

Regulatory Analysis Form

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DEPARTMENT OF ENVIRONMENTAL PROTECTION

(1) Agency

Environmental Protection

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

7-364

IRRC Number: 2239

(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: Barbara Sexton, 783-1303

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Final Rulemaking Omitted

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

- No
 Yes: By the Attorney General
 Yes: By the Governor

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

There are three main purposes of the proposed rulemaking. First, issues that have emerged in the administration of the regulations such as inconsistencies or necessary clarifications are being proposed. Many of these are restoration of provisions in previous regulations that were deleted by the RBI regulation modifications. Second, minor typographic errors and corrections to inaccurate cross-references or redundancies that have been identified are being proposed. Finally, during the public comment period, the Department will request USEPA to review the proposal to determine if any changes are required to conform to federal requirements for an authorization update.

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

The proposed 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.

Regulatory Analysis Form

(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 to USEPA for a 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 proposed for amendment.

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

None.

(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 proposal will affect anyone who generates, transports, stores, treats or disposes of hazardous waste in Pennsylvania. The proposed changes are clarifications and corrections, and there are no new requirements being proposed. Because of this, the regulated entities should benefit from an improved and clearer set of requirements.

Regulatory Analysis Form

(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 proposed 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 proposal 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 regulations.

(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 proposed changes are clarifications and corrections, and there are no new requirements being proposed. Because of this, there are no additional costs imposed. 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.

Regulatory Analysis Form

(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.

No new compliance cost or financial assistance will be necessary as a result of these proposed amendments. This proposal 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.

Regulatory Analysis Form

(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.

Regulatory Analysis Form

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

N/A

| Program | FY-3 | FY-2 | FY-1 | Current FY |
|---------|------|------|------|------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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

The proposed regulatory changes will clarify some ambiguous provisions, eliminate redundant provisions, and eliminate typographical errors. The proposal will also provide a basis to solicit formal comment from the USEPA for any changes required for approval of the regulations in an update application for state authorization of the hazardous waste program.

The proposed changes are clarifications and corrections, and there are no new requirements being proposed, 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 proposed 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.

Regulatory Analysis Form

(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 only provision in this proposal that is more stringent than federal requirements involves 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.

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

As noted in Question 24, there is only one provision in the proposal that is more stringent than federal requirements. Since the federal requirements are the minimum requirements for any hazardous waste management program, only this provision could potentially put Pennsylvania at a competitive disadvantage with other states. Most other states require the submission of manifest documents, however, so the submission of manifests required by this proposed rulemaking does not put Pennsylvania at a competitive disadvantage with other states.

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

The regulations being amended are 25 Pa Code Chapters 260a and 269a. Regulations of other state agencies will not be affected.

(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.

Regulatory Analysis Form

(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 will 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 proposed rule, 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.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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#2239

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Copy below is hereby approved as to form and legality. Attorney General

[Signature]
DEPUTY ATTORNEY GENERAL

NOV 08 2001

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-364

DATE OF ADOPTION:

BY: *[Signature]*

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

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: *[Signature]*

10/18/01
DATE OF APPROVAL

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

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Hazardous Waste Amendments

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

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

Preamble

The Environmental Quality Board (Board) proposes to amend 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 proposal was adopted by the Board at its meeting of October 16, 2001.

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 Klappkowski, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this preamble. 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 proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed 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 Purpose

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 proposed rulemaking provides the opportunity to make any changes necessary to update that program authorization.

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

E. Summary of Regulatory Requirements

The proposed amendments generally fall into one of five categories: codification of a SWMA requirement that is different than or broader than the federal requirements incorporated by reference; restoration of a regulatory provision that was deleted in the RBI rulemaking; clarification of an ambiguous requirement; clarification of a manifesting requirement; and correction of a typographical error. The specific changes in these categories are summarized below.

1. Codification of a statutory requirement.

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. This proposed rulemaking duplicates 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 is in Section 260a.10 (relating to definitions) where the proposed rulemaking adds the definition of “treatment.” The term has different definitions in section 103 of the SWMA (35 P.S. § 6018.103) and 40 CFR 260.10. Although the substance of the two definitions is very similar, the actual wording is different, primarily in terms of word order. The proposed definition follows the SWMA language.

