RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

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

Hazardous Waste

The Environmental Quality Board (Board) by this order deletes Chapters 260—267, 269 and 270 and renumbers existing or adds 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 Commonwealth's existing hazardous waste regulations to identify where the regulations could be improved.

This order was adopted by the Board at its meeting of February 16, 1999.

A. *Effective Date*

With the exception of Chapter 264a, Subchapter S, these amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking. The provisions of Chapter 264a, Subchapter S will become effective upon delegation of the corrective action program to the Department by the Environmental Protection Agency (EPA).

B. *Contact Persons*

For further information contact Rick Shipman, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or 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. 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 rulemaking is available electronically through the Department's Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The final rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 401—403 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste 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 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 necessary for the proper work of the Department.

D. *Background and Summary*

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 in 40 CFR Parts 124, 260—270, 273 and 279, 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. Therefore, a state standard less stringent than the RCRA standard respecting the same matter 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 (relating to requirements for authorization of state hazardous waste programs). 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 authorized the EPA to impose and administer directly certain more stringent requirements in all states 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 this Commonwealth hazardous waste requirements in order to be in compliance with RCRA.

Since the Commonwealth received its authorization in 1986, the Board has adopted several hazardous waste rules. The Commonwealth's hazardous waste regulations were most recently significantly amended with substantive changes at 23 Pa.B. 363 (January 15, 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 final rulemaking deletes these requirements and replaces them with the Federal regulations.

The Department has reviewed all of its hazardous waste regulations under 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 finalized 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 an authorization update from EPA for its hazardous waste program based on this final rulemaking.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The proposed amendments were published at 27 Pa.B. 6407 (December 6, 1997). The 60-day public comment period ended on February 4, 1998. The Department received comments from 30 citizens and regulated persons. Comments were also received from the Independent Regulatory Review Commission (IRRC) and the EPA. All comments received were given due consideration and review, and changes were made to the amendments in response to comments received. The Board believes that the regulations have been improved as a result of the efforts of the commentators. A copy of the Comment and Response Document prepared for this rulemaking may be obtained by contacting Rick Shipman, Division of Hazardous Waste Management, at the address given in Section B of this Preamble.

The changes contained within these final amendments were reviewed and approved with certain recommendations by the Department's Solid Waste Advisory Committee (SWAC) on July 9, 1998. SWAC suggested the following: 1) include the coproduct transition scheme in the preamble; 2) clarify the provisions of § 261a.7 (relating to residues of hazardous waste in empty containers) to indicate that the material in an empty container means a material that, if disposed, would be a hazardous or solid waste in accordance with the SWMA; 3) clarify that the definition of "financial institutions" could be broader than "banks"; 4) reexamine whether or not an 8,000 Btu/lb. minimum heating value is justified when the Federal regulations set a 5,000 Btu/lb. minimum heating value for small quantity onsite burners, § 266a.108 (relating to small quantity onsite burners); and 5) clarify that the exemption from application and administration fees applies only to the recycling related activities prior to reclamation at a facility permitted for treatment of hazardous waste. The Department revised the final form rulemaking to conform to SWAC's suggestions except for SWAC's suggested changes to § 261a.7 and to the financial assurance provisions. Regarding § 261a.7, the Department determined that until a material is actually disposed, the Department does not have jurisdiction over a material that, if disposed, would be a hazardous or solid waste. Therefore, the regulation cannot be amended to regulate these materials. With regard to the suggestion that the term "financial institution" could be broadened to include more than banks, the Department agrees that the term "financial institution" should be broadened. However, for purposes of letters of credit, the Department found that it should only accept letters of credit issued by banks since banks are the only institutions for which the Department can be assured that the institution will issue a letter of credit that is regulated by Commonwealth law. Finally, the Department reexamined whether or not an 8,000 Btu/lb. minimum heating value for small quantity onsite burners in § 266a.108 is justified. The Department determined that a 5,000 Btu/lb. minimum heating value is adequate to ensure safe operation of small quantity onsite burners subject to § 266.108.

Substantive changes to the proposed amendments which are made in this rulemaking are discussed in this Preamble by general topic. Several stylistic or typographical corrections are not discussed. Amendments to the regulations which have not been changed from the proposed rulemaking are discussed in the Preamble published with the proposed amendments at 27 Pa.B. 6407.

Format and Interface with 40 CFR

The Board's proposed amendments to the hazardous waste regulations deleted the current text of the Commonwealth's hazardous waste regulations and added new chapters that incorporate by reference the Federal hazardous waste regulations. The purpose of incorporating by reference is to ensure that the Commonwealth's hazardous waste regulations are consistent with the Federal regulations. In cases for which the Board has determined that The 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 amendments were formatted so that the first section of each Commonwealth chapter contained language to incorporate by reference each corresponding Federal part that the Commonwealth proposed to incorporate by reference. Individual Commonwealth sections were identified by a small letter "a" that was included in the section number. The sections with an "a" contained Commonwealth additions to, deletions from or modifications of the Federal regulations that had been incorporated. In most instances, the Commonwealth chapter numbers corresponded to the parallel Federal part numbers; the Commonwealth subchapter numbers corresponded to the parallel Federal subpart numbers; and the Commonwealth section numbers corresponded to the parallel Federal section numbers. In instances for which no Commonwealth section number existed for a Federal counterpart section, the Commonwealth decided to incorporate the Federal section without modification. The final-form regulations retain this format.

The EPA was concerned with the Board's use of the word "notwithstanding" in sections that contained modifications to the Federally incorporated language and the phrase "in addition to" in sections that contained additions to the Federal language. The EPA felt that the resulting provisions were confusing since they did not identify specifically the Federal language that was being modified. The Board has removed all of the "notwithstanding" language and replaced it with language that identifies more clearly the Federal language that is being modified by the Commonwealth provisions. The Board has decided that the phrase "in addition to" clearly indicates that the Commonwealth intends to add to the Federally incorporated provisions, and therefore, the Board has decided to continue to use the phrase "in addition to" to indicate additions to Federally incorporated language.

The EPA was also concerned about the Board's blanket substitution of terms found in proposed § 260a.3(a) (relating to terminology and citations related to Federal regulations). The EPA was particularly concerned about individual Commonwealth sections for which the substitution of terms should not apply because the EPA retains certain authorities or responsibilities, or because the EPA cannot delegate certain incorporated provisions of 40 CFR in the state authorization process. Based on the EPA's identification of these individual sections, the Board has made specific exceptions from the substitution of terms found in § 260a.3(a). In situations in which a blanket substitution does not apply to a particular provision, but for which the Department inadvertently may have applied a blanket substitution, the regulatory provision should be read in a manner that is consistent with the law. For example, Federal law prohibits states from enforcing certain RCRA provisions and gives the enforcement authority for these provisions to the EPA exclusively. These provisions should be read to be unenforceable by the Commonwealth, regardless of whether or not the Commonwealth regulations include an inappropriate substitution of terms.

The EPA pointed out that dates contained in the Federally incorporated language or in the Commonwealth's proposed language could be confusing. The Board has reviewed all of the dates contained in the Federally incorporated language and has modified those dates when necessary to reflect accurately the Commonwealth's authority to regulate. For example, proposed § 264a.570 (relating to applicability) modified the Federal date for compliance for certain drip pad operations from December 6, 1990, to a Commonwealth date of January 11, 1997. Drip pads have been subject to Federal regulation since December 6, 1990, but were not subject to Commonwealth regulatory requirements until January 11, 1997. The EPA suggested that the Commonwealth should retain the Federal date for HSWA units in its regulations since the regulated community has been subject to Federal regulation for HSWA units beginning on the date that EPA promulgated HSWA regulations. The Board has reviewed the EPA's suggestions on date modification and has concluded that the Commonwealth does not have the authority to enforce regulatory provisions prior to the date on which the regulatory provisions were promulgated in this Commonwealth. Therefore, the Board has retained the Commonwealth's effective dates.

Coproduct

The proposed rulemaking deleted from the definitions section of the hazardous waste regulations the terms "coproduct," "byproduct," "solid waste" and "waste" and replaced them with the Federal definition for "solid waste" in 40 CFR 261.2 (relating to definition of solid waste). Several commentators were concerned that certain facilities that produced coproducts under the Commonwealth's existing system would suddenly find themselves regulated under the Federally incorporated language. The commentators suggested that the Board include a transition period for these facilities. The Board believes that most facilities currently producing a coproduct will find that their coproduct does not fall within the Federally incorporated definition of solid waste in 40 CFR 261.2. However, the Board recognizes that it may not be aware of all of the facilities that may be handling materials as coproducts, and therefore, the final form regulation includes a transition period for these facilities in § 260a.30 (relating to variances from classification as a solid waste). The transition period is intended to allow the operators of these facilities to determine if their coproducts do not fall within the Federally incorporated definition of solid waste or if the operators of these facilities will have to apply to the Department for a variance from classification as a solid waste under the Federally incorporated variance provisions found in 40 CFR Part 260, Subpart C (relating to rulemaking petitions) and § 260a.20 (relating to rulemaking petitions). The final-form regulation also includes a 90-day notification period during which time any person producing, selling, transferring, possessing or using a material as a coproduct that is not exempt from regulation in other parts of these final-form regulations shall notify the Department so that the person can qualify for the transition period.

Definitions—§ 260a.10

In response to the concerns of several commentators, the Board has modified § 260a.10 (relating to definitions), of the final-form regulations so that all of the definitions are contained within one section rather than in several subsections. The definition section is now in alphabetical order and includes every term that modifies a Federal definition, adds to a Federal definition or is excluded from the incorporation by reference of the Federal definitions. The Board received several comments suggesting that the final-form regulation would be easier to follow if it included definitions found in SWMA. The final-form regulations do include SWMA definitions for those terms that are replacing Federal regulatory terms, as well as, for other terms, the inclusion of which is intended to clarify the SWMA definitions. For example, the term "disposal" is defined using the SWMA definition rather than the Federal regulatory definition.

Definition of "Hazardous Waste"—§ 261a.3

The proposed rulemaking did not incorporate by reference the Federal exclusion for high temperature metals reclamation (HTMR) slags derived from listed hazardous wastes that meet health-based criteria. The Federal regulation in 40 CFR 261.3(c)(2)(ii)(C) provides an exemption for HTMR slags that meet certain criteria and that are disposed of in Subtitle D units. The purpose of the Federal exemption is to allow operators to dispose of hazardous HTMR slag in Subtitle D landfills rather than requiring them to dispose of the slags in Subtitle C facilities. The Federal exclusion does not affect any other aspect of the management of hazardous HTMR slags. The Department has determined that these HTMR slags should be disposed of as hazardous wastes and should not be permitted to go to Subtitle D landfills for the following reasons as follows.

Several commentators felt that the Federal provision should be incorporated by reference so that these slags would be excluded from regulation. The commentators believe that if the Board does not incorporate the exclusion and eliminates the definition of "coproduct," beneficial uses of HTMR slag would be eliminated and recycling of HTMR slag would be discouraged.

