PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 260—265, 267, 269—270, 260a—266a, 266b AND 268a—270a]

Hazardous Waste Management

The Environmental Quality Board (Board) proposes to delete Chapters 260—265, 266—267 and 269—270 and add or renumber existing new hazardous waste regulations in Chapters 260a—266a, 266b and 268a—270a. The changes are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1. Under the Regulatory Basics Initiative and Executive Order 1996-1, the Department reviewed the Department's existing hazardous waste regulations to identify where the regulations could be improved.

This proposal was adopted by the Board at its meeting of September 16, 1997.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Rick Shipman, Chief, Division of Hazardous Waste, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239, or Leigh B. Cohen, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 401—403 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety and welfare, and the environment of this Commonwealth. Sections 105, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations that are necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

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

Numerous Federal statutes applicable to hazardous waste management activities are administered by Federal agencies, including the Environmental Protection Agency (EPA). The EPA administers the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§ 6901—6992) and Federal regulations at 40 CFR Parts 260—272 which contain the basic Federal hazardous waste program requirements. RCRA provides that no state "may impose any requirements less stringent than [EPA's RCRA regulations] respecting the same matter governed by such regulations." 42 U.S.C.A. § 6929. A state standard less stringent than the RCRA standard respecting the same matter therefore would be superseded by Federal law.

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

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

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

Since the Commonwealth received its authorization in 1986, the Board has adopted several hazardous waste rules. Pennsylvania's hazardous waste regulations were most recently significantly amended with substantive changes at 23 Pa.B. 363 (January 16, 1993). This regulatory amendment is referred to as PK-4. The basic

framework for the Department's hazardous waste program was amended in that rulemaking through the definition of "waste" and related terms such as "coproduct." These provisions, which differ significantly from the Federal hazardous waste regulations, are currently contained in the Department's regulations. This proposal deletes these requirements and replaces them with the Federal regulations.

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

E. *Summary of Regulatory Requirements*

The proposed amendments delete the current text of the Pennsylvania hazardous waste regulations and add new chapters that incorporate by reference the Federal hazardous waste regulations. The purpose of incorporating by reference is to ensure that Pennsylvania's hazardous waste regulations are consistent with the Federal regulations. For cases in which the Board has determined that this Commonwealth has a compelling State interest to promulgate regulations that are more stringent than the Federal regulations, the Board has promulgated regulations that are more stringent than the Federal regulations.

The proposed regulations are formatted so that the first section of each Pennsylvania chapter contains language to incorporate by reference each corresponding Federal part that the Commonwealth is proposing to incorporate by reference. Individual Pennsylvania sections are identified by a small letter "a" that is included in the section number. These sections contain the Commonwealth's additions to, deletions from or modifications of the Federal regulations that have been incorporated. In most instances, the the Commonwealth's chapter numbers should correspond to the parallel Federal part numbers; the Commonwealth's subchapter numbers should correspond to the parallel Federal subpart numbers; and the Commonwealth's section numbers should correspond to the parallel Federal section numbers. In instances in which no Commonwealth's section number exists for a Federal counterpart section, Pennsylvania has decided to incorporate the Federal section without modification.

Although the proposed amendments appear to make major changes to all of the Commonwealth's hazardous waste regulations, most of the amendments to the Commonwealth's hazardous waste regulations are textual changes rather than conceptual changes. Many of the Commonwealth's current hazardous waste regulations intend to accomplish the same result as the Federal hazardous waste regulations, and therefore, many of the requirements currently found in the Commonwealth's hazardous waste regulations are also found in the Federal hazardous waste regulations.

The proposal was reviewed and approved by the Solid Waste Advisory Committee (SWAC). The Department met with a SWAC subcommittee on January 30, 1997, and February 25, 1997, to identify significant issues that should be raised to the attention of the entire SWAC. The Department met with SWAC on March 13, 1997, and May 8, 1997, to discuss the proposed revisions.

The following is a summary of the proposed amendments that will have a significant impact on the regulated community. Changes in text that do not have a significant impact on the regulated community are not discussed. In addition, the summary includes an explanation of any Commonwealth hazardous waste requirements that the Board intends to retain and that are more stringent than the Federal hazardous waste regulations. Regulations that have been relocated appear as new language in Annex A. The chapter and section headings include both the Federal citation, if the Federal provision was incorporated, and the proposed Commonwealth citation. If no parallel Federal citation is proposed to be incorporated, only a Commonwealth citation appears in the caption. A Federal citation without a parallel Commonwealth citation indicates that the Board is not proposing to modify the Federal provision to be incorporated. Finally, any HSWA requirements that are being added to the Commonwealth's program and that have been in effect in this Commonwealth are not summarized in this Preamble.

25 Pa. Code Chapter 260a and 40 CFR Part 260

25 Pa. Code § 260a.10 and 40 CFR 260.10 Definitions

The Board is proposing to incorporate by reference the Federal definition section found in 40 CFR 260.10 with the exception of those Federal definitions that conflict with the SWMA definition section. In addition, the Board proposes to relocate definitions currently found in § 260.2 to this section. The Board believes that the relocated definitions are necessary to ensure that the proposed regulations are in conformance with SWMA and the HSCA.

25 Pa. Code § 260a.20 and 40 CFR 260.20 General: Rulemaking Petitions

The Board is proposing to incorporate by reference the Federal regulation regarding the general provisions for rulemaking petitions found in 40 CFR 260.20(a). The proposal does not incorporate 40 CFR 260.20(b)—(e) since these provisions set forth the procedural requirements that must be followed by petitioners submitting petitions to the EPA. Since the petitions submitted in this Commonwealth will be submitted to the Board, the Board is proposing to substitute for the Federal procedures the Board's rulemaking petition procedures found in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

40 CFR 260.21 Petitions for Equivalent Testing or Analytical Methods

40 CFR 260.22 Petitions to Amend Chapter 261 to Exclude a Waste Produced at a Particular Facility

The Board is proposing to incorporate by reference 40 CFR 260.21, the Federal regulation regarding petitions for equivalent testing or analytical methods. In addition, the Board is proposing to incorporate 40 CFR 260.22, the Federal regulation regarding petitions to exclude a waste produced at a particular facility. The difference between the Commonwealth's existing regulations and the proposed regulations is that the existing regulations do not

require a rulemaking procedure for approvals for equivalent testing or analytical methods or for amendments to existing Chapter 261 to exclude a waste produced at a particular facility. The Board is proposing to adopt the rulemaking procedure to facilitate authorization of the Commonwealth's hazardous waste program.

40 CFR 260.23 Petitions to Amend the Universal Waste Rule to Include Additional Hazardous Wastes

The Board is proposing to incorporate by reference 40 CFR 260.23, the Federal regulation regarding petitions to amend the universal waste rule to include additional hazardous wastes. The proposed regulation does not change the Department's substantive requirements currently found in §§ 266.280—266.282 and proposed to be relocated to Chapter 266b. The proposal merely moves the universal waste petition procedure to Chapter 260 so that the Commonwealth's regulatory provisions have the same numbering scheme as the Federal regulations.

40 CFR 260.30 Variances from Classification as a Solid Waste

40 CFR 260.31 Standards and Criteria for Variances from Classification as a Solid Waste

40 CFR 260.32 Variance to be Classified as a Boiler

40 CFR 260.33 Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler

The Board is proposing to incorporate by reference 40 CFR 260.30—260.33, the Federal regulations regarding variances. The Commonwealth's existing hazardous waste regulations do not contain analogous variance provisions. The proposed regulations allow the Department to grant variances on a case-by-case basis using criteria listed in 40 CFR 260.31 or 260.32. As proposed, the incorporated provisions of 40 CFR 260.30 authorize the Department to grant a variance from classification as a solid waste for certain recycled materials or materials that are reclaimed and then reused or that have been reclaimed but that must be reclaimed further. The proposed incorporation of 40 CFR 260.32 authorizes the Department to grant variances so that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in proposed § 260a.10 or 40 CFR 260.10. The incorporated provisions of proposed 40 CFR 260.33 set forth the variance application procedure.

40 CFR 260.40 Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis

40 CFR 260.41 Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities

The Board is proposing to incorporate by reference the Federal provisions regarding additional regulation of certain hazardous waste recycling activities and the procedures used for the regulation of these hazardous waste recycling activities. The Federal provisions are found in 40 CFR 260.40 and 260.41. The incorporated provisions authorize additional regulation of persons who accumulate or store lead acid batteries in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. A similar provision is currently found in § 266.80.

25 Pa. Code Chapter 261a and 40 CFR Part 261

25 Pa. Code § 261a.2 and 40 CFR 261.2 Definition of "Solid Waste"

The Board is proposing to amend the definition of "solid waste" for the hazardous waste program, which now includes the definitions of "byproduct," "coproduct" and "waste." The Board is proposing to delete from its current hazardous waste regulations the definitions of "byproduct," "coproduct," "solid waste" and "waste" and replace these definitions with the Federal regulation found in 40 CFR 261.2. The most significant difference between the current Commonwealth hazardous waste definition of "solid waste" and the Federal definition of "solid waste" is that the Commonwealth's regulations rely upon coproduct determinations to exempt materials from the definition of solid waste, and the Federal regulations rely upon several variances and a narrow definition of "discarded materials" to exempt materials from the definition of "solid waste."

In the Department's experience, applying different regulatory definitions of "solid waste" creates confusion. In addition, under the existing definition of "waste," the Department may be required to regulate as hazardous wastes materials that industries could reuse and that the Federal government does not regulate. The continued regulation of these materials could encourage industries to dispose of these materials rather than to reuse them. Therefore, the Board has decided to adopt the Federal definition of "solid waste" so that the Commonwealth's hazardous waste definition of "solid waste" is consistent with the Federal definition. The Board expects that the use of one definition for both Federal and State hazardous waste regulations will result in a simpler hazardous waste regulatory scheme for the regulated community and for the Department.

25 Pa. Code § 261a.3 and 40 CFR 261.3 Definition of Hazardous Waste

The Board is proposing to incorporate by reference 40 CFR 261.3, with two exceptions. The Board is proposing to continue to regulate as a hazardous waste the waste streams exempted in 40 CFR 261.3(c)(2)(ii)(C) and 261.3(c)(2)(ii)(D). Since the Department has no experience with these waste streams, the Board has determined that these waste streams should not at this time be excepted from hazardous waste regulation in this Commonwealth. The new exceptions contained in the proposed incorporated language are: mixtures of wastes from the extraction beneficiation and processing of ores and minerals that are excluded under section 40 CFR 261.3(a)(2)(I); mixtures of solid waste and listed hazardous wastes that are listed only because they exhibit a characteristic but the resultant mixture does not exhibit any characteristic, 40 CFR 261.3(a)(2)(iii); wastewaters that contain de minimis amounts of certain listed hazardous constituents and are subject to regulation under the Clean Water Act (NPDES), 40 CFR 261.3(a)(2)(iv); waste from burning hazardous waste fuels produced from petroleum coke and oil-bearing hazardous wastes from petroleum refining exempted from regulation by section, 40 CFR 261.3(c)(2)(ii)(B); and hazardous waste debris as defined in the land disposal requirements (40 CFR Part 268) that has been treated or determined by the Department to no longer be contaminated with hazardous waste, 40 CFR 261.3(f).

In addition, the Board is proposing to remove from the existing regulations the State specific hazardous waste designation PA01 for waste oil that contains greater than

1,000 ppm total halogens and use the Federal approach that such oil be designated by the listed halogenated solvent which has been mixed with the oil to cause it to exceed 1,000 ppm total halogen. The proposal retains the rebuttable presumption for used oil at 40 CFR 261.3(a)(2)(v).

25 Pa. Code § 261a.5 and 40 CFR 261.5 Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The Federal language that the Board is proposing to adopt is contained in the existing Commonwealth hazardous waste regulations in § 261.5. However, the proposed regulation is more stringent than the Federal requirement, because it retains the existing State prohibition against the disposal of conditionally exempt small quantity generator hazardous waste in municipal or residual waste facilities. This is required by State law under section 207(b) of the Small Business and Household Pollution Prevention Act.

25 Pa. Code § 261a.6 and 40 CFR 261.6 Recyclable Materials

The Board is proposing to delete the existing text found in § 261.6 and replace it with language that will incorporate by reference the provisions of 40 CFR 261.6 with one exception. The proposed amendment is more stringent than the Federal requirement, because it requires a recycling permit for owners and operators of facilities that manage recyclable materials. The Federal analog only requires a permit for the storage of recyclable materials before the materials are recycled. Since section 401(a) of the SWMA (35 P. S. § 6018.401(a)), requires operators to obtain a permit for treating hazardous waste, and since recycling hazardous waste falls within the SWMA definition of "treatment," the Commonwealth must require recycling permits for recycling of hazardous wastes.

25 Pa. Code § 261a.7 Residues of Hazardous Waste in Empty Containers

This regulation clarifies that the residues of hazardous waste in empty containers is treated as a residual waste in this Commonwealth. The Federal law has no waste classification equivalent to the Commonwealth's residual waste classification.

40 CFR 261.8 PCB Wastes Regulated under Toxic Substance Control Act

The Board is proposing to incorporate by reference 40 CFR 261.8. The provision clarifies that PCB wastes regulated under TSCA that could also be construed to be regulated under RCRA will be regulated under TSCA.

25 Pa. Code Chapter 262a and 40 CFR Part 262

25 Pa. Code § 262a.22 and 40 CFR 262.22 Number of Copies of Manifest

The Board is proposing to incorporate by reference the Federal regulation regarding number of copies of the manifest. In addition, the Board is proposing to require the use of a six part manifest rather than the four part manifest required by the Federal regulations. The Board has determined that the Commonwealth should require two more copies than the Federal regulation requires, because the two additional copies are sent from the TSD facility to the generator state and from the TSD to the disposal state. The Board believes that hazardous waste cannot be properly monitored unless the generator state and the disposal state can track the waste, and the manifest contains all of the necessary information once it gets to the TSD facility. The existing Commonwealth regulation requires the use of an eight part manifest. The two copies that the proposed rule will no longer require are copies that the generator sends to the generator state and the copy that the generator sends to the disposal state.