The second 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 proposed 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 in the proposed rulemaking 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 example of this category of changes is in Section 261a.3 (relating to definition of “hazardous waste”). The proposal reinstates the requirement to manage waste as hazardous until 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 issue of 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.

There have been many inquiries from the regulated community and questions from Department personnel about when spills must be reported. The proposed Section 262a.43 (relating to additional reporting) re-establishes the conditions, amounts, standards, and procedures for reporting spills and discharges of hazardous waste and hazardous materials. 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 proposed 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 in this proposal.

Several of the proposed 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 proposed 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 proposed to require secondary containment for generator storage of hazardous waste in containers. Second, Section 263a.12 (relating to transfer facility requirements) adds requirements for secondary containment and Preparedness, Prevention and Contingency (PPC) plan preparation for hazardous waste transfer facilities. The proposed changes accomplish this through reference to Section 263a.13(b)(4) (discussed above).

The proposed change to Section 264a.97 (relating to general groundwater monitoring requirements) specifies the frequency of the analyses required by that section. The proposal eliminates setback requirements contained in Sections 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 proposal eliminates Section 265a.175 (relating to containment and collection system). This section is redundant since the federal containment and collection system requirements are already incorporated by reference for interim status facilities in Section 265a.179 (relating to containment).

The proposal adjusts the fee schedule for permit modifications by amending Section 270a.3 (relating to payment of fees). The change is proposed because Class 2 permit modifications are generally much less complex than Class 3 modifications, which 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 proposed to be added to Section 270a.51 (relating to continuation of expired 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 proposed to be added matches the federal regulation and will clarify this issue.

The proposal contains changes to Section 270a.60 (relating to permits by rule) that eliminates the application of siting criteria for permit-by-rule facilities. These proposed 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 proposed 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 proposed rulemaking are changes addressing the administration of the manifest program for tracking the movement of hazardous waste in the Commonwealth. This is a series of proposed 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 proposed change 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 proposed change is important for tracking the waste while it remains within the Commonwealth. Several changes are proposed 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 proposed change to Section 263a.12(4) (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 by Department staff as necessary to implement the hazardous waste program.

The proposed additions to Section 263a.20 (relating to manifest system) give specific manifest handling guidance to subsequent transporters of hazardous waste. The proposed addition to Section 263a.21 (relating to compliance with the manifest) requires a transporter to accept only complete manifests from a hazardous waste generator and prohibits alteration of the Manifest Tracking Number. Finally, the proposed change to 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 proposed change to Section 265a.71 (relating to use of the manifest system) contains the same requirements for an interim status facility.

5. Typographical errors

Several sections of the 1999 RBI rulemaking contained minor typographical errors or 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 or omissions are corrected by this proposed rulemaking. The proposed rulemaking contains corrections for the following sections: 263a.24(b), 264a.83(a)(2) & (3), 270a.42, 270a.60(b)(1)(iv), 270a.60(b)(5), 270a.62, 270a.66, 270a.81 and 270a.83.

F. Benefits, Costs and Compliance

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

Benefits

The proposed regulatory changes will clarify some ambiguous provisions, eliminate redundant provisions, and eliminate typographical errors. The proposal will also provide a basis to solicit formal comment from the USEPA for any changes required for approval of the regulations in an update application for state authorization of the hazardous waste program.

Compliance Costs

The proposed changes are clarifications and corrections; there are no new requirements being proposed. As a result, there are no additional costs imposed. 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.

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 a fact sheet specifically addressing certain changes made by this regulatory amendment. The Department will also continue to work with the regulated community to explain impacts from the proposed regulations 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 in paperwork requirements because the clarifying provision included states that a hazardous waste generator is no longer required to submit generator copies of manifests to the Department. Other proposed changes do not affect paperwork requirements.

G. 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.

H. 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 proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, if IRRC has any objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the General Assembly and the Governor of objections raised by IRRC prior to final publication of the amendments by the Department.

I. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by January 14, 2002 (within 30 days of publication in the Pennsylvania Bulletin). Interested persons may also submit a summary of their comments to the Board. The summary shall not exceed one page in length and must also be received by January 14, 2002 (within 30 days following publication in the Pennsylvania Bulletin). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal must be included in each transmission. Comments submitted electronically must also be received by the Board by January 14, 2002.