The Department reviewed this provision and found that even if the Board did adopt the Federal exclusion for these HTMR slags, HTMR slags that are being recycled would nonetheless continue to be subject to all of the Commonwealth regulations that apply to the storage or treatment of hazardous wastes. Furthermore, the Department believes that this requirement will encourage recycling of these slags, since recycling may be a more economical alternative than disposal of these slags in accordance with hazardous waste disposal requirements.

The Board also bases its decision to prohibit these slags from going to Subtitle D landfills, because in past rulemakings, the Department received many comments from the public opposing a proposal to allow conditionally exempt small quantity generator (CESQG) hazardous waste to go to hazardous waste landfills. Like HTMR slags, the EPA was not concerned about CESQG wastes going to Subtitle D landfills but the public was concerned. Since the EPA exempts HTMR slags from the definition of "hazardous waste" only to allow for its disposal in Subtitle D landfills, the Board believes that the public would not approve of this exemption any more than it approved of the exemption to allow CESQG waste to go to Subtitle D landfills.

The beneficial uses of HTMR slag will not be affected by the Board's decision not to incorporate the Federal exemption. Beneficial uses do not involve "disposal in Subtitle D units," which is the specific exemption in 40 CFR 261.3(c)(2)(ii)(C), and therefore, to the extent that beneficial uses are authorized by the current hazardous waste regulations, beneficial uses are authorized by the final-form regulations. Since the final-form regulations do not amend the existing hazardous waste regulations with regard to this exemption, the regulated community will experience no additional costs as a result of the final-form regulations. In addition, HTMR slags that have been determined to be coproducts or that are beneficially used are HTMR slags that are residual wastes. The beneficial use or coproduct status of residual waste HTMR slags is unaffected by these hazardous waste regulations.

Based on comments received, the Board has decided to incorporate by reference the Federal exemption for biological treatment sludge generated from the treatment of organic waste from the production of carbamates and carbamoyl oximes as well as wastewaters from the production of carbamates and carbamoyl oximes. The commentators felt that the Department's lack of experience with these wastes was not a sufficiently compelling reason to continue to regulate them as hazardous wastes.

The exemption in 40 CFR 261.3(c)(2)(ii)(D) for certain listed wastes from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156 and K157) was not included as an exclusion in the proposal because the Federal listings and the exclusion were relatively new, controversial and had been challenged in a lawsuit (*Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394). In addition, the Department was unable to verify if any hazardous waste handlers for EPA hazardous waste numbers K156 and K157 exist in this Commonwealth at the time that the proposed rulemaking was being developed, because the waste listing was very recent. This lack of information prompted concern for automatically adopting by reference the exemption and its effect in this Commonwealth. The Department has researched whether any entities exist in this Commonwealth that have been affected by this exemption and determined that no entities within this Commonwealth would be affected by this exemption at this time. The Department has also conducted a detailed review of the EPA preamble of the carbamate rule. The Department has reviewed the extensive research and analysis conducted by the EPA on the carbamate rule and believes that the exemption would be protective of human health and the environment if such a facility began to operate in this Commonwealth.

Exclusions—§ 261a.4

Several commentators suggested that the Board should incorporate without modification the Federal exclusions found in 40 CFR 261.4 (relating to exclusions) and exclude the materials listed in 40 CFR 261.4(a) from the definition of "solid waste," rather than from the definition of "hazardous waste." The Department has reevaluated the proposed manner of adopting 40 CFR 261.4. After closer examination of the materials excluded from classification as solid wastes under 40 CFR 261.4(a), the Department agrees that there are no compelling environmental or human health needs justifying further regulation of these materials as solid wastes in the Commonwealth's hazardous waste regulations. The final-form regulations will adopt by reference and without modification 40 CFR 261.4 so that the regulation excludes from classification as solid wastes the materials identified in 40 CFR 261.4(a).

Special Requirements for Hazardous Waste Generated by Small Quantity Generators—§ 261a.5

One commentator pointed out that the PK-5 amendments to the hazardous waste regulations allowed CESQG hazardous wastes to be mixed with waste oil and transported, stored or processed as municipal or residual waste, as long as the mixture was to be recycled or reused. The commentator noted that the proposed rulemaking did not include this provision and would require these mixtures to be regulated as hazardous wastes, unless the wastes were destined to be burned for energy recovery. In accordance with the proposed rulemaking, if a mixture of CESQG hazardous waste and waste oil is destined to be burned for energy recovery, the mixture would be regulated as a residual or municipal waste. The commentator believes that if the proposed rule is finalized, waste oil burning will be encouraged rather than waste oil recycling.

The Board has incorporated by reference 40 CFR 261.5(j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators). This Federal provision, as incorporated into the Commonwealth program, applies the Commonwealth's waste oil regulations found in Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery) to mixtures of CESQG hazardous waste and waste oil only if the mixture is destined to be burned for energy recovery. This is the same as the Federal equivalent waste oil provision found in 40 CFR Part 279 (relating to standards for the management of used oil), although the EPA has proposed to broaden the class of mixtures subject to Part 279 to include CESQG waste mixed with waste oil that is not destined to be burned for energy recovery. Mixtures of CESQG waste and waste oil should be regulated in the same manner as any other conditionally exempt small quantity generator hazardous waste if the mixtures are not destined to be burned for energy recovery. The

Department has developed a proposed chapter of waste oil regulations published at 29 Pa.B. 1975 (April 10, 1999). The issue regarding mixtures of waste oil and CESQG generator waste has been addressed in that proposed rulemaking, which will also consider the final outcome of the May 6, 1998, the EPA proposed/direct final-form regulations regarding recycling of these mixtures.

Transporter Requirements for Conditionally Exempt Small Quantity Generators—§ 261.a5

The Board has added a provision to § 261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) that allows CESQG facilities to transport their hazardous waste without using a hazardous waste transporter as long as the CESQG facility complies with § 261a.5 and 40 CFR 261.5. A CESQG facility is deemed to have a transporter license if the CESQG complies with § 261a.5(b) and 40 CFR 261.5.

Requirements for Recyclable Materials Except Waste Oil—§§ 261a.2, 261a.4, 261a.6, 270a.60 and Chapter 266a

In the proposed rulemaking, the Board intended to require operators to obtain permits for treatment activities related to recycling of hazardous wastes. The proposed rulemaking included this requirement in § 261a.6 (relating to recyclable materials). Several commentators found the language of proposed § 261a.6 (relating to hazardous waste materials) to be confusing and unclear about the scope of the Commonwealth's recycling permit requirements and felt that provisions in the proposed regulations conflicted with each other. Other commentators requested that the Board exclude any regulation of recycling that is more stringent than the Federal recycling requirements.

The Board did not intend to require permits for all recycling and reclamation activities in its proposed rulemaking. The proposed rulemaking incorporated most of the Federal regulations that exempt from permitting most recycling and reclamation activities that occur within this Commonwealth. Specifically, the proposed regulation incorporated the Federal definition of "solid waste" in 40 CFR 261.2 the Federal exclusions in 40 CFR 261.4; the Federal provisions on recyclable materials in 40 CFR 261.6 and the Federal provisions for reduced management standards for certain recycling activities contained in 40 CFR Part 266 (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities). The final-form regulations clarify the Board's intent to regulate certain activities associated with recyclable materials.

After the proposed rulemaking was published, the Department reviewed all of the hazardous waste recycling activities that occur in this Commonwealth to determine how many facilities are impacted by its recycling regulations and whether the recycling regulations are essential to assuring proper management of hazardous waste that is destined for recycling or reclamation. As a result of this review, the Department identified approximately 60 hazardous waste recycling facilities in this Commonwealth that are currently subject to recycling requirements that are more stringent than the Federal requirements. Of these, six are required to receive individual permits—the remainder operate under a permit by rule. Onsite solvent recovery accounts for the greatest number of the activities subject to a permit by rule.

Regarding the individually permitted facilities, the six facilities are subject to the Federal storage permit requirements in 40 CFR 261.6(c). In addition to the storage permit requirement, the Department found that the following processes occur at these facilities prior to reclamation: physical treatment, chemical/physical treatment and thermal treatment. The Board has determined that the SWMA requires these facilities to obtain permits for these activities, because these activities make the waste suitable for recovery. Furthermore, the activities at these facilities are identical to activities that are regulated as permitted treatment activities at hazardous waste facilities where the treatment process neutralizes the waste; renders the waste nonhazardous or less hazardous; or makes the waste safer for transport, storage or disposal.

Regarding the facilities regulated by permit by rule, the Department determined that permits by rule ensure adequate protection of human health and the environment without being overly burdensome on the facilities' operations. Permit by rule is a self implementing process where the facility is deemed to have a permit as long as the facility complies with the requirements specified in the applicable permit by rule that is contained in the regulation. A permit by rule does not require the operator to submit a permit application or financial assurance information; and recordkeeping and reporting are minimal. The Department uses the permit by rule approach for those activities for which the statute mandates regulation but for which the technical complexity of the operation does not justify a full written permit. The permit by rule provisions for hazardous waste recycling facilities are available for: 1) battery manufacturing facilities that treat spent, lead acid batteries prior to reclaiming them; 2) facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of precious metals; and 3) facilities that treat hazardous waste onsite prior to reclaiming the hazardous waste. The permit by rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form regulations. Since the refinery is the actual reclamation unit, there is no need for a permit or permit by rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit by rule for treatment prior to onsite reclamation.

Examples of activities conducted at battery manufacturing facilities reclaiming spent lead acid batteries that are covered by a permit by rule include: 1) breaking battery cases to remove acid, 2) physical separation of the lead components from the plastic cases, and 3) physical mixing of the lead component with flux materials, limestone, coke or other additives to prepare the materials for charging to the secondary lead smelter. The smelter is the reclamation unit and is not subject to a permit; the other activities described above meet the SWMA definition of "treatment."

Examples of activities conducted at facilities that reclaim economically significant amounts of precious metals that are covered by a permit by rule include: 1) various physical, chemical or electrochemical methods used to extract silver metal from X-ray or photographic film fixers; and 2) drying silver recovery media prior to charging to the secondary smelter. The smelter is the reclamation unit not subject to a permit. The other activities described meet the definition of "treatment."

Examples of activities conducted at facilities that reclaim hazardous waste onsite can be extremely varied. The most common onsite reclamation is solvent recovery. Physical separation of the spent solvent and water or

sludge would constitute an activity subject to permit by rule. In some cases, the spent solvent can be placed directly into a distillation unit, in which case there is no treatment prior to reclamation and the permit by rule would not be applicable. The distillation unit is the reclamation unit not subject to a permit. Other onsite reclamation activities that require a physical, chemical or thermal process prior to placing the recyclable materials in any of the various reclamation units for onsite recovery would be subject to permit by rule rather than a full hazardous waste treatment permit.