25 Pa. Code Chapter 263a and 40 CFR Part 263

25 Pa. Code § 263a.12 and 40 CFR 263.12 Transfer Facility Requirements

The Board is proposing to incorporate by reference the Federal regulation regarding transfer facility requirements found in 40 CFR 263.12. In addition, the Board is proposing to retain the existing State requirement that requires the use of an in-transit storage preparedness, prevention and contingency plan. This requirement is currently found in § 263.30(g) and (h). The Board considers in-transit storage preparedness, prevention and contingency plans to be necessary to ensure that transfer facilities are able to deal with emergency situations resulting from spills or other accidents since these facilities are not subject to siting requirements.

25 Pa. Code § 263a.13 Licensing

The Board intends to relocate the hazardous waste transporter licensing requirement that is currently found in § 263.13 to § 263a.13. There is no Federal equivalent for this requirement since it is a requirement of section 501 of the SWMA (35 P. S. § 6018.501), and not RCRA.

25 Pa. Code § 263a.23 Hazardous Waste Transportation Fee

The Board intends to relocate the existing hazardous waste transportation fee, without revision, that is currently found in § 263.23 to § 263a.23. This provision requires the submission of fees for the transportation of hazardous wastes which are picked up or delivered in this Commonwealth. There is no Federal equivalent to this requirement since it is a requirement of section 903 of HSCA (35 P. S. § 6020.903).

25 Pa. Code § 263a.24 Documentation of Hazardous Waste Transporter Fee Submission

The Board intends to relocate the hazardous waste transportation fee submission requirement currently found in § 263.24 to § 263a.24 This provision requires that hazardous waste transporters document the submission of hazardous waste transportation fees. There is no Federal equivalent to this provision since the fees are required by the HSCA, and the Department cannot verify the amount of fees submitted without proper documentation.

25 Pa. Code § 263a.26 Assessment of Penalties

The Board intends to relocate the assessment of penalties provision that is currently found in § 263.26 to § 263a.26. There is no Federal equivalent since the Federal law does not require payment of hazardous waste transporter fees. The Department cannot effectively enforce the payment of fees provisions unless it is able to assess penalties against transporters that fail to submit their fees in a timely manner.

25 Pa. Code § 263a.32 Bonding

The Board intends to relocate the bonding requirements for hazardous waste transporters that are currently found in § 263.32 to § 263a.32. This provision requires hazardous waste transporters to retain a minimum $10,000 bond, with a larger bond proposed for transporters who transport larger amounts of waste. This proposal does not alter the current bonding requirements for hazardous waste transporters. There is no Federal equivalent to this

requirement since it is a requirement of section 505(e) of the SWMA (35 P. S. § 6018.505(e)).

25 Pa. Code Chapters 264a and 265a and 40 CFR Parts 264 and 265

Chapters 264a and 265a provide standards for owners and operators of hazardous waste treatment, storage and disposal facilities. Chapter 265a differs from Chapter 264a, because it contains interim status standards that only apply to facilities that are classified as interim status facilities. However, the requirements of the two chapters are often the same. Consequently, any proposed changes to regulatory requirements that are contained in both Chapters 264a and 265a are explained in this Preamble under one heading.

25 Pa. Code §§ 264a.13 and 265a.13 and 40 CFR 264.13 and 265.13 General and Generic Waste Analysis

The Board intends to retain the waste analysis requirements currently found in §§ 264.12, 265.12, 264.13, and 265.13. The Board is proposing to relocate these Commonwealth requirements to §§ 264a.13 and 265a.13 so that the Commonwealth's waste analysis citation parallels the Federal waste analysis requirements found in 40 CFR 264.13 and 265.13. The proposed regulations are more stringent than the Federal regulation because they require Department approval before a facility can accept hazardous waste for treatment, storage or disposal (TSD). This approval is done through a Module I application. The Federal regulation only requires an operator to obtain waste stream analyses and keep the analyses onsite but it does not require prior agency approval before the waste stream can be accepted by the operator of the TSD facility. The Board has determined that the Department must approve of waste streams before a facility can accept them in order to ensure that the facility is able to manage the hazardous waste properly. However, to expedite an operator's ability to receive new waste streams, the existing regulations allow operators of TSD's to submit a Generic Module I application that allows operators to accept additional hazardous wastes that are similar to the type of waste for which they have received approval. At least 15 days prior to accepting a waste from a new generator, the operator of the TSD must submit to the Department specific information about the generator and the waste to document that the new generator meets the criteria of the approved Generic Module I. The Board is requesting comments on the proposal to retain the Module I application.

25 Pa. Code §§ 264a.15 and 265a.15 and 40 CFR 264.15 and 265.15 General Inspection and Construction Inspection Requirements

The Board is proposing to incorporate by reference 40 CFR 264.15 and 265.15, the Federal regulations regarding general inspection requirements. In addition, the Board is proposing to retain a Commonwealth inspection requirement. The added provision requires operators to submit to the Department for approval schedules for the construction of hazardous waste management facilities. The Federal regulations do not require inspection of facilities during construction or approval of schedules for construction. The Board is requesting comments on the proposal to retain the requirement for Department construction inspections and approval of construction schedules.

25 Pa. Code §§ 264a.52 and 265a.52 and 40 CFR 264.52 and 265.52 Content of Contingency Plan

The Board is proposing to incorporate by reference 40 CFR 264.52 and 265.52, the Federal provisions for contents of contingency plans. In addition, the Department proposes to relocate to §§ 264a.52 and 265a.52 the existing Commonwealth requirement that operators prepare contingency plans in accordance with Department guidelines rather than in accordance with EPA guidelines. The Department guidelines provide guidance to operators and assure the Department that the contingency plans will adequately address emergency situations that may arise at hazardous waste facilities. The Federal regulation together with the additional State requirement is essentially the same as the current Commonwealth regulation.

25 Pa. Code §§ 264a.71 and 265a.71 and 40 CFR 264.71 and 265.71 Use of the Manifest System

The Board is proposing to incorporate by reference the Federal regulations found in 40 CFR 264.71 and 265.71 regarding use of the manifest system. In addition, the Board proposes to relocate the current Commonwealth requirement that TSD facilities submit copies of manifests to the generator State and to the TSD disposal State to §§ 264a.71 and 265a.71. The Federal regulations do not require submission of any copies of manifests from the TSD facility to the generator State or from the TSD to the disposal State. The Board is proposing a regulation that will be more stringent than the Federal analog. The Board's proposed regulation also requires two fewer manifest copies than the current State regulation. The current Commonwealth regulation requires the use of an eight part manifest. The proposed regulation requires the use of a six part manifest. The proposed regulation has two fewer parts than the existing regulation because it does not require generators to submit manifest forms to the generator State or to the disposal State. To ensure the proper management of hazardous waste, the Board believes that the Department must receive copies of manifests so that it can track the movement of the waste.

25 Pa. Code §§ 264a.78—264a.83 and 25 Pa. Code § 265a.78—265a.83 Hazardous Waste Management Fees and Administrative Fees

The Board intends to retain these State requirements that have no Federal analog. Section 903 of HSCA (35 P. S. § 6020.903) requires that the Department collect hazardous waste management fees. As stated in the introductory paragraphs of this Preamble, the Board is specifically seeking comment on the Board's proposal to retain the administrative fees contained in §§ 264a.82, 264a.83, 265a.82 and 265a.83.

40 CFR 264.94 Concentration Limits

The Board is proposing to incorporate by reference 40 CFR 264.94, the Federal regulation regarding concentration limits. This regulation has no existing State analog. The proposed regulation establishes alternate concentration limits (ACL) for constituents in groundwater if leakage of hazardous constituents to the groundwater is detected at the facility. The ACL is a standard that the Department will determine to be protective of human health and the environment. Historically, the Commonwealth has required operators of facilities with leakage of hazardous constituents to the groundwater to remediate the groundwater to a background standard. In its experience, however, this standard was often unattainable and the Department had no mechanism for approving ACLs in these situations. The proposed regulation provides the Department with this flexibility.

25 Pa. Code § 264a.96 and 40 CFR 264.96 and Compliance Period, Recordkeeping and Reporting

The Board is proposing to incorporate by reference 40 CFR 264.96, the Federal regulation regarding the compli-

ance period. In addition, the Board is proposing to relocate the current recordkeeping and reporting requirements to § 264a.96. This will result in a regulation that is more stringent than the corresponding Federal analog. The Board has determined that the recordkeeping and reporting requirements are essential to ensuring that the data is received in a timely and consistent manner so that it can be analyzed quickly.

25 Pa. Code § 264a.97 and 40 CFR 264.97 General Groundwater Monitoring Requirements

The Board is proposing to incorporate by reference 40 CFR 264.97, the Federal regulation regarding general groundwater monitoring requirements. The existing Commonwealth regulation that regulates groundwater monitoring is found in § 264.97. The difference between the existing regulation and the proposed regulation is that the proposed regulation is less prescriptive than the existing regulation, because it provides operators with flexibility to allow for innovation in monitoring well design and construction.

25 Pa. Code Chapters 264a and 265a, Subchapter H, §§ 264a.141—264a.169 and §§ 265a.141—265a.169

The Board is proposing to move the financial requirements sections currently found in Chapter 267 to Chapter 264a, Subchapter H and Chapter 265a, Subchapter H to align the Commonwealth's numbering system with the Federal hazardous waste regulatory numbering system. The Federal hazardous waste financial requirements are found in 40 CFR Parts 264, Subpart H and 265, Subpart H. Proposed §§ 264.a162—264a.169 and 265a.162—265a.169 have been relocated without change from Chapter 267 of the existing regulations.

25 Pa. Code §§ 264a.141 and 265a.141 Definitions of terms

The Board is proposing to incorporate by reference the Federal definitions for "financial requirements" in 40 CFR Part 264, Subpart H and 40 CFR Part 265, Subpart H. The Commonwealth's definitions that are contained in the existing § 267.1 and that are necessary to interpret the Commonwealth's financial requirements provisions are proposed to be relocated to §§ 264a.141 and 265a.141.

25 Pa. Code §§ 264a.147 and 265a.147 Liability Requirements

The Board is proposing to move the liability requirements sections from their current location at §§ 267.41—267.46 to §§ 264a.147 and 265a.147. The Federal analog to these requirements are found in 40 CFR 264.147 and 265.147. The proposed amendments will incorporate by reference the Federal liability requirements section to replace the current Commonwealth insurance coverage requirement for sudden and nonsudden accidental pollution occurrences. However, the Federal regulation that the Board proposes to incorporate reduces the required insurance coverage amount to $1 million per occurrence for sudden accidental pollution occurrences with an annual aggregate of $2 million and to $3 million per occurrence for nonsudden accidental pollution occurrences with an annual aggregate of $6 million. Currently, the Pennsylvania hazardous waste regulations require $2 million per occurrence for sudden accidental pollution occurrences with an annual aggregate of $4 million and $6 million per occurrence for nonsudden accidental pollution occurrences with an annual aggregate of $12 million. The proposed regulation will retain the SWMA requirement that all permittees have in effect an ordinary public liability insurance policy (35 P. S. § 6018.502(e)). Ordinary public liability insurance is not required by Federal law.

25 Pa. Code §§ 264a.148 and 265a.148 Incapacity of Owners or Operators, Guarantors, or Financial Institutions

The Board is proposing to move the incapacity section from its current location at § 267.29 to §§ 264a.148 and 265a.148. The proposed amendment will incorporate by reference the Federal definition section found in 40 CFR 264.148 and 265.148. The incorporated provisions are essentially the same as the current provisions found in § 267.29.

25 Pa. Code § 264a.151 Wording of Instruments

The Board proposes to incorporate the text of the Federal financial responsibility forms found in 40 CFR 264.151 to the extent these are consistent with Commonwealth law. In general, the differences between the Federal and State forms arise because there is no Federal insurance law, and the terms and conditions of an insurance policy are generally matters of State law.

25 Pa. Code §§ 264a.153—264a.169 and 265a.153—265.169 Bonding requirements

The Board is proposing to move the bonding requirements from §§ 267.11—267.30 to §§ 264a.153—264a.169 and §§ 265a.153—265a.169. Minor changes are proposed to the current requirements as noted in this Preamble. The bonding requirements for hazardous waste are governed by sections 505 and 506 of the SWMA (35 P. S. §§ 6018.505 and 6018.506) which differ from the bonding requirements found in RCRA.

25 Pa. Code §§ 264a.156 and 265a.156 Special Terms and Conditions for Collateral Bonds

The Board is proposing to add another type of bonding option to the existing bonding options available to hazardous waste facility permittees. Self-bonding will be added to the Pennsylvania regulations by incorporating into the Commonwealth's regulations the Federal financial test and corporate guarantee provisions found in 40 CFR 264.143(f) and 265.143(e). Permittees interested in using this form of bonding must qualify by demonstrating that they meet the financial test contained in 40 CFR 264.143(f) and 265.143(e). This financial test has been a part of the Department's hazardous waste regulations since August 2, 1986, but the Department has used it only for self-insurance determinations.

25 Pa. Code §§ 264a.161 and 265a.161 Cost Estimate for Closure and Post-Closure Care

The Board is proposing to move the cost estimate sections from their current location at § 267.19 to §§ 264a.161 and, for interim status to §§ 265a.161. The corresponding Federal regulations are found in 40 CFR 264.142 and 264.144 and for interim status, the Federal regulations are found in 40 CFR 265.142 and 265.144. The proposed amendments will incorporate by reference the Federal cost estimate sections which are essentially the same as the current cost estimate provisions found in § 267.19.

40 CFR 264.173 and 265.163 Management of Containers

The Board is proposing to incorporate by reference 40 CFR 264.173 and 265.173, the Federal regulations regarding the use and management of containers. In addition, the Board is proposing to retain the existing labeling requirements found in §§ 264.173 and 265.173 and to relocate these requirements to §§ 264a.173 and 265a.173.

The Federal regulations do not require operators to label their containers that contain hazardous waste. Labels are required by section 403(b)(2) of SWMA (35 P. S. § 6018.403(b)(2)). The Board has determined that labeling containers with their contents is essential to the proper management of the containers.

25 Pa. Code §§ 264a.175 and 265a.175 and 40 CFR 264.175 and 265.179 Containment

The Board is proposing to retain the current requirements for height, width and depth of containers used to store waste as well as aisle distances between groups of storage containers. These requirements are currently found in §§ 264.179 and 265.178. These regulations have no Federal analog. The Board has determined that these requirements will ensure uniformity in storage practices and are essential to the safe management of containers that store hazardous waste.

25 Pa. Code § 264a.180 Weighing or Measuring Facilities

The Board is proposing to retain the existing requirements for weighing and measuring facilities currently found at § 264.180. These requirements are necessary to calculate the fees owed under sections 305, 306 and 903 of HSCA (35 P. S. §§ 6020.305, 6020.306 and 6020.903. In addition, the weights and measurements obtained from the requirements in proposed § 264a.180 provide the Department with information that it uses to verify the manifest information that is submitted to the Department.

25 Pa. Code §§ 264a.191 and 265a.191 and 40 CFR 264.191 and 265.191 Tanks: Assessment of Existing Tank System's Integrity

The proposed regulations amend the effective dates of the requirements of 40 CFR 264.191 and 265.191 to match the dates on which these requirements became effective in this Commonwealth under the existing hazardous waste regulations.

25 Pa. Code §§ 264a.193 and 265a.193 and 40 CFR 264.193 and 265.193 Tanks: Containment and Detection of Releases

The proposed regulations amend the effective dates of the requirements of 40 CFR 264.193 and 265.193 to match the dates on which these requirements became effective in this Commonwealth under the existing hazardous waste regulations.

25 Pa. Code §§ 264a.194 and 265a.194 and 40 CFR 264.194 and 265.194 Tanks: General Operating Requirements

The Board is proposing to incorporate by reference 40 CFR 264.194 and 265.194, the Federal regulations regarding general operating requirements for tanks. In addition, the Board is proposing to retain the existing labeling requirements currently found in §§ 264.194 and 265.194 and to relocate these requirements to §§ 264a.194 and 265a.194. The Federal regulation does not require operators to label tanks. The Board has determined that labeling tanks with their contents is essential to the proper management of tanks that contain hazardous wastes.

25 Pa. Code §§ 264a.195 and 265a.195 and 40 CFR 264.195 and 265.195 Tanks: Inspections

The Board is proposing to incorporate by reference 40 CFR 264.195 and 265.195, the Federal regulation regarding tank inspections. In addition, the Board is proposing to relocate the existing Commonwealth requirement to inspect tanks every 72 hours when the facility is not operating, if the tank waste remains in the tank or tank system components. This Commonwealth requirement is currently found in §§ 264.195 and 265.195, but the Board is proposing to move it to §§ 264a.195 and 265a.195. The Federal regulation requires only that operators inspect tanks once each operating day. The Board has determined that all tanks and tank systems containing hazardous waste must be inspected, regardless of whether or not the facility is operating since all tanks could leak.

25 Pa. Code § 264a.221 and 40 CFR 264.221 Surface Impoundments: Design and Operating Requirements

The Board is proposing to adopt 40 CFR 264.221, the Federal regulation for surface impoundment design and operating requirements. In addition, the Board proposes to retain the minimum groundwater separation distance requirements found in the current regulations at § 264.222. This requirement is proposed to be relocated to § 264a.221. Separation distances provide a layer of soil material that will allow some attenuation of any waste passing through the liner system. In addition, the separation distance reduces the threat of upward hydraulic pressures which could threaten the integrity of the liner system. The Board has determined that since the Commonwealth has a high water table and receives a lot of precipitation, it is a compelling State interest to protect groundwater from contamination that results from leakage from surface impoundment liners. Generally, the proposed regulation is not as prescriptive as the existing Commonwealth design and operating requirements found in §§ 264.221, 264.223 and 264.224 so that owners and operators of facilities are given more flexibility in designing and operating their facilities in an environmentally protective manner. The significant differences between the proposed regulation and the existing State regulations are:

1) The proposed regulation requires double composite liner requirements for new surface impoundments. The current regulation requires a double noncomposite liner system for all surface impoundments. A composite liner system contains two different components that keep the waste from traveling through the liner.

2) The proposed regulation allows for alternative design and operating practices if the alternate design and operating practice is as effective as the design and operating practice prescribed in the regulations. The current regulation does not provide any flexibility in design and operating practices

3) The proposed regulation requires that the Department specify in the permit all design and operating practices. The current regulation does not require this.

4) The current regulation sets forth specific conveyance, storage and treatment requirements for leachate. The proposed regulation does not provide prescriptive requirements. The proposed regulation addresses leachate detection collection but allows the specific storage and treatment design issues to be addressed on a case by case basis.

5) The current regulation sets forth specific operating requirements regarding standby equipment, equipment maintenance, loading areas, and waste tracking. The proposed regulation does not provide prescriptive requirements. The proposed regulation allows permit applicants to address these issues in their permit applications on a case by case basis.

6) The current regulation contains prescriptive capping requirements. The proposed regulation does not contain prescriptive capping requirements, but it does contain

performance requirements so that operators must minimize migration of wastes; minimize maintenance of cap; and utilize a cap that has a permeability that is less than or equal to the permeability of the liner. The proposed regulation also requires the use of a final cover.

25 Pa. Code § 264a.251 and 40 CFR 264.251 Waste Piles: Design and Operating Requirements

The Board is proposing to incorporate by reference 40 CFR 264.251, the Federal regulation regarding design and operating requirements of waste piles. In addition, The Board proposes to relocate the existing Commonwealth provision that requires operators to design waste pile liner systems with 20 inches between the top of the subbase and the seasonal high groundwater table. This provision is currently found in § 264.252(d); the Board is proposing to relocate it to § 264a.251. The Department believes that this additional State requirement will ensure the stability of the liner system and prevent the infiltration of groundwater into the hazardous waste. The protection of groundwater from a leaking liner system is a compelling State interest. Generally, the difference between the proposed regulation and the existing regulation is that the proposed regulation is less prescriptive than the existing regulation. Specific significant differences between the current State regulation and the proposed State regulation are:

1) The current regulation exempts from groundwater monitoring requirements waste piles from which the waste is periodically removed and for which the liner is inspected for cracks. The proposed regulation does not contain this exemption.

2) The proposed regulation allows the depth of leachate over a liner to reach a maximum of 1 foot while the current regulation does not permit any standing liquid over the liner.

3) The proposed regulation requires a composite bottom liner for each new waste pile. The current regulation does not require a composite bottom liner for any waste piles.

4) The proposed regulation allows for alternative design and operating practices, if the alternative design and operating practices prevent migration of waste into the groundwater and detect leaks through the liner at least as effectively as the design requirements contained in the regulations. The current regulation does not provide any flexibility in design and operating practices.

5) The proposed regulation requires that operators design run-on control measures, such as berms and dikes for a 25 year storm. The current regulation requires operators to design run-on control measures for a 100 year storm.

6) The proposed regulation requires that the Department specify in the permit all design and operating practices. The current regulation does not require this.

7) The current regulation sets forth specific conveyance, storage and treatment requirements for leachate. The proposed regulation does not provide prescriptive requirements. The proposed regulation addresses leachate detection and collection while leaving the specific storage and treatment design to be addressed on a case by case basis.

8) The current regulation sets forth specific operating requirements regarding standby equipment, equipment maintenance, loading areas, dust prevention and waste tracking. The proposed regulation does not provide prescriptive requirements. The proposed regulation allows the permit applicant to address operating requirements in the permit application based on the specific characteristics of the permit applicant's facility.

40 CFR 264.272 Land Treatment: Treatment Program

The Board is proposing to incorporate by reference 40 CFR 264.272, the Federal regulation for treatment demonstration programs for land treatment. The current State analog is found in § 264.272, and it differs from the Federal regulation because the proposed regulation authorizes the Department to issue permits only for the demonstration portion of the land treatment project. The current regulation includes the demonstration permit as a part of the operating permit.

25 Pa. Code § 264a.273 and 40 CFR 264.273 Land Treatment: Design and Operating Requirements

The Board is proposing to incorporate by reference 40 CFR 264.273, the Federal regulation regarding design and operating requirements for land treatment. In addition, the Department proposes to relocate the existing requirements that are currently found in § 264.273(a)(5)—(10). These requirements are proposed to be relocated in § 264a.273. The additional State provisions require specific waste application requirements that include: spreading the waste; turning the waste within 24 hours of its placement on the land; spreading the waste in thin layers, and ensuring that the waste is not spread on frozen ground. The proposed regulation is more stringent than the Federal regulation, because it contains additional State requirements. However, the Board has determined that the additional requirements are consistent with the standard practices employed in the industry to ensure basic environmental protection. The most notable difference between the current regulation and the proposed regulation is that the current regulation contains prescriptive operating requirements for standby equipment, equipment maintenance, loading areas, dust prevention and waste tracking while the proposed regulation allows these requirements to be addressed through the facility specific permitting process.

25 Pa. Code § 264a.276 and 40 CFR 264.276 Land Treatment: Food Chain Crops

The Board is proposing to incorporate by reference 40 CFR 264.276, the Federal regulation for food chain crops. In addition, the Board is proposing to relocate the existing State requirements that are currently found in § 264.276. These requirements are proposed to be found in § 264a.276. The additional State provisions prohibit the growth of tobacco and food crops intended for direct human consumption on hazardous waste land treatment facilities. The Board believes that it is clear that this prohibition is necessary for the protection of human health.

25 Pa. Code § 264a.301 and 40 CFR 264.301 Landfills: Design and Operating Requirements

The Board is proposing to adopt 40 CFR 264.301, the Federal regulation for landfill design and operating requirements. In addition, The Board proposes to relocate the existing Commonwealth requirement for minimum groundwater separation distances. These requirements are currently found in § 264.302(b) and are proposed to be moved to § 264a.301. Separation distances provide a layer of soil material that will allow some attenuation of any waste passing through the liner system. In addition, the separation distance reduces the threat of upward hydraulic pressures which could threaten the integrity of the liner system. The regulation protects groundwater from contamination that results from leakage from landfill liners. Generally, the proposed regulation is not as

prescriptive as the existing Commonwealth design and operating requirements found in §§ 264.301, 264.303 and 264.304. The significant differences between the proposed regulation and the existing Commonwealth regulations are:

1) The proposed regulation requires double composite liner requirements for new landfills. The current regulations require a double noncomposite liner system for all landfills. A composite liner system contains two different components that keep the waste from traveling through the liner.

2) The proposed regulation allows for alternative design and operating practices if the alternate design and operating practice is as effective as the design and operating practice prescribed in the regulations. The current regulation does not provide any flexibility in design and operating practices

3) The proposed regulation requires that operators design run-on control measures such as berms and dikes for a 25 year storm. The current regulation requires operators to design run-on control measures for a 100 year storm.

4) The proposed regulation requires that the Department specify in the permit all design and operating practices. The current regulation does not require this.

5) The current regulation sets forth specific conveyance, storage and treatment requirements for leachate. The proposed regulation does not provide prescriptive requirements. The proposed regulation addresses leachate detection collection but allows the specific storage and treatment design issues to be addressed on a case-by-case basis.

6) The current regulation sets forth specific operating requirements regarding standby equipment, equipment maintenance, loading areas, and waste tracking. The proposed regulation does not provide prescriptive requirements. The proposed regulation allows permit applicants to address these issues in their permit applications on a case by case basis.

7) The current regulation contains prescriptive capping requirements. The proposed regulation does not contain prescriptive capping requirements, but it does contain performance requirements for operators to minimize migration of wastes; minimize maintenance of cap; and utilize a cap that has a permeability that is less than or equal to the permeability of the liner. The proposed regulation also requires the use of a final cover.

40 CFR 264.343 Incinerators: Performance Standards

The Board is proposing to incorporate by reference 40 CFR 264.343, the Federal regulation regarding incinerator performance standards. The proposed regulation differs from the existing regulation, because incinerator owners or operators currently must control total hydrogen halide emissions and the proposed regulation will require the control of hydrogen chlorides only. Although hydrogen halides may contribute to acid gas formation, hydrogen chloride is the most commonly occurring hydrogen halide that contributes to acid gas formation. Using hydrogen chloride as an indicator of acid gas formation is a commonly accepted practice in permitting incinerators. Adoption of this Federal regulation will facilitate compliance monitoring and will not compromise human health or the environment.

40 CFR 265.340 Applicability to Interim Status Incinerators

The Board is proposing to incorporate by reference 40 CFR 265.340, the Federal regulation regarding the applicability of Part 265, Subpart O to interim status incinerators. The adoption of the Federal regulation will result in the addition to the existing Commonwealth regulations of certain exemptions from the requirements of existing Chapter 265, Subchapter O for any interim status incinerators burning low risk hazardous wastes. These exemptions are currently available to hazardous waste incinerators subject to the requirements of existing Chapter 264, Subchapter O and, therefore, the same exemptions should be available for incinerators subject to the interim status standards of existing Chapter 265, Subchapter O. These exemptions are proposed in Chapters 264a, Subchapter O and 265a, Subchapter O.

25 Pa. Code § 265a.382 Thermal Treatment: Open Burning; Waste Explosives

The Board is proposing to retain the existing State prohibition of burning waste explosives in certain air basins delineated in this Commonwealth's air resources regulations. The existing hazardous waste regulation that contains this prohibition is found in § 265.382(b). The air resources regulation that delineates certain air basins is found in § 121.1. The prohibition is based on a broader air quality prohibition that forbids any open burning in the specifically identified air basins. The prohibition is found in the Department's air quality regulations at § 129.14(a). The Federal regulation at 40 CFR 265.382 does not contain this prohibition.

25 Pa. Code Chapter 266a and 40 CFR Part 266

25 Pa. Code § 266a.20 and 40 CFR 266.20 Applicability

The Board is proposing to incorporate by reference 40 CFR 266.20. In addition, the Board is proposing to retain and relocate the existing State requirement that requires producers of products containing or derived from hazardous waste to obtain written approval from the Department prior to applying or placing these products on the land. The Commonwealth requirement is proposed to be relocated to § 266a.20. Although the Federal regulations require producers of these products to satisfy the same conditions as those contained in the State regulations, the Federal regulations do not require prior written approval from the EPA. The Board has determined that prior written approval is required to ensure that this provision is not abused and that this requirement is consistent with most other States' regulatory programs.

25 Pa. Code Chapter 266a, Subchapter E Waste Oil Burned for Energy Recovery

The Board is proposing to relocate all of the existing text of Chapter 266, Subchapter E to Chapter 266a, Subchapter E. The Board is not proposing to make any substantive changes to the existing text.

25 Pa. Code § 266a.103 and 40 CFR 266.103 Interim Status Standards for Burners

The Board is proposing to incorporate by reference 40 CFR 266.103, the Federal regulation regarding interim status standards for burners. In addition, the Board is proposing to retain and relocate the existing State requirement that establishes an 8,000 Btu/lb minimum heating value for hazardous waste being burned as fuel in interim status burners and exempt small quantity on-site burners. Federal regulations establish the minimum heating value at 5,000 Btu/lb. The existing State regulation is found in § 266.30, and the Board is proposing to relocate

this requirement to § 266a.103. The Commonwealth's regulations contain an 8,000 Btu/lb minimum heating value, because the Board determined that the 8,000 Btu/lb minimum provides some assurance that hazardous wastes burned in boilers or industrial furnaces (BIF) operating in interim status were actually burning the hazardous wastes for energy recovery rather than for disposal. The Board has determined that this restriction is necessary only until BIFs are permitted, at which point permitting standards render the 8,000 Btu/lb limitation unnecessary. The 8,000 Btu/lb value contained in the Commonwealth's regulations is equivalent to the Btu/lb value of wood or low-grade coal. Burning wastes with lower heating values presents a potential risk to human health and the environment because these wastes tend to contain a greater amount of hazardous constituents that will not be destroyed by burning. The Board is proposing to retain the 8,000 Btu/lb standard in situations in which hazardous waste is to be burned or processed prior to issuance of a BIF permit or under a permit exemption.

40 CFR Part 266, Subpart F Recyclable Materials Utilized for Precious Metal Recovery

The Board proposes to incorporate by reference 40 CFR Part 266, Subpart F, the Federal regulations for recyclable materials utilized for precious metal recovery. This Federal regulation provides reduced regulatory requirements for generators, transporters or storers of hazardous wastes that are reclaimed to recover economically significant amounts of certain precious metals. The reduced requirements include notification, manifesting and, where the materials are stored, recordkeeping to document that the materials are not accumulated speculatively. Under the current Federal regulatory scheme, the reclamation process itself is exempt from regulation under 40 CFR 261.6(c)(1).

The SWMA, however, requires a permit to be issued by the Department for facilities that perform treatment to recycle hazardous waste. Therefore, even under this proposed rule, facilities that reclaim precious metals from hazardous waste would need to obtain a recycling permit from the Department. Some precious metal-bearing hazardous waste, such as spent photographic fixer solutions classified as spent materials, are not excluded from the definition of solid waste when reclaimed. The Department does not intend to impede the safe reclamation of these materials. The Department specifically seeks comments on the possibility of providing a permit-by-rule for the owners or operators of facilities that reclaim, or otherwise treat hazardous waste to make the waste suitable for further reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F.

25 Pa. Code Chapter 266b and 40 CFR Part 273

The Board is proposing to relocate the Universal Waste Rule, currently found in Chapter 266, Subchapters J—P, to Chapter 266b. The Board is not proposing to make any changes to the text of these subchapters.

25 Pa. Code Chapter 268a and 40 CFR Part 268

The Board is proposing to incorporate by reference 40 CFR Part 268 (relating to land disposal restrictions). The Board is proposing to locate these requirements in Chapter 268a. Although the Commonwealth will be including these requirements in its regulations for the first time, the land disposal restrictions have been administered and enforceable by the EPA since the passage of HSWA.

25 Pa. Code Chapter 270a and 40 CFR Part 270

The Board proposes to restructure the permitting requirements that are currently found in Chapters 265 and 270 so that all of the permitting requirements are contained in Chapter 270a. The following chart lists the proposed regulatory section numbers and the corresponding section numbers in the existing regulations that contain the similar provisions. Individual sections in this proposed rulemaking that are in Chapter 270a and that contain either significant substantive changes from the existing regulation, or that contain provisions that are more stringent than the Federal regulations, are listed below the chart.

Proposed 25 Pa. Code citation or 40 CFR citation	*Existing 25 Pa. Code citation*
40 CFR 270.1	265.440 and 270.1
25 Pa. Code § 270a.3	265.447
25 Pa. Code § 270a.10 and 40 CFR 270.10	265.441
25 Pa. Code § 270a.11 and 40 CFR 270.11	265.443
25 Pa. Code § 270a.12 and 40 CFR 270.12	265.446
40 CFR 270.13	270.12
40 CFR 270.14	265.442
40 CFR 270.15—270.28	265.450—265.452 and 265.460
40 CFR 270.30	270.13
40 CFR 270.31	270.21
40 CFR 270.32	270.13
40 CFR 270.33	270.22
25 Pa. Code § 270a.41 and 40 CFR 270.41	265.445, 270.31—270.33
25 Pa. Code § 270a.60 and 40 CFR 270.60	Chapter 266
25 Pa. Code § 270a.61 and 40 CFR 270.61	270.2(a)
40 CFR 270.62—270.66	Chapter 264, Subchapter O
40 CFR 270.70	265.431
25 Pa. Code § 270a.41	270.33
25 Pa. Code § 270a.80	270.41
25 Pa. Code § 270a.81	270.42

40 CFR 270.40 Transfer of Permits

The Board is proposing to incorporate by reference 40 CFR 270.40, the Federal regulation regarding transfer of permits. Currently, the hazardous waste regulations prohibit the transfer of permits in accordance with the existing regulation found in § 270.1(g). In the Department's experience, permit transfers are necessary in some situations including company buyouts and corporate restructuring.

Appendix I for 40 CFR 270.42 Classification of Permit Modification

The Board is proposing to incorporate by reference the Federal regulation and its appendix regarding permit modification at the request of the permittee found in 40 CFR 270.42. The State analog is currently found in § 270.31(c). The proposed regulation includes an appen-

dix that classifies permit modifications as Class 1, Class 2 or Class 3 modifications. The proposed regulations intend to expand the list of modifications considered to be minor modifications in categorizing Class 2 and Class 3 modifications as minor permit modifications.

25 Pa. Code § 270a.60 and 40 CFR 270.60 Permits by Rule

The Board is proposing to incorporate by reference 40 CFR 270.60, the Federal regulation for permits by rule. In addition, the Board proposes to retain the existing State requirements that require the following facilities to operate pursuant to permits by rule: elementary neutralization units; generator treatment in containers, tanks or containment buildings; battery manufacturing facilities reclaiming spent, lead-acid batteries; petroleum refining facilities that reclaim hazardous waste onsite, at the site where it is generated; and facilities that store hazardous waste onsite prior to reclamation. These facilities are exempted from permitting requirements by the Federal law, but since the SWMA requires permitting for the treatment or reclamation of hazardous wastes, the Commonwealth must require permits for these facilities.

40 CFR Subpart EE of Parts 264 and 265 and Subpart M of Part 266 Munitions

The Board is proposing to incorporate by reference the February 12, 1997, Federal regulations that deal with munitions, 62 FR 6621. The specific regulatory provisions regarding munitions are found throughout the Federal hazardous waste regulations since the rulemaking sets forth standards for generators of hazardous waste munitions; transporters of hazardous waste munitions; owners and operators of TSDFs that handle hazardous waste munitions; storage of hazardous waste munitions and explosives; and management of military munitions. The significant elements of the munitions rulemaking include a definition for military munitions that are a solid waste as well as a definition for military munitions that are not a solid waste. In addition, the rulemaking establishes new storage standards for both military and nonmilitary waste munitions and explosives and exempts from RCRA generator, transporter and permitting requirements persons responding to time-critical munitions and explosives emergencies. Finally, the rulemaking exempts generators and transporters from RCRA manifest requirements for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties under the control of a single owner.

F. *Benefits, Costs and Compliance*

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

Benefits

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

Compliance Costs

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

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

The proposed regulations allow permit applicants to submit information on their own forms rather than on the Department's Module 1 forms. The Department estimates that this will save the regulated community $35,000 annually. These savings would be a direct result of the elimination of the requirement to transcribe information from an operator's form to a Department form.

Compliance Assistance Plan

The Department will assist the regulated community by developing a series of fact sheets explaining any changes to the regulations. In addition, the Department intends to meet with industry groups whenever and wherever possible to explain the regulatory changes. Department field staff will also provide compliance assistance during routine facility inspections.

Paperwork Requirements

These proposed regulations will result in a net reduction in paperwork requirements. Manifest copies will be reduced from eight to six resulting in substantial paperwork reduction and reduced filing, storage and mailing costs. An additional reduction in paperwork will result from the reduced groundwater monitoring requirements. These forms will only have to be completed and mailed once per year, as opposed to the current requirement that operators complete and mail these forms twice per year. Allowing industry to use their own forms in place of the Department's Module 1 forms will also reduce paperwork requirements. Transcription and storage of duplicate

records will be eliminated. No additional forms are required by these regulations.

G. *Pollution Prevention*

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, this rulemaking has incorporated the following provision and incentive to meet that goal: § 262.100 provides that any person or municipality that generates hazardous waste must prepare a source reduction strategy that identifies the methods and procedures that the person or municipality intends to implement to reduce the amount of hazardous waste generated. The incentive for a person or municipality to implement their source reduction strategy is to save money in hazardous waste management costs, protect employe health and safety, lower insurance costs and protect the environment by reducing the amount of hazardous waste generated.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on November 19, 1997, to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

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

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments received by facsimile will not be accepted. Comments, suggestions or objections must be received by February 4, 1998, (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary shall not exceed one page in length and must also be received by February 4, 1998 (within 60 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.State.pa.us. A subject heading of the proposal must be included in each transmission. Comments submitted electronically must also be received by the Board by February 4, 1998.

K. *Public Hearings*

The Board will hold three public hearings at 1 p.m. as follows:

Date	*Location*
January 12, 1998	Department of Environmental Protection Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA
January 14, 1998	Department of Environmental Protection Southwest Regional Office 500 Waterfront Drive Pittsburgh, PA
January 16, 1998	Department of Environmental Protection 1st Floor Meeting Room Rachel Carson State Office Building 400 Market Street Harrisburg, PA

Persons wishing to present testimony at a hearing are requested to contact Sharon Freeman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Sharon Freeman at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-328. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

(*Editor's Note*: The Department is proposing to delete the current version of 25 Pa. Code Chapters 260—270 as it appears in the *Pennsylvania Code* at pages 260-1—270-28 (serial pages (233837), (233838), (225009)—(225028), (228321), (228322), (225031)—(225038), (228323), (228324), (225041)—(225048), (228325), (228326), (230435)—(230446), (225061), (225062), (228327), (228328), (230447), (230448), (225067), (225068), (230449)—(230474), (225095)—(225110), (230475)—(230482), (225117)—(225276), (230483)—(230488), (225281)—(255324), (230481)—(230492), (225329)—(225340), (230493), (230494), (225343)—(225398), (230495)—(230546), (228335), (228336), (225423)—

(225426), (210143)—(210154), (225427), (225428), (210157), (210158), (228337)—(228340), (210163)—(210178), (230547), (230548), (210181)—(210206), (230549), (230550) and (225431)—(225456).)

CHAPTER 260. (Reserved)

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchapter A. GENERAL

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

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

(b) Notwithstanding the requirements incorporated by reference, nothing contained in this article relieves or limits a person or municipality who generates, transports, stores, treats or disposes of hazardous waste from complying with the requirements of Pennsylvania law, including The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305); the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 1406.1—1406.21); the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101—70-1405); and the act of July 9, 1976 (P. L. 931, No. 178) (52 P. S. §§ 27.7-1—27.7-9).

§ 260a.2. Availability of information.

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

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

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

(1) "Administrator" and "Regional Administrator" are synonymous with "Department."

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

(3) "Environmental Protection Agency" is synonymous with "Department."

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

(5) "Used oil" is synonymous with "waste oil."

(6) "State," "authorized state," "approved state" or "approved program" is synonymous with "the Commonwealth."

(7) Whenever the regulations require compliance with procedures found in 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program), compliance shall be accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

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

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

(c) Federal statutes and regulations that are cited in 40 CFR Parts 260—266, 268 and 270 that are not specifically adopted by reference will be used as guidance in interpreting the Federal regulations in 40 CFR Parts 260—266, 268 and 270.

Subchapter B. DEFINITIONS

§ 260a.10. Definitions.

(a) Notwithstanding the requirements incorporated by reference:

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

(i) "Act."

(ii) "Disposal."

(iii) "Management."

(iv) "Storage."

(v) "Transportation."

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

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

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

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

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

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

(2) *Disposal*—The incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is

emitted into the air or is discharged to the waters of this Commonwealth. The term also includes the abandonment of solid waste with the intent of not asserting or exercising control over, or title or interest in the solid waste.

(3) *Fund*—The host municipalities fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) *Responsible official*—For corporations, the corporate officers; for limited partnerships, the general partners; for all other partnerships, the partners; for a sole proprietorship, the proprietor; for a municipal, state or Federal authority or agency, an executive officer or ranking elected official responsible for compliance of the hazardous waste activities and facilities of the authority or agency with all applicable rules and regulations.

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

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

Subchapter C. RULEMAKING PETITIONS

Sec.
260a.20. Rulemaking petitions.

§ 260a.20. Rulemaking petitions.

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

CHAPTER 261. (Reserved)

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchap.
A. GENERAL

Subchapter A. GENERAL

Sec.
261a.1. Incorporation by reference, purpose and scope.
261a.3. Definition of "hazardous waste."
261a.4. Exclusions.
261a.5. Special requirements for hazardous waste generated by small quantity generators.
261a.6. Requirements for recyclable materials.
261a.7. Residues of hazardous waste in empty containers.

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

Except as expressly provided in this chapter, the requirements of 40 CFR Part 261 and its Appendices (relating to identification and listing of hazardous waste) are incorporated by reference.

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

(a) Notwithstanding the requirements incorporated by reference:

(1) Certain nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces are hazardous wastes if they are described in 40 CFR 261.3(c)(2)(ii)(C) (relating to definitions of hazardous waste).

(2) Biological treatment sludge from the treatment of organic waste from the production of carbamates and

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

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

§ 261a.4. Exclusions.

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

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

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

Notwithstanding the requirements incorporated by reference:

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

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

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

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

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

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

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

§ 261a.6. Requirements for recyclable materials.

Notwithstanding the requirements incorporated by reference, owners or operators of facilities that reclaim or otherwise treat hazardous waste are regulated under, required to obtain a permit under and shall comply with this article.

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

Notwithstanding the requirements incorporated by reference:

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

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

CHAPTER 262. (Reserved)

CHAPTER 262a. STANDARDS APPLICABLE GENERATORS OF HAZARDOUS WASTE

Subchap.
A. GENERAL
B. THE MANIFEST
E. EXPORT OF HAZARDOUS WASTE
H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD
I. SOURCE REDUCTION STRATEGY

Subchapter A. GENERAL

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

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

Except as expressly provided in this chapter, the requirements of 40 CFR 262 (relating to standards applicable to generators of hazardous waste) are incorporated by reference.

§ 262a.11. Hazardous waste determination.

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

§ 262a.12. EPA identification numbers.

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

Subchapter B. THE MANIFEST

Sec.
262a.20. General requirements.
262a.22. Number of copies.
262a.23. Use of the manifest.

§ 262a.20. General requirements.

Notwithstanding the requirements incorporated by reference, a generator shall:

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

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

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

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

(5) A generator shall designate only one facility which is permitted to handle the waste.

§ 262a.22. Number of copies.

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

(b) The manifest shall consist of at least the number of copies which will provide the generator, each transporter and the owner or operator of the designated facility with one copy each for their records and which will allow the designated facility to send copies to the generator, generator state and destination state.

§ 262a.23. Use of the manifest.

Notwithstanding the requirements incorporated by reference, the generator shall:

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

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

(i) The next nonrail transporter, if any.

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

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

Subchapter E. EXPORTS OF HAZARDOUS WASTE

Sec.
262a.55. Exception report.
262a.56. Annual reports.
262a.57. Recordkeeping.

§ 262a.55. Exception report.

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

§ 262a.56. Annual reports.

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

§ 262a.57. Recordkeeping.

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

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

Sec.
262a.80. Applicability.

§ 262a.80. Applicability.

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

Subchapter I. SOURCE REDUCTION STRATEGY

Sec.
262.100. Source reduction strategy.

§ 262a.100. Source reduction strategy.

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

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

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

(2) A statement of whether the person or municipality has established a source reduction program.

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

or procedure, and shall specify when each method or procedure will be implemented.

(4) If the person or municipality has not established a source reduction program as described in paragraph (2), the strategy shall include the following:

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

(ii) A description of potential source reduction options.

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

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

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

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

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

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

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

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

CHAPTER 263. (Reserved)

CHAPTER 263a. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

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

Subchapter A. GENERAL

Sec.
263a.10. Incorporation by reference and scope.
263a.11. EPA identification number.
263a.12. Transfer facility requirements.
263a.13. Licensing.

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

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

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

§ 263a.11. EPA identification number.

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

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter utilizing in-transit storage of hazardous waste for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan will be approved in writing by the Department.

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan which will be approved in writing by the Department.

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b) or § 263a.30 (relating to immediate actions), a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Failure to maintain the required bond amount.

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

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

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

Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

Sec.
263a.20. The manifest system.
263a.23. Hazardous waste transportation fee.
263a.24. Documentation of hazardous waste transporter fee submission.
263a.25. Civil penalties for failure to submit hazardous waste transporter fees.
263a.26. Assessment of penalties.

§ 263a.20. The manifest system.

Notwithstanding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply in 40 CFR 263.20 (relating to manifest system), as adopted in this rule.

§ 263a.23. Hazardous waste transportation fee.

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

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

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

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

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

(1) Onsite shipments of hazardous waste.

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

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

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

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

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

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

(g) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

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

(ii) Liters shall be converted to tons using a factor of 2.1 pound per liter.

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

(h) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.

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

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

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

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

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

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

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

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

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

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

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

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

§ 263a.26. Assessment of penalties.

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

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

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

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

Subchapter C. HAZARDOUS WASTE DISCHARGES

Sec.
263a.30. Immediate action.

§ 263a.30. Immediate action.

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

Subchapter D. BONDING

Sec.
263a.32. Bonding.

§ 263a.32. Bonding.

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

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

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

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

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

(f) Collateral bonds shall be subject to the following conditions:

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

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

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

(g) Letters of credit shall be subject to the following conditions:

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

(2) Letters of credit shall be irrevocable. The Department may accept a letter of credit which is irrevocable for a term of 3 years if:

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

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

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

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

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

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

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

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

(i) The Department will declare forfeit all the bonds if the Department finds that the licensee has violated any of the requirements of the act, the regulations promulgated thereunder, terms and conditions of a license or a Department order issued to the licensee, and if the Department also finds that the licensee has failed to remedy promptly the violation.

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

CHAPTER 264. (Reserved)

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

Subchapter A. GENERAL

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

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) and the appendices to Part 264 are incorporated by reference.

(b) Notwithstanding the requirements incorporated by reference:

(1) The requirements of 40 CFR 264.1(f)(relating to purpose, scope and applicability) regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs), are not incorporated herein.

(2) The requirements of this chapter apply to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter or in Chapter 261a (relating to identification and listing of hazardous waste).

(3) The requirements of this chapter do not apply to owners or operators of facilities specifically exempted from compliance with this chapter under 40 CFR 264.1 (relating to purpose, scope and applicability), except that those owners or operators of facilities which are authorized to treat, store or dispose of hazardous waste under a permit-by-rule established under Chapter 270a (relating to hazardous waste permit program) are required to comply with specified provisions of this chapter if an applicable permit-by-rule established in Chapter 270a expressly requires compliance with this chapter.

(4) This chapter does not apply to owners or operators of facilities authorized to treat, store or dispose of hazardous waste under a permit-by-rule and variance established under § 270a.60 (relating to permits by rule).

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

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

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

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

Subchapter B. GENERAL FACILITY STANDARDS

Sec.
264a.11. Identification number and transporter license.
264a.13. General and generic waste analysis.
264a.15. General inspection and construction inspection requirements.
264a.18. Location standards.

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

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an identification number from the EPA and a license from the Department, except as otherwise provided. This provision does not apply to acceptance of waste generated by a small quantity generator or by a conditionally exempt small quantity generator.

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

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

In addition to the requirements incorporated by reference:

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

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

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

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

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

(v) Results of liner compatibility testing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator

of the treatment, storage or disposal facility shall submit to the Department in writing, the generator specific information required by paragraph (1). The Department will not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

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

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

In addition to the requirements incorporated by reference, a schedule for construction of a hazardous waste management facility shall be submitted to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

§ 264a.18. Location standards.

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

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.
264a.52. Content of contingency plan.
264a.56. Emergency procedures.

§ 264a.52. Content of contingency plan.

In addition to the requirements incorporated by reference:

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

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

§ 264a.56. Emergency procedures.

In addition to the requirements incorporated by reference:

(1) The emergency coordinator shall immediately notify the Department by telephone at (717) 787-4343 and the National Response Center at (800) 424-8802.

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

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

(ii) The name and address of the facility.

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

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

(v) The extent of injuries, if any.

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

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

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.
264a.71. Use of the manifest system.
264a.72. Manifest discrepancies.
264a.75. Biennial report.
264a.78. Hazardous waste management fee.
264a.79. Documentation of hazardous waste management fee submission.
264a.80. Civil penalties for failure to submit hazardous waste management fees.
264a.81. Assessment of penalties; minimum penalties.
264a.82. Administration fees.
264a.83. Administration fees during closure.

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

In addition to the requirements incorporated by reference:

(1) Except as otherwise provided in 40 CFR 262.23(1) (relating to use of the manifest), an owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by a Pennsylvania manifest.

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

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

§ 264a.72. Manifest discrepancies.

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

§ 264a.75. Biennial report.

(a) Notwithstanding the requirements incorporated by reference, the owner or operator shall submit to the Department its biennial report on EPA form 8700-13B, as modified.

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

§ 264a.78. Hazardous waste management fee.

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

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

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

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

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

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

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

§ 264a.82. Administration fees.

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

§ 264a.83. Administration fees during closure.

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

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Sec.
264a.96. Compliance period.

§ 264a.96. Compliance period.

In addition to the requirements incorporated by reference:

(1) The owner or operator shall keep records of analyses and evaluations of groundwater quality, surface elevations, and flow rate and direction determinations required under this subchapter.

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

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

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

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

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

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

Subchapter H. FINANCIAL REQUIREMENTS

Sec.
264a.141. Definitions.
264a.143. Financial assurance for closure.
264a.145. Financial assurance for post-closure care.
264a.147. Liability requirements.
264a.148. Incapacity of owners or operators, guarantors, or financial institutions.
264a.149. Use of state-required mechanisms.
264a.150. State assumption of responsibility.
264a.151. Working of instruments.
264a.153. Requirement to file a bond.
264a.154. Form, terms and conditions of bond.
264a.155. Special terms and conditions for surety bonds.
264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.
264a.157. Phased deposits of collateral.
264a.158. Replacement of bond.
264a.159. Reissuance of permits.
264a.160. Bond amount determination.
264a.161. Cost estimate for closure and postclosure care.
264a.162. Bond amount adjustments.
264a.163. Failure to maintain adequate bond.
264a.164. Separate bonding for a portion of a facility.
264a.165. Bond release.
264a.166. Closure certification.
264a.167. Public notice and comment.
264a.168. Bond forfeiture.
264a.169. Preservation of remedies.

§ 264a.141. Definitions.

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

Amount of liability coverage—The insurance requirements of § 264a.147 (relating to liability requirements).

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

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

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

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

Surety bond—A penal bond agreement in a sum certain, payable to the Department, executed by the permittee, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

§ 264a.143. Financial assurance for closure.

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

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

Notwithstanding the requirements incorporated by reference, 40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference.

§ 264a.147. Liability requirements.

(a) Notwithstanding the requirements incorporated by reference, 40 CFR 264.147 (relating to liability requirements) is incorporated by reference only to the extent that the demonstration of financial responsibility complies with the laws of the Commonwealth and the related regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 264a.150. State assumption of responsibility.

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

§ 264a.151. Wording of instruments.

Notwithstanding the requirements incorporated by reference, 40 CFR 264.151 (relating to wording of the instruments) is incorporated by reference only to the extent consistent with the laws and regulations of the Commonwealth. Revisions to financial tests or wording of the standard instruments in 40 CFR 264.151 that are substantially similar to the intent of the Federal text may be approved by the Department as necessary to conform with state law and regulations.

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

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

(a) Hazardous waste storage, treatment and disposal facilities which have been permitted under the act, or which are being treated as having been issued a permit under the act, shall file a bond in accordance with this subchapter, payable to the Department.

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

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility which is permitted or is being treated as having been issued a permit, shall cease accepting hazardous

waste unless the permittee has submitted a bond under this part. The Department will review and determine whether or not to approve the bond within 1 year after submittal. If, on review, the Department determines the permittee has submitted an insufficient bond amount, the Department will require the permittee to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

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

(a) The Department will accept one of the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A bond pledging a corporate guarantee.

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

(b) The Department will prescribe and furnish the forms for bond instruments.

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

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area.

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

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

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

(b) The Department will accept only the bond of a surety authorized to do business in this Commonwealth.

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

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

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

(f) The bond shall provide that the surety and the permittee shall be jointly and severally liable for payment of the bond amount.

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

(a) The Department will obtain possession of and keep in custody collateral deposited by the permittee until authorized for release or replacement as provided in this subchapter.

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

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

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

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

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

(4) The Department will only accept automatically-renewable certificates of deposit.

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

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

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

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

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

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

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

(4) The letter of credit shall be irrevocable and shall be so designated. The Department may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the credit:

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

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

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

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

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

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

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure).

§ 264a.157. Phased deposits of collateral.

(a) A permit applicant or a permittee may post a collateral bond for a hazardous waste storage, treatment or disposal facility which will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The permittee shall submit a collateral bond to the Department.

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

(3) The permittee shall submit a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

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

(1) The permittee has failed to make a deposit of bond amount when required by the schedule for the deposits.

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

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

§ 264a.158. Replacement of bond.

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

(b) The Department will not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this chapter.

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

§ 264a.159. Reissuance of permits.

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

§ 264a.160. Bond amount determination.

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

(b) This amount shall be based on the requirements of 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

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

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

§ 264a.162. Bond amount adjustments.

(a) The permittee shall deposit additional amounts of bond, at any time, upon demand of the Department. The Department will require a permittee to deposit additional amounts of bond if one of the following occurs:

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

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

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

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

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

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

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

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

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

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

§ 264a.165. Bond release.

(a) The permittee may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility during the operation of the facility as part of a request for bond adjustment under § 264a.162 (relating to bond amount adjustments), upon completion of closure of the facility and upon expiration of the postclosure care period of liability as specified in 40 CFR Part 264, Subpart G (relating to closure and postclosure care).

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

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

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

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

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

(5) Provide other information as may be required by the Department.

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

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

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the permittee.

(f) The Department will not release a bond amount for a facility which is causing adverse effects on the public

health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

§ 264a.166. Closure certification.

(a) The permittee shall submit a request for closure certification upon completion of closure of the facility in accordance with 40 CFR 264.120 (relating to certification of completion of post-closure care).

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

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

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

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

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

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

§ 264a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure certification shall be, for the purpose of providing public notice and comment, considered a major permit modification and shall satisfy the public notice and comment requirements for major permit modifications.

§ 264a.168. Bond forfeiture.

(a) The Department may forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

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

(2) The permittee has abandoned the facility without providing closure or postclosure care, or has otherwise failed to properly close the facility in accordance with the requirements of this article, the act, the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

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

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

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

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

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

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

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

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

§ 264a.169. Preservation of remedies.

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

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sec.
264a.175. Containment.
264a.180. Weighing or measuring facilities.

§ 264a.175. Containment.

In addition to the requirements incorporated by reference:

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

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

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

§ 264a.180. Weighing or measuring facilities.

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

Subchapter J. TANK SYSTEMS

Sec.
264a.191. Assessment of existing tank system's integrity.
264a.193. Containment and detection of releases.
264a.194. General operating requirements.
264a.195. Inspections.

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

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

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

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

§ 264a.194. General operating requirements.

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

§ 264a.195. Inspections.

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

Subchapter K. SURFACE IMPOUNDMENTS.

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

§ 264a.221. Design and operating requirements.

In addition to the requirements incorporated by reference:

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

(2) For surface impoundments subject to 40 CFR 264.221(c), the requirement relating to leak detection systems not located completely above the seasonal high water table is not incorporated herein.

Subchapter L. WASTE PILES

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

§ 264a.251. Design and operating requirements.

In addition to the requirements incorporated by reference:

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

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

Subchapter M. LAND TREATMENT

Sec.
264a.273. Design and operating requirements.
264a.276. Food chain crops.

§ 264a.273. Design and operating requirements.

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

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

(i) Is used for top dressing.

(ii) Has plant nutrient value.

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

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

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

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

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

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

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

§ 264a.276. Food chain crops.

In addition to the requirements incorporated by reference, the growth of food chain crops is subject to the following restrictions:

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

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

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

Subchapter N. LANDFILLS

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

§ 264a.301. Design and operating requirements.

In addition to the requirements incorporated by reference:

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

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

Subchapter S. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

Sec.
264a.552. Applicability.

§ 264a.552. Applicability.

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

Subchapter W. DRIP PADS

Sec.
264a.570. Applicability.

§ 264a.570. Applicability.

Notwithstanding the requirements incorporated by reference, this subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-on to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

Subchapter X. MISCELLANEOUS UNITS

Sec.
264a.601. Environmental performance standards.

§ 264a.601. Environmental performance standards.

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

Subchapter DD. CONTAINMENT BUILDINGS

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

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

§ 264a.1100. Applicability.

Notwithstanding the requirements incorporated by reference, this subchapter applies to owners or operators who store or treat hazardous waste in units designed and operated under the requirements of 40 CFR 264.1101 (related to design and operating standards) incorporated by reference herein.

§ 264a.1101. Design and operating standards.

Notwithstanding the requirements incorporated by reference:

(1) Owners or operators of existing units described in 40 CFR 264.1101(b)(4) (relating to design and operating standards) seeking a delay in the secondary containment requirement for up to 2 years shall provide written notice

to the Department by July 11, 1997. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment.

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

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

CHAPTER 265. (Reserved)

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

Subchapter A. GENERAL

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

(a) Except as expressly provided in this chapter, 40 CFR Part 265 (relating to interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) and the appendices to Part 265 are incorporated by reference.

(b) Notwithstanding the requirements incorporated by reference in this section:

(1) The provisions of 40 CFR 265.1(c)(4)(relating to purpose, scope and applicability) regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs), are not incorporated herein.

(2) This chapter applies to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter or in Chapter 261a (relating to identification and listing of hazardous waste).

(3) This chapter does not apply to owners or operators of facilities specifically exempted from compliance with this chapter under 40 CFR 265.1, except that those owners or operators of facilities which are authorized to treat, store or dispose of hazardous waste under a permit-by-rule established in § 270a.60 (relating to permits-by-rule) are required to comply with specified provisions of this chapter if an applicable permit-by-rule established in § 270a.60 expressly requires compliance with provisions of this chapter.

(4) This chapter does not apply to owners of facilities authorized to treat, store or dispose of hazardous waste under a permit-by-rule and variance established under § 270a.60.

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

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

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

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

Subchapter B. GENERAL FACILITY STANDARDS

§ 265a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an identification number from the EPA and a license from the Department, except as otherwise provided. This provision does not apply to acceptance of waste generated by a small quantity generator or by a conditionally exempt small quantity generator.

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

(*Editor's Note*: Most of the provisions proposed in § 265a.13 are in the existing text of § 265.12 and § 265.13.)

In addition to the requirements incorporated by reference:

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

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

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

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

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

(v) Results of liner compatibility testing.

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

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

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

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

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

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

(2) The owner or operator shall develop and follow a written waste analysis plan in compliance with 40 CFR 265.13 (relating to general waste analysis) which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility.

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

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

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

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

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

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

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

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

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

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

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

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

§ 265a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, a schedule for construction of a hazardous waste management facility shall be submitted to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

§ 265a.18. Location standards.

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

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.
265a.52. Content of contingency plan.
265a.56. Emergency procedures.

§ 265a.52. Content of contingency plan.

In addition to the requirements incorporated by reference:

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

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

§ 265a.56. Emergency procedures.

In addition to the requirements incorporated by reference:

(1) The emergency coordinator shall immediately notify the Department by telephone at (717) 787-4343 and the National Response Center at (800) 424-8802.

(2) The report to the Department and the National Response Center shall include the following:

(i) The name and telephone number of reporter.

(ii) The name and address of facility.

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

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

(v) The extent of injuries, if any.

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

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

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.

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

In addition to the requirements incorporated by reference:

(1) Except as otherwise provided in 40 CFR 262.23(1) (relating to use of the manifest), an owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by a Pennsylvania manifest.

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

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

§ 265a.72. Manifest discrepancies.

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

§ 265a.75. Biennial report.

(a) Notwithstanding the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA form 8700-13B, as modified.

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

§ 265a.78. Hazardous waste management fee.

(*Editor's Note*: The text of the existing § 265.78 (relating to hazardous waste management fee) is proposed to be renumbered as § 265a.78.)

§ 265a.79. Documentation of hazardous waste management fee submission.

(*Editor's Note*: The text of the existing § 265.79 (relating to documentation of hazardous waste management fee submission) is proposed to be renumbered as § 265a.79.)

§ 265a.80. Civil penalties for failure to submit hazardous waste management fees.

(*Editor's Note*: The text of the existing § 265.80 (relating to civil penalties for failure to submit hazardous waste management fees) is proposed to be renumbered as § 265a.80.)

§ 265a.81. Assessment of penalties; minimum penalties.

(*Editor's Note*: The text of the existing § 265.81 (relating to assessment of penalties; minimum penalties) is proposed to be renumbered as § 265a.81.)

§ 265a.82. Administration fees.

(*Editor's Note*: The text of the existing § 265.82 (relating to administration fees) is proposed to be renumbered as § 265a.82.)

§ 265a.83. Administration fees during closure.

(*Editor's Note*: The text of the existing § 265.113(b) (relating to closure; time allowed for closure) is proposed to be renumbered as § 265a.83.)

Subchapter H. FINANCIAL REQUIREMENTS

Sec.

§ 265a.141. Definitions.

In addition to the terms defined in 40 CFR 265.141 (relating to definitions of terms as used in this subpart)

which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to definitions and requests for determination) apply to this chapter. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Amount of liability coverage—The insurance requirements of § 265a.147 (relating to liability requirements).

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

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

Final closure—Successful completion of requirements for closure and postclosure care as required by 40 CFR Part 265, Subpart G (relating to closure and postclosure).

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

Surety bond—A penal bond agreement in a sum certain, payable to the Department, executed by the permittee, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

§ 265a.143. Financial assurance for closure.

Notwithstanding the requirements incorporated by reference, only subsection (e) of 40 CFR 265.143 (relating to financial test and corporate guarantee for closure) is incorporated by reference. This subsection is incorporated by reference only to the extent that the instruments used for financial assurances for closure comply with the laws and regulations of the Commonwealth.

§ 265a.145. Financial assurance for postclosure care.

Notwithstanding the requirements incorporated by reference, 40 CFR 265.145 (relating to financial assurance for postclosure care) is not incorporated by reference.

§ 265a.147. Liability requirements.

(a) Notwithstanding the requirements incorporated by reference, 40 CFR 265.147 (relating to liability requirements) is incorporated by reference only to the extent that the demonstration of financial responsibility complies with the laws of the Commonwealth and the related regulations.

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

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

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

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

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

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

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

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

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

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

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

§ 265a.148. Incapacity of owners or operators, guarantors or financial institutions.

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

§ 265a.149. Use of State-required mechanisms.

Notwithstanding the requirements incorporated by reference, 40 CFR 265.149 (relating to use of State-required mechanisms) is not incorporated by reference.

§ 265a.150. State assumption of responsibility.

Notwithstanding the requirements incorporated by reference, 40 CFR 265.150 (relating to State assumption of responsibility) is not incorporated by reference.

(*Editor's Note*: Proposed §§ 265a.153—265a.169 include provisions of existing Chapter 267, Subchapter B (relating to bonding requirements), which have been updated and conformed to Federal provisions.)

§ 265a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities which have been permitted under the act, or which are being treated as having been issued a permit under the act, shall file a bond in accordance with this subchapter, payable to the Department.

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

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility which is permitted or is being treated as having been issued a permit, shall cease accepting hazardous waste unless the permittee has submitted a bond under this part. The Department will review and determine whether or not to approve the bond within 1 year after submittal. If, on review, the Department determines the permittee has submitted an insufficient bond amount, the Department will require the permittee to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

§ 265a.154. Form, terms and conditions of bond.

(a) The Department will accept one of the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A phased deposit collateral bond as provided in § 265a.157 (relating to phased deposits of collateral).

(b) The Department will prescribe and furnish the forms for bond instruments.

(c) Bonds shall be payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area.

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

§ 265a.155. Special terms and conditions for surety bonds.

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

(b) The Department will accept only the bond of a surety authorized to do business in this Commonwealth.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the permittee and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of cancellation the permittee shall provide the Department with a replacement bond under § 265a.158 (relating to replacement of bond). Failure of the permittee to provide a replacement bond within the 60-day period shall constitute grounds for forfeiture of the existing bond under § 265a.168 (relating to bond forfeiture).

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

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

(f) The bond shall provide that the surety and the permittee shall be jointly and severally liable for payment of the bond amount.

§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.

(a) The Department will obtain possession of and keep in custody collateral deposited by the permittee until authorized for release or replacement as provided in this subchapter.

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

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

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

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

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

(4) The Department will only accept automatically-renewable certificates of deposit.

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

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

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

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

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

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

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

(4) The letter of credit shall be irrevocable and shall be so designated. The Department may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the credit:

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

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

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

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

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

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

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure).

§ 265a.157. Phased deposits of collateral.

(a) A permit applicant, or a permittee may post a collateral bond for a hazardous waste storage, treatment or disposal facility which will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The permittee shall submit a collateral bond to the Department.

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

(3) The permittee shall submit a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

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

(1) The permittee has failed to make a deposit of bond amount when required by the schedule for the deposits.

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

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

§ 265a.158. Replacement of bond.

(a) The Department may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds if the liability which has accrued against

the permittee of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond will be determined under this chapter, may not be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this chapter.

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

§ 265a.159. Reissuance of permits.

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

§ 265a.160. Bond amount determination.

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

(b) This amount shall be based on the requirements of 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

§ 265a.161. Cost estimate for closure and postclosure care.

The permittee or permit applicant shall prepare a detailed written estimate of the cost of closing the facility and providing postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimates for closure; and cost estimates for postclosure care).

§ 265a.162. Bond amount adjustments.

(a) The permittee shall deposit additional amounts of bond, at any time, upon demand of the Department. The Department will require a permittee to deposit additional amounts of bond if one of the following occurs:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason which requires an additional amount of bond determined under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for postclosure care).

(2) Inflationary cost factors have exceeded the estimate used for the original bond amount determination under 40 CFR 265.142 and 265.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, which requires an additional amount of bond determined under 40 CFR 265.142 and 265.144.

(4) The Department determines that an additional amount of bond is required as determined by 40 CFR 265.142 and 265.144 to meet the requirements of applicable statutes, this chapter and the terms and conditions of the permit or orders of the Department.

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

§ 265a.163. Failure to maintain adequate bond.

If a permittee fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 265a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the permittee, and if the permittee fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the permittee and take additional actions that may be appropriate, including suspending or revoking permits.

§ 265a.164. Separate bonding for a portion of a facility.

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

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 265a.162 (relating to bond amount adjustments).

§ 265a.165. Bond release.

(a) The permittee may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility during the operation of the facility as part of a request for bond adjustment under § 265a.162 (relating to bond amount adjustments), upon completion of closure of the facility and upon expiration of the postclosure care period of liability as specified in 40 CFR Part 265, Subpart G (relating to closure and postclosure care).

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

(1) The name of the permittee and shall identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

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

(3) The reasons why, in specific detail, bond release is requested, including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or

assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and postclosure care).

(5) Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 265.142 and 265.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

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

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the permittee.

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

§ 265a.166. Closure certification.

(a) The permittee shall submit a request for closure certification upon completion of closure of the facility in accordance with the provisions of 40 CFR 265.120 (relating to certification of completion of post-closure care).

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

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

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

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

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

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1 year liability period, the Department will require the permittee to deposit a separate bond under § 265a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond on deposit with the Department.

§ 265a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure certification shall be, for the purpose of providing public notice and comment, considered a major permit modification and shall satisfy the public notice and comment requirements for major permit modifications.

§ 265a.168. Bond forfeiture.

(a) The Department may forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

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

(2) The permittee has abandoned the facility without providing closure or postclosure care, or has otherwise failed to properly close the facility in accordance with this article, the act, the statutes set forth in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

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

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

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

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

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

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

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

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

§ 265a.169. Preservation of remedies.

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

Subchapter I. Use and Management of Containers

Sec.
265a.175. Containment and collection systems.
265a.179. Containment and collection system.

§ 265a.175. Containment and collection systems.

In addition to the requirements incorporated by reference:

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

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

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

§ 265a.179. Containment and collection system.

(*Editor's Note*: The provisions of existing § 265.178 (relating to containment and collection system) are proposed to be renumbered as § 265a.175.)

Subchapter J. TANK SYSTEMS

Sec.
265a.191. Assessment of existing tank system's integrity.
265a.193. Containment and detection of releases.
265a.194. General operating requirements.
265a.195. Inspections.

§ 265a.191. Assessment of existing tank system's integrity.

Notwithstanding the requirements incorporated by reference, owners or operators of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity as of January 17, 1994, which is otherwise in accordance with the provisions of 40 CFR 265.191 (relating to assessment of existing tank system's integrity).

§ 265a.193. Containment and detection of releases.

Notwithstanding the requirements incorporated by reference, owners or operators of existing tank systems shall comply with 40 CFR 265.193 (relating to containment and detection of releases) by January 16, 1995, except that owners and operators of existing tank systems for which the age cannot be documented, shall comply with 40 CFR 265.193 by January 16, 1996.

§ 265a.194. General operating requirements.

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

§ 265a.195. Inspections.

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

Subchapter P. THERMAL TREATMENT

Sec.
265a.382. Open burning; waste explosives.

§ 265a.382. Open burning; waste explosives.

In addition to the requirements incorporated by reference, the open burning of waste explosives as specified in 40 CFR 265.382 (relating to open burning; waste explosives) is not permitted in air basins as defined in § 121.1 (relating to definitions).

CHAPTER 266. (Reserved)

CHAPTER 266a. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchap.
C. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL
E. WASTE OIL BURNED FOR ENERGY RECOVERY
H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Subchapter C. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

Sec.
266a.20. Incorporation by reference and applicability.

§ 266a.20. Incorporation by reference and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 266 and its Appendices (relating to standards for the management of specific hazardous wastes; and specific types of hazardous waste management facilities) are incorporated by reference.

(b) Notwithstanding the requirements incorporated by reference, producers of a product that is not presently subject to regulation and that is to be used by the general public in a manner that constitutes disposal and that contains recyclable materials, shall demonstrate, by obtaining the Department's written approval, that the recyclable materials have undergone the chemical reaction described in 40 CFR 260.20(b) (relating to general).

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

(*Editor's Note*: This subchapter contains the existing text in Chapter 266, Subchapter E. The text is being relocated and renumbered only)

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Sec.
266a.103. Interim status standards for burners.
266a.108. Small quantity onsite burner exemption.

§ 266a.103. Interim status standards for burners.

Notwithstanding the requirements incorporated by reference:

(1) An 8,000 Btu/lb minimum heating value requirement is substituted for the Federal 5,000 Btu/lb minimum heating value requirement.

(2) "Existing or in existence" means a boiler or industrial furnace, excluding sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, that on or before August 21, 1991 is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. For sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, "existing or in existence" means that on or before _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal), these units are either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and one of the following applies:

(i) A continuous onsite, physical construction program has begun.

(ii) The owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time."

(c) Hazardous waste may be burned under the exceptions of the restrictions contained in 40 CFR 266.103(a)(6) (relating to interim status standards for burners) if the Department has documentation to show that, prior to August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and prior to _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators the following apply:

(1) The boiler or industrial furnace is operating under the interim status standards for incinerators provided by 40 CFR Part 265, Subpart O (relating to incinerators), or the interim status standards for thermal treatment units provided by 40 CFR Part 265, Subpart P and Chapter 265, Subchapter P (relating to thermal treatment).

(2) The boiler or industrial furnace met the interim status eligibility requirements under 40 CFR Part 265, Subpart O or Chapter 265a, Subchapter P.

(3) Hazardous waste with a heating value less than 8,000 Btu/lb was burned prior to that date.

(d) The owner or operator shall provide the Department with the certification of precompliance required by 40 CFR 266.103(b). The owner or operator shall submit the certification by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(e) The owner or operator shall submit to the Department a complete and accurate certification of compliance under 40 CFR 266.103(c). The owner or operator shall submit the certification by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and on or before _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(f) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of 40 CFR 266.104—266.107 by August 21, 1991, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and by _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, the owner or operator shall do one of the following:

(1) Stop burning hazardous waste and begin closure activities under 40 CFR 266.103(c)(1).

(2) Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators and, for the period of time beginning _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators. Submit a notification to the director by August 21, 1992, for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators or submit a notice to the Department by _____ (*Editor's Note*: The blank refers to a date 1 year after the effective date of adoption of this proposal) for sludge dryers,

carbon regeneration units, infrared incinerators, and plasma arc incinerators, stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993 for all boilers or industrial furnaces, except sludge dryers, carbon regeneration units, infrared incinerators, and plasma arc incinerators, or by _____ (*Editor's Note*: The blank refers to a date 2 years after the effective date of adoption of this proposal) for sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators.

(3) Obtain a case-by-case extension of time under 40 CFR 266.103(c)(7)(ii).

§ 266a.108. Small quantity onsite burner exemption.

Notwithstanding the requirements incorporated by reference, the hazardous waste burned in an onsite boiler or industrial furnace have a minimum heating value of 8,000 Btu/lb to be exempt from this subchapter.

CHAPTER 266b. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

(*Editor's Note*: All of the existing text of Chapter 266 Subchapters J—O is being relocated to Chapter 266b.)

Subchap.

Subchapter A. GENERAL

Sec.

§ 266b.1. Incorporation by reference and scope.

Except as expressly provided in this chapter, the requirements of 40 CFR Part 273 (relating to standards for universal waste management) are incorporated by reference.

Subchapter B. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

Sec.

§ 266b.10. Applicability.

In addition to the requirements incorporated by reference, a small quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

Subchapter C. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTES

Sec.

§ 266b.30. Applicability.

In addition to the requirements incorporated by reference, a large quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

Subchapter D. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS

Sec.

§ 266b.50. Applicability.

In addition to the requirements incorporated by reference, a universal waste transporter complying with this subchapter is deemed to have a license for the transportation of universal wastes.

Subchapter E. STANDARDS FOR DESTINATION FACILITIES

Sec.

§ 266b.60. Applicability.

Notwithstanding the requirements incorporated by reference, 40 CFR 273.60(b) (relating to applicability) is not incorporated by reference.

CHAPTER 267. (Reserved)

(*Editor's Note*: All of the existing text of Chapter 267 is proposed to be deleted and the financial responsibility requirements are proposed to be relocated to Subchapter H of Chapters 264a and 265a.)

CHAPTER 268a. LAND DISPOSAL RESTRICTIONS

Subchap.

Subchapter A. GENERAL

Sec.

§ 268a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 268 (relating to land disposal restrictions) except for 40 CFR 268.5, 268.6, 268.42(b) and 268.44 and its appendices are incorporated by reference.

(b) Notwithstanding the requirements incorporated by reference, the substitution of the term "EPA" in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.1(e)(3) (relating to purpose, scope and applicability).

CHAPTER 269. (Reserved)

CHAPTER 269a. SITING

(*Editor's Note*: All of the existing text of Chapter 269 is being renumbered as Chapter 269a. No changes, except citation changes, are being proposed to the existing text of Chapter 269. All citations contained within the existing text of Chapter 269 are also being renumbered to reflect the numbering changes proposed in this regulation.)

CHAPTER 270. (Reserved)

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchap.

Subchapter A. GENERAL INFORMATION

Sec.

§ 270a.1. Incorporation by reference, scope and applicability.

Except as expressly provided in this chapter 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its Appendices (relating to hazardous waste permit program) are incorporated by reference.

§ 270a.2. Definitions.

Notwithstanding the requirements incorporated by reference:

(1) The definitions for "disposal," "hazardous waste," "person," "storage" and "treatment" are not incorporated by reference.

(2) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply for the terms "Administrator," "Director," "Environmental Protection Agency" and "Regional Administrator" found in 40 CFR 270.2 (relating to definitions).

§ 270a.3. Payment of fees.

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

(1) Applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(i) Land disposal facilities—commercial—$125,000.

(ii) Land disposal facility—captive—$71,400.

(iii) Surface impoundments:

(A) Commercial—$36,000.

(B) Captive—$14,000.

(iv) Postclosure permits—$25,000.

(v) Treatment facilities:

(A) Commercial—$36,000.

(B) Captive—$14,000.

(vi) Storage facilities:

(A) Commercial—$36,000.

(B) Captive—$14,000.

(vii) Incinerators:

(A) Commercial—$93,000.

B) Captive—$54,000.

(viii) For applications for determination of applicability under § 266.100 (relating to applicability and requirements)—$1,125.

(2) If more than one permitted activity is located at a site, or more than one activity occurs, the fees shall be cumulative.

(3) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(i) Module I and Generic Module I applications:

(A) Module I—$300.

(B) Generic Module I—$1,500.

(ii) Class 2 and Class 3 permit modifications—50 % of fees listed in subsection (1).

(iii) Class 1 permit modifications—$700.

(4) An application for a permit modification shall be considered a major modification if the application involves one or more of the following:

(i) A change in the site volume-waste capacity.

(ii) A change in excavation contours, including final elevations and slopes.

(iii) A change in permitted acreage.

(iv) A change in the approved groundwater monitoring plan, except for the addition of wells or parameters.

(v) A change in approved leachate collection and treatment plan.

(vi) A change in gas monitoring or management plan, or both.

(vii) A change in the approved type, amount, origin or application of daily, intermediate or final cover materials.

(viii) A change in the approved closure plan.

(ix) A change in approved design.

(*Editors Note*: The language contained in § 270a.3 of this rulemaking is the language that is being deleted from § 265.447 by this rulemaking.)

(*Editor's Note*: The Department is deleting the existing text at 25 Pa. Code § 270.4 (relating to research, development and demonstration permits) and adopting the Federal 40 CFR 270.65 (relating to research, development and demonstration permits) by reference.).

§ 270a.4. Effect of permit.

Notwithstanding the requirements incorporated by reference, 40 CFR 270.4 (relating to effect of a permit) is not incorporated by reference.

§ 270a.5. Noncomplying and program reporting by Director.

Notwithstanding the requirements incorporated by reference, 40 CFR 270.5 (relating to noncompliance and program reporting by the Director) is not incorporated by reference.

§ 270a.6. References.

Notwithstanding the requirements incorporated by reference, the term "*Federal Register*" shall retain its meaning and may not be replaced by the term "*Pennsylvania Bulletin*" when used in 40 CFR 270a.6 (relating to references).

Subchapter B. PERMIT APPLICATION

Sec.
270a.10. General application requirements.
270a.11. Signatories to permit applications and reports.
270a.12. Confidentiality of information.
270a.29. Permit denial.

§ 270a.10. General application requirements.

(a) Notwithstanding the requirements incorporated by reference:

(1) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the terms "administrator," "*Federal Register*" and "EPA" does not apply to 40 CFR 270.10(c)(2) (relating to general application requirements).

(2) The substitution of terms in § 260a.3 for the term "administrator" does not apply to 40 CFR 270.10(e) and (f)(3).

(3) Applicants are only required to submit the application to the Department under 40 CFR 270.10(f)(2) and (g)(1)(i).

(b) In addition to the requirements incorporated by reference, an application shall include the application fees required by § 270a.3 (relating to payment of fees).

§ 270a.11. Signatories to permit applications and reports.

Notwithstanding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term "administrator" does not apply to 40 CFR 270.11(a)(3) (relating to signatories to permit applications and reports).

§ 270a.12. Confidentiality of information.

Notwithstanding the requirements incorporated by reference, confidentiality of information shall be as follows:

(1) Information submitted to the Department under this subsection may be claimed as confidential by the applicant. Any claim shall be asserted at the time of submission in the manner prescribed in paragraph (2) and the application form or instructions by stamping the words "confidential business information" on each page containing the information. If a claim is not made at the time of submission, the Department will make the information available to the public without further notice.

(2) Claims of confidentiality for permit application information shall be substantiated at the time the application is submitted and shall address the following:

(i) The portions of the information claimed to be confidential.

(ii) The length of time the information is to be treated as confidential.

(iii) The measures taken to guard against undesired disclosure of the information to others.

(iv) The extent the information has been disclosed to others and the precautions taken in connection with that disclosure.

(v) A copy of any pertinent confidentiality determinations by EPA or another Federal agency.

(vi) The nature of the substantial harm to the competitive position by disclosure of the information, the reasons it should be viewed as substantial and the relationship between the disclosure and the harm.

(3) The Department will keep confidential information in a secure repository and will not make the information available for inspection by the general public.

(4) The Department will make confidential information available to any State or Federal agency for the purpose of administration of any State or Federal law.

(*Editors Note*: The language contained in § 270a.12 of this rulemaking is the language that is being deleted from § 265.446 by this rulemaking.)

§ 270a.13. Contents of Part A of the permit application.

In addition to the requirements incorporated by reference, Part A of the permit application shall include information to demonstrate compliance with the siting criteria in Chapter 269a (relating to siting).

§ 270a.29. Permit denial.

Notwithstanding the requirements incorporated by reference, in 40 CFR 270.29 (relating to permit denial), the phrase "25 Pa. Code, Chapter 270a, Subchapter H" shall be substituted for the phrase "Part 124."

Subchapter D. CHANGES TO PERMITS

Sec.
270a.41. Modification or revocation and reissuance of permits.

§ 270a.41. Modification or revocation and reissuance of permits.

In addition to the requirements incorporated by reference:

(1) A person who requires a permit under the hazardous waste program shall complete, sign and submit to the Department an application for a hazardous waste permit.

(2) The Department will not begin the processing of a permit until the applicant has complied with the application requirements for that permit and complied with the signature and certification requirements of § 270a.11 (relating to signatories to permit applications and reports) and 40 CFR 270.11 (relating to certification by responsible official).

(3) The Department will review for completeness every hazardous waste permit application for a new or existing hazardous waste management facility—both Parts A and B of the application. Upon completing the review, the Department will notify the applicant in writing whether the application is complete. If the application is incomplete, the Department will list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Department will specify in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department will notify the applicant that the application is complete. After the application is completed, the Department may request additional information from an applicant if necessary to clarify, modify or supplement previously submitted material. Requests for additional information will not render an application incomplete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under applicable statutory provisions.

(5) If the Department decides that a site visit is necessary in conjunction with the processing of an application, it will notify the applicant. The applicant shall provide the Department access for a site visit at a reasonable time.

(6) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in paragraph (3).

(7) Once an application is complete, the Department will tentatively decide whether to prepare a draft permit or to deny the application.

(8) If the Department tentatively decides to deny the permit application, it will issue a notice of intent to deny the application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as a draft permit prepared under this section. If, after issuing a notice of intent to deny, the Department's final decision is to issue the permit, the notice of intent to deny will be withdrawn and the Department will proceed to prepare a draft permit under paragraph (9).

(9) A draft permit prepared by the Department will contain the following information:

(i) Conditions under 40 CFR Subpart C (relating to conditions applicable to all permits).

(ii) Proposed compliance schedules under 40 CFR 270.33 (relating to schedules of compliance).

(iii) Monitoring requirements under Chapters 264a and 265a; 40 CFR Parts 264 and 265 and 40 CFR 270.14.

(iv) Hazardous waste permit standards for treatment, storage and disposal and other permit conditions under this chapter and 40 CFR, Subpart C (relating to permit conditions).

(10) A draft permit prepared under this section shall be accompanied by a statement of basis, under paragraph (11) or a fact sheet under paragraph (12), publicly noticed under § 270a.80 (relating to public notice and comment requirements) and made available for public comment under § 270a.81 (relating to public hearings). The Department will give notice of the opportunity for a public hearing under § 270a.81 and respond to comments under paragraph (13).

(11) The Department will prepare a statement of basis for every draft permit for which a fact sheet under paragraph (12) is not prepared. The statement of basis will briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or revoke, reasons supporting the tentative decision. The statement of basis will be sent to the applicant and, on request, to other persons.

(12) Preparation of fact sheets shall comply with the following:

(i) A fact sheet will be prepared by the Department for every draft permit for a major hazardous waste management facility or activity, and for every draft permit which the Department determines is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department will send this fact sheet to the applicant and, on request, to other persons.

(ii) The fact sheet shall include the following when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit.

(B) The type and quantity of wastes which are proposed to be or are being treated, stored or disposed of.

(C) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

(D) Reasons why requested variances or alternatives to required standards do or do not appear justified.

(E) A description of the procedures for reaching a final decision on the draft permit including the following:

(I) The beginning and ending dates of the comment period under § 270a.81 and the address where comments will be received.

(II) Procedures for requesting a hearing and the nature of that hearing.

(III) Other procedures by which the public may participate in the final decision.

(IV) The name and telephone number of a person to contact for additional information.

(13) At the time that a final permit is issued, the Department will also issue a response to comments. The response will state the following:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decisions, and the reasons for the change.

(ii) Briefly describe the response to significant comments on the draft permit raised during the public comment period or during a hearing.

(14) The Department will make available to the public its response to public comments.

(15) The Department will follow the following procedures if it modifies, revokes and reissues, or revokes a permit:

(i) The Department may modify, revoke and reissue, or revoke a permit either at the request of an interested person—including the permittee—or upon the Department's initiative for reasons specified in 40 CFR 270.41 (relating to modification or revocation and reissuance of permits) and for a reason authorized under the act, this article or the terms and conditions of the permit. A request shall be in writing and contain facts or reasons supporting the request.

(ii) If the Department decides the request is not justified, the Department will send a brief written response giving a reason for the decision to the requestor. The Department's refusal to modify, revoke and reissue or revoke a permit under a request is not subject to public notice, comment or hearings.

(iii) If the Department tentatively decides to modify or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, it will prepare a draft permit under paragraphs (7)—(9) incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits the Department will require the submission of a new application. The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

(iv) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. Other aspects of the existing permit shall remain in effect for the duration of the permit. When the permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During a revocation and reissuance proceeding. The permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(v) If the Department tentatively decides to revoke a permit in accordance with the incorporated provisions of 40 CFR 270.41, it will issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit which follows the same procedures as a draft permit prepared under paragraphs (7)—(9).

(vi) Class 1 modifications as listed in the Appendix I to 40 CFR 270.42 (relating to classification of permit modification) are not subject to the requirements of this section.

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

Sec.

§ 270a.51. Continuation of existing permits.

Notwithstanding the requirements incorporated by reference, 40 CFR 270.51 (reltaing to continuance of expiring permits) is not incorporated by reference.

Subchapter F. SPECIAL FORMS OF PERMITS

Sec.
270a.60. Permits-by-rule.
270a.61. Emergency permits.
270a.64. Interim permits for UIC wells.

§ 270a.60. Permits-by-rule.

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

Notwithstanding other provisions of this chapter, the activities listed in this section shall be deemed to have a hazardous waste management permit if the conditions listed are met. The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain, an individual permit when the facility is not in compliance with the applicable requirements or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

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

(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit-by-rule, if the following requirements are complied with:

(i) The facility is a captive facility and the only waste treated is generated onsite, or was a captive facility prior to September 4, 1982, and the only waste treated is generated onsite or on an interconnected adjacent site which was previously part of an integrated facility.

(ii) The facility has an NPDES permit, if required, and complies with the conditions of that permit.

(iii) Section 264a.11 (relating to identification number and transporter license) and 40 CFR 264.11 (relating to identification number).

(iv) Chapter 264a, Subchapter D and 40 CFR Subparts C and D (relating to standards for owners and operators of hazardous waste treatment, storage and disposal facilities; transfer of permits; and preparedness and prevention, and preparedness, prevention and contingency (PPC) plan and emergency procedures).

(v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).

(vi) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous via dilution by merely mixing it with nonhazardous material.

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if the following requirements are complied with:

(i) The facility is a captive facility and the only waste treated is generated onsite.

(ii) The notification requirements of 40 CFR 264.11(relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.

(iii) The applicable requirements of 40 CFR 262.34 (relating to accumulation).

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit-by-rule, if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E and I—L and Chapter 264a, Subchapters A, B, D, E and I—L.

(4) The owner or operator of a petroleum refining facility refining hazardous waste along with normal process streams to produce petroleum products is deemed to have a permit-by-rule, if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, and I—L and Chapter 264a, Subchapters A, B, D, E and I—L.

(5) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a recycling permit for the reclamation, if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E and I—L and 40 CFR Part 262 and 264, Subparts A—E and I—L.

(iii) For the purposes of this subsection, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 (relating to general requirements) and 40 CFR Part 262.20 (relating to manifest).

(iv) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subsection without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subsection.

(6) The owner or operator of a facility storing hazardous waste onsite in tanks, containers or containment buildings under paragraph (5) is deemed to have a hazardous waste storage permit for the storage of hazardous waste prior to reclamation if the following requirements are complied with:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.

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

(1) With respect to any permit-by-rule facility under paragraphs (b)(3)-(6) of this section, the Department may, upon written application from any person subject to these paragraphs, grant a variance from one or more specific provision of those paragraphs in accordance with this subsection.

(2) In granting an variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity will result in a level of protection of the environment and public health equivalent to that

which would have resulted from compliance with the suspended provisions. Any variance granted under this section shall be no less stringent than the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

§ 270a.61. Emergency permits.

In addition to the requirements incorporated by reference, the Department may waive the procedural requirements for a hazardous waste management permit under section 504(g) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.504(g)), for site cleanup response actions conducted entirely on the site. For the purposes of this paragraph "site" is as defined in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103).

§ 270a.64. Interim permits for UIC wells.

Notwithstanding the requirements incorporated by reference, the requirements at 40 CFR 270.64 (relating to interim permits for UIC wells) are not incorporated by reference.

Subchapter G. INTERIM STATUS

Sec.
270a.72. Changes during interim status.

§ 270a.72. Changes during interim status.

Notwithstanding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term "EPA" does not apply to 40 CFR 270.72(a)(5) and (b)(5) (relating to changes during interim status).

Subchapter H. PUBLIC NOTICE AND HEARINGS

Sec.
270a.80. Public notice and comment requirements.
270a.81. Public hearings.
270a.82. Public availability of information.

§ 270a.80. Public notice and comment requirements.

In addition to the requirements incorporated by reference:

(1) The Department will give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under § 270a.29 (relating to permit denial), 40 CFR 270.29 (relating to permit denial) and § 270a.41 (relating to modification or revocation and reissuance of permits).

(ii) A draft permit has been prepared under § 270a.41(9).

(iii) A hearing has been scheduled under § 270a.81(2) (relating to public hearings).

(iv) A closure/postclosure plan has been received in accordance with the incorporated requirements of 40 CFR 264.112(d) or 264.118(a) (relating to closure plan; amendment of plan; and postclosure plan; amendment of plan).

(2) A public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under paragraph (1) will provide for at least 45 days for public comment.

(3) The Department will give public notice of a public hearing at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two notices may be combined.

(4) The Department will give public notice of activities described in paragraph (1) by the following methods:

(i) By mailing a copy of a notice to the following (persons otherwise entitled to receive notice under this paragraph may waive the right to receive notice for classes and categories of permits):

(A) The applicant.

(B) An agency which the Department knows has issued or is required to issue an RCRA, underground injection control, prevention of significant deterioration, NPDES or 404 permit for the same facility or activity, including EPA .

(C) An appropriate Federal or State agency with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, State historic preservation officers, advisory council on historic preservation and other appropriate government authorities, including affected states.

(D) A person on a mailing list developed by the Department, which will include a person who submits to the Department a request in writing to be on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State-funded newsletters, environmental bulletins or State law journals. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

(E) A unit of local government having jurisdiction over the area where the facility is proposed to be located.

(F) A State agency having authority under State statute with respect to the construction or operation of the facility.

(ii) Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(iii) In a manner constituting legal notice to the public under State statute.

(iv) By other methods reasonably calculated to give actual notice of the action in question to a person potentially affected by it, including press releases or another form or medium to elicit public participation.

(5) The content of a public notice issued under this section shall contain the following minimum information:

(i) The name and address of the office processing the permit action for which notice is being given.

(ii) The name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit.

(iv) The name, address and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, the statement of basis or fact sheet, and the application.

(v) A brief description of the comment procedures required by § 270a.81 (relating to public hearings), and the time and place of a hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision.

(vi) Additional information which the Department considers necessary or proper.

(6) In addition to the general public notice described in paragraph (5), the public notice of a hearing under § 270a.81 shall contain the following information:

(i) A reference to the date of previous public notices relating to the permit.

(ii) The date, time and place of the hearing.

(iii) A brief description of the nature and purpose of the hearing, including the applicable procedures.

(7) In addition to the general public notice described in paragraph (5), a person identified in paragraph (4)(i)(A)—(C) will be mailed a copy of the fact sheet or statement of basis, the draft permit and, if applicable, the permit application.

§ 270a.81. Public hearings.

In addition to the requirements incorporated by reference:

(1) During the public comment period provided under § 270a.80 (relating to public notice and comment requirements), an interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Department will consider comments in making its final decision and will answer these comments as provided in § 270a.41(13) (relating to modification or revocation and reissuance of permits).

(2) The Department will follow the following procedures in a public hearing held under this subchapter:

(i) The Department will hold a public hearing whenever, on the basis of requests received under paragraph (1), it determines that a significant degree of public interest in a draft permit exists.

(ii) The Department may hold a public hearing whenever a hearing might clarify issues involved in the permit decision.

(iii) The Department will hold a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice, under § 270a.80.

(iv) The Department will, when possible, schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(v) The Department will give public notice of the hearing under § 270a.80.

(vi) A person may submit oral or written statements and data concerning the draft permit before, during or after the public hearing. The Department may set reasonable limits upon the time allowed for oral statements and may require the submission of statements in writing. The public comment period under § 270a.80 will automatically be extended to the close of a public hearing under this section. The Department's hearing officer may also extend the comment period by so stating at the hearing.

(vii) The Department will make a tape recording or written transcript of the hearing available to the public.

§ 270a.82. Public availability of information.

In addition to the requirements incorporated by reference:

(1) Information provided to the Department under this article will be made available to the public in accordance with the current Departmental policy on public information. The Department will make every effort to respond to written requests in a timely manner by providing the materials requested or a written response explaining why the request cannot be honored.

(2) The Department will release material obtained regarding facilities and sites for the treatment, storage and disposal of hazardous waste, unless the material is subject to a claim of confidentiality under § 270a.12 (relating to confidentiality of information) or other law or regulation. These records include:

(i) Permit applications and modifications.

(ii) Annual reports.

(iii) Closure plans.

(iv) Notification of facility closure.

(v) Contingency plan incidence reports.

(vi) Delisting petitions and other petitions for variances or waivers.

(vii) Financial responsibility instruments.

(viii) Environmental monitoring data, such as groundwater monitoring data.

(ix) Transporter spill reports.

(x) International shipment reports.

(xi) Manifest exception, discrepancy and unmanifested waste reports.

(xii) EPA facility identification numbers.

(xiii) General correspondence with the facility.

(xiv) Enforcement orders.

(xv) Inspection reports.

(xvi) Results of corrective action investigations.

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