DAVID E. HESS
Chairman
Environmental Quality Board

Editors Note: Material proposed to be added is underlined and printed in bold face; material proposed to be deleted is enclosed in brackets and printed in bold face.

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—Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so

as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of waste so as 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, when it is not immediately possible to determine if a material will be a hazardous waste, the 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.

§ 262a.12. EPA identification numbers.

* * * * *

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

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

[(1)] **(i)** The generator activity moves to another location.

[(2)] **(ii)** The generator facility's designated contact person changes.

[(3)] **(iii)** The ownership of the generator facility changes.

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

(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**--(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 or her 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] copy [which would] 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], all transporters and [as signed upon receipt by] the designated facility. This copy shall be sent within ten 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 shall not use a hazardous waste manifest which has a preprinted Manifest Document Number or Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

* * * * *

SUBCHAPTER C. PRE-TRANSPORT 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 the requirements of 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, and which are managed according to an approved contingency plan, need not be reported. 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. A discharge or spill into surface water or groundwater shall be reported regardless of quantity spilled or discharged.

TABLE 1

Hazard Codes

| <u>Physical Form</u> | <u>Unit</u> | <u>H</u> | <u>T</u> | <u>I, C, R and E</u> |
|-----------------------------|--------------------|------------------|-------------------|-----------------------------|
| <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) In the event of a discharge or spill equal to or greater than the reportable quantity of hazardous 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) Name of the person reporting the spill.

(II) Name and identification number of generator.

(III) Phone number where person reporting the spill can be reached.

(IV) Date, time and location of the spill.

(V) 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) If a discharge or spill of hazardous material 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) A generator shall clean up a hazardous 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) In addition, the generator shall file a written report on a reportable hazardous 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 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.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).]

§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).

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 or her 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.

[(4)] (5) ***

* * * * *

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

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

(ii) 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.

(iii) 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.] 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 shall not accept a hazardous waste manifest which has a preprinted Manifest Document Number or 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 I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

* * * * *

(ii) [Class 2 and] Class 3 permit modifications--50% of fees listed in subsection (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] 124.19 (relating to appeal of RCRA, UIC, NPDES permits)[.], the Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) [Applications] **Applicants** seeking a Class [2 and] 3 permit modification[s] 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.

(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 (relating to**

location standards).

(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 (relating to location standards)**, 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 (relating to location standards), 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.

* * * * *



Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
November 29, 2001

The Secretary

Phone: 717-787-2814
E-Mail: DavidHess@state.pa.us

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #2
333 Market Street
Harrisburg, PA 17120

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

Dear Bob:

Enclosed is a copy of a proposed regulation for review and comment by the Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on December 15, 2001, with a 30-day public comment period. This proposal was approved by the Environmental Quality Board (EQB) on October 16, 2001.

This proposal addresses "housekeeping" issues that have been identified during the two years that the comprehensive hazardous waste amendments under the Regulatory Basics Initiative (RBI) have been implemented. Pennsylvania's hazardous waste management program received final authorization from the EPA for changes made to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and this proposal provides the opportunity to make any changes necessary to update that program authorization.

The proposal clarifies ambiguous language, corrects typographical errors and in some cases restores clarifying provisions that were removed by the RBI amendments. The proposal also codifies the Solid Waste Management Act requirements where they differ from the federal regulations incorporated by reference. Lastly, the proposal clarifies and streamlines the manifest process and ensures that DEP is properly notified on a timely basis.

The Solid Waste Advisory Committee (SWAC) reviewed and supported a draft of the proposal on March 8, 2001.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Act provides that the Commission may,

Mr. Robert E. Nyce

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November 29, 2001

within ten days after the expiration of the Committee review period, notify the agency of any objections to the proposed regulation. The Department will consider any comments or suggestions received by the Commission, together with Committee and other public comments prior to final adoption.

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", with a long horizontal stroke extending to the right.

David E. Hess
Secretary

Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 7-364
SUBJECT: Hazardous Waste Amendments
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- X 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

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|----------|-----------------------|--|
| 11-29 | <u>C. Zun</u> | HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY |
| 11-29-01 | <u>Dr. A. Castell</u> | SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY |
| 11/29/01 | <u>E. Pagan</u> | INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL |
| 11/29/01 | <u>C. Lee-Beun</u> | LEGISLATIVE REFERENCE BUREAU |

November 14, 2001