In the final-form regulations, the only Federal provision regarding recycling exemptions that the Board has not incorporated by reference is 40 CFR 261.6(c). This Federal provision includes a parenthetical phrase that states that the recycling process is exempt from regulation. In retaining the exclusion of 40 CFR 261.6(c) from the Commonwealth's regulations, the Commonwealth does not intend to regulate all recycling activities. Specifically, reclamation and recovery processes tend to resemble or replace a manufacturing process, and therefore, the permit requirement is not intended to apply to the reclamation or recovery process itself. Operation of the recovery process such as feed rates, temperature, residence time and the construction of the recovery unit are dictated by the specific process and should not be regulated in the same manner as a waste management unit. The Department intends to regulate only those activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery. Consequently, the Department does not intend to regulate the actual reclamation or recovery process.

The Department does intend to regulate more extensively than the Federal government certain hazardous waste activities that occur prior to the actual reclamation or recycling process, such as those processes described in the previously cited examples. The Department believes that it is responsible for ensuring that hazardous waste is properly managed before it enters the recycling process so that it poses a minimal risk to human health and the environment. The Board believes that including 40 CFR 261.6(c) in the Commonwealth's regulations adds confusion since the Department has been presented with an argument that 40 CFR 261.6(c) exempts all nonstorage related recycling activities, including nonstorage activities that occur prior to the actual recycling or reclamation process. Therefore, the Board is not incorporating by reference 40 CFR 261.6(c). This is not a substantive change from the proposed rulemaking, but it simply clarifies a point which the commentators found confusing.

In addition to the Board's decision not to incorporate 40 CFR 261.6(c), the Board is promulgating regulations in Chapter 266a (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities) that are more stringent than the Federal requirements for battery manufacturers and precious metals recovery operations. 40 CFR 266.70 (relating to precious metals reclamation) requires precious metals reclaimers to comply with minimal requirements. The Board has added to the Federal requirements the requirement for precious metal reclaimers to obtain an individual permit under § 261a.6(c) (relating to recyclable materials) or to comply with a permit by rule established by § 270a.60(b)(6) (relating to permits by rule). The permit by rule allows the precious metals reclaimers to operate in a manner that is protective of human health and the environment but that is less burdensome than operating under an individual permit. The Board does not intend to regulate the recovery process itself, only those activities that occur prior to the recovery process to make the material suitable for recovery such as chemical or electrochemical precipitation and hydrometallurgical processes. In addition, § 266a.70(a)(1) (relating to applicability and requirements) grants to transporters of recyclable materials used for precious metals recovery a license for the transportation of those materials if certain requirements are met. This transporter license by rule is intended to encourage precious metals recovery by easing the burden and cost of transporting the recyclable materials.

Battery reclaimers are subject to 40 CFR 266.80 (relating to lead acid battery reclamation). As with the precious metals reclaimers, the Board's regulation in § 266a.80 (relating to applicability of regulations) requires battery reclaimers to obtain an individual permit under the requirements of § 261a.6(c), unless the operator is eligible for the permit by rule established by § 270a.60(b)(3). The Federal regulations require operators of spent lead acid battery reclamation facilities to obtain a storage permit only. The permit by rule in § 270a.60(b)(3) applies to battery manufacturing facilities that reclaim spent lead acid batteries. Again, the Board's intent in promulgating the permit by rule is to encourage battery manufacturers to reclaim spent lead acid batteries in a manner that is protective of human health and the environment but that is less burdensome than operating under to an individual permit.

Consequently, all Commonwealth recycling activity regulation that is more extensive than the Federal requirements is found in §§ 261a.6, 266a.70, 266a.80 and 270a.60. The Commonwealth does not intend to regulate the recycling process itself, but it does intend to regulate certain activities that occur prior to the recycling process. In making this decision, the Board has promulgated several permits by rule so that most facilities will not be subject to all of the burdensome requirements associated with securing an individual permit.

The Board supports the hierarchy of preferred waste management practices to promote more effective methods of hazardous waste management. To promote the improved operation of existing hazardous waste recycling facilities and to encourage the development of new improved technologies for hazardous waste reclamation, the final-form regulations eliminate the requirement for permit application, modification and administration fees for hazardous waste recycling permits, and for research, development and demonstration permits (40 CFR 270.65 (relating to development and demonstration permits)) that employ new improved technologies for hazardous waste reclamation. The elimination of the fee requirements applies only to those activities directly involved in a recycling activity. If a facility conducts other treatment, storage or disposal activities in addition to the recycling activity, the fees are applicable to those other activities.

Residues of Hazardous Waste in Empty Containers—§ 261a.7

The proposed rulemaking retained the Commonwealth's requirement to manage as hazardous wastes residues from empty containers and inner liners removed from empty containers if the residues meet the criteria used to identify hazardous waste. The Board did not intend the proposed rulemaking to change the existing practices for the management of hazardous waste in empty containers or inner liners removed from empty containers. Two commentators felt that the proposed rulemaking classified as a residual waste all containers or container liners

being transported to a facility for processing or disposal, regardless of whether the containers could be reused or otherwise qualify as coproducts under the residual waste program. In addition, the commentators found the proposed rulemaking to be unclear as to whether the residual waste classification of the containers and container liners applies only during transportation or during other stages of container and container liner management. Finally, the commentators did not think that the proposed rulemaking provided the regulated community with clear guidance on how to manage residues from empty containers.

The proposed rulemaking was initially written to classify as residual waste empty containers and inner liners removed from empty containers to allow operators to transport these items for processing or disposal without using a hazardous waste transporter. The residual waste classification was intended to apply to these items for transportation purposes only. In addition, the regulations were intended to regulate as hazardous wastes those residues that may remain in containers or inner liners if those residues are ever removed from the empty containers or inner liners. The proposed rulemaking did not intend to regulate the residues while they remain in the empty containers or inner liners.

The Board agrees that the proposed rulemaking is confusing. Therefore, the final-form regulations clarify the intent of the proposed rulemaking. The final-form regulations specifically state that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners. The final-form regulations focus on the residues rather than on the containers that hold the residues. As intended by the proposed rulemaking, the containers, tanks and inner liners will not be subject to hazardous waste regulation unless the containers, tanks or inner liners satisfy the criteria used to determine whether or not a solid waste is a hazardous waste. Therefore, if a tank, container or inner liner is determined to be a residual waste under the SWMA, the tank, container or inner liner will be eligible for residual waste coproduct status if it meets all of the residual waste coproduct criteria.

SWAC was presented with a proposal that included the term "hazardous material." SWAC specifically requested that the Department clarify § 261a.7 (relating to residues of hazardous waste in empty containers) to indicate that the material in the empty containers that is subject to these regulations is a material that, if disposed, would be a hazardous or solid waste under the SWMA. After further review, the Department found that it is unnecessary to use the terminology "material that, if disposed, would be a solid or hazardous waste" since the regulation can only apply to hazardous wastes in accordance with the applicability provisions of the hazardous waste regulations and the SWMA. As written in its final form, the regulation only applies to hazardous wastes.

Manifest—Chapter 262a, Subchapter B

In addition to the Federal manifest requirements, the Board proposed to require the use of a manifest that may have up to six parts rather than the four part manifest required by the Federal regulations. The two additional copies are sent from a Commonwealth TSD facility to the generator state and disposal state. If the Commonwealth is both the generator and disposal state, only one manifest copy must be sent to the Commonwealth to satisfy this requirement. The Board believes that hazardous waste cannot be properly monitored unless the generator state and the disposal state can track the waste. Since the manifest contains all of the necessary information once it gets to the TSD facility, the regulation requires the TSD facility to send the manifest copies to the generator and disposal states. The existing Commonwealth regulation requires the use of a manifest that may have up to eight parts. The two copies that the final-form regulations will no longer require are the copy that the generator sends to the generator state and the copy that the generator sends to the disposal state.

Several commentators pointed out that the EPA is considering revising the manifest system to streamline it. The commentators were concerned that Commonwealth facilities will receive no benefit if the EPA does streamline the manifest system. In addition, the commentators felt that sending the additional copies to the generator and TSD states does not serve any health, safety or environmental protection purpose.

In addition to providing the generator with a mechanism for tracking hazardous waste, the Federal manifest system was designed as a paperwork reduction effort so that the EPA would not receive a copy of each manifest from each shipment in each of the 50 states. However, the Board has determined that if the regulatory agency does not receive a manifest copy, it cannot track the movement of the waste to determine whether operators are in compliance with the hazardous waste regulatory requirements. The Department's manifest copy is also used to verify payment of fees required by the HSCA. The biennial report does not provide the Department with enough information to determine compliance with fee payment requirements since the report provides data from the year prior to the year in which the report is compiled. Finally, the manifest data is also used in developing the hazardous waste facilities plan.

The EPA and Department are considering the application of electronic data interchange for manifest submission. This will not take the place of manifest requirements, but it will provide an additional option to satisfy the reporting requirements that will result in less paperwork and faster more accurate data transmission. The Department is currently exploring this option with several companies.

Transfer Facility Requirements—§ 263a.12

The proposed rulemaking retained a Commonwealth requirement for all transporters to submit for approval a preparedness, prevention and contingency (PPC) plan if they utilize in-transit storage of hazardous waste for more than 3 days but no more than 10 days or if they transfer hazardous waste from one vehicle to another. Several commentators pointed out that the proposed rulemaking does not provide a deadline for Department review and approval of PPC plans. One commentator suggested that the Department should be allowed 30 days to complete the review, and if the review is not approved in that time frame, the plan should be considered approved.

The Board agrees that the time frame for the review of an administratively complete plan should be limited. Review of transfer facility PPC plans will be added to the Department's Money Back Guarantee Program, which requires the Department to review listed submissions within a set time frame.

Transporter Compliance with the Manifest System—§§ 263a.20 and 263a.21

The transporter manifest requirements have been clarified to require transporters to print or type their names on the manifest forms and to prohibit a transporter from accepting or transporting hazardous waste that does not accurately correspond with the information contained on the manifest form.

Bonding—§ 263a.32

The provision that requires hazardous waste transporters to post bonds was included in the Commonwealth's hazardous waste regulations prior to this rulemaking. The proposed rulemaking did not include a change to this provision. One commentator felt that transporter bonds are unnecessary and that the requirement is unenforceable due to a United States Department of Transportation (USDOT) ruling which preempts it. The commentator also felt that the financial cost of possible environmental harm resulting from the transportation of hazardous waste is covered by the liability insurance requirements of the regulations.

The Board has retained the bonding requirements for transporters based on a DC Circuit Court decision, *Massachusetts v. US DOT*, 93 F.3rd 890. In that case, the DC Circuit Court found that the Massachusetts bonding requirements for hazardous waste transporters were not preempted by Federal law. The Commonwealth's bonding requirements are similar to Massachusetts's, and therefore, the Board believes that Pennsylvania's bonding requirements are not preempted by Federal law.

