

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 261, 262 and 264—266] Hazardous Waste Management

The Environmental Quality Board (Board) proposes to amend Chapters 261, 262 and 264—266 (relating to criteria, identification and listing of hazardous waste; and special standards for the management of certain hazardous waste activities) to read as set forth in Annex A.

This proposal was adopted by the Board at its regular meeting on June 18, 1996.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Leon Kuchinski, Chief, Division of Hazardous Waste Management, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 14th floor, 400 Market Street, P. O. Box 8471, Harrisburg, PA 17105-8471, (717) 787-6239, or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P. O. Box 8464, 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 (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). These proposed amendments are available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

This proposal is being made under the provisions of sections 105, 401—403 and 501 of the Solid Waste Management Act (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 Solid Waste Management Act. The Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste as are necessary to protect the public's health, safety and welfare, as well as protect the environmental resources of this Commonwealth. Sections 105, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations as 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 as are necessary for the proper work of the Department.

D. *Background of the Proposal*

The Department administers the hazardous waste program under numerous State laws, including the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1304), The Clean Streams Law (35

P. S. §§ 691.1—691.100), the Air Pollution Control Act (35 P. S. §§ 4001—4015) and sections 1905-A and 1917-A of The Administrative Code of 1929 (71 P. S. §§ 510-5 and 510-17).

Numerous Federal statutes applicable to hazardous waste management activities are administered by Federal agencies including the Environmental Protection Agency (EPA). The Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6992) (RCRA), and Federal regulations at 40 CFR Parts 260—279 administered by the EPA, contain the basic Federal hazardous waste program requirements. RCRA provides that states may apply for and receive authorization from the EPA for all or parts of the state hazardous waste management program, under 42 U.S.C.A. § 6926 and 40 CFR Part 271. The EPA authorization essentially eliminates the dual Federal and state permitting requirements for the hazardous waste management activities that are covered entirely within the scope of the state program authorized by the EPA, and thereby allows the regulated community to comply with state law in lieu of the affected parts of Federal law. The Department intends to apply for EPA authorization for the universal waste rule once this proposal is finalized.

EPA has concluded that the existing regulatory structure is not appropriate for certain widely generated wastes referred to as universal wastes. On May 11, 1995, the EPA promulgated the universal waste rule at 40 CFR Part 273. The universal waste rule is a set of simplified management standards for the collection and transportation of universal wastes. (Notice of proposed universal waste rule appeared at 58 FR 8102 (February 11, 1993), and final universal waste rule appeared at 60 FR 25492 (May 11, 1995).

Universal wastes share the following common characteristics:

- a. They are frequently generated in a variety of settings other than the industrial settings usually associated with hazardous wastes.
- b. They are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program.
- c. They may be present in significant volumes in nonhazardous waste management systems.

The EPA has determined that nickel cadmium and other types of batteries, certain hazardous waste pesticides and mercury-containing thermostats should be classified as universal wastes. In the future, EPA may add additional wastes or categories of wastes to the universal waste rule.

The universal waste rule is designed to accomplish three general goals. The first goal is to encourage resource conservation, while ensuring adequate protection of human health and the environment. The second goal is to improve implementation of the current Subtitle C hazardous waste regulatory program. The third goal is to provide incentives for individuals and organizations to collect the unregulated portions of these universal waste streams (such as, universal wastes from households or conditionally exempt small quantity generators) and manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream and minimizing their input of hazardous constituents to municipal landfills and combustors.

At its March 14, 1996, meeting, the Department's Solid Waste Advisory Committee (Committee) voted to recommend the Department proceed with the draft regulations as written. No changes were made to the regulations as a result of this recommendation.

On April 20, 1996, the Department published in the *Pennsylvania Bulletin* an enforcement strategy for interim management of waste that meets the proposed definition for universal waste. See 26 Pa.B. 1828 (April 20, 1996). Under the enforcement strategy, persons who manage any of the three universal wastes in accordance with this proposal will not be subject to enforcement proceedings initiated by the Department under more stringent existing Pennsylvania regulations. This enforcement strategy is an exercise of the Department's discretionary enforcement authority under the existing regulations.

E. Summary and Purpose of Proposed Rulemaking

The Board agrees with the EPA that the existing regulatory structure is not appropriate for the wastes referred to as universal wastes. The universal waste rule strikes an appropriate and reasonable balance between the need to streamline the waste management requirements and to protect human health and the environment. Therefore, the Board is proposing to amend the Department's hazardous waste regulations by adding a universal waste rule that is essentially identical to the EPA rule.

The purpose of the proposed amendments is to add the Federal universal waste rule to the Department's hazardous waste management regulations. Adopting the rule should facilitate recycling or proper disposal of universal wastes by encouraging the creation of universal waste collection systems.

The Department's regulations as applied to the collection and transportation of batteries, pesticides and mercury thermostats have become more stringent than necessary to retain RCRA authorization. The EPA's reduced management standards for the collection and transportation of universal wastes will protect human health and the environment. Therefore, adopting the universal waste rule will eliminate an unnecessary conflict with the RCRA regulations.

At present, due to the lack of effective collection systems, many universal wastes are not being recycled or properly disposed of. Batteries and mercury thermostats are frequently being disposed rather than recycled. These wastes are frequently included in the municipal waste stream and disposed of at either an incinerator or a municipal landfill rather than at a hazardous waste disposal facility. This is especially true for universal wastes generated by households. Farmers now frequently retain or dispose of unused or waste pesticides without having to comply with the requirements of Chapters 264—266. These pesticides should be returned to the manufacturer for proper management.

The absence of adequate universal waste collection systems is due to the high cost of complying with the existing management standards for the storage, treatment, disposal and transportation of hazardous wastes. By reducing the waste management standards applicable to universal waste collection systems, the costs associated with their operation should be reduced. Therefore, it is anticipated that establishing the universal waste rule will encourage the creation of universal waste collection systems and facilitate the recycling or proper disposal of universal wastes.

As described in this Preamble, the Commonwealth's universal waste rule is essentially equivalent to the Federal universal waste rule. Adopting the universal waste rule is consistent with the Department's commitment to adopting environmental regulations that are no more stringent than Federal requirements unless there is a compelling reason.

The Board proposes to amend Chapter 266 by adding six subchapters defining the universal waste program: Subchapter J (relating to general), Subchapter K (relating to standards for small quantity handlers of universal waste), Subchapter L (relating to standards of large quantity handlers of universal waste), Subchapter M (relating to standards for universal waste transporters), Subchapter N (relating to standards for destination facilities), Subchapter O (relating to import requirements) and Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste). In addition, the Department proposes to make some technical amendments to §§ 262.10(a) and 266.80 (relating to scope; reclaimed spent lead acid batteries: applicability and requirements).

The following table is a simplified overview of the types of participants in the universal waste system and the requirements that are applicable to each type of participant. Each of the universal waste requirements is then described in more detail.

OVERVIEW OF UNIVERSAL WASTE REGULATIONS

<i>Universal Waste Requirements</i>	<i>Small Quantity Handlers of Universal Waste</i>	<i>Large Quantity Handlers of Universal Waste</i>	<i>Universal Waste Transporters</i>	<i>Destination Facilities</i>
Prohibitions	§ 266.211	§ 266.231	§ 266.251	Comply with RCRA TSDF requirements
Notification	§ 266.212 NO REQUIREMENTS	§ 266.232	Comply with DOT requirements	Comply with RCRA TSDF requirements
Waste Management Requirements	§ 266.213	§ 266.233	§ 266.252 Comply with DOT requirements	Comply with RCRA TSDF requirements
Labeling/Marking	§ 266.214	§ 266.234	Comply with DOT requirements	Comply with RCRA TSDF requirements
Storage Time Limits	§ 266.215 ONE YEAR LIMIT	§ 266.235 ONE YEAR LIMIT	§ 266.253 TEN DAY LIMIT	Comply with RCRA TSDF requirements
Employe Training	§ 266.216 DISTRIBUTE INFO	§ 266.236 ENSURE FAMILIARITY	Comply with DOT requirements	Comply with RCRA TSDF requirements
Response to Releases	§ 266.217	§ 266.237	§ 266.254	Comply with RCRA TSDF requirements
Off-Site Shipments	§ 266.218	§ 266.238	§ 266.255 Comply with DOT requirements	§ 266.261
Tracking	§ 266.219 NO REQUIREMENTS	§ 266.239	Comply with DOT requirements	§ 266.262
Export Requirements	§ 266.220	§ 266.240	§ 266.256	None

¹ Gray shading indicates that there are applicable regulations in Chapter 266, Subchapters K—O.

