THE COMMONWEALTH shall be reported regardless of quantity spilled or discharged.

[TABLE 1

Hazard Codes

<i>Physical Form</i>	<i>Unit</i>	<i>H</i>	<i>T</i>	<i>I, C, R and E</i>
<u>Liquids*</u>	<u>Gal</u>	<u>5</u>	<u>5</u>	<u>10</u>
<u>Solid</u>	<u>Lbs</u>	<u>10</u>	<u>100</u>	<u>1000</u>

***Liquids are flowable substances which contain less than 20% solids by dry weight.**

Flowable refers to flow in the sense of pourable as a liquid.

(2) (4) In the event of a discharge or spill equal to or greater than the reportable quantity of hazardous WASTE OR MATERIAL THAT BECOMES A HAZARDOUS WASTE WHEN SPILLED OR DISCHARGED [material], the generator shall take appropriate immediate action to protect the health and safety of the public and the environment and immediately notify the Department by telephone at (800) 541-2050 with the following information:

(i) The name of the person reporting the spill.

(ii) The name and identification number of the generator.

(iii) The phone number where the person reporting the spill can be reached.

(iv) The date, time and location of the spill.

(v) A brief description of the incident.

(vi) For each material involved in the spill:

(A) The shipping name, hazard class and U.N. Number.

(B) The estimated quantity of material spilled.

(vii) The extent of contamination of land, water or air, if known.

[(3)](5) If a discharge or spill of HAZARDOUS WASTE, OR hazardous material THAT BECOMES A HAZARDOUS WASTE WHEN SPILLED OR DISCHARGED, occurs during onsite unloading, loading, storage or plan operation, and a Departmental official acting within the scope of his official responsibilities determines that immediate removal of the material is necessary to protect the health and safety of the public and the environment, that official may authorize in writing the removal of the material by transporters who do not have identification numbers or license and without the preparation of a manifest.

[(4)] (6) A generator shall clean up a SPILL OR DISCHARGE OF hazardous WASTE, OR MATERIAL THAT BECOMES A HAZARDOUS WASTE WHEN SPILLED OR DISCHARGED, [material discharge or spill] that occurs during onsite unloading, loading, storage or plan operation, and take actions that may be required or approved by the Department so that the discharge or spill no longer presents a hazard to the health and safety of the public or environment.

[(5)] (7) In addition, the generator shall file a written report on a SPILL OR DISCHARGE OF A reportable hazardous WASTE OR MATERIAL THAT BECOMES A HAZARDOUS WASTE WHEN SPILLED OR DISCHARGED, [material discharge or spill] with the Department within 15 days after the incident, and supply the Department with other information it may require or request that pertains to the discharge. The report on the [hazardous material] spill or discharge shall be entitled "Hazardous Waste Spill Report" and shall contain the following information:

(i) The name, address and identification number of the generator and the date, time and location of the incident.

(ii) A brief description of the circumstances causing the incident.

(iii) A description of each of the hazardous WASTES OR MATERIALS THAT BECOME HAZARDOUS WASTES WHEN SPILLED OR DISCHARGED [materials] involved in the incident, including the estimated quantity spilled by weight or volume.

(iv) A legible copy of the manifest document, if applicable.

(v) A description of a contamination of land, water or air that has occurred due to the incident.

(vi) A description of the actions the generator intends to take to prevent a similar occurrence in the future.

Subchapter E. EXPORTS OF HAZARDOUS WASTE

§ 262a.50. Applicability.

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.55. [Exception report] (Reserved).

[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] (Reserved).

[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] (Reserved).

[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).]

CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter 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 as required by § 263a.13(b)(4) (relating to licensing). This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the 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 as required by § 263a.13(b)(4). This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

~~(3) [A transporter transferring hazardous waste from one transport vehicle to another, or from a transport vehicle to a loading dock or other area for temporary off-vehicle intransit storage shall do so only in areas protected by secondary containment.]~~

~~[(4)]~~ A transporter delivering hazardous waste to another transporter at a transfer facility shall do the following:

(i) Obtain the printed or typed name and signature of the subsequent transporter and the date of the transfer in the designated location on the manifest.

(ii) If the subsequent transporter is not present at the transfer facility while the delivering transporter is at the transfer facility, obtain the location address of the transfer facility, the printed or typed name and signature of the transfer facility operator, and the date of delivery to the transfer facility, assuring the information is entered in Item 15 of the manifest.

(iii) If neither the subsequent transporter nor a representative of the transfer facility is present, enter the location address of the transfer facility, [his] THE SUBSEQUENT TRANSPORTER'S printed or typed name and signature, and the date of delivery to the transfer facility in Item 15 of the manifest.

(iv) Assure all the information required by subparagraphs (i)--(iii) is legible on remaining copies of the manifest.

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § 263a.30, § 261a.5[(d)] (c), § 266a.70(1) or § 266b.50, 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:

* * * * *

(4) In accordance with the Department's guidelines for contingency plans, submit a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste.

(5) Supply the Department with relevant additional information it may require.

* * * * *

(i) A copy of the transporter contingency plan approved at licensure or approved as amended shall be carried on the transport vehicle while transporting hazardous waste.

**Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND
RECORDKEEPING**

§ 263a.20. Manifest system.

[(1)] **(a)** 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 incorporated by reference into this chapter.

[(2)] **(b)** In addition to the requirements incorporated by reference[, a]:

(1) A transporter shall print or type **[his] the transporter's** name.

(2) The second and any subsequent highway transporter shall print or type their name, and sign and date the manifest or continuation sheet in the designated location.

(3) A transporter shall obtain the printed or typed name of the subsequent transporter or representative of the designated facility.

§ 263a.21. Compliance with the manifest.

In addition to the requirements incorporated by reference:

* * * * *

(2) A transporter [shall assure the manifest is properly completed] may not accept a manifest from a generator unless it is completed in accordance with 40 CFR 262.20 and § 262a.20 (relating to general requirements).

(3) A transporter may not accept a hazardous waste manifest which has EITHER a preprinted Manifest Document Number or PREPRINTED Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

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

* * * * *

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

* * * * *

§ 263a.26. Assessment of penalties.

* * * * *

(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 minimum civil penalty of \$1,000.

* * * * *

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

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

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

In addition to the requirements incorporated by reference:

(1) 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] the Department's manifest [approved by the Department], unless a manifest is not required by 40 CFR 262.20(e) (relating to the manifest general requirements).

* * * * *

(3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.

(4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

§ 264a.83. Administration fees during closure.

(a) The owner or operator shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The Department may approve a longer closure period if the owner or operator demonstrates that:

* * * * *

(2) [He] **The owner or operator** has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility. Under [§ **264a.112(d)**] **40 CFR 264.112(d)** (relating to closure plan; amendment of plan) and paragraph (1)(i), if operation of the site is recommenced, the Department may defer completion of closure activities until the new operation is terminated. The deferral shall be in writing.

(3) The demonstrations referred to in [§ **264a.112(d)**] **40 CFR 264.112(d)** and this section shall be made as follows:

(i) The demonstrations in [§ **264a.112(d)**] **40 CFR 264.112(d)** shall be made at least 30 days prior to the expiration of the 60-day period.

* * * * *

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

§ 264a.97. General groundwater 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[,] **and** surface elevations, **which shall be conducted quarterly**, and flow rate and direction determinations, **which shall be conducted annually. These evaluations and**

determinations shall be conducted as required under 40 CFR Part 264, Subpart F (relating to releases from solid waste management units).

* * * * *

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

§ 264a.173. Management of containers.

In addition to the requirements incorporated by reference:

* * * * *

(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.]**

* * * * *

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

Subchapter B. GENERAL FACILITY STANDARDS

§ 265a.13. General and generic waste analysis.

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 **Module 1** report which the owner or operator shall retain for 3 years. The report shall include the following information:

* * * * *

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

§ 265a.71. Use of the manifest system.

In addition to the requirements incorporated by reference:

(1) 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] **the Department's** manifest [approved by the Department], unless a manifest is not required by 40 CFR 262.20(e) (relating to general requirements).

* * * * *

(3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.

(4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

§ 265a.173. Management of containers.

In addition to the requirements incorporated by reference:

* * * * *

(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 or reactive or ignitable hazardous waste.]**

* * * * *

§ 265a.175. [Containment and collection system] (Reserved).

[(a) Container storage areas shall have a containment system capable of collecting and holding spills, leaks and precipitation. The containment system shall:

(1) Have an impervious base underlying the containers which is free of cracks or gaps so as to contain leaks, spills and accumulated rainfall. All joints in an impervious base shall be sealed with appropriate sealants.

(2) Provide efficient drainage from the base to a sump or collection system.

(3) Have sufficient capacity to contain the entire volume of the largest container, or 10% of the total volume of all the containers, whichever is greater.

(b) Run-on into the containment system shall be prevented.

(c) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection system with sufficient frequency to prevent overflow.

(d) At closure, all hazardous waste and hazardous waste residues shall be removed from the containment and collection systems. Remaining containers, liners, bases and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed.

(e) Storage of flowable liquid wastes--less than 20% solids by dry weight and flowable--in containers of less than 110 gallons capacity shall be in accordance with the following criteria, unless otherwise approved by the Department:

(1) For indoor storage of reactive or ignitable hazardous waste, the total maximum container height shall 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.]

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter A. GENERAL INFORMATION

§ 270a.3. Payment of fees.

40 CFR 270.3 is not incorporated by reference, and the following fees are established:

* * * * *

(3) Module ~~[H]~~ 1 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:

* * * * *

(ii) [Class 2 and] Class 3 permit modifications--50% of fees listed in [subsection] paragraph

(1).

(iii) Class 1 and Class 2 permit modifications--\$700.

Subchapter D. CHANGES TO PERMITS

§ 270a.42. Permit modification at the request of the permittee.

* * * * *

(b) Instead of the appeal procedure in 40 CFR [245.19] 124.19 (relating to appeal of RCRA, UIC, NPDES permits)[. The], the Department's decision to grant or deny permit modifications

may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) **[Applications] Applicants** seeking a Class **[2 and] 3** permit **[modifications] modification** shall comply with § 270a.83 (relating to preapplication public meeting and notice).

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

§ 270a.51. Continuation of existing permits.

(a) 40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

(b) The conditions of an expired permit continue in force until the effective date of a new permit if the following conditions are met:

(1) The permittee has submitted a timely application which is a complete application for a new permit.

(2) The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(c) Permits continued under this section remain fully effective and enforceable.

(d) When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may choose to do one or more of the following:

(1) Initiate enforcement action based upon the permit which has been continued.

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit.

(3) Issue a new permit with appropriate conditions.

(4) Take other actions authorized by these regulations.

Subchapter F. SPECIAL FORMS OF PERMITS

§ 270a.60. Permits-by-rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule):

(1) In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the owner or operator gives prior notification to the Department on a form provided by the Department and the conditions listed are met. EXISTING PERMIT-BY-RULE FACILITIES SHALL COMPLY WITH THE NOTIFICATION REQUIREMENTS BY _____ (EDITOR'S NOTE: THE BLANK REFERS TO A DATE ONE YEAR FROM THE EFFECTIVE DATE OF ADOPTION OF THIS RULEMAKING.).

(2) 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:

* * * * *

(iv) Chapter 264a, Subchapter D and 40 CFR **Part 264** Subparts C and D (relating to **preparedness and prevention and** contingency plan and emergency procedures[; **permit conditions; and changes to permit**]).

* * * * *

(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:

* * * * *

(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, **except for § 264a.18 (relating to location standards)**.

* * * * *

(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:

* * * * *

(ii) The applicable requirements of 40 CFR Part 264, Subparts A--E, I--L and DD and Chapter 264a, Subchapters A, B, D, E, I--L and DD, **except for § 264a.18**.

(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 permit-by-rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

* * * * *

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Parts 262 and 264, Subparts A--E and I, J and DD.

* * * * *

[(6)] (5) 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 (relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit-by-rule if the owner or operator complies with the following:

* * * * *

(ii) The applicable requirements of Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Part 264, Subparts A--D, I, J and DD.

* * * * *

§ 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)] (d)(1) (relating to public notice and comment requirements).

§ 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)--(F)] (d)(1) (relating to public notice and comment requirements).

Subchapter H. PUBLIC NOTICE AND HEARINGS

§ 270a.81. Public hearings.

* * * * *

(b) The Department follows the following procedures in a public hearing held under this subchapter:

* * * * *

(5) The Department gives public notice of the hearing under **[subsection (a)] § 270a.80 (relating to public notice and comment requirements)**.

* * * * *

§ 270a.83. Preapplication public meeting and notice.

(a) *Applicability.*

* * * * *

(4) This section does not apply to **Class 1 or Class 2** permit modifications under 40 CFR 270.42 and § 270a.42 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

* * * * *



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October 8, 2002

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333 Market Street
Harrisburg, PA 17120

RE: Final Rulemaking: Hazardous Waste Amendments (#7-364)

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 final rulemaking was approved by the Environmental Quality Board (EQB) on September 17, 2002.

This final rulemaking addresses “housekeeping” issues associated with Pennsylvania’s hazardous waste program and covers three general categories of changes. The first category addresses typographical errors that were identified in the May 1999 publication of comprehensive amendments to the hazardous waste regulations under the Regulatory Basics Initiative (RBI). It also restores some clarifying provisions that were deleted by that rulemaking, but were later determined to be important for effective management of the program. In addition, it clarifies ambiguous provisions that have been identified during implementation of the RBI regulations over the past three years. The second category of changes includes codifying requirements of the Solid Waste Management Act where they differ from the federal regulations that are incorporated by reference. These changes are necessary to eliminate confusion by indicating where the Pennsylvania statute has precedence over federal regulations. Lastly, the rulemaking contains a series of changes that streamline and clarify the manifest program for tracking the movement of hazardous waste in the Commonwealth.

The proposed rulemaking was adopted by the EQB on October 16, 2001, and published with a 30-day public comment period on December 15. There were 23 comments received from seven organizations. Many of the comments focused on the reinstated provisions, expressing that the restored text goes beyond or is in addition to the federal requirements. These concerns have been addressed in the comment/response document, and some modifications to these provisions were made in response to the comments.

Mr. Robert E. Nyce

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October 8, 2002

The Solid Waste Advisory Committee (SWAC) endorsed the draft final amendments on September 13, 2002.

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 Trostle, Regulatory Coordinator, at 787-4526.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Hess". The signature is written in a cursive style with a large, stylized initial "D".

David E. Hess
Secretary

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

ID. NUMBER: 7-364
SUBJECT: Amendments to Hazardous Waste Regulations
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- 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

2002 OCT -8 PM 12:35
REGULATORY REVIEW DIVISION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10-8	<u>Cindy Jain</u>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/8	Pat Carruthan	
10/8	<u>Pat Carruthan</u>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/8	<u>St. Gilbert</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

September 17, 2002