The bond is required by the SWMA, regardless of whether or not the environmental impairment risk is covered by liability insurance. In addition, the bond requirement has helped the Department receive timely and accurate paperwork and fee submission from the regulated community. Finally, the Department's ability to hold and forfeit a collateral bond provides incentives to transporters who owe money to the Department for civil penalties to pay those penalties.

Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Purpose and Scope—§§ 264a.1 and 265a.1

The final-form regulations are intended to have the same scope as the proposed rulemaking, but the final-form regulations have fewer subsections than the proposed rulemaking. The final-form regulations have condensed the same information that was contained in the proposed rulemaking into fewer subsections. The final-form regulations also relocated §§ 264a.1(b)(6) and 265a.1(b)(6) (relating to incorporation by reference, purpose, scope and reference) to the specific provisions that deal with surface impoundments and landfills.

Module I Requirements—§§ 264a.13 and 265a.13

The Board's proposed rulemaking retained the requirement for operators of TSD facilities to seek preapproval from the Department before accepting new waste streams. This requirement is known as the Module I or Mod I requirement. Several commentators opposed this requirement. The commentators stated that the requirement to obtain Department approval before accepting new waste streams exceeds Federal requirements, adds unnecessary costs and delays their ability to accept new wastes and customers. The commentators felt that the Mod I is unnecessary since it duplicates approvals granted through the permitting process. One commentator also expressed concern about the safety of confidential business information which the operator may be required to submit as part of the Source Reduction Strategy. One commentator requested that the Board retain the Generic Module I process or an equivalent process to expedite an owner and operator's ability to receive new waste streams and to reduce burdens on the owner and operator who receives consistent waste from various generators.

In the final-form regulations, the Board has replaced the Mod I requirement with case specific individual permit conditions for TSD facilities operating under a permit issued under Chapter 264a. In place of the Mod I, § 264a.13 (relating to general and generic waste analysis) requires an operator to notify the Department before it accepts a new waste stream. The notification requirements will be contained in individual permits rather than in a regulation. Existing permitted facilities will be required to continue to use the Generic Mod I and the Mod I system unless they obtain a permit modification. The requirement for generators to submit their Source Reduction Strategy to the Department as part of this approval process has also been eliminated.

The final-form regulations retain the Generic Mod I and Mod I requirements of § 265a.13 for interim status facilities. These facilities do not have permits or approved waste analysis plans in place, so the Mod I and Generic Mod I requirements in this section are necessary to ensure that the facilities are operating in a manner that is protective of human health and the environment. When these facilities apply for and receive operating permits, the Mod I and Generic Mod I requirements will no longer apply to them, if an alternative to the Mod I requirement has been included in the permit.

General inspection and construction inspection—§§ 264a.15 and 265a.15

The Board proposed retaining the Commonwealth requirement for an operator to obtain prior Department approval before beginning construction on a new facility. One commentator felt that general inspection authority is well provided for elsewhere in law and regulation and that the regulation micro-manages the construction schedule. The commentator also felt that waiting for approvals will extend the time and cost of construction without commensurate benefit. The Board does not intend to manage the construction schedule for any facility, but the Board does believe that the Department should be fully aware of the proposed schedule. This permits the Department to be onsite for critical phases of construction (for example, installation of the liner and drilling of monitoring wells) that are essential to ensuring adequate protection of human health and the environment. Therefore, the Board has decided to retain this requirement.

Content of contingency plan—§§ 264a.52 and 265a.52

The proposed rulemaking required operators to submit contingency plans under §§ 264a.52 and 265a.52. These provisions required that the operators write contingency plans that comply with Department guidance for contingency plans. Several commentators stated that requiring contingency plans to be submitted in accordance with Department guidance for contingency plans is unclear since it does not identify the Department guidance for contingency plans. The commentator suggested that the Board include guidance as part of the final-form regulations. The commentators also believed that this provision is vague since it requires the plan to be submitted "at the time in the application process the Department prescribes." In addition, commentators stated that the Federal "Integrated Contingency Plans" are adequate and the

commentators requested that the Department explain the insufficiency of the Federal requirements. Finally, one commentator asked the Department to include an estimate of the economic impact that the Department contingency plan will have on the regulated community.

The Board has removed from the final-form regulations the requirement to comply with the Department's guidelines. The Department's guidelines were prepared as a guidance document to assist the regulated facilities by consolidating all emergency response plan information into one document. These guidelines are updated periodically with input from the various Department programs that require emergency response plans. The guidance document is not included in the final-form regulations, because it is not intended to be a regulation.

The EPA, as the chair of the National Response Team (NRT), published the *Integrated Contingency Plan Guidance* in the June 5, 1996 *Federal Register*. The EPA's Guidance is intended to provide a mechanism for consolidating multiple plans that one facility may have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan (ICP). Emergency response plans prepared from either guidance would contain very similar information but with different formats, therefore, the Board has decided to allow operators to use either guidance document—the Department's or the EPA's—in preparing their contingency plans. Since the requirements for submitting contingency plans with permit applications are clearly defined in other areas of the regulations, the Board has deleted from the final-form regulations §§ 264a.52(2) and 265a.52(2).

Emergency procedures—§§ 264a.56 and 265a.56

Several commentators stated that the emergency procedure requirements in §§ 264a.56 and 265a.56 (relating to emergency procedures) are unauthorized by State law, to the extent that they require an emergency coordinator to notify a Federal agency. In addition, several commentators noted that the Federal law requires notice to either a designated government official or the National Response Center, while the state provision requires notification to both the Department and the National Response Center. The commentators believe that notification should be given to the Department's regional offices rather than the Department's Central Office in Harrisburg, as the proposed rulemaking required. Other commentators suggested that it is more efficient to notify the Department's Central Office rather than requiring emergency coordinators to figure out which regional office to call. The commentators suggested reviewing the selection of the phone numbers to assure that Department is not duplicating the services and equipment of other Commonwealth entities. Finally, one commentator stated that the proposed rulemaking duplicated Federal language and that the duplicative language should be eliminated.

The Department has reviewed the emergency notification requirements proposed in §§ 264a.56 and 265a.56 and 40 CFR 264.56 and 265.56 and agrees that it is unnecessary to include the requirement to notify the National Response Center given the incorporation by reference of that requirement in 40 CFR 264.56(d)(2) and 265.56(d)(2). The Board has changed the final-form regulations so that the emergency coordinator will continue to notify the Department by telephone, but the emergency coordinator may contact either the Department's regional office or Central office The Board has also deleted §§ 264a.56(2) and (3) and 265a.56(2) and (3) since they are duplicative of requirements incorporated by reference.

TSD Use of the Manifest System—§§ 264a.71 and 265a.71

One commentator noted that the Board should not use the term "six part manifest" in its regulations since the maximum number of manifest copies required is six. Depending on the number of parties involved in handling hazardous wastes, the number of manifest copies could be less than six. Therefore, the Board has deleted this language from the final-form regulations and has clarified that the manifest used by TSD facilities should be either a Commonwealth manifest form or another form approved by the Department.

Biennial Reports—§§ 264a.75 and 265a.75

Several commentators stated that the proposed rulemaking required operators to retain biennial reports for the life of the facility. They felt that this requirement created unnecessary paperwork without serving any practical purpose. The Board agrees and has changed the final-form regulations to conform to the Federal requirement that operators retain biennial reports for 3 years.

Groundwater Monitoring—§ 264a.97

Several commentators stated that compliance and monitoring reports required by proposed § 264a.96 (relating to compliance period) exceed Federal requirements and add unnecessary costs to the regulated community. In addition, it was noted that there are no exemptions from these requirements; and therefore, the proposed rulemaking, unlike the Federal regulations, lacks flexibility that is necessary to deal with different conditions that exist at different sites.

The monitoring and reporting requirements that the Board proposed in § 264a.96 (relating to compliance period) have been relocated to § 264a.97. These provisions are authorized in the Federal program by the incorporated Federal regulations found in 40 CFR 264.91, 264.97—264.99 However, the Federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. In addition, the provisions only apply to certain facilities that have releases to groundwater.

The Board has determined that permit conditions are appropriate for requirements that are determined on a case-by-case basis rather than for requirements that are applicable to an entire class of facilities. This Commonwealth's seasonal, climatological and hydrological features, including a high water table, make it necessary to require all surface impoundments, land treatment units, landfills and, in some cases, waste piles operating in this Commonwealth to conduct the same type of groundwater monitoring and reporting. Consequently, the Board's final-form regulations continue to require certain monitoring and reporting requirements, by regulation rather than by permit condition. Specifically, the Board found that the proposed monitoring and reporting requirements found in proposed § 264a.96 are necessary for the protection of human health and the environment for the following reasons:

1. A quarterly interval between sampling events would allow for early detection of a potential problem and for the operator to respond to and correct a problem before significant wide-spread contamination would occur.

2. The frequency established provides a basis for valid statistical evaluation of groundwater data.

3. Quarterly data generated considers this Commonwealth's seasonal, temporal and spatial variability and climatological variations which are not adequately taken into account with less frequent monitoring.

4. These reporting requirements allow the Department to receive the data in a timely fashion. It can be analyzed and assessed in the early stages of any environmental problem. This provides a proactive rather than a remedial response which is the purpose of the hazardous waste regulations.

These monitoring and reporting requirements, like the Federal requirements, only apply to active facilities that have releases to groundwater. For facilities that have gone through closure and are in postclosure care, some flexibility may be warranted. The Board has provided flexibility on the issue of monitoring and reporting frequency in cases in which the owner or operator of a facility that is conducting postclosure activities has demonstrated that the facility is secure. In these situations, a reduction of the monitoring frequency from quarterly to semi-annually will be allowed. The final-form regulations, by incorporation of Federal language found in 40 CFR 264.117 and 264.118 (relating to postclosure care and use of property; and postclosure plan; amendment of the plan), provide this flexibility.

Closure and Postclosure—Chapters 264a and 265a, Subchapter G

A minor change to §§ 264a.115, 264a.120, 265a.115 and 265a.120 has been made in the final-form regulations clarifying that Commonwealth specific procedures are required for owners or operators to certify closure and postclosure. The final-form regulations retain the certification provisions previously found in § 267.26 and which have been relocated in the final-form regulations to §§ 264a.166 and 265a.166. The final-form regulations are different from the proposed rulemaking because the proposed regulations incorporated by reference 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h). These Commonwealth specific certification procedures are necessary to demonstrate that the facility is closed and that the closure or postclosure bond can be released by the Department. This change was necessary because the Federal provisions in 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h) that were proposed to be incorporated by reference do not provide a mechanism for release of closure or postclosure bonds.

Financial Assurance for Closure and Postclosure Care—Chapters 264a and 265a, Subchapter H

The final-form regulations have been slightly modified. The final-form regulations include cross references that connect together different financial assurance provisions. The final-form regulations also update some of the terminology used in the financial assurance regulations. The term "financial institution" has been broadened to include entities other than banks, and the term "customer" has been changed to "operator."

Financial Assurance for Closure and Financial Assurance for Postclosure—§§ 264a.143, 264a.145, 265a.143 and 265a.145

Several commentators noted that the Commonwealth's failure to incorporate 40 CFR 264.143, 265.143, 264.145 and 265.145 puts the Commonwealth's facilities at a competitive disadvantage, since the Commonwealth closure and postclosure RCRA requirements foreclose all of the financial instrument options available under these Federal provisions. The commentators recommended that the Board incorporate the Federal provisions into the Commonwealth's regulations.

The Board has reviewed all of the Federal provisions and has determined that, with the exception of the bond pledging a corporate guarantee, the Federal financial instruments that are authorized by 40 CFR 264.143 and 264.145 (relating to financial assurance for closure; and financial assurance for post-closure care) fail to satisfy the SWMA requirement that operators submit bonds. In addition, Federal financial assurance mechanisms that require the use of a standby trust fund fail to satisfy the SWMA requirement that all forfeited bond proceeds go to the Solid Waste Abatement Fund.

Liability Requirements—40 CFR 264.147 and 265.147

Several commentators noted that proposed § 264a.147 (relating to liability requirements) contains liability insurance requirements that exceed Federal requirements. Commentators expressed opinions that the Federal requirements are sufficient and should be adopted by reference. The requirement for an ordinary public liability policy, including the amounts required, were proposed to be relocated from § 267.42 (relating to insurance coverage) to §§ 264a.147 and 265a.147 (relating to liability requirements). The proposal anticipated the need to continue to differentiate between environmental impairment and ordinary public liability coverage. Upon further review, the Department has determined that the Federal insurance provisions satisfy the SWMA requirements. Changes have been made to the EPA's insurance requirements since the Commonwealth last amended its hazardous waste insurance requirements, which now include comprehensive general (ordinary public liability) coverage, and consequently, the Federal insurance requirements now satisfy the SWMA requirements. The final rulemaking will incorporate the Federal requirement for liability requirements—the separate proposed requirement for comprehensive general liability (ordinary public liability) coverage has been removed from the final-form regulations.

Wording of Instruments—§§ 264a.151 and 265a.151

The proposed rulemaking incorporated by reference 40 CFR 264.151 and 265.151 (relating to wording of instruments). The Board has decided not to incorporate this Federal provision since the Commonwealth will review each instrument on a case by case basis to determine if it complies with Commonwealth law and if it is appropriate for the facility that is submitting the financial instrument.

Form, Terms and Conditions of Bonds—§§ 264a.154 and 265a.154

The EPA also commented that, unlike the Federal requirements, the Commonwealth does not require the owner or operator to submit the letter of credit at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The Board agrees and has modified §§ 264a.154 and 265a.154 to require submittal of a letter of credit at least 60 days prior to the date on which hazardous waste is first received by the facility.

Special Conditions for Collateral Bonds and Bonds Pledging Corporate Guarantee—§§ 264a.156 and 265a.156

The EPA commented that §§ 264a.156(d)(1) and 265a.156(d)(1) of the proposed rulemaking specified that the letter of credit shall be a standby or guarantee letter of credit. The Federal code only specifies a standby letter of credit and does not appear to allow a guarantee letter of credit. Depending on the Commonwealth's interpretation of "standby letter of credit" and "guarantee letter of credit," the EPA felt that the Commonwealth could be less stringent than the Federal rule. The Board has reviewed the Commonwealth requirements for a standby or guarantee letter of credit and has found that either term is

used to describe the same type of letter of credit. Therefore, the final-form regulations have eliminated the phrase "or guarantee" from §§ 264a.156(d)(1) and 265a.156(d)(1).

The EPA noted that 40 CFR 264.143(d)(5) requires that the letter of credit must be issued for at least 1 year, must be automatically extended for a period of at least 1 year, and must require at least a 120-day notification by certified mail prior to termination. The EPA believes that the Commonwealth could be less stringent because the proposed rulemaking does not include these specific requirements. The final-form regulations include a modification to § 264a.156 to reflect the 1 year minimum time periods and the 120-day termination notice by certified mail. The same change has been made to § 265a.156.

Cost Estimate for Closure and Postclosure Care—§§ 264a.161 and 265a.161

The final-form regulations delete these proposed sections. The proposed provisions require an owner or operator to prepare a detailed written cost of closing the facility and providing postclosure care as specified in 40 CFR 264.142, 264.144, 265.142 and 265.144. These requirements are already incorporated by reference and therefore, the proposed rulemaking is unnecessary.

Bond Amount Adjustments, Adequate Bond and Bond—§§ 264a.162 and 265a.162

The EPA commented that the responsibility for determining if a bond amount change is needed rests with the permittee under the Federal requirements and with the Department under the Commonwealth's requirements. This could make the Commonwealth less stringent if the Department fails to demand that the permittee increase the bond amount in the same circumstances where the permittee would have to do so under the Federal Code. The Board agrees with this comment and has changed the final-form regulations to require operators to deposit with the Department additional amounts of bond if the cost of closure or postclosure increases. This provision has been added to §§ 264a.162 and 265a.162.

Bond Release—§§ 264a.165 and 265a.165

The EPA stated that under the proposed rulemaking in §§ 264a.165(e) and 265a.165(e), the Department has 6 months within which to make a decision on a bond release application. Under the Federal regulations, the regional administrator has 60 days to make a decision and notify the owner. The EPA believes that this could make the Commonwealth less stringent than the EPA. The Board has retained the 6 month review period for a bond release. The Board has determined that the Department must have 6 months to reach a decision on bond release so that the Department has the time necessary to make a correct decision on bond release. Limiting the time period to a 60 day maximum could force a decision which is based on time rather than on accurate and complete site information. Nothing in the final-form regulations prevent the Department from making a bond release decision before the 6 month time period expires.

Management of Containers—§§ 264a.173 and 265a.173

One commentator recommended that the Department incorporate by reference 40 CFR 264.173 and 265.173 (relating to the management of containers) without further restrictions on the labeling of containers. The commentator stated that Federal regulations require that any hazardous waste being accumulated in a satellite area be placed in a container labeled as hazardous waste and that the operator use US DOT approved containers. The commentator pointed out that containers placed in a storage area (including generator storage of less than 90 days) must, according to Federal regulations, have the proper labels that indicate the type of waste in the containers, waste codes of the waste in the containers, and date the waste was placed in the storage area. The Board's proposed rulemaking never included a Commonwealth labeling requirement, although the Preamble inaccurately stated that the labeling requirement was being proposed. The Board's final-form regulations do not include a Commonwealth labeling requirement for containers, and any applicable Federal labeling requirements will continue to apply.

Containment—§§ 264a.173, 265a.173, 264a.175 and 265a.175

Several commentators noted that proposed §§ 264a.175 and 265a.175 (relating to management of containers) included detailed provisions applicable to storage of hazardous waste containers. Specific requirements for maximum container height, width and depth of container groups and aisle widths were prescribed. Comparable Federal regulations do not contain these exact requirements. Commentators stated that the proposed Commonwealth provisions do not accommodate newer containers known as "totes" and suggest that the final-form regulations be more performance oriented.

The Board agrees and has modified the proposed language in §§ 264a.175 and 265a.175 (relating to containment in the proposed regulation), to exclude the prescriptive nature of the requirements and modify the proposed rulemaking towards performance-based requirements directed toward the use of best management practices, that is, maintaining appropriate aisle spacing, heights and configuration of containers to allow for the use of more modern containers and to facilitate inspections and unobstructed movement of emergency equipment and personnel. The requirements for the management of containers have also relocated to §§ 264a.173 and 265a.173 (relating to management of containers) in the final-form regulations.

Inspections—§§ 264a.195 and 265a.195

One commentator suggested deleting the requirement found in § 265a.195 (relating to inspections) to inspect hazardous waste tanks every 72 hours when the facility is not operating. The commentator felt that site specific best management practices could be employed to replace inspection requirements when the facility is not operating. Another commentator stated that the inspection requirement should be retained.

After consideration, the Board has decided to retain the proposed rulemaking. The proposed language clarified that the inspections were only required at facilities that were not operating but that continued to store waste in the tank and tank system components. The Board has determined that, as long as waste remains in the tank and tank components, there is a potential for leaks and spillage, and therefore, the facility should be inspected on a regular basis.

Surface Impoundments—§ 264a.221 and Chapter 264a, Subchapter K

In the final-form regulations, the variance procedure that was proposed for surface impoundments was relocated from § 264a.1(b)(6) to the specific subchapters for surface impoundments, § 264a.221 (relating to design and operating requirements). This was done for clarity and the convenience of surface impoundment operators.

Land Treatment—§ 264a.276 and Chapter 264a, Subchapter M

The final-form regulations eliminate a redundant requirement from the proposal. In the proposal, § 264a.276 (relating to food chain crops) repeated the annual application of cadmium rates found in 40 CFR 264.278(b)(ii) (relating to unsaturated zone monitoring), which is incorporated by reference. Reiterating those application rates in the regulation is not necessary.

Landfills—§ 264a.301 and Chapter 264a, Subchapter N

In the final-form regulations, the variance procedure that was proposed for surface impoundments and landfills was relocated from § 264a.1(b)(6) to the specific subchapter for landfills, § 264a.301 (relating to design and operating requirements). This was done for clarity and the convenience of operators of landfills.

Corrective Action for Solid Waste Management Units—40 CFR Part 264, Subpart S

The proposed rulemaking did not incorporate by reference the corrective action program found in 40 CFR Part 264, Subpart S (relating to corrective action for solid waste management unit). Upon further review, the Board has decided to include the corrective action program in the Commonwealth's hazardous waste regulation. The Board's decision is based on an EPA comment stating that the Commonwealth must have regulations for corrective action if it intends to seek authorization for corrective action. Although the Commonwealth has not decided whether or not it will seek authorization for corrective action, the final-form regulations do include the corrective action provisions. However, unlike the other provisions of the final-form regulations, the effective date of the corrective action provisions is the date on which the EPA approves of the corrective action provisions as part of the Commonwealth's hazardous waste program. The Board has decided to include the corrective action regulations in the final-form regulations so that the Commonwealth can easily seek authorization for the corrective action program in the future, if it decides that it wants to administer the corrective action program.

Recyclable Materials Used in a Manner Constituting Disposal—Chapter 266a, Subchapter C

The proposed rulemaking required prior written Department approval of products that contain recyclable materials to be used by the public in a manner that constitutes disposal. The Board has determined that this requirement is no longer necessary. After surveying other states that do not have this requirement, the Department found that these states did not report any problems that they felt could be aided by inclusion of this type of requirement, and therefore, the Board has eliminated this requirement from the final-form regulations.