Wastes Covered Under the Universal Waste System

The proposed universal waste rule covers three types of wastes. These wastes are: batteries, hazardous waste pesticides that are either recalled or collected in waste pesticide collection program, and mercury thermostats. The Board is requesting comments and supporting documentation concerning the inclusion of fluorescent tubes, as well as other wastes or waste categories, under the universal waste rule on final publication of the rule. Individuals who collect and store lead acid batteries have the option of using either the universal waste rule or Chapter 266, Subchapter G. Proposed § 266.205 (relating to applicability, household and conditionally exempt small quantity generator waste) makes it clear that universal wastes generated by households or conditionally exempt small quantity generators may also be managed under the universal waste rule. As explained as follows, proposed Subchapter P contains a process for adding other wastes to the universal waste rule.

Participants in the Universal Waste Program

The four types of participants in the universal waste system are: Small Quantity Handlers of Universal Waste (SQHUW), Large Quantity Handlers of Universal Waste (LQHUW), Universal Waste Transporters and Destination Facilities. Each of these participants and the applicable management standards are described as follows.

SQHUWs and LQHUWs

Section 266.206 (relating to definitions) defines a “universal waste handler” as a person who generates or collects a universal waste. A “generator” is a person who creates a universal waste. This is a person who uses batteries, pesticides or thermostats and determines that

the material has become a waste. Contractors or repair persons who decide that batteries or thermostats are no longer useable and remove them from service are also generators. A universal waste handler collects universal wastes that are generated by the handler or are received from other handlers, consolidates the waste and sends it on to other handlers or treatment/recycling or disposal facilities. Each separate location (that is, generating location or collecting location) is considered a separate universal waste handler. Except as authorized under proposed §§ 266.213 and 266.233 (relating to waste management) a universal waste handler cannot treat/recycle, or dispose of a universal waste.

The proposed categories of LQHUWs and SQHUWs are distinguished by the amount of waste accumulated onsite at any time. See § 266.206. LQHUWs may accumulate 5,000 kilograms or more total of universal wastes. SQHUWs are limited to accumulating less than 5,000 kilograms total.

A SQHUW may occasionally receive or generate more than 5,000 kg of universal waste. There is no intent to permanently categorize a universal waste handler as a LQHUW simply because in 1 year that handler accumulated onsite at one time 5,000 kgs or more of universal waste. As a result, the proposed definition for LQHUW allows the individual to annually reevaluate its status.

It is anticipated that the SQHUW category will facilitate the creation of universal waste collection systems. Many collectors of universal wastes will service consumers and small businesses. These collectors would frequently be retail-type operations participating in a National collection program, such as, a department or specialty store that has a spent battery collection box. These collectors would likely accumulate only small quantities of universal waste because only a minor portion of their business is devoted to managing waste, and because they would ship wastes frequently using package shipping services or similar systems set up by the collection programs.

notification) is different for SQHUW and LQHUW. Only LQHUVs are required to obtain an EPA identification number.

Sections 266.213 and 266.233 (relating to waste management) explain the requirements SQHUWs and LQHUVs must follow when handling universal waste. Universal waste must be managed in a way that prevents releases to the environment and must also be specially packaged. Special procedures must be followed when handling batteries and when removing mercury-containing ampules from thermostats. Proposed §§ 266.214 and 266.234 (relating to labeling/markings) require handlers to label or mark universal wastes or containers of universal waste to identify the universal waste. Proposed §§ 266.215 and 266.235 (relating to accumulation time limits) limit the time that handlers may accumulate universal waste to 1 year. This time limit may be exceeded if additional time is solely necessary to facilitate the proper recycling or disposal of the waste. In addition, handlers must be able to demonstrate the length of time the waste has been accumulated.

Proposed §§ 266.216 and 266.236 (relating to employee training), are somewhat different for SQHUWs and LQHUVs. SQHUWs are required to distribute basic handling and emergency information to employees handling universal waste. LQHUVs are required to ensure that employees are familiar with waste handling and emergency procedures as appropriate, based on their responsibilities. Proposed §§ 266.217 and 266.237 (relating to response to releases) requires handlers to immediately contain any releases of universal waste and to handle residues appropriately. Proposed §§ 266.218 and 266.238 (relating to offsite shipments) requires handlers to send universal waste only to persons within the universal waste system and specify procedures to be followed when a shipment is rejected by the receiving facility. Proposed §§ 266.219 and 266.239 (relating to tracking universal waste shipments) are different for SQHUWs and LQHUVs. SQHUWs are not required to keep records of shipments of universal waste. LQHUVs are required to maintain basic records documenting shipments received at the facility and shipments sent from the facility. Proposed §§ 266.220 and 266.240 (relating to exports) specify notification procedures to be followed when handlers ship universal wastes to foreign destinations.

Universal Waste Transporters

A "universal waste transporter" is defined as a person who is engaged in the transportation of universal wastes. A universal waste transporter may be an independent shipper contracted to transport the waste, or may be a handler who self-transport universal waste. The proposed requirements applicable to universal waste transporters are found in Subchapter M.

Proposed § 266.250(a) (relating to applicability) explains to whom the transporter requirements are applicable. A universal waste transporter who complies with the requirements of Subchapter M will be deemed to have a transporter's license as required by the Solid Waste Management Act. There are no similar requirements in the Federal regulations. Because the State license is provided by the regulations, the proposed amendments have the same practical effect as the Federal regulations which do not require a license.

Proposed § 266.251 (relating to prohibitions) prohibits universal waste transporters from disposing of, diluting or treating universal waste. Proposed § 266.252 (relating

to waste management) explains that universal waste transporters are required to comply with applicable United States Department of Transportation requirements if the waste they are transporting is a hazardous material under United States Department of Transportation regulations. Proposed § 266.253(a) (relating to storage time limits) allows a universal waste transporter to store universal waste for 10 days or less at a universal waste transfer facility. Universal waste transfer facilities are transportation-related facilities such as loading docks, parking areas and storage areas where universal waste is normally stored during the course of transportation. See § 266.206 (relating to definitions). If a universal waste transporter stores universal waste for more than 10 days at one location, the universal waste transporter is required to comply with the appropriate universal waste handler rules in § 266.253(b).

Proposed § 266.254 (relating to response to releases) requires universal waste transporters to immediately contain any releases of universal waste and to handle residues appropriately. Proposed § 266.255 (relating to offsite shipments) prohibits universal waste transporters from transporting universal waste to any place other than a universal waste handler, destination facility or foreign destination. Finally, proposed § 266.256 (relating to exports) requires universal waste transporters to follow certain requirements for exports of universal waste.

Destination Facilities

A "destination facility" is defined as a facility that treats, disposes of or recycles a particular category of universal waste in § 266.206 (relating to definitions). For the purposes of the universal waste rule, treatment does not include the waste management practices required by proposed §§ 266.213(a) and (c) and 266.233(a) and (c) (relating to waste management). The standards that will be applicable to a destination facility are found in Subchapter N.

Proposed § 266.260 (relating to applicability) indicates which of the hazardous waste regulations destination facilities are required to follow. Except as modified by Subchapter N, a destination facility is subject to the same regulations applicable to any treatment, storage or disposal facility handling a hazardous waste.

Proposed § 266.261 (relating to offsite shipments) sets forth procedures to be used when rejecting a shipment of waste. Finally, proposed § 266.262 (relating to tracking universal waste shipments) requires destination facilities to retain the same records for receipt of universal waste shipments that LQHUVs are required to retain. By documenting receipt of universal waste shipments, these records complete documentation of shipments sent from handlers.

Import Requirements

Proposed Subchapter O (relating to import requirements) clarifies the requirements applicable to universal wastes that are imported. Once universal waste enters the United States it is subject to the same universal waste requirements as if it had been generated in the United States. See § 266.270 (relating to imports).

Including Additional Hazardous Wastes under the Universal Waste Rule

Proposed Subchapter P creates two methods for adding new categories to the universal waste rule. First, all new categories of hazardous waste added to the EPA universal waste rule will be incorporated by reference into the Department's universal waste rule. See § 266.283 (relat-

ing to incorporation by reference). Second, the Board is directing the Department to make a determination whether another waste can be managed in a manner consistent with the universal waste rule. This determination shall be based on a petition from individuals or on the Department's own motion. The procedures and standards for making this determination are set forth in proposed §§ 266.280—266.282 (relating to general; factors for petitions to include other waste under Chapter 266, Subchapters J—O; public notice and review of petitions).

Authorizing the Department to determine whether to include additional wastes under the universal waste rule enables the Department to quickly customize the universal waste rule to hazardous waste management practices in this Commonwealth. The Department's determination to include another hazardous waste under the universal waste rule should automatically become part of the Department's authorized program because the procedures and standards for making this determination will be part of the universal waste rule submitted to the EPA as a revision to the Department's authorized program.

It is anticipated that the EPA will approve the procedures and standards authorizing the Department to determine whether to add additional wastes to the universal waste rule as part of a revision to the Commonwealth's authorized program. The EPA is encouraging states to include in their universal waste rule a process for petitioning that state to revise its regulations to include additional wastes under its universal waste rule. See 60 FR 25536 (May 11, 1995) (addition of new universal wastes to state programs). The procedures established by the Board are essentially equivalent to those required by the EPA. The information requirements and substantive standards established by the Board are identical to those mandated by the EPA. The only difference is that the Department's determination is an adjudication rather than a rulemaking. By proceeding by adjudication rather than rulemaking, the proposed amendments will streamline the process.

Miscellaneous Proposed Amendments

Section 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt generators) proposes to exclude universal wastes from the quantity determination necessary to qualify for small quantity generator status. This proposal has been made because universal wastes are to be managed separately under Chapter 266, Subchapters J—P. Proposed § 261.9 (relating to requirements for universal waste) makes it clear that universal wastes are to be managed in accordance with the requirements of Chapter 266, Subchapters J—O and not the normal hazardous waste regulations. Finally, the proposal to § 266.80 (relating to applicability and requirements) includes lead-acid batteries that are being regenerated.

F. Benefits and Costs

Executive Order 1996-1 requires a statement of the benefits of proposed amendments, as well as the costs which may be imposed. It also requires a statement of the need for, and a description of, forms, reports or other paperwork required as a result of the proposed amendments.

Benefits

Adopting the universal waste rule will prevent pollution by facilitating the recycling or proper disposal of these wastes. The complexity and costs of complying with the full hazardous waste regulations inhibits the creation of systems for the collection and transportation of univer-

sal wastes to recycling or hazardous waste disposal facilities. The universal waste rule establishes environmentally protective streamlined standards for the collection and transportation of these wastes. By making these management standards less complex and less costly to comply with, the creation of universal waste systems will be facilitated.

The Department lacks the data to develop an estimate of the reduction in costs that will result from adopting the universal waste rule. However, EPA's analysis of its universal waste rule indicates that the management costs for generators or universal wastes should be reduced by approximately 50% when compared to management under full Subtitle C RCRA standards. Since the proposed universal waste rule is essentially equivalent to EPA's universal waste rule, it is anticipated that Pennsylvania generators of universal waste will see a similar reduction in costs.

Costs

The proposed amendments, if adopted, provide an optional means to comply with applicable hazardous waste requirements. Compared to existing requirements, the proposed amendments will reduce costs.

There are some persons who are currently not subject to regulation under the hazardous waste regulations which may elect to participate in the universal waste program. If they elect to collect universal waste under the proposed amendments, they will incur additional costs.

Compliance Assistance

The Department's compliance assistance efforts will take two forms. The Department will prepare fact sheets to help explain how the universal waste rule works. In addition, the Department will work with industry groups to develop workshops to explain how individuals can utilize the universal waste rule to establish universal waste collection systems to recycle or properly dispose of these hazardous wastes.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on July 24, 1996, 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 1982-2 "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the regulation.

H. Sunset Review

These regulations 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. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments 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 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 2, 1996. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by October 2, 1996. 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 regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us. The subject heading of the proposal and returned name and address must be included in each transaction. Comments submitted electronically must also be received by the Board by October 2, 1996.

JAMES M. SEIF,
Chairperson

(Editors Note: A proposed rulemaking relating to this proposal was published at 25 Pa.B. 4917 (November 11, 1995). The following sections were also proposed to be amended at that time: §§ 261.5, 262.10 and 265.1.)

Fiscal Note: 7-297. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261. CRITERIA, IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

(Editor's Note: The Department is proposing to delete the existing text of § 261.5 which appears at 25 Pa. Code pages 261-15—261-19, serial pages (176171)—(176175) and replace it with the text which follows.)

§ 261.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if the generator generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e)—(g) and (j), a conditionally exempt small quantity generator is not subject to regulation under Chapters 262—266 and 270 if the generator complies with the requirements of subsections (f), (g) and (j).

(c) When making the quantity determinations of this chapter and Chapter 262 (relating to generators of hazardous waste), the generator shall include all hazardous waste that it generates, except hazardous waste that is one or more of the following:

(1) Exempt from regulation under 40 CFR 261.4, 261.6(a)(3), 261.7(a)(1) or 261.8.

(2) Managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in § 262.2.

(3) Recycled, without prior storage or accumulation, only in an onsite process subject to regulation under 40 CFR 261.6(c)(2).

(4) Used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR Part 279.

(5) Spent lead-acid batteries managed under the requirements of Chapter 266, Subchapter G (relating to reclaimed spent lead-acid batteries),

(6) Universal waste managed under Chapter 266 (relating to special standards for the management of certain hazardous waste activities and universal waste management).

(d) In determining the quantity of hazardous waste generated, a generator need not include one or more of the following:

(1) Hazardous waste when it is removed from onsite storage, if it has been counted once.

(2) Hazardous waste produced by onsite treatment, including reclamation of hazardous waste generated onsite, if the hazardous waste that is treated was counted once.

(3) Spent materials that are generated, reclaimed and subsequently reused onsite, if the spent materials have been counted once.

(4) A universal waste managed under § 261.9 (relating to requirements for universal waste) and Chapter 266.

(e) All quantities of acute hazardous waste are subject to Chapters 262—266, and 270 if a generator generates acute hazardous waste in a calendar month in quantities greater than the following:

(1) A total of 1 kilogram of acute hazardous wastes listed in § 261.31, § 261.32 or § 261.33(4) (relating to list of hazardous waste from nonspecific sources; list of hazardous waste from specific sources; and waste commercial chemical products, off-specification species, containers, container residues and spill residues thereof).

(2) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of acute hazardous wastes listed in § 261.31, § 261.32 or § 261.33(4).

(f) For acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e) to be excluded from this section, the generator shall comply with the following requirements:

(1) Section 262.11 (relating to hazardous waste determination).

(2) The generator may accumulate acute hazardous waste onsite. If the generator accumulates at any time acute hazardous wastes in quantities greater than those in subsection (e), all of those accumulated wastes are subject to Chapters 262—266 and 270. The time period established in § 262.34(a) (relating to accumulation) for accumulation of wastes onsite begins when the accumulated wastes exceed the applicable exclusion limit.

(3) The conditionally exempt small quantity generator may either treat or dispose of acute hazardous waste

generated onsite at an onsite facility or ensure delivery to an offsite treatment, storage or disposal facility, either of which, if located in the United States, is:

(i) Permitted under Chapter 270 (relating to permit program) if the facility is located within this Commonwealth.

(ii) Provided interim status under Chapter 265 (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and Chapter 270 if the facility is located within this Commonwealth.

(iii) Authorized to manage hazardous waste by another state with a hazardous waste management program approved under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs).

(iv) Permitted, licensed or registered by another state to manage municipal or industrial solid waste.

(v) A facility which meets one or more of the following conditions:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste.

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(vi) A universal waste handler or destination facility subject to the requirements of Chapter 266, Subchapters J—P, if the waste is a universal waste managed under Chapter 266, Subchapters J—P.

(g) For hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator shall comply with the following requirements:

(1) Section 262.11.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste onsite. If the conditionally exempt small quantity generator accumulates at any time more than a total of 1,000 kilograms of hazardous wastes which were generated onsite, all of those accumulated wastes are subject to regulation under the special provisions of Chapter 262 (relating to generators of hazardous waste) applicable to generators of between 100 kg and 1,000 kg of hazardous waste in a calendar month as well as the requirements of Chapters 263—266 and 270. The time period established in § 262.34(e) for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms.

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

(i) Permitted under Chapter 270.

(ii) Provided interim status under Chapters 265 and 270.

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271.

(iv) Permitted, licensed or registered by another state to manage municipal or industrial solid waste.

(v) A facility which meets one or more of the following conditions:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste.

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(vi) A universal waste handler or destination facility subject to the requirements of Chapter 266, if the waste is a universal waste managed under Chapter 266.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subchapter C (relating to characteristics of hazardous waste).

(i) If a person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator's wastes are mixed with waste oil, the mixture is subject to Chapter 266, Subchapter E (relating to waste oil burned for energy recovery), if it is destined to be burned for energy recovery. A material produced from such a mixture by processing, blending or other treatment is also so regulated if it is destined to be burned for energy recovery.

(Editor's Note: Section 261.8 has been omitted to retain parallelism with the Federal numbering system.)

§ 261.9. Requirements for universal waste.

The wastes listed in this section are exempt from regulation under Chapters 262—270 except as specified in Chapter 266 (relating to special standards for the management of certain hazardous waste activities and universal waste management) and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under Chapter 266:

(1) Batteries as described in § 266.202 (relating to applicability—batteries).

(2) Pesticides as described in § 266.203 (relating to applicability—pesticides).

(3) Thermostats as described in § 266.204 (relating to applicability—thermostats).

(4) Other hazardous wastes or categories of hazardous waste determined by EPA to be universal wastes regulated under 40 CFR Part 273 (relating to standards for management of universal wastes).

(5) Other hazardous wastes or categories of hazardous waste determined by the Department to be universal wastes in accordance with Chapter 266, Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal wastes).

CHAPTER 262. GENERATORS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 262.10. Scope.

(a) This chapter establishes standards for a generator of hazardous waste identified in Chapter 261 (relating to criteria, identification and listing of hazardous waste)

who is located in this Commonwealth. [A generator who is located outside this Commonwealth and whose hazardous waste is designated for treatment, storage or disposal in this Commonwealth shall be subject to the requirements of this chapter, except §§ 262.34, 262.45, 262.46 and 262.70. Small quantity generators identified in § 261.5 (relating to special requirements for hazardous waste generated by small quantity generators), are subject only to the requirements of § 262.11 and Subchapter B (relating to hazardous waste determination; and manifest).] Section 261.5(c) and (d) (relating to special requirements for wastes generated by conditionally exempt small quantity generators) shall be used to determine the applicability of provisions of this chapter that are dependent on calculations of the quantity of hazardous waste generated per month.

* * * * *

§ 262.11. Hazardous waste determination.

(a) A person or municipality who generates a solid waste as defined in section 103 of the act (35 P.S. § 6018.103) shall determine if that waste is a hazardous waste using the following procedures:

(1) The generator shall first determine if the waste is excluded from regulation under § 261.4 (relating to exclusions) or subject to the special requirements under § 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators), or to be managed as a universal waste under the special requirements of Chapter 266 (relating to special standards for the management of certain hazardous waste activities and universal waste management).

* * * * *

CHAPTER 264. NEW AND EXISTING HAZARDOUS WASTE

MANAGEMENT FACILITIES APPLYING FOR A PERMIT

Subchapter A. General

§ 264.1. Scope.

* * * * *

(c) The requirements of this chapter do not apply to the following:

* * * * *

(10) Universal waste handlers and universal waste transporters as defined in § 266.206 (relating to definitions) handling the wastes listed in this paragraph. These persons are subject to regulation under Chapter 266 (relating to special standards for the management of certain hazardous waste activities and universal waste management) when managing the following listed universal wastes:

- (i) Batteries as described in § 266.202 (relating to applicability—batteries).
(ii) Pesticides in § 266.203 (relating to applicability—pesticides).
(iii) Thermostats as described in § 266.204 (relating to applicability—mercury thermostats).
(iv) Other hazardous wastes or categories of hazardous waste determined by EPA to be universal

wastes regulated under 40 CFR Part 273 (relating to standards for management of universal wastes).

(v) Other wastes or categories of hazardous waste determined by the Department to be universal wastes in accordance with Chapter 266, Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste) to be universal wastes.

* * * * *

CHAPTER 265. INTERIM STATUS STANDARDS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES AND PERMIT PROGRAM FOR NEW AND EXISTING HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchapter A. GENERAL

§ 265.1. Scope.

* * * * *

(c) This section does not apply to the following:

* * * * *

(11) Universal waste handlers and universal waste transporters as defined in § 266.206 (relating to definitions) handling the wastes listed in this paragraph. These persons are subject to regulation under Chapter 266 (relating to special standards for the management of certain hazardous waste activities and universal waste management) when handling the following listed universal wastes.

- (i) Batteries as described in § 266.202 (relating to applicability—batteries).
(ii) Pesticides as described in § 266.203 (relating to applicability—pesticides).
(iii) Thermostats as described in § 266.204 (relating to applicability—mercury thermostats).
(iv) Other hazardous wastes which may be determined by EPA to be universal wastes regulated under 40 CFR Part 273 (relating to standards for management of universal wastes).

(v) Other wastes or categories of hazardous waste determined by the Department in accordance with Chapter 266, Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste).

* * * * *

CHAPTER 266. SPECIAL STANDARDS FOR THE MANAGEMENT OF CERTAIN HAZARDOUS WASTE ACTIVITIES AND UNIVERSAL WASTE MANAGEMENT

Subchapter G. RECLAIMED SPENT LEAD-ACID BATTERIES

§ 266.80. Applicability and requirements.

(a) This section applies to persons who reclaim (including regeneration) spent lead-acid batteries. Persons who generate, transport or collect intact spent lead-acid batteries, who regenerate spent batteries, or who store intact spent batteries, but do not reclaim them (other than spent batteries that are to be regenerated) are not subject to Chapters [262] 260—265, 267, 269 and 270 or the notification requirements of § 261.41 (relating to notification of hazardous waste activities).

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than

spent batteries that are to be regenerated) shall be deemed to have a hazardous waste storage permit and are subject to the following requirements:

* * * * *

(Editor's Note: The following Subchapters J—P are proposed to be added. They are printed in regular type to enhance readability.)

Subchapter J. GENERAL

- Sec.
- 266.201. Scope.
- 266.202. Applicability—batteries.
- 266.203. Applicability—pesticides.
- 266.204. Applicability—mercury thermostats.
- 266.205. Applicability—household and conditionally exempt small quantity generator waste.
- 266.206. Definitions.

§ 266.201. Scope.

(a) This subchapter and Subchapters K—P establish requirements for managing the following:

- (1) Batteries as described in § 266.202 (relating to applicability—batteries).
- (2) Pesticides as described in § 266.203 (relating to applicability—pesticides).
- (3) Thermostats as described in § 266.204 (relating to applicability—mercury thermostats).

(4) Other hazardous wastes which may be determined universal wastes through the petition process as described in Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste).

(b) This subchapter and Subchapters K—P provide an alternative set of management standards in lieu of regulation under the remainder of this article.

§ 266.202. Applicability—batteries.

(a) Batteries covered under this subchapter and Subchapters K—P include the following:

- (1) The requirements of these sections apply to persons managing batteries, as described in § 266.206 (relating to definitions), except those listed in subsection (b).
- (2) Spent lead-acid batteries which are not managed under Subchapter G (relating to reclaimed spent lead-acid batteries), are subject to management under this subchapter and Subchapters K—P.

(b) The requirements of this subchapter and Subchapters K—P do not apply to persons managing the following batteries:

- (1) Spent lead-acid batteries that are managed under Subchapter G.
- (2) Batteries, as described in § 266.206 that are not yet wastes under 40 CFR 261.2, including those that do not meet the criteria for waste generation in subsection (c).
- (3) Batteries, as described in § 266.206, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste).

(c) Generation of waste batteries shall be as follows:

- (1) A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).
- (2) An unused battery becomes a waste on the date the handler decides to discard it.

§ 266.203. Applicability—pesticides.

(a) The requirements of this subchapter and Subchapters K—P apply to persons managing pesticides, as described in § 266.206 (relating to definitions), meeting the following conditions, except those listed in subsection (b):

(1) Recalled pesticides that are either:

(i) Stocks of a suspended or cancelled pesticide that are part of a voluntary or mandatory recall under FIFRA section 19(b) (7 U.S.C.A. § 137(y)), including but not limited to those owned by the registrant responsible for conducting the recall.

(ii) Stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) The requirements of this chapter do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in subsection (a)(1), and unused pesticide products described in subsection (a)(2) that are managed by farmers in compliance with § 262.70 (relating to farmers). Section 262.70 refers to pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with § 261.7 (relating to empty containers) (Editor's Note: Section 261.7 was proposed to be added at 25 Pa.B. 4917 (November 11, 1995).)

(2) Pesticides not meeting the conditions set forth in subsection (a). These pesticides shall be managed in compliance with the hazardous waste regulations in the remainder of this article.

(3) Pesticides that are not wastes under 40 CFR Parts 260 and 261 (relating to definitions and requests for determination; and criteria, identification and listing of hazardous waste), including those that do not meet the criteria for waste generation in subsection (c) or those that are not wastes as described in subsection (d).

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in 40 CFR Part 261 Subpart D as incorporated by reference in Chapter 261, Subchapter D (relating to lists of hazardous waste) or if it exhibits one or more of the characteristics identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste).

(c) When a pesticide becomes a waste:

(1) A recalled pesticide described in subsection (a)(1) becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall.

(ii) The person conducting the recall decides to discard (for example, burn the pesticide for energy recovery).

(2) An unused pesticide product described in subsection (a)(2) becomes a waste on the date the generator decides to discard it.

(d) The following pesticides are not wastes:

(1) Recalled pesticides described in subsection (a)(1), provided that the person conducting the recall either:

(i) Has not made a decision to discard (for example, burn for energy recovery) the pesticide under 40 CFR 261.2 (relating to definition of solid waste). Until such a decision is made, the pesticide does not meet the definition of "solid waste" under 40 CFR 261.2. The pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this subchapter and Subchapters K—P. This pesticide remains subject to the requirements of FIFRA.

(ii) Has made a decision to use a management option that does not cause the pesticide to be a solid waste under 40 CFR 261.2. That is, the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation. The pesticide is not a solid waste under 40 CFR 261.2. The pesticide is not a waste, and is not subject to the hazardous waste requirements including this chapter. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in subsection (a)(2), if the generator of the unused pesticide product has not decided to discard (for example, burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

§ 266.204. Applicability—mercury thermostats.

(a) The requirements of this subchapter and Subchapters K—P apply to persons managing thermostats, as described in § 266.206 (relating to definitions), except those listed in subsection (b).

(b) The requirements of this chapter do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under 40 CFR 261.2 (relating to definition of solid waste).

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in Subchapter C (relating to characteristics of hazardous waste).

(c) Generation of waste thermostats is as follows:

(1) A used thermostat becomes a waste on the date it is discarded (for example, sent for reclamation).

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

§ 266.205. Applicability—household and conditionally exempt small quantity generator waste.

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under § 261.4(a)(6) (relating to exclusions) and are also of the same type as the universal wastes defined at § 266.206 (relating to definitions).

(2) Conditionally exempt small quantity generator wastes that are exempt under § 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) and are also of the same type as the universal wastes defined at § 266.206.

(b) Persons who commingle the wastes described in subsection (a) together with universal waste regulated under this chapter shall manage the commingled waste under the requirements of this chapter.

§ 266.206. Definitions.

The following words and terms when used in this subchapter and Subchapters K—O, have the following meanings, unless the context clearly indicates otherwise:

Battery—A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode and an electrolyte, plus connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term also includes an intact, unbroken battery from which the electrolyte has been removed.

Destination facility—A facility that treats, disposes of, or recycles a particular category of universal waste, except management activities described in subsections (a) and (c) of §§ 266.213 and 266.233 (relating to waste management). A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

FIFRA—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§ 136—136(y)).

Generator—A person, by site, whose act or process produces hazardous waste identified or listed in Chapter 261 (relating to criteria, identification and listing of hazardous waste) or whose act first causes a hazardous waste to become subject to regulation.

Large quantity handler of universal waste—A universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

Onsite—The same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. The term includes noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access.

Pesticide—A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest, or intended for use as plant regulator, defoliant or desiccant, other than an article that:

(i) Is a new animal drug under section 201(w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 321(w)).

(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug.

(iii) Is an animal feed under section 201(x) of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 321(x)), that bears or contains substances described by subparagraph (i) or (ii).

Small quantity handler of universal waste—A universal waste handler (as defined in this section) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time.

Thermostat—A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of § 266.213(c)(2) or § 266.233(c)(2) (relating to waste management).

Universal waste—Any of the following hazardous wastes that are subject to the universal waste requirements of this subchapter and Subchapters K—P:

- (i) Batteries as described in § 266.202 (relating to applicability—batteries).
- (ii) Pesticides as described in § 266.203 and (relating to applicability—pesticides).
- (iii) Thermostats as described in § 266.204 (relating to applicability—mercury thermostats).
- (iv) Other hazardous wastes or categories of hazardous wastes determined to be a universal waste by EPA under 40 CFR Part 273 (relating to standards for universal waste management).
- (v) Other hazardous wastes or categories of hazardous wastes determined by the Department in accordance with Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal wastes) to be a universal waste.

Universal waste handler:

- (i) The term means either:
 - (A) A generator (as defined in this section) of universal waste.
 - (B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste and sends universal waste to another universal waste handler, to a destination facility or to a foreign destination.
- (ii) The term does not mean:
 - (A) A person who treats (except under the provisions of § 266.213(a) or (c) or § 266.233(a) or (c) (relating to waste management)), disposes of, or recycles universal waste.
 - (B) A person engaged in the offsite transportation of universal waste by air, rail, highway or water, including a universal waste transfer facility.

Universal waste transfer facility—Any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for 10 days or less.

Universal waste transporter—A person engaged in the offsite transportation of universal waste by air, rail, highway or water.

Subchapter K. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

Sec.

- 266.210. Applicability.
- 266.211. Prohibitions.
- 266.212. Notification.
- 266.213. Waste management.
- 266.214. Labeling/markings.
- 266.215. Accumulation time limits.
- 266.216. Employee training.
- 266.217. Response to releases.
- 266.218. Offsite shipments.
- 266.219. Tracking universal waste shipments.
- 266.220. Exports.

§ 266.210. Applicability.

(a) This subchapter applies to small quantity handlers of universal waste as defined in § 266.206 (relating to definitions).

(b) A small quantity handler of universal waste complying with the requirements of this subchapter is deemed to have a permit for the storage of universal wastes.

§ 266.211. Prohibitions.

A small quantity handler of universal waste is:

- (1) Prohibited from disposing of universal waste.
- (2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in § 266.217 (relating to response to releases); or managing specific wastes as provided in § 266.213 (relating to waste management).

§ 266.212. Notification.

A small quantity handler of universal waste is not required to notify the Department or the EPA of universal waste handling activities.

§ 266.213. Waste management.

(a) *Universal waste batteries.* A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

- (i) Sorting batteries by type.
- (ii) Mixing battery types in one container.
- (iii) Discharging batteries so as to remove the electric charge.
- (iv) Regenerating used batteries.
- (v) Disassembling batteries or battery packs, individual batteries or cells.
- (vi) Removing batteries from consumer products.
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (such as, battery pack materials, discarded consumer products) as a result of the activities listed in paragraph (2) shall determine whether the electrolyte or other solid waste exhibits a characteristics of hazardous waste identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste).

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of this article. The handler is considered the generator of the hazardous electrolyte or

other waste and is subject to Chapter 262 (relating to generators of hazardous waste).

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with the applicable municipal or residual waste regulations.

(b) *Universal waste pesticides.* A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide and that lacks evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A container that does not meet the requirements of paragraph (1), provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (1).

(3) A tank that meets the requirements of Chapter 265, Subchapter J (relating to tanks), except for § 265.197(c) (relating to closure and postclosure care).

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide and that lacks evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(c) *Universal waste thermostats.* A small quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste thermostat that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats if the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules.

(ii) Removes ampules only over or in a containment device (for example, a tray or pan sufficient to collect and contain mercury released from an ampule in case of breakage).

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of § 262.34 (relating to accumulation).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of § 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury.

(vi) Ensures that employes removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.

(vii) Stores removed ampules in closed, nonleaking containers that are in good condition.

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling and transportation.

(3) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine whether:

(i) The following exhibit a characteristic of hazardous waste identified in Chapter 261, Subchapter C:

(A) Mercury or clean-up residues resulting from spills or leaks.

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining thermostat units).

(ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of this article. The handler is considered the generator of the mercury, residues or other waste and is subject to Chapter 262 (relating to generators of hazardous waste).

(iii) If the mercury, residues or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with the applicable municipal or residual waste regulations.

(d) *Department determination.* A small quantity handler of universal waste shall manage other universal wastes determined by the Department to be universal wastes under Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste) according to the applicable requirements set by the Department in the determination.

(e) *EPA determination.* A small quantity handler of universal waste shall manage other universal wastes determined by EPA to be universal wastes managed under 40 CFR Part 273 (relating to standard universal waste management) according to the applicable requirements of 40 CFR Part 273.

§ 266.214. Labeling/markings.

A small quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified as follows:

(1) Universal waste batteries (that is, each battery), or a container in which the batteries are contained, shall be labeled or marked clearly with one of the following phrases: "universal waste—battery(ies), or "waste battery(ies)," or "user battery(ies)."

(2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in § 266.203(a)(1) (relating to applicability—pesticides) are contained shall be labeled or marked clearly with the following:

(i) The label that was on or accompanied the product as sold or distributed.

(ii) The words "universal waste—pesticide(s)" or "waste—pesticide(s)."

(3) A container, tank or transport vehicle or vessel in which unused pesticide products as described in § 266.203(a)(2) are contained shall be labeled or marked clearly with:

(i) The label that was on the product when purchased, if still legible.

(ii) The appropriate label as required under the United States Department of Transportation regulation 49 CFR Part 172 (relating to hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements), if using the labels described in paragraph (1) is not feasible.

(iii) Another label prescribed or designated by the waste pesticide collection program administered or recognized by the Department of Agriculture or collection program of another state, if using the labels described in paragraphs (1) and (2) is not feasible.

(iv) The words "universal waste—pesticide(s)" or "waste—pesticide(s)."

(4) Universal waste thermostats (that is, each thermostat), or a container in which the thermostats are contained, shall be labeled or marked clearly with one of the following phrases: "universal waste—mercury thermostat(s)," or "waste mercury thermostat(s)," or "user mercury thermostat(s)."

(5) A small quantity handler of universal waste shall label or mark other universal wastes determined by the Department to be universal wastes under Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste) according to the applicable requirements set by the Department in the determination.

(6) A small quantity handler of universal waste shall label or mark other universal wastes determined by EPA to be universal wastes managed under 40 CFR Part 273 (relating to standard universal waste management) according to the applicable requirements of 40 CFR Part 273.

§ 266.215. Accumulation time limits.

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than 1 year from the date the universal waste is generated or received from another handler unless the requirements of subsection (b) are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than 1 year from the date the universal waste is generated or received from another handler if the activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment or disposal. The handler bears the burden of proving that the activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by either:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received.

(2) Marking or labeling each individual item of universal waste (for example, each battery or thermostat) with the date it became a waste or was received.

(3) Maintaining an inventory system onsite that identifies the date each universal waste became a waste or was received.

(4) Maintaining an inventory system onsite that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received.

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received.

(6) Another method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

§ 266.216. Employee training.

A small quantity handler of universal waste shall inform employes who handle or have responsibility for managing universal waste. The information shall describe proper handling and emergency procedures appropriate to the type of universal waste handled at the facility.

§ 266.217. Response to releases.

(a) A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste shall determine whether material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of this article. The handler is considered the generator of the material resulting from the release, and shall manage it in compliance with Chapter 262 (relating to generators of hazardous waste).

§ 266.218. Offsite shipments.

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility or a foreign destination.

(b) If a small quantity handler of universal waste self-transportes universal waste offsite, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the transporter requirements of Subchapter M (relating to standards for universal waste transporters) while transporting the universal waste.

(c) If a universal waste being offered for offsite transportation meets the definition of hazardous materials under 49 CFR Parts 171—180 (relating to hazardous materials regulations), a small quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable United States Department of Transportation regulations under 49 CFR Parts 172—180.

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(1) Receive the waste back when notified that the shipment has been rejected.

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, the handler shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall either:

(1) Send the shipment back to the originating handler.

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the appropriate regional Department office of the illegal shipment, and provide the name, address and phone number of the originating shipper. The regional office will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with the applicable municipal or residual waste regulation.

§ 266.219. Tracking universal waste shipments.

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

§ 266.220. Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination shall:

(1) Comply with Chapter 262, Subchapter E (relating to exports of hazardous waste) and also the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1)—(4), (6) and (b) and 262.57.

(2) Export the universal waste only upon consent of the receiving country and in conformance with Chapter 262, Subchapter E.

(3) Provide to the Department a copy of the EPA acknowledgement of consent for the shipment to the transporter transporting the shipment for export.

Subchapter L. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE

Sec.	
266.230.	Applicability.
266.231.	Prohibitions.
266.232.	Notification.
266.233.	Waste management.
266.234.	Labeling/markings.
266.235.	Accumulation time limits.
266.236.	Employee training.
266.237.	Response to releases.
266.238.	Offsite shipments.
266.239.	Tracking universal waste shipments.
266.240.	Exports.

§ 266.230. Applicability.

(a) This subchapter applies to large quantity handlers of universal waste as defined in § 266.206 (relating to definitions).

(b) A large quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

§ 266.231. Prohibitions.

A large quantity handler of universal waste is:

(1) Prohibited from disposing of universal waste.

(2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in § 266.237 (relating to response to releases) or by managing specific wastes as provided in § 266.233 (relating to waste management).

§ 266.232. Notification.

(a) Notification requirements include:

(1) Except as provided in paragraphs (2) and (3), a large quantity handler of universal waste shall have sent written notification of universal waste management to the regional administrator of the EPA, and received an EPA identification number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified EPA of hazardous waste management activities and has received an EPA identification number is not required to renotify EPA under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in § 266.203(a)(1) (relating to applicability—pesticides) and who has sent notification to EPA as required by 40 CFR Part 165 (relating to pesticide management and disposal: standards for pesticide containers and containment) is not required to notify EPA for those recalled universal waste pesticides under this section.

(b) This notification shall include:

(1) The universal waste handler's name and mailing address.

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities.

(3) The address or physical location of the universal waste management activities.

(4) A list of all of the types of universal waste managed by the handler (for example, batteries, pesticides, thermostats).

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (for example, batteries, pesticides, thermostats) the handler is accumulating above this quantity.

§ 266.233. Waste management.

(a) A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain a universal waste battery that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

(i) Sorting batteries by type.

- (ii) Mixing battery types in one container.
- (iii) Discharging batteries so as to remove the electric charge.
- (iv) Regenerating used batteries.
- (v) Disassembling batteries or battery packs into individual batteries or cells.
- (vi) Removing batteries from consumer products.
- (vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (such as battery pack materials, discarded consumer products) as a result of the activities listed in paragraph (2) shall determine whether the electrolyte or other solid waste exhibits a characteristic of hazardous waste identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste).

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of Chapters 260—265, 267, 269 and 270. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to Chapter 262 (relating to generators of hazardous waste).

(ii) If the electrolyte or other solid waste is not hazardous, the handler shall manage the waste in compliance with the applicable municipal or residual waste regulations.

(b) A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A container that does not meet the requirements of paragraph (1), provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (1).

(3) A tank that meets the requirements of Chapter 265, Subchapter J (relating to tanks), except for § 265.197(c) (relating to closure and postclosure care).

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(c) A large quantity handler of universal waste shall manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain a universal waste thermostat that shows evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the thermostat, and lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats if the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules.

(ii) Removes ampules only over or in a containment device (for example, a tray or pan sufficient to contain mercury released from an ampule in case of breakage).

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of § 262.34 (relating to accumulation).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of § 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable Occupation Safety and Health Administration exposure levels for mercury.

(vi) Ensures that employes removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.

(vii) Stores removed ampules in closed, nonleaking containers that are in good condition.

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling and transportation.

(3) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats shall determine:

(i) Whether the following exhibit a characteristic of hazardous waste identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste):

(A) Mercury or clean-up residues resulting from spills or leaks.

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (for example, remaining thermostat units).

(ii) If the mercury, residues, or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of this article. The handler is considered the generator of the mercury, residues, or other waste and is subject to Chapter 262 (relating to generators of hazardous waste).

(iii) If the mercury, residues, or other solid waste is not hazardous, the handler shall manage the waste in compliance with applicable municipal or residual waste regulations.

(d) A large quantity handler of universal waste shall manage other universal wastes determined by the Department to be universal wastes under Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste) according to the applicable requirements set by the Department in the determination.

(e) A large quantity handler of universal waste shall manage other universal wastes determined by EPA to be universal wastes managed under 40 CFR Part 273 (relating to standards for universal waste management) according to the applicable requirements of 40 CFR Part 273.

§ 266.234. Labeling/markings.

A large quantity handler of universal waste shall label or mark the universal waste to identify the type of universal waste as specified as follows:

(1) Universal waste batteries (that is, each battery), or a container or tank in which the batteries are contained, shall be labeled or marked clearly with one of the following phrases: "universal waste—battery(ies)," or "waste battery(ies)" or "user battery(ies)."

(2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in § 266.203(a)(1) (relating to applicability—pesticides) are contained shall be labeled or marked clearly with:

(i) The label that was on or accompanied the product as sold or distributed.

(ii) The words "universal waste—pesticide(s)" or "waste—pesticide(s)."

(3) A container, tank or transport vehicle or vessel in which unused pesticide products as described in § 266.203(a)(2) are contained shall be labeled or marked clearly with:

(i) The label that was on the product when purchased, if still legible.

(ii) If not feasible, the appropriate label as required under the United States Department of Transportation regulations at 49 CFR Part 172 (relating to hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements), if using the labels described in subparagraph (i) is not feasible.

(iii) Another label prescribed or designated by the pesticide collection program approved by the Department of Agriculture or collection program of another state, if using the labels described in subparagraphs (i) and (ii) is not feasible.

(iv) The words "universal waste—pesticide(s)" or "waste—pesticide(s)."

(4) Universal waste thermostats (that is, each thermostat), or a container or tank in which the thermostats are contained, shall be labeled or marked clearly with one of the following phrases: "universal waste—mercury thermostat(s)," or "waste mercury thermostat(s)" or "used mercury thermostat(s)."

(5) A large quantity handler of universal waste shall label or mark other universal wastes determined by the Department to be universal wastes under Subchapter P (relating to petitions to include other wastes under Chapter 266 as universal waste) according to the applicable requirements set by the Department in the determination.

(6) A large quantity handler of universal waste shall label or mark other universal wastes determined by EPA to be universal wastes managed under 40 CFR Part 273 (relating to standard universal waste management) according to the applicable requirements of 40 CFR Part 273.

§ 266.235. Accumulation time limits.

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than 1 year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection (b) are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than 1 year from the date the universal waste is generated, or received from another handler, if the activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment or disposal. The handler bears the burden of proving that the activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment or disposal.

(c) A large quantity handler of universal waste shall be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received.

(2) Marking or labeling the individual item of universal waste (for example, each battery or thermostat) with the date it became a waste or was received.

(3) Maintaining an inventory system onsite that identifies the date the universal waste being accumulated became a waste or was received.

(4) Maintaining an inventory system onsite that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received.

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received.

(6) Another method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

§ 266.236. Employee training.

A large quantity handler of universal waste shall ensure that employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

§ 266.237. Response to releases.

(a) A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with applicable requirements of this article. The handler is considered the generator of the material resulting from the release, and is subject to Chapter 262 (relating to generators of hazardous waste).

§ 266.238. Offsite shipments.

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility or a foreign destination.

(b) If a large quantity handler of universal waste self-transportes universal waste offsite, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the trans-

porter requirements of Subchapter M (relating to standards for universal waste transporters) while transporting the universal waste.

(c) If a universal waste being offered for offsite transportation meets the definition of hazardous materials under 49 CFR Parts 171—180 (relating to hazardous materials regulations), a large quantity handler of universal waste shall package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR Parts 172—180.

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

(1) Receive the waste back when notified that the shipment has been rejected.

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, the handler shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(1) Send the shipment back to the originating handler.

(2) Send the shipment to a destination facility, if agreed to by both the originating and receiving handler.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the Department of the illegal shipment, and provide the name, address and phone number of the originating shipper. The Department will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler shall manage the waste in accordance with the applicable municipal or residual waste regulations.

§ 266.239. Tracking universal waste shipments.

(a) A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent.

(2) The quantity of each type of universal waste received (for example, batteries, pesticides, thermostats).

(3) The date of receipt of the shipment of universal waste.

(b) A large quantity handler of universal waste shall keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take

the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent shall include the following information:

(1) The name and address of the universal waste handler, destination facility or foreign destination to whom the universal waste was sent.

(2) The quantity of each type of universal waste sent (for example, batteries, pesticides, thermostats).

(3) The date the shipment of universal waste left the facility.

(c) Record retention is as follows:

(1) A large quantity handler of universal waste shall retain the records described in subsection (a) for at least 3 years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste shall retain the records described in subsection (b) for at least 3 years from the date a shipment of universal waste left the facility.

§ 266.240. Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination shall:

(1) Comply with §§ 262.53 and 262.55 (relating to notification of intent to export; and exception report) and the requirements applicable to primary exporters in 40 CFR 262.53, 262.56(a)(1)—(4), (6) and (b) and 262.57.

(2) Export the universal waste only upon consent of the receiving country and in conformance with the EPA acknowledgement of consent as defined in 40 CFR Part 262, Subpart E.

(3) Provide a copy of the EPA acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

Subchapter M. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS

Sec.
 266.250. Applicability.
 266.251. Prohibitions.
 266.252. Waste management.
 266.253. Storage time limits.
 266.254. Response to releases.
 266.255. Offsite shipments.
 266.256. Exports.

§ 266.250. Applicability.

(a) This subchapter applies to universal waste management transporters as defined in § 266.206 (relating to definitions).

(b) A universal waste transporter complying with the requirements of this subchapter is deemed to have a license for the transportation of universal wastes.

§ 266.251. Prohibitions.

A universal waste transporter is:

(1) Prohibited from disposing of universal waste.

(2) Prohibited from diluting or treating universal waste, except by responding to releases as provided in § 266.254 (relating to response to releases).

§ 266.252. Waste management.

(a) A universal waste transporter shall comply with applicable United States Department of Transportation regulations in 49 CFR Parts 171—180 (relating to hazardous materials regulations) for transport of universal

waste that meets the definition of hazardous material in 49 CFR 171.8 (relating to definitions and abbreviations). For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste). Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the United States Department of Transportation regulations.

(b) Some universal waste materials are regulated by the United States Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2 (relating to general requirements for shipments and packaging). As universal waste shipments do not require a manifest under 40 CFR Part 262, they may not be described by the Department of Transportation proper shipping name "Hazardous Waste, (L) or (S), N.O.S.," nor may the hazardous material's proper shipping name be modified by adding the word "waste."

§ 266.253. Storage time limits.

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for 10 days or less.

(b) If a universal waste transporter stores universal waste for more than 10 days, the transporter becomes a universal waste handler and shall comply with the applicable requirements of Subchapters K or L (relating to standards for small quantity handlers of universal waste; and standards for large quantity handlers of universal waste) while storing the universal waste.

§ 266.254. Response to releases.

(a) A universal waste transporter shall immediately contain releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter shall determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of this article. If the waste is determined to be a hazardous waste, the transporter is subject to Chapter 262 (relating to generators of hazardous waste).

§ 266.255. Offsite shipments.

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility or a foreign destination.

(b) If the universal waste being shipped offsite meets the United States Department of Transportation's definition of hazardous materials under 49 CFR 171.8 (relating to definitions and abbreviations), the shipment shall be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR Part 172 (relating to hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements).

§ 266.256. Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA acknowledgment of consent. The transporter shall ensure that:

(1) A copy of the EPA acknowledgement of consent accompanies the shipment.

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

Subchapter N. STANDARDS FOR DESTINATION FACILITIES

Sec.

266.260. Applicability.

266.261. Offsite shipments.

266.262. Tracking universal waste shipments.

§ 266.260. Applicability.

The owner or operator of a destination facility, as defined in § 266.206 (relating to definitions) is subject to all applicable requirements of Chapters 264—266, Subchapters C—I, and 269 and 270, as well as § 261.6 (relating to requirements for hazardous wastes that are recycled), and the notification requirements of § 261.41 (relating to notification of hazardous waste activities).

§ 266.261. Offsite shipments.

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, the owner or operator shall contact the shipper to notify the shipper of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility shall either:

(1) Send the shipment back to the original shipper.

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility shall immediately notify the appropriate Department regional office of the illegal shipment, and provide the name, address and phone number of the shipper. The Department regional office will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of nonhazardous, nonuniversal waste, the owner or operator shall manage the waste in any way that is in compliance with the applicable municipal or residual waste regulations.

§ 266.262. Tracking universal waste shipments.

(a) The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste received shall include the following information:

(1) The name and address of the universal waste handler, destination facility or foreign shipper from whom the universal waste was sent.

(2) The quantity of each type of universal waste received (for example, batteries, pesticides, thermostats).

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility shall retain the records described in subsection (a) for at least 3 years from the date of receipt of a shipment of universal waste.

Subchapter O. IMPORT REQUIREMENTS

Sec.
266.270. Imports.

§ 266.270. Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this chapter, immediately after the waste enters this Commonwealth, as indicated below:

(1) A universal waste transporter is subject to the universal waste transporter requirements of Subchapter M (relating to standards for universal waste transporters).

(2) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Subchapter K or L (relating to standards for small quantity handlers of universal waste; and standards for large quantity handlers of universal waste), as applicable.

(3) An owner or operator of a destination facility is subject to the destination facility requirements of Subchapter N (relating to standards for destination facilities).

Subchapter P. PETITIONS TO INCLUDE OTHER WASTES UNDER CHAPTER 266 AS UNIVERSAL WASTE

Sec.
266.280. General.
266.281. Factors for petitions to include other wastes under Chapter 266, Subchapters J—O.
266.282. Public notice and review of petitions.
266.283. Incorporation by reference.

§ 266.280. General

(a) A person seeking to add a hazardous waste or a category of hazardous waste to Subchapters J—O and this subchapter may petition the Department for a universal waste determination under this subchapter.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Department that regulation as a universal waste under this chapter is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program.

(c) The petition shall include the following information:

- (1) The petitioner's name and address.
- (2) A statement of the petitioner's interest in the proposed action.
- (3) A description of the proposed action, including proposed waste management practices.
- (4) A statement of the need and justification for the proposed action, including supportive tests, studies or other information.

(5) The petition should also address as many of the factors listed in Subchapters J—O and this subchapter as are appropriate for the waste or waste category addressed in the petition.

(d) The petition will be processed and reviewed in accordance with § 266.282 (relating to public notice and review of petitions).

(e) The Department will evaluate petitions using the factors listed in § 266.281 (relating to factors for petitions to include other waste under Chapter 266, Subchapters J—O). The decision will be based on the weight of evidence showing that regulation under Chapter 266, Subchapters J—O is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste and will improve implementation of the hazardous waste program.

(f) The Department may on its own initiative determine that additional hazardous wastes or categories of hazardous wastes may be managed as universal wastes subject to particular management standards specified by the Department in a universal waste determination. The Department will use the same factors and criteria applicable to a petition when including an additional waste on its own initiative. The Department will provide public notice which meets the requirements of § 266.282 when deciding to include an additional waste.

§ 266.281. Factors for petitions to include other waste under Chapter 266, Subchapters J—O.

The following factors shall be considered in petitions:

(1) The waste or category of waste, as generated by a wide variety of generators, as listed in Chapter 261, Subchapter D (relating to lists of hazardous waste), or if not listed a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste). When a characteristic waste is added to the universal waste regulations by using a generic name to identify the waste category (for example, batteries), the definition of "universal waste" in § 266.206 (relating to definitions) includes only the hazardous waste portion of the waste category (for example, hazardous waste batteries). Thus, only the portion of the waste stream that does exhibit one or more characteristics (that is, is hazardous waste) is subject to the universal waste regulations of this chapter.

(2) The waste or category of waste is not exclusive to a specific industry or group of industries and is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities).

(3) The waste or category of waste is generated by a large number of generators (for example, more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator.

(4) Systems to be used for collecting the waste or category of waste (including packaging, marking and labeling practices) would ensure close stewardship of the waste.

(5) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner or applicable United States Department of Transportation requirements would be protective of human health and the environment during accumulation and transport.

(6) Regulation of the waste or category of waste under this chapter will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (for example, the municipal waste stream, residual waste stream, municipal sewer or stormwater

systems) to hazardous waste recycling, treatment or disposal facilities in compliance with this article.

(7) Regulation of the waste or category of waste under this chapter will improve implementation of and compliance with the hazardous waste regulatory program.

(8) Other factors as may be appropriate.

§ 266.282. Public notice and review of petitions.

(a) The Department will publish notice of receipt of a petition for a universal waste determination in the *Pennsylvania Bulletin* when the Department determines that the application is administratively complete.

(b) The Department will publish notice when it initiates the process to include an additional waste under § 266.281(f) (relating to factors for petitions to include other waste under Chapter 266, Subchapters J—O) without a petition.

(c) Interested persons may submit comments to the Department within 60 days of publication and may recommend conditions upon, revisions to, approval of or disapproval of the universal waste determination.

(d) The Department will publish notice in the *Pennsylvania Bulletin* of its decision on a petition or when it initiates the process to include an additional waste under § 266.281(f).

§ 266.283. Incorporation by reference.

Any modification to the EPA universal waste rule, 40 CFR Part 273 (relating to standard universal waste management) is incorporated into this chapter and is effective on the date established by the Federal regulations, unless otherwise established by this chapter.

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