

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 261, 262 and 264—266]

Hazardous Waste Management—Universal Waste Rule

The Environmental Quality Board (Board) by this order amends the Department of Environmental Protection's (Department) regulations governing the management of hazardous waste by amending Chapters 261, 262 and 264—266. These amendments are set forth in Annex A.

This order was adopted by the Board at its meeting of March 18, 1997.

A. Effective Date

These amendments are effective immediately upon publication in the *Pennsylvania Bulletin* as final-form rule-making.

B. Contact Persons

For further information, contact Rick Shipman, 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, telephone: (717) 787-6239, or electronic mail Shipman.Rick@a1.dep.state.pa.us 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, telephone: (717) 787-7060, or electronic mail Roda.Marc@a1.dep.state.pa.us. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rulemaking is available electronically through the DEP Website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final rulemaking is being made under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.105); section 105 of the Solid Waste Management Act (35 P. S. § 6018.105); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Section 5 of The Clean Streams law directs the Department to adopt rules and regulations necessary to implement the act. Under section 105 of the Solid Waste Management Act, the Board has the power and duty to adopt rules and regulations that are necessary to carry out the purposes of the Solid Waste Management Act which includes the management of hazardous waste to protect the public's health, safety, and welfare, as well as protect the environmental resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the

authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. Background and Summary

These regulatory amendments add the Universal Waste Rule to the Department's hazardous waste management regulations. The Universal Waste Rule is a set of environmentally protective, simplified standards for the management of certain wastes identified as universal wastes. 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.

This rule will facilitate the recycling of spent batteries and mercury-containing thermostats, and the disposal of recalled pesticides, while ensuring that the environment and the public's health, safety and welfare are adequately protected.

This final-form rulemaking also aligns more closely the Department's regulations with the Federal program. The Universal Waste Rule adopted by the Board is essentially equivalent to the Universal Waste Rule adopted by the Environmental Protection Agency (EPA), 40 CFR Part 273 (relating to standards for universal waste management).

This final-form rule amends Chapter 266 (relating to special standards for certain hazardous waste activities) by adding six subchapters defining the universal waste program. These subchapters are: J (relating to general); K (relating to standards for small quantity handlers of universal waste); L (relating to standards for large quantity handlers of universal waste); M (relating to standards for universal waste transporters); N (relating to standards for destination facilities); O (relating to import requirements); and P (relating to petitions to include other wastes under Chapter 266 as universal wastes). In addition, there are some technical amendments to Chapter 261 (relating to criteria, identification and classification of hazardous waste); §§ 262.10(a) (relating to scope); 264.1(c) (relating to scope); 265.1(c) (relating to scope); and 266.80 (relating to reclaimed spent lead acid batteries: applicability and requirements).

The following table is a simplified overview of the 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 REGULATIONS¹

<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

<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>
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 1 YEAR LIMIT	§ 266.235 1 YEAR LIMIT	§ 266.253 10 DAY LIMIT	Comply with RCRA TSDf requirements
Employee 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
Offsite 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 through O.

Wastes Covered Under the Universal Waste Rule

The Universal Waste Rule is designed to apply to certain widely generated hazardous wastes that are not appropriately managed under the existing regulations. Three types of wastes are defined as a universal waste. These wastes are: nickel cadmium and other batteries, hazardous waste pesticides that are either recalled or collected in a waste pesticide collection program, and mercury-containing thermostats. Additional types of hazardous waste can also be managed in a manner consistent with the Universal Waste Rule if they are added to the EPA's Universal Waste Rule or if they are added to Pennsylvania's Universal Waste Rule by the rulemaking petition process.

Nothing in this rule negatively impacts the Pennsylvania Department of Agriculture's CHEMSWEEP program. It also does not conflict with the Federal Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C.A. §§ 14301—14336).

Universal Waste Handler

A key participant in the universal waste system is the universal waste handler. A universal waste handler is a person who either generates universal waste or who accumulates universal waste for transfer to another facility (collection facility). Except for some basic management activities, a universal waste handler cannot treat/recycle, or dispose of a universal waste.

There are two types of universal waste handlers, large and small quantity handlers. The distinction between a large quantity handler of universal waste (LQHUW) and a small quantity handler of universal waste (SQHUW) is the amount of waste accumulated onsite at any time. A universal waste handler that accumulates at any time onsite 5,000 kg or more total of universal wastes is an LQHUW.

An SQHUW that any one time accumulates 5,000 or more kgs becomes an LQHUW for the remainder of the calendar year. In the following year, the handler can operate as an SQHUW provided it does not accumulate onsite 5,000 kgs or more at any time.

It is anticipated that the SQHUW category with its reduced management standards will facilitate the creation of universal waste collection facilities for consumers and small businesses. These collectors will 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. As a result, the standards for SQHUWs will ensure that the environment and the public is protected and will minimize the cost of operating a universal waste collection facility.

The requirements applicable to LQHUWs and SQHUWs are found in Subchapters K and L. Most of the requirements are the same for SQHUWs and LQHUWs. The discussion will indicate when LQHUWs and SQHUWs are subject to different standards.

The Universal Waste Rule creates a Permit-By-Rule (PBR) for the management of universal waste by a universal waste handler. The universal waste handler obtains this PBR by complying with the applicable requirements for an LQHUW or an SQHUW.

This PBR was created to satisfy sections 401 and 501 of the Solid Waste Management Act (35 P.S. §§ 6018.401 and 6018.501) which require a permit for the storage and treatment of hazardous waste. This is because a universal waste handler is authorized to conduct some activities,

such as draining batteries and removing mercury ampules from thermostats, that constitute treatment under the Solid Waste Management Act.

This PBR makes the Department's Universal Waste Rule different, but not more stringent than the EPA's Universal Waste Rule. The EPA exempts universal waste handlers from the requirement to obtain a permit. Nonetheless, the Department's Universal Waste Rule is not more stringent than the EPA's Universal Waste Rule because a universal waste handler is subject to the same requirements under both rules.

In general, universal waste handlers are only authorized to collect, store and package for shipping universal waste. The universal waste must be stored and packaged in a manner that prevents releases to the environment. Except for the draining of batteries and the removal of mercury ampules from thermostats, a universal waste handler is prohibited from treating or disposing of universal wastes.

LQHUs and SQHUs are subject to different notification requirements. Only LQHUs are required to notify the Department and the EPA of their universal waste handling activities. SQHUs are not subject to this notification requirement.

Universal waste handlers are required to label and mark all shipping containers. The label must identify the material contained therein either as a universal waste, a waste or a used material.

Universal waste handlers can store universal waste for up to 1 year. This time limit may be exceeded if additional time is necessary solely to facilitate the proper recycling or disposal of the waste. Universal waste handlers must be able to demonstrate the length of time the waste has been accumulated.

SQHUs and LQHUs are subject to different training requirements. SQHUs are only required to distribute basic handling and emergency information to employees handling universal waste. LQHUs are required to ensure that employees are familiar with waste handling and emergency procedures as appropriate, based on their responsibilities.

Universal waste handlers must immediately contain any releases of universal waste and other residues from universal waste. Universal waste handlers must characterize the materials generated by the release. If this material is determined to be hazardous, then it is managed in accordance with the hazardous waste regulations. Universal waste handlers assume generator responsibility for the material generated by the release.

Universal waste handlers can only send or receive universal waste from another handler, destination facility or a foreign destination. Universal waste handlers who self-transport universal waste must comply with the universal waste transporter requirements. Also, any universal waste that is a United States Department of Transportation (U.S. DOT) hazardous material must be shipped in accordance with the applicable U.S. DOT regulations, 49 CFR Parts 171—180.

Prior to shipping universal waste, the originating universal waste handler must ensure that the receiving facility will accept the shipment. The originating handler is also responsible for receiving any load or partial load that has been rejected by the receiving facility. However, the originating handler and the receiving facility can jointly agree upon another destination facility to receive the rejected load.

Universal waste handlers that receive a shipment of hazardous waste that is not a universal waste, must immediately notify the appropriate Department regional office. The regional office will provide instructions on managing the hazardous waste. Shipments of nonhazardous waste are to be managed in accordance with the applicable municipal or residual waste regulations.

SQHUs and LQHUs are subject to different tracking requirements. SQHUs are not required to keep records of shipments of universal waste. LQHUs are required to document each shipment received and sent from the facility. This documentation can take the form of a log, invoice, manifest, bill of lading or other shipping document. The documentation must identify the facility sending or receiving the shipment, the quantity of each type of universal waste being shipped, and the date the shipment was sent or received. LQHUs must retain these documents for 3 years after the shipment was received or sent. Universal waste handlers exporting universal waste to a foreign destination must comply with the requirements of Chapter 262, Subchapter E (relating to exports of hazardous waste). The applicable requirements for primary exporters in 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste) must also be satisfied.

Universal Waste Transporters

Another participant in the universal waste system is the universal waste transporter. Universal waste transporters are persons engaged in the transportation of universal waste. The requirements applicable to universal waste transporters are found in Subchapter M.

Persons who transport universal waste in accordance with the requirements of Subchapter M are deemed to have a universal waste transporters license. This license-by-rule implements section 501 of the Solid Waste Management Act (35 P. S. § 6018.501) which requires that hazardous waste be transported by a licensed transporter.

The granting of a license makes the Department's Universal Waste Rule slightly different from, but not more stringent than, the EPA's Universal Waste Rule. As with all other hazardous waste transporters, the EPA Universal Waste Rule does not require universal waste transporters to obtain a license. The Department's Universal Waste Rule is not more stringent than EPA's Universal Waste Rule because the two rules have the same requirements.

Universal waste transporters are prohibited from disposing of, diluting or treating universal waste. This prohibition is not applicable to treatment activities necessary to respond to a release.

Universal waste transporters are subject to the U. S. DOT requirements for transporting hazardous materials. The U. S. DOT hazardous material category of "hazardous waste" is not applicable to universal wastes. The U. S. DOT hazardous material classification for hazardous wastes only applies to materials subject to the EPA's manifest requirements. Universal wastes are not required to be manifested. Only those universal wastes that meet a specific U. S. DOT hazardous material category are subject to the U. S. DOT regulations. The shipping papers accompanying these materials must describe the material by the U. S. DOT proper shipping name. The words "hazardous waste" or "waste" cannot be added to the shipping name.

Universal wastes can be stored for up to 10 days at a universal waste transfer facility without the transporter having to comply with any additional requirements. A

universal waste transporter who complies with the applicable universal waste handler requirements can store universal wastes for more than 10 days.

A universal waste transporter must immediately contain any releases of universal waste. The transporter must characterize the materials generated by the release. If this material is determined to be hazardous, it is managed under the hazardous waste regulations. The transporter assumes generator responsibility for this material.

A transporter cannot knowingly accept a shipment of universal waste destined for export that does not conform to the EPA acknowledgement of consent. In addition, the transporter must ensure that the shipment is accompanied with the EPA acknowledgement of consent and is delivered to the designated facility.

Destination Facilities

A destination facility is any facility that treats/recycles or disposes of universal waste. Except as modified by Subchapter N (relating to standards for destination facilities), a destination facility is subject to the applicable regulations for a hazardous waste treatment/recycling, or disposal facility.

A shipment of universal waste can be rejected, in whole or in part, by the owner or operator of a destination facility. The owner or operator of the destination facility must notify the shipper of the rejected load. The rejected load can be returned to the shipper. Alternatively, if the shipper agrees, the rejected load can be sent to another destination facility.

If a destination facility receives a shipment of hazardous waste that is not a universal waste, the owner or operator must immediately notify the appropriate regional office of the Department. The regional office will provide the owner or operator with instructions on managing the hazardous waste. Any shipments of non-hazardous waste are to be managed in accordance with the applicable municipal or residual waste regulations.

The owner or operator of a destination facility must document each shipment of universal waste received at the facility. The documentation can take the form of a log, invoice, manifest, bill of lading or other shipping document. The documentation must identify the shipper, quantity of each type of universal waste received and the date the shipment was received. These records are to be retained for 3 years from the date of receiving the shipment.

Import Requirements

Subchapter O contains the standards applicable to universal waste shipped from a foreign country. In short, once universal waste from a foreign country enters this Commonwealth, it is managed like universal waste generated within this Commonwealth.

Including Additional Hazardous Wastes Under the Universal Waste Rule

Subchapter P creates two mechanisms for adding new types or categories of hazardous waste to the Universal Waste Rule. These mechanisms are incorporated by reference and a rulemaking petition process.

The incorporation by reference provision automatically amends the Department's Universal Waste Rule to include any changes to the EPA's Universal Waste Rule. Thus, any new type or category of hazardous waste added to the EPA Universal Waste Rule is automatically added to the Department's Universal Waste Rule.

The rulemaking petition process contains procedures and criteria applicable to petitions to the Board and the Department to amend the Universal Waste Rule to add another type or category of universal waste. This petition process differs from the proposed petition process in that a successful petition results in an amendment to the Universal Waste Rule rather than a determination by the Department that the hazardous waste can be managed like a universal waste. This change has been made to address concerns raised by the EPA and the Independent Regulatory Review Commission (IRRC).

Rather than just the Department determining the merits of a petition, Chapter 266, Subchapter P has been revised to have the Department and the Board evaluate the petition. This evaluation will still be based upon the factors listed in § 266.281 (relating to factors for petitions to include other wastes under Subchapters J—O). Some of the more important factors are whether: the hazardous waste is generated by a wide variety of generators; the hazardous waste is generated by a large number of generators and is frequently generated in relatively small quantities by each generator; the applicable management standards will be protective of human health and the environment; and whether managing the hazardous waste as a universal waste will increase the likelihood that the hazardous waste will be recycled, treated or disposed of properly.

Section 266.280(f), which stated that the Department could initiate the petition process, is unnecessary and has been deleted. The Department, on its own initiative, can request the Board to amend the Universal Waste Rule.

Section 266.282 (relating to public notice and review of petitions) sets forth the process for reviewing these petitions. The Department still determines whether the petition is administratively complete; See § 266.282 (a). The Department will then publish in the *Pennsylvania Bulletin* a notice that it has received an administratively complete rulemaking petition to add another type or category of hazardous waste to the Universal Waste Rule. Subsection (b) gives interested parties 60 days to submit comments concerning the proposed action. After reviewing all comments the Department will submit to the Board a recommendation whether or not to amend the Universal Waste Rule in a manner consistent with the proposed action.

The proposed and final-form regulations contain a number of provisions identifying those hazardous wastes which can be managed under the Universal Waste Rule. In the proposed regulations, these provisions contained language to include types or categories of hazardous wastes determined by the Department, pursuant to the petition process, that could be managed like a universal waste. This language is now unnecessary because successful petitions will result in an amendment to the Department's regulations. Therefore, §§ 261.9(5) (relating to requirements for universal wastes); 264.1(c)(10)(v) and 265.1(c)(11)(v) (both relating to scope); 266.201(5) (relating to scope); 266.206 definition of "universal waste" subsection (v) (relating to definitions); 266.213(d) and 266.233(d) (relating to waste management); and 266.234(5) (relating to labeling/markings) are deleted.

By including this rulemaking petition process in the Universal Waste Rule, once the Universal Waste Rule becomes part of Pennsylvania's authorized program, any new type or category of hazardous waste added to the Universal Waste Rule, through the petition process, becomes part of Pennsylvania's authorized program. The rulemaking petition process contains all the procedural

and substantive requirements found in the EPA's Universal Waste Rule petition process. The EPA is encouraging states to include this petition process in their own Universal Waste Rule. Additional wastes deemed universal wastes under the petition process become part of the state's authorized program.

Miscellaneous Amendments

The Universal Waste Rule, like the EPA's Universal Waste Rule, exempts hazardous wastes managed as a universal waste from the quantity determination used to qualify for conditionally exempt small quantity generator status. This exemption should encourage generators to participate in the universal waste program. The other amendments to Chapters 261, 264 and 265 merely make 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.

E. Summary of Comments and Changes to the Proposed Rulemaking

Notice of proposed rulemaking was published on August 2, 1996, in the *Pennsylvania Bulletin* and was followed by a 60-day public comment period. No public meetings or hearings were held.

Comments

Four persons and organizations commented on the proposed amendments during the comment period. IRRC also submitted comments.

The Department has prepared a Comment and Response Document summarizing and responding to the comments received by the Board. This document is available for review upon request from the contact persons identified in Section B of this Preamble.

Several commentators suggested expanding the Universal Waste Rule to include mercury-containing lamps, and other mercury-containing devices. In the notice of proposed rulemaking, the Board requested information concerning adding fluorescent tubes and other hazardous wastes to the final-form rule.

The Board agrees that mercury-containing lamps and other mercury-containing devices are good candidates for management as universal wastes. Nonetheless, the Board believes the final-form rule should only cover those hazardous wastes included under the EPA Universal Waste Rule. The EPA has specified the procedures and standards to be used by a state for expanding its Universal Waste Rule beyond the Federal program. These procedures and standards have been included in the final-form rule. They will be used to review the recommendations that mercury-containing lamps or other mercury-containing devices should be managed under the universal waste program.

One commentator suggested that the final-form rule require the shipping documents to include a parenthetical expression to modify the U.S.DOT proper shipping name to identify the material as a waste. Except for materials categorized as a hazardous waste, the U.S.DOT proper shipping name does not identify the material as a waste. The commentator is concerned that someone might mistakenly conclude that the shipment contains a product, rather than a waste because the shipping documents only use the U.S.DOT shipping name to describe the shipment.

The Board believes this concern is unfounded. In addition to the shipping paper description, universal waste handlers must label packages of universal waste to

identify their contents as a waste or used material, such as universal waste—batteries, waste batteries, or used batteries. Any regulation imposing additional requirements on the description to be used in shipping documents may be preempted by the U.S. Hazardous Materials Transportation Act (49 U.S.C.A. § 5125 (b)).

IRRC recommended deleting from the final-form rule the regulations authorizing the Department to determine whether other wastes can be managed as a universal waste. IRRC believes the Department lacks the authority to make adjudications. Even if the Department has the authority to make adjudications, IRRC believes that the determination to expand the Universal Waste Rule should be made via the rulemaking process.

The final-form rule has been changed to conform the petition process to the Federal program's petition process. Successful petitions to add other hazardous wastes will result in an amendment to the Universal Waste Rule through the rulemaking process.

IRRC believed mercury-containing lamps and other mercury-containing devices may be worthy candidates for inclusion under the Universal Waste Rule. However, IRRC recommended not including these hazardous wastes in the final-form rule. These wastes should be considered only after there has been broad opportunity for public comment on the addition of each waste.

The Board agrees. The procedures authorizing the Department to make these determinations include notice in the *Pennsylvania Bulletin* and a 60-day comment period.

IRRC recommended that the labeling requirements be clarified in the final-form rule. The Board disagrees. As explained previously, the handler is required to clearly identify the contents of packages of universal waste.

IRRC recommended rewriting the Universal Waste Rule to primarily incorporate by reference EPA's Universal Waste Rule. The Board disagrees at this point in time. Rewriting the Universal Waste Rule to incorporate by reference the EPA Universal Waste Rule will extend the rulemaking process. At a minimum, the Board would have to use an advanced notice of final rulemaking to provide the public with notice of the change in the rule. However, as part of the Regulatory Basics Initiative, the question of incorporation by reference will be considered on a broad scale.

IRRC recommended that the statutory references requiring permits for handlers and licenses for transporters be included in the final-form rule. The Board believes adding this explanation and cross references to the regulation will adversely affect the regulation's clarity. This explanation, including citations, has instead been included in the summary and background section of this Preamble.

IRRC recommended clarifying language in § 261.5(i) relating to which regulations are applicable to mixtures of hazardous waste and solid waste that exceed the quantity limitations. The revisions to § 261.5 were addressed as part of the recently promulgated hazardous waste amendments known as PK5. This final-form rulemaking merely excludes universal wastes from the quantity limitations imposed by that regulation.

The remainder of IRRC's comments relate to either correcting typos or minor changes to clarify the regulations. In general, the Board accepts these recommendations.

Changes to Proposed Regulations

The final regulations contain several changes which respond to comments. The changes are identified as follows:

1. Amendment to petitioning process.

The final regulations in Subchapter P, §§ 266.280, 266.281 and 266.282 were amended to remove the procedures to petition for a Department universal waste determination. Under the final regulations, persons may petition for a regulatory amendment to regulate additional categories of waste as universal wastes.

In §§ 261.9(5), 264.1(5), 265.1(5), 266.201(a)(4), 266.206, 266.212(d), 266.214(5), 266.233(d) and 266.234(5), the final regulations delete language which referred to the procedures for a Department universal waste determination. Under the final regulations, additional categories of waste can only be added by regulatory amendment.

2. Cross references to Chapters 261—266.

In the proposed amendments, §§ 266.203(b)(2), 266.212(a)(3)(i), 266.217 and 266.237 referenced the hazardous waste regulations in the remainder of this article as being applicable in several circumstances. To improve clarity the final regulations a reference to Chapters 261—265 and Chapter 266, Subchapters C—I as provides other applicable requirements in several circumstances.

On November 14, 1996, the Solid Waste Advisory Committee (SWAC) was briefed on the comments received during the public comment period. On January 9, 1997, SWAC approved this final-form regulations for submission to the Board. The final-form regulations were also approved by the Agricultural Advisory Committee at its December 18, 1996, meeting.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final rulemaking.

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 inhibit the creation of systems for the collection and transportation of universal 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.

It is estimated that generators of universal waste will see an annualized cost saving of \$11.4 million. This estimate is based upon an EPA study concerning cost savings resulting from the Universal Waste Rule.

The EPA performed a Nationwide analysis to estimate the cost differences between compliance with the full RCRA Subtitle C (Hazardous Waste) requirements, and compliance with the universal waste regulations for generators of universal wastes. The economic impact analysis examined the savings that should result from generators handling hazardous waste batteries and thermostats under several possible options for complying with the universal waste requirements. It also identified the least-cost compliance options. The economic impact analysis also estimated the incremental savings that should result for generators of pesticides that are hazardous after their

recall. Summing up the savings from the various universal wastes, the EPA's estimate of the total annualized savings from complying with the Universal Waste Rule is \$76 million Nationwide.

The estimate that the Universal Waste Rule will save Pennsylvania generators \$11.4 million is based upon the assumption that the proportion of the National cost saving attributable to Pennsylvania generators equals the proportion of universal waste generated Nationally that is attributable Pennsylvania. The Department estimates Pennsylvania's share of the National universal waste stream to be 15%. Multiplying the National estimate of the total annualized savings estimate by 15% (\$76 million x 0.15) results in a total annualized savings of \$11.4 million, for Pennsylvania generators of universal waste.

Savings could increase substantially in future years if additional wastes are added to the Universal Waste Rule.

Compliance Costs

The regulations provide an optional means to comply with applicable hazardous waste requirements. Compared to compliance costs associated with full regulations under the hazardous waste program, compliance with the Universal Waste Rule will be less costly.

Compliance Assistance Plan

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.

Paperwork Requirements

The Universal Waste Rule imposes few paperwork requirements. LQHUV and owner/operators of destination facilities must maintain records of the universal waste received or shipped from the facility. These records can be the normal shipping documents, such as invoices or bills of lading, used by businesses to track shipments.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, the more efficient use of raw materials, or the incorporation of energy efficient strategies. Pollution prevention provisions are not applicable with these regulations because these regulations establish a set of streamlined standards for managing universal wastes. However, these final-form regulations should promote the recycling of universal wastes.

H. *Sunset Review*

These final-form 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. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 4, 1996, the Department submitted a copy of the proposed amendments to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In compliance

with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

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

The final-form regulations were deemed approved by the House Environmental Resources and Energy Committee on April 21, 1997, and were deemed approved by the Senate Environmental Resources and Energy Committee on April 21, 1997. IRRC met on May 1, 1997, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

J. Findings of the Board

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 26 Pa.B. 3801.

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

K. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapters 261, 262 and 264—266, are amended by amending §§ 261.5, 262.10, 262.11, 264.1, 265.1 and 266.80; and by adding §§ 261.9, 266.201—266.206, 266.210—266.220, 266.230—266.240, 266.250—266.256, 266.260—266.262, 266.270 and 266.280—266.283, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

(e) This order shall take effect immediately.

JAMES M. SEIF,
Chairperson

(Editor's Note: For the text of the order of IRRC relating to this document, see 27 Pa.B. 2490 (May 17, 1997).)

Fiscal Note: Fiscal Note 7-297 remains valid for the final adoption of the subject regulations.

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

§ 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 (f), (g) and (j), a conditionally exempt small quantity generator is not subject to regulation under Chapters 262—266 and Chapter 270, and the notification requirements of § 261.41 (relating to notification of hazardous waste activities), 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:

(1) Is exempt from regulation under § 261.4 or 40 CFR § 261.6(a)(3), § 261.7(a)(1) or § 261.8 (relating to requirements for recyclable materials; residues in hazardous waste in empty containers; and PCB waste regulated under toxic substance control act).

(2) Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units or totally enclosed treatment facilities as defined in § 260.2 (relating to definitions).

(3) Is recycled, without prior storage or accumulation, only in an onsite process subject to regulation under Chapter 266 (relating to special standards for the management of certain hazardous waste activities).

(4) Is used oil managed under the requirements of § 261.6 (relating to requirements for hazardous wastes that are recycled) and Chapter 266.

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

(6) Is universal waste managed under Chapter 266.

(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.

(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 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) In 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 a 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, or, if a conditionally exempt small quantity generator's wastes are mixed with waste oil and the mixture is to be recycled or reused, it may be transported, stored or processed under Article VIII (relating to municipal waste) or Article IX (relating to residual 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 kilograms and 1,000 kilograms 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) (relating to accumulation) 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 one or more of the following:

(i) Permitted under Chapter 270.

(ii) In 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, or, if a conditionally exempt small quantity generator's wastes are mixed with waste oil and the mixture is to be recycled or reused, it may be transported, stored or processed under Article VIII or Article IX.

(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, Subchapters J—P.

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

(b) A generator who treats, stores or disposes of hazardous waste at a permitted onsite facility or an onsite facility being treated as having been issued a permit shall comply with applicable requirements of Chapters 264 and 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and with the following in this chapter:

- (1) Section 262.11 (relating to hazardous waste determination).
- (2) Section 262.12 (relating to identification numbers).
- (3) Section 262.34 (relating to accumulation).
- (4) Section 262.40 (relating to recordkeeping).
- (5) Section 262.41(b) (relating to biennial report).
- (6) Section 262.43 (relating to additional reporting).
- (7) Section 262.45 (relating to hazardous waste disposal plan).
- (8) Section 262.46 (relating to hazardous waste discharges or spills).

(c) A farmer who generates waste pesticides which are hazardous wastes and who complies with the require-

ments of § 262.70 (relating to farmers), is not required to comply with Chapters 264 and 265 with respect to the pesticides.

(d) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage or disposal facility shall comply with the generator standards established in this chapter.

(e) A household hazardous waste collection contractor under section 1512 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 400.1512) is a generator of the hazardous wastes collected and shall comply with the requirements of this chapter.

(f) Used oil collection site operators who are not transporters, marketers or burners are not generators. Used oil collection contractors under section 1512 of the Municipal Waste Planning, Recycling and Waste Reduction Act who manage hazardous waste oils are generators.

§ 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).

(2) The generator shall then determine if the waste is listed as a hazardous waste in Chapter 261, Subchapter D (relating to lists of hazardous wastes), contains a waste listed in Chapter 261, Subchapter D or is derived from a waste listed in Chapter 261, Subchapter D.

(3) For purposes of compliance with 40 CFR Part 268 (relating to land disposal restrictions), or if the waste is not listed in Chapter 261, Subchapter D, the person shall determine whether the waste material is identified in Chapter 261, Subchapter C (relating to characteristics of hazardous waste), by either:

(i) Testing the waste according to the methods in Chapter 261 (relating to criteria, identification and listing of hazardous waste) or according to an equivalent method approved by the Department under § 260.21 (relating to requests for determination of equivalent testing or analytical methods).

(ii) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) The generator shall determine if a spill or accidental discharge is subject to the reporting requirements of § 262.46 (relating to hazardous waste discharges or spills) and shall comply with § 262.46, except § 262.46(e), for a spill or accidental discharge.

(b) If a waste is listed as a hazardous waste in, contains a waste listed in, or is derived from a waste listed in Chapter 261, Subchapter D, a generator's waste can be declared nonhazardous if the generator can demonstrate to the Department in accordance with § 260.22 (relating to delisting procedures) that the waste from the generator's particular facility or operation is not a hazardous waste.

(c) If the waste is determined to be nonhazardous or is subject to the special requirements under § 261.5, a

generator shall retain copies of the evaluations performed under subsection (a)(3)(i) or (ii) and shall repeat the evaluations or testing when there is a significant change in the generator's raw materials or operations which may alter the test results. Copies of the evaluations shall be retained for 5 years and furnished to the Department upon request.

(d) A generator of hazardous waste subject to regulation under § 261.5 shall retain for 5 years records of quantities, descriptions and dispositions of the wastes, and shall furnish the records to the Department upon request.

(e) A determination that a waste is not hazardous under subsection (a)(3) and (b) does not preclude the Department, using the characteristics and testing methods set forth in Chapter 261 from determining the waste to be hazardous.

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

* * * * *

CHAPTER 266. 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 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:

(1) Notification requirements under § 261.41.

(2) Chapter 264, Subchapters A—L and Chapters 267, 269 and 270, except the waste analysis requirements of § 264.13(a)—(c) (relating to general requirements for hazardous waste management approvals and analysis) and the manifest and manifest discrepancy requirements of §§ 264.70—264.72 (relating to applicability; use of the manifest system; and manifest discrepancies) unless a variance is obtained under § 264.1(d) (relating to scope).

(c) The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain an individual permit when the facility is not in compliance with the requirements of subsection (b) or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

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

(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 (relating to definitions of solid waste), 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) 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 canceled pesticide that are part of a voluntary or mandatory recall under section 19(b) of FIFRA (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).

(2) Pesticides not meeting the conditions in subsection (a). These pesticides shall be managed in compliance with the hazardous waste regulations in the remainder of Chapters 261—265 and Chapter 266, Subchapters C—I.

(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 (relating to list of hazardous waste) 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 this 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) 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 in paragraphs (1) and (2) 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 in § 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 in § 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 §§ 266.213(a) and (c) and 266.233(a) and (c) (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 is:

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

(ii) 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) 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 § 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 (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).

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 § 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/marketing.
 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 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 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 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 is subject to the applicable requirements of Chapters 261—265 and Chapter 266, Subchapters C—I. 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 applicable requirements of Chapters 261—265 and Chapter 266, Subchapters C—I. 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) *EPA determination.* A small quantity handler of universal waste shall manage other universal wastes

determined by the 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 “used 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 in 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 “used mercury thermostat(s).”

(5) A small quantity handler of universal waste shall label or mark other universal wastes determined by the 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 the 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 the 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 applicable requirements of Chapters 261—265 and Chapter 266, Subchapters C—I. 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-transport universal waste offsite, the handler becomes a universal waste transporter for those self-transportation activities and shall comply with the transporter require-

ments 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 (relating notification of intent to export; annual reports; and recordkeeping).

(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 prohibited from:

- (1) Disposing of universal waste.
- (2) 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 the EPA of hazardous waste management activities and has received an EPA identification number is not required to renotify the 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 the 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 Occupational Safety and Health Administration (OSHA) 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 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 "used 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 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 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 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 Chapters 261—265 and Subchapters C—I. 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 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 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 (relating to notification of intent to export; annual reports; and recordkeeping).

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

(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 this subchapter is deemed to have a license for the transportation of universal wastes.

§ 266.251. Prohibitions.

A universal waste transporter is prohibited from:

(1) Disposing of universal waste.

(2) 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 United States 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 Subchapter 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 the 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 United States 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 acknowledgment 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 the applicable requirements of Chapters 264, 265, 269 and 270 and Subchapters C—I, 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) Send the shipment to another destination facility, if agreed to by both the shipper and the owner or operator of the 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 as follows:

(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 may petition the Department for a regulatory amendment under this subchapter.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Department and the EQB that regulation as a universal waste under this chapter is the following:

- (1) Appropriate for the waste or category of waste.
- (2) Will improve management practices for the waste or category of waste.
- (3) 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 and the EQB 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 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.

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

The following factors will be considered in evaluating 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 regulatory amendment in the *Pennsylvania Bulletin* when the Department determines that the application is administratively complete.

(b) 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 regulatory amendment.

§ 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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