Waste Oil—§§ 261a.6(a) and 261a.5(a); Chapter 266a.40, Subchapter E; 40 CFR 261.5(j) and 261.6(a)(4)

The Board received several comments stating that the regulations regarding waste oil were confusing since the Board only proposed to renumber the existing regulations but did not propose to incorporate the Federal waste oil provisions into the Commonwealth's waste program. The commentators were particularly confused about cross references to the Federal waste oil requirements that are found in some of the Federal provisions that the Commonwealth has incorporated by reference. After reviewing the waste oil provisions of the proposed rulemaking, the Board has decided to write out the waste oil provisions with cross reference corrections rather than rely on an editor's note stating that the existing waste oil provisions are being renumbered. Therefore, the final-form regulations include the text of the waste oil regulations that were intended to be renumbered only. The text of the final-form regulations include corrections to cross reference citations. The final-form regulations do not change substantively the requirements of the Commonwealth's waste oil regulations that were found previously in Chapter 266, Subchapter E.

The final-form regulations have several provisions that regulate waste oil. The final-form regulations provide that, unless excluded by Chapter 266a, Subchapter E, waste oil that is hazardous and that is being burned for energy recovery is subject to Chapter 266a, Subchapter E. The final rulemaking does not substantively amend the Department's existing regulations regarding waste oil burned for energy recovery. The only substantive change that has been made to the Department's proposed rulemaking regarding waste oil is that the Commonwealth has incorporated by reference the Federal CESQG provision found in 40 CFR 261.5(j) without modification. This provision, as incorporated, subjects mixtures of CESQG waste and waste oil to Chapter 266a, Subchapter E if the mixtures are being burned for energy recovery and to the regulations applicable to all CESQG hazardous waste which are found at 40 CFR 261.5 and § 261a.5 if the mixtures will be recycled or reused.

In sum, several provisions of the hazardous waste regulations apply to waste oil. 40 CFR 261.6(a)(4) and § 261a.6(a) regulate waste oil that is hazardous solely due to a characteristic and that is to be recycled or reused. If this type of waste oil is destined to be burned for energy recovery, § 261a.6(a) requires the operator to comply with Chapter 266a, Subchapter E. If this type of waste oil is not destined to be burned for energy recovery, § 261a.6(a) requires the operator to comply with the residual waste regulations. In the proposed rulemaking, § 261a.3(b) set forth the same requirements that have been relocated to 40 CFR 261.6(a)(4) and § 261a.6(a) of the final-form regulations. Chapter 266a, Subchapter E continues to direct the operator dealing with waste oil that is destined to be burned for energy recovery to the applicable provisions of the regulations. Mixtures of CESQG waste and waste oil are regulated under 40 CFR 261.5 and § 261a.5. In accordance with 40 CFR 261.5(j), if mixtures of CESQG waste and waste oil are burned for energy recovery, the mixtures are subject to Chapter 266a, Subchapter E. The final-form regulations are not intended to change the substance of Chapter 266a, Subchapter E. The changes made to Chapter 266a, Subchapter E are intended to correct cross references and to take into account the adoption of the boiler and industrial furnace rule, incorporated by reference in Chapter 266a, Subchapter H (relating to hazardous waste burned in boilers and industrial furnaces). The Department has proposed a rulemaking specifically for waste oil at 29 Pa.B. 1975. Any substantive changes to the waste oil provisions will be made through that rulemaking

Recyclable Materials Utilized for Precious Metal Recovery—Chapter 266a, Subchapter F

The Board proposed to incorporate by reference the Federal provisions for precious metal recovery. In addition, the proposed rulemaking required operators of precious metals recovery facilities to obtain treatment permits under the proposed language of § 261a.6 (relating to recyclable materials). After further consideration, the Board has determined that requiring individual permits for these facilities discourages recycling of precious met-

als. Therefore, the Board has added a new permit by rule in § 270a.60(b) for facilities that recover precious metals. This permit by rule will satisfy the SWMA requirement for a permit without imposing a burden on the facilities that will discourage them from recycling precious metals. In addition to the permit by rule for precious metals recovery facilities, § 266a.70 (relating to applicability and requirements) grants to transporters transporting recyclable materials utilized for precious metals recovery a license for the transportation of the recyclable materials if they comply with 40 CFR 263.11 (relating to EPA identification number) and § 263a.23 (relating to hazardous waste transportation fees).

Spent Lead-Acid Batteries Being Reclaimed—Chapter 266a, Subchapter G

The final-form rulemaking clarifies that facilities that treat spent lead-acid batteries prior to reclamation shall comply with § 261a.6 (relating to recyclable materials) unless the facilities qualify for the permit by rule for battery reclamation found in § 270a.60(b).

Interim Status Standards for Burners—§ 266a.103

One commentator stated that the proposed 8,000 Btu/lb. minimum heating value is better than the weak Federal standard. The commentator felt that the Board was correct in identifying the need for assurance that hazardous wastes are being burned for energy recovery, rather than disposal.

The Board has determined that substituting an 8,000 Btu/lb. minimum heating value for the Federal 5,000 Btu/lb. minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in this Commonwealth. The substitution proposed in § 266a.103(1) (relating to interim status standards for burners) was applicable only to interim status BIFs that have not certified compliance with certain emission standards or received a final permit. After further research, the Department found that all interim status BIF facilities in this Commonwealth have certified compliance with the EPA, meaning that all of the Commonwealth's interim status BIF facilities meet specified emissions standards established by the EPA. Furthermore, there will be no additional interim status BIF facilities in this Commonwealth since the owners or operators of facilities wishing to initiate burning or processing of hazardous waste in a BIF unit shall first obtain a permit.

The 8,000 Btu/lb. minimum heating value substitutions proposed in § 266a.108 (relating to small quantity onsite burners) will not be included in the final-form regulations. After further review of the incorporated Federal provisions and the existing regulations, the Board found that the existing regulations in § 266.30(f) (relating to applicability for hazardous waste burned for energy recovery) that were proposed to be deleted allow operators to use a 5,000 Btu/lb. minimum heating value as long as the operator complies with 40 CFR 266.104—266.112 (relating to hazardous waste burned in boilers and industrial furnaces). In the final-form regulations, small quantity onsite burners are required to comply with 40 CFR 266.108 (relating to small quantity onsite burner exemption), which the Department has determined to provide adequate regulation for onsite burners. Therefore, the Board is deleting from the final-form regulations proposed § 266a.108 (relating to small quantity onsite burner exemption).

Hazardous Waste Permit Program—Chapter 270a

The proposed rulemaking incorporated by reference the Federal permitting program and retained many of the existing Commonwealth permitting procedural requirements. After further review, the Board has found that many of the incorporated provisions duplicate existing Commonwealth requirements that were included in the proposed rulemaking. The Board also determined that some of the procedural requirements that were retained in the proposed rulemaking should have been relocated to sections that dealt more directly with the substantive requirements that were subject to the procedural requirements. Therefore, the final-form regulations do not include those provisions that are duplicative of Federal requirements that the final-form regulations incorporate by reference. In addition, the Board has relocated to different section numbers some of the procedural requirements that were included in the proposed rulemaking so that the procedural requirements can be found in the same section as the relevant substantive requirements.

Effect of a permit—§ 270a.4

The EPA also commented that the Commonwealth has excluded 40 CFR 270.4 (relating to effect of a permit) from its incorporation by reference of 40 CFR Part 270 (relating to the hazardous waste permit program). This provision addresses the effect of a permit. The EPA stated that the Federal section is required for authorization; and therefore, the Commonwealth is less stringent. The Board has included this provision in the Commonwealth's regulations. However the final-form regulations clarify that nothing contained in the incorporated language prohibits the Department from taking any enforcement action under section 602 of the SWMA (35 P. S. § 6018.602), which authorizes the Department to take enforcement actions against permitted facilities for any violation of the SWMA or any regulations promulgated under the SWMA.

General application requirements and permit issuance procedures—§ 270a.10

The EPA commented that the Commonwealth is required to include procedural requirements that are equivalent to certain procedural requirements found in 40 CFR Part 124 (relating to procedures for decision making). The Board has reviewed the essential procedural requirements found in 40 CFR Part 124 and has included the text rather than an incorporation by reference of those requirements. The number of essential provisions contained in Part 124 are minimal and the cross reference problems that resulted from incorporating these requirements into the Commonwealth hazardous waste regulatory numbering scheme were most easily resolved by including the text of those requirements. In response to the EPA comments, the Board has substituted applicable Commonwealth citations for any Part 124 citations that are included in the incorporated language. The essential 40 CFR Part 124 text is found in the final-form regulations in § 270a.10 (relating to general application requirements and permit issuance procedures).

Classification of Permit Modification—Appendix I for 40 CFR 270.42

The final-form regulations incorporate by reference the Federal classification system for permit modifications and the Federal public notice requirements for those permit modifications. One commentator noted that Appendix I would increase the scope of permit changes that could be instituted by the Department and the permittee, with no effective public participation. The commentator felt that without public notice this provision would be abused. The existing Commonwealth regulations have minor and major modifications. The Federal permit modifications are divided into three classes. Class 1 modifications are the

most minor modifications and are subject to less stringent notification requirements than Class 2 or Class 3 permit modifications. The Commonwealth's existing minor modifications are essentially the same as the Federal class 1 modifications. All three classes of permit modification require the permittee to notify everyone on the facility mailing list (including local and county government) of the proposal. In the minor modification (Class1), anyone can request the Secretary of the Department to review and deny the modification request. Class 2 and 3 modification procedures call for full public participation, including publishing the notice in a major local newspaper, announcement of at least a 45-day comment period, and announcement of a public meeting and a public hearing, if requested. The Department believes that adopting this appendix by reference will increase public participation since the current regulations do not require the Department or the permittee to notify the public of a minor permit modification.

Permits by Rule—§ 270a.60

The Board received many comments regarding its permits by rule. The Commonwealth uses permits by rule in many instances for which the Commonwealth is more stringent than the Federal government. Without the permits by rule, the Commonwealth would require individual permits. Consequently, the permits by rule are intended to assure proper management of hazardous waste without causing overly burdensome regulation. After reviewing the proposed rulemaking and comments received, the final-form regulations have been modified. In addition to the changes made to this section in response to the comments summarized as follows, the permit by rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form regulations. Since the refinery is the actual reclamation unit, there is no need for a permit or permit by rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit by rule for treatment prior to onsite reclamation.

One commentator felt that permits by rule serve the permitted industries by providing the illusion of regulation instead of serving the public by providing effective regulation. The commentator thought that abolishing the permits by rule and requiring individual permits would be better than retaining them.

In general, permit by rule is available under the Commonwealth's regulations to the owners or operators of certain hazardous waste management facilities that are exempt from permit and other requirements under Federal hazardous waste regulations. Permit by rule satisfies the SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities and provides adequate regulatory oversight. The owners or operators of permit by rule facilities shall notify the Department of their activity and meet some basic facility standards. The notification requirement alone is important to the Department so that inspectors may schedule and prioritize periodic visits to a permit by rule facility. In situations where a facility is not in compliance with the applicable permit by rule requirements, particularly to the extent that harm or threat of harm to people or the environment is present, the Department may require the owners or operators of these facilities to obtain an individual permit.

Several commentators felt that the Commonwealth should adopt the Federal regulation in 40 CFR 270.1(c)(2)(v) (relating to purpose and scope) which specifically excludes wastewater treatment units that treat hazardous waste, from RCRA permitting and RCRA permit by rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. A commentator stated that the Federal exclusion from permitting and permit by rule requirements for units regulated under the Clean Water Act eliminates duplication of effort by different departments of the Federal agency and allows the regulated community to focus its compliance efforts on the regulations that are most appropriate to the operating unit. Concern was also expressed over the additional recordkeeping requirements for operators as well as additional inspection requirements for State hazardous waste inspectors. A commentator stated that if the SWMA requires permit by rule for units such as elementary neutralization and wastewater treatment units, the regulations should clarify that wastes to these units do not count in determining if the site is a large quantity generator.

Permit by rule is available to wastewater treatment units, and certain other hazardous waste management facilities, to satisfy the Commonwealth SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities. The Department has examined the permit by rule provisions of proposed § 270a.60 and determined that they will reduce or streamline many requirements that would otherwise be required by an individual permit. With regard to CESQG quantity determinations, the Federal regulation in 40 CFR 261.5(c)(2) (relating to CESQGs), incorporated by reference with this rulemaking, clearly states that generator quantity determinations do not need to include hazardous wastes that are managed in onsite elementary neutralization or wastewater treatment units.

Several commentators noted that § 270a.60(b)(1)(i) of the proposed rulemaking retains the Commonwealth's prohibition against intracompany shipments of hazardous wastes to an elementary neutralization or wastewater treatment permit by rule facility. This limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. The prohibition does not exist in neighboring states. For instance, the commentator pointed out, member companies can send hazardous wastes from their Commonwealth plants to Ohio plants for treatment, but cannot receive intracompany shipments from either Ohio or this Commonwealth. This type of exception to the Federal rules is typical of the discrepancies between the Commonwealth's rules and the Federal rules that were intended to be eliminated by the regulatory basics effort. This section should be consistent with Federal regulations and allow intracompany shipments of wastes for treatment. Conforming to the Federal elementary neutralization/wastewater treatment unit provisions will afford Commonwealth business the opportunity to use existing investment to reduce operating costs, and reduce risks associated with transporting these wastes to neighboring states. It should be noted the final-form regulations do allow intracompany transfers for reclamation.

In the final-form regulations changes have been made to the elementary neutralization and wastewater treatment unit permit by rule provisions to allow receipt of offsite hazardous waste shipments for treatment at these facilities, if the conditions of the permit by rule are not violated (for example, compliance with an NPDES permit or pretreatment requirements is maintained). To prevent classification as a commercial hazardous waste treatment

facility and consequential application of the siting, fee assessment and other requirements of the HSCA, the permit by rule facilities shall be limited to receipt of wastes from other facilities operated or owned by the same generator. Limiting offsite wastes in this manner will also provide additional assurance that the owner or operator of the permit by rule facility has a better knowledge of the physical and chemical character and composition of the wastes being treated at the facility.

One commentator questioned whether operators would continue to be allowed to recycle oily wastewaters from other facilities they own and operate under proposed § 270a.60(b)(5)(iii) (relating to onsite reclamation) since the proposed rulemaking does not define onsite as including materials generated at facilities owned and operated by the same generator. If this is the case, the commentator requests that a provision allowing recycling of materials generated at facilities owned and operated by the same generator be included in the new regulations. Proposed § 270a.60(b)(5)(iii) provided for the reclamation of materials generated at other facilities operated or owned by the same generator at an onsite reclamation permit by rule facility. This is included in the final-form regulations as well.

The EPA commented that the permit by rule for facilities storing hazardous waste onsite in tanks, containers or containment buildings and reclaiming them under the proposed § 270a.60(b)(6) is less stringent than Federal requirements. The EPA noted that, according to 40 CFR 261.6(c)(1) (relating to recyclable materials), these facilities are subject to the permitting requirements unless specifically exempted under 40 CFR 261.6(a)(3). The Board agrees that the permit by rule proposed in § 270a.60(b)(6) for storage of hazardous waste onsite prior to reclamation under the onsite reclamation permit by rule provisions of § 270a.60(b)(5) could be less stringent than Federal storage permit requirements. The storage permit by rule provision has been dropped from the final-form regulations.

The EPA also commented that the variance from any permits by rule described in proposed § 270a.60(b)(3)—(6) would make the Commonwealth's program less stringent than the Federal program if the variance could apply to requirements which are equivalent to or less stringent than the Federal Code. To be as stringent as the Federal program, the EPA noted that the Commonwealth may only grant a variance from requirements that are more stringent than the Federal requirements. The Board has revised the permit by rule provisions of proposed § 270a.60 to insure that they only apply to hazardous waste activities that are exempt from Federal permit requirements.

Minor Changes

In addition to the above revisions, the Board has made minor changes to the following sections: §§ 260a.1—260a.3, 260a.10, 261a.1, 261a.3, 261a.5, 261a.7, 262a.10, 262a.12, 262a.20—262a.23, 262a.41, 262a.55—262a.57, 262a.80, 263a.10, 263a.11, 263a.13, 263a.20, 263a.30, 264a.1, 264a.11, 264a.12, 264a.75, 264a.96, 264a.147, 264a.149, 264a.150, 264a.153, 264a.156—264a.160, 264a.166, 264a.191, 264a.221, 264a.251, 264a.301, 264a.570, 265a.1, 265a.11, 265a.12, 265a.56, 265a.71, 265a.75, 265a.141, 265a.147, 265a.149, 265a.150, 265a.153, 265a.156—265a.160, 265a.191, 265a.193, 265a.194, 266a.40, 266a.41, 266a.108, 266b.30, 266b.50, 266b.60, 268a.1, 270a.2—270a.6, 270a.10, 270a.12, 270a.60, 270a.64, 270a.72, 270a.81 and 270a.82.

F. *Benefits, Costs and Compliance*

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

Benefits

The final-form regulations will incorporate by reference the Federal regulatory requirements for hazardous waste management and add Commonwealth requirements to the Federal requirements in instances in which the Department has identified 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 final-form regulations will align more closely the text and numbering system of the Commonwealth 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 final-form regulations will eliminate the confusion caused by using two different sets of regulations—those used by 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 the 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 regulatory changes since the final-form 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 this rulemaking 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 fewer manifest copies 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 reduced mail handling and data entry costs associated with reduced manifesting requirements.

Newly permitted facilities or facilities seeking permit renewals will no longer be required to submit Module 1 forms. Therefore, operators will no longer be required to pay a fee to amend their Module 1 forms every time that they receive a new waste stream. The final-form 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 final-form regulations, and how the changes impact on specific groups within the regulated community. In addition, the Department intends to meet with industry groups to develop workshops to explain the regulatory changes and how the changes affect particular types of industry. Department field staff will also provide compliance assistance during routine facility inspections.

The Department intends to develop a series of compliance guides customized for specific groups of entities affected by this final-form regulations. These compliance guides will be a printed version of the full text of the Federal regulations with any Commonwealth changes made to the Federal regulations incorporated into the text. Therefore, the Department expects most operators to be able to use the guides as stand alone documents that synthesize all of the Federal and Commonwealth requirements into one guide. The Department expects to publish different guides to target the needs of specific groups. For example, there could be a guide for each of the following groups: CESQGs, small quantity generators, generators, transporters, onsite reclamation facilities and permit by rule facilities. The guides, as well as the fact sheets and any other written material the Department publishes, will be available on the worldwide web.

Paperwork Requirements

These final-form regulations will result in a net reduction in paperwork requirements. Manifest copies will be reduced 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 final-form regulations.

G. *Pollution Prevention*

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these final-form regulations have incorporated the following provision and incentive to meet that goal: § 262a.100 (relating to source reduction strategy) provides that any person or municipality that generates hazardous waste shall 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*

These final-form regulations 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)), on February 23, 1999, the Department submitted a copy of this final-form rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

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

These final-form regulations were approved by the House and Senate Environmental Resources and Energy Committees on March 15, 1999. IRRC met on March 25, 1999, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745a.5(e)).

J. *Findings of the Board*

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 6407.

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

K. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by:

(1) Deleting §§ 260.1, 260.2, 260.11, 260.21, 260.22, 261.1—261.7, 261.9—261.11, 261.20—261.24, 261.30—261.34, 261.41, 262.10—262.13, 262.20, 262.22, 262.23, 262.30, 262.33, 262.34, 262.40—262.43, 262.45, 262.46, 262.50, 262.53, 262.55, 262.60, 262.70, 262.80, 263.10, 263.11, 263.13, 263.20—263.27, 263.30—263.32, 264.1, 264.11—264.17, 264.31—264.35, 264.37, 264.51—264.56, 264.70—264.82, 264.90, 264.91, 264.96—264.100, 264.110—264.115, 264.117—264.119, 264.140, 264.171—264.180, 264.190—264.199, 264.220—264.225, 264.227—264.231, 264.250—264.258, 264.270—264.273, 264.276, 264.278—264.282, 264.300—264.305, 264.309, 264.310, 264.312—264.316, 264.340—264.345, 264.347, 264.351—264.353, 264.500—264.505, 264.520—264.522, 264.600—264.603, Appendices A—E, 265.1, 265.11—265.17, 265.31—265.35, 265.37, 265.51—265.56, 265.70—265.82, 265.90—265.94, 265.110—265.115, 265.117—265.119, 265.140, 265.142, 265.144, 265.171—265.174, 265.176—265.178, 265.190—265.201, 265.220, 265.222, 265.223, 265.225, 265.226, 265.228—265.230, 265.250—265.253, 265.256—265.258, 265.270, 265.272, 265.273, 275.276, 265.278—265.282, 265.300, 265.302, 265.309, 265.310,

265.312—265.315, 265.340—265.342, 265.345, 265.347, 265.351, 265.370, 265.373, 265.375, 265.377, 265.381, 265.382, 265.400—265.406, 265.430—265.433, 265.435, 265.440—265.448, 265.450—265.452, 265.460—265.462, 265.470, 265.500—265.505, 265.520—265.522, 266.20—266.24, 266.30—266.35, 266.40—266.44. 266.70, 266.80, 266.90, 266.100—266.104, 266.201—266.206, 266.210—266.220, 266.230—266.240, 266.250—266.256, 266.260—266.262, 266.270, 266.280—266.283, 267.1, 267.2, 267.11—267.30, 267.41—267.46, 267.51—267.59, 267.61, 267.62, 269.1, 269.11—269.14, 269.21—269.29, 269.41—269.50, 269.101—269.103, 269.111, 269.121—269.124, 269.131, 269.132, 269.141—269.143, 269.151—269.155, 269.161—269.163, 269.201, 269.211, 269.221, 269.231, 270.1—270.4, 270.11—270.13, 270.21, 270.22, 270.31—270.33, 270.41—270.43, 270.60; and by

(2) Adding §§ 260a.1—260a.3, 260a.10, 260a.20, 260a.30, 260a.1, 260a.3—260a.7, 261a.1, 261a.3—261a.7, 262a.10, 262a.12, 262a.20—262a.23, 262a.41, 262a.42, 262a.55—262a.57, 262a.80, 262a.100, 263a.10—263a.13, 263a.20, 263a.21, 263a.23—263a.26, 263a.30, 263a.32, 264a.1, 264a.11—264a.13, 264a.15, 264a.18, 264a.56, 264a.71, 264a.75, 264a.78—264a.83, 264a.97, 264a.101, 264a.115, 264a.120, 264a.141, 264a.143, 264a.145, 264a.147—264a.151; 264a.153—264a.160, 264a.162—264a.169, 264a.173, 264a.180, 264a.191, 264a.193—264a.195, 264a.221, 264a.251, 264a.273, 264a.276, 264a.301, 264a.570, 264a.1100, 264a.1101, 265a.1, 265a.11—265a.13, 265a.15, 265a.18, 265a.56, 265a.71, 265a.75, 265a.78—265a.83, 265a.115, 265a.120, 265a.141, 265a.143, 265a.145, 265a.147—265a.150, 265a.153—265a.160, 265a.162—265a.169, 265a.173, 265a.179, 265a.191, 265a.193—265a.195, 265a.382, 266a.20, 266a.40—266a.44, 266a.70, 266a.80, 266a.100, 266b.1, 266b.10, 266b.30, 266b.50, 266b.60, 268a.1, 269a.1, 269a.11—269a.14, 269a.21—269a.29, 269a.41—269a.50, 269a.101—269a.103, 269a.111, 269a.121—269a.124, 269a.131, 269a.132, 269a.141—269a.143, 269a.151—269a.155, 269a.161—269a.163, 269a.201, 269a.211, 269a.221, 269a.231, 270a.1—270a.6, 270a.10, 270a.12, 270a.29, 270a.32, 270a.41, 270a.42, 270a.43, 270a.51, 270a.60, 270a.64, 270a.72 and 270a.80—270a.84 to read as set forth in Annex A.

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

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

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

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

Fiscal Note: Fiscal Note 7-328 remains valid for the final adoption of the subject regulations.

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 1957 (April 10, 1999).)

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260. (Reserved).

§ 260.1. (Reserved).

§ 260.2. (Reserved).

§ 260.11. (Reserved).

§ 260.21. (Reserved).

§ 260.22. (Reserved).

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchap.
A. GENERAL
B. DEFINITIONS
C. RULEMAKING PETITIONS

Subchapter A. GENERAL

Sec.
260a.1. Incorporation by reference, purpose, scope and applicability.
260a.2. Availability of information.
260a.3. Terminology and citations related to Federal Regulations.

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

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

(b) Regarding 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 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.

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 otherwise noted:

(1) The terms "Administrator," "Regional Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and "State Director" are substituted 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 substituted with the act.

(3) "Environmental Protection Agency" or "EPA" and all names or associated acronyms are substituted with "Department" except when referring to the terms "EPA Form," "EPA Identification Number," "EPA Acknowledgment of Consent," "EPA Hazardous Waste Number," "EPA publication," "EPA publication number," "EPA Test Methods" and "EPA Guidance" including any mailing addresses associated with these terms.

(4) "Used oil" is substituted with "waste oil."

(5) "State," "authorized state," "approved state" or "approved program" is substituted with "the Commonwealth."

(6) 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 is accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

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

(8) The Commonwealth equivalent of 40 CFR Part 279 (relating to standards for the management of used oil) is found in Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

(b) Federal regulations that are cited in this article or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

(c) References to 40 CFR Part 124 (relating to procedures for decision making) found in Federal regulations incorporated by reference are substituted with Pennsylvania procedures found in Chapter 270a.

(d) References to the "Department of Transportation" or "DOT" means the United States Department of Transportation.

(e) The effective date for the *Code of Federal Regulations* incorporated by reference in this article is May 1, 1999. The incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.

Subchapter B. DEFINITIONS

Sec.
260a.10. Definitions.

§ 260a.10. Definitions.

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

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

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.

Existing tank system or *existing component*—The Federal definition for "existing tank system or existing component" in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

Facility—The land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed.

Fund—The Host Municipalities Fund.

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

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

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.

Management or *hazardous waste management*—The entire process, or a part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process. The term "hazardous waste management" refers to management of hazardous waste.

New hazardous waste management facility or *new facility*—The Federal definition for "new hazardous waste management facility or new facility" in 40 CFR 260.10 is incorporated by reference except that the date referenced is November 19, 1980, instead of October 21, 1976.

New tank system or *new tank component*—The Federal definition for "new tank system or new tank component" in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

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.

Person—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency, State institution and agency (including, but not limited to, the Department of General Services and the State Public School Buildings Authority), or other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of the act prescribing a fine, imprisonment or penalty, or a combination of the foregoing, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

Qualifying facility—A commercial hazardous waste treatment or disposal facility, or expansion to an existing hazardous waste treatment or disposal facility, which was permitted after December 18, 1988, is operating, and fulfills the commercial hazardous waste treatment or disposal needs identified in the Pennsylvania Hazardous Waste Facilities Plan.

RCRA—The Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

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

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

Responsible official—For corporations, a corporate officer; for limited partnerships, a general partner; for all other partnerships, a partner; 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.

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.

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.

Storage—The containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

Transportation—The offsite removal of solid waste at any time after generation.

Subchapter C. RULEMAKING PETITIONS

Sec.
260a.20. Rulemaking petitions.
260a.30. Variances from classification as a solid waste.

§ 260a.20. Rulemaking petitions.

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).

§ 260a.30. Variances from classification as a solid waste.

The coproduct transition scheme is as follows:

(1) Those materials previously regulated as coproducts prior to May 1, 1999, and that are not otherwise excluded as solid wastes, continue to be regulated as if excluded from classification as a solid waste until a variance from classification as a solid waste under 40 CFR 260.30 (relating to variances from classification as a solid waste) is acted upon by the Department. The request for a variance shall be filed by May 1, 2001.

(2) To qualify under paragraph (1), a person producing, selling, transferring, possessing or using a material as a coproduct not exempt from regulation under other provisions of this article shall submit by May 1, 2001, a written notification to the Department that the exemption in paragraph (1) applies to the person's activity.

CHAPTER 261. (Reserved)

§§ 261.1—261.7. (Reserved).

§ 261.9. (Reserved).

§§ 261.20—261.24. (Reserved).

§§ 261.30—261.34. (Reserved).

§ 261.41. (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 conditionally exempt 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, 40 CFR Part 261 and its appendices (relating to identification and listing of hazardous waste) are incorporated by reference. The substitution of terms in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 261.4(f)(1), 261.10 and 261.11 (relating to notification of treatability studies; criteria for identifying the characteristics of hazardous waste; and criteria for listing hazardous waste). The substitution of terms in § 260a.3(a)(3) does not apply to Appendix IX (relating to wastes excluded under §§ 260.20 and 260.22) of the CFR.

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

40 CFR 261.3(c)(2)(ii)(C) (relating to certain nonwastewater residues such as slag resulting from HTMR processing of K061, K062 or F006 waste) is not incorporated by reference.

§ 261a.4. Exclusions.

In addition to the requirements incorporated by reference, a copy of the written state agreement required by 40 CFR 261.4(b)(11)(ii) (relating to exclusions) 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 conditionally exempt small quantity generators.

(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) is replaced with Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

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

(c) A conditionally exempt small quantity generator complying with this subchapter and 40 CFR 261.5 is deemed to have a license for the transportation of those conditionally exempt small quantity generator wastes generated by the generator's own operation.

§ 261a.6. Requirements for recyclable materials.

(a) The reference to "Part 279 of this chapter" in 40 CFR 261.6(a)(4) (relating to requirements for recyclable materials) is replaced with one of the following:

(1) The residual waste regulations in Article IX (relating to residual waste management) if the waste oil is being recycled or reused in a manner other than burning for energy recovery.

(2) Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery) if the waste oil is destined to be burned for energy recovery.

(b) 40 CFR 261.6(c) is not incorporated by reference.

(c) Instead of 40 CFR 261.6(c), owners and operators of facilities that store or treat recyclable materials are regulated under all applicable and incorporated provisions of 40 CFR Parts 264 and 265, Subparts A—L, AA, BB, CC and DD; 40 CFR Part 264 Subpart X; 40 CFR Parts 266 and 270, except as provided in 40 CFR 261.6(a).

(1) In addition, owners and operators of facilities regulated under this section are subject to the applicable provisions of:

(i) Chapter 264a and Chapter 265a, Subchapters A—L.

(ii) Chapter 264a, Subchapters X and DD

(iii) Chapters 266a and 270a.

(2) Recycling processes that are not treatment are exempt from regulation except as provided in 40 CFR § 261.6(d).

(3) The sizing, shaping or sorting of recyclable materials will not be considered treatment for purposes of this section.

(d) The requirements of §§ 270a.3, 264a.82, 264a.83, 265a.82 and 265a.83 do not apply to facilities or those portions of facilities that store or treat recyclable materials.

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

(a) Hazardous waste removed from either an empty container or an inner liner removed from an empty container, as defined in 40 CFR 261.7(b) (relating to residues of hazardous waste in empty containers), is subject to Chapters 261a—265a, 268a and 270a.

(b) For purposes of this section, the term "containers" includes tanks.

CHAPTER 262. (Reserved)

§§ 262.10—261.13. (Reserved).

§ 262.20. (Reserved).

§ 262.23. (Reserved).

§ 262.30. (Reserved).

§ 262.33. (Reserved).

§ 262.34. (Reserved).

§§ 262.40—262.43. (Reserved).

§ 262.45. (Reserved).

§ 262.46. (Reserved).

§ 262.50. (Reserved).

§ 262.53. (Reserved).

§ 262.55. (Reserved).

§ 262.60. (Reserved).

§ 262.70. (Reserved).

§ 262.80. (Reserved).

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchap.

Subchapter A. GENERAL

Sec.

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

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR 262.10(g) (relating to purpose, scope and applicability) the term "section 3008 of the act" is replaced with "Article VI of the Solid Waste Management Act (35 P. S. §§ 6018.601—6018.617)."

§ 262a.12. EPA identification numbers.

(a) Regarding 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).

(b) In addition to the requirements incorporated by reference, a generator shall submit a subsequent notification to the Department if:

(1) The generator activity moves to another location.

(2) The generator facility's designated contact person changes.

(3) The ownership of the generator facility changes.

(4) The type of regulated activity that takes place at the generator facility changes.

Subchapter B. MANIFEST

Sec.

§ 262a.20. General requirements.

40 CFR 262.20(a)—(c) (relating to general requirements) is not incorporated by reference. In addition to the requirements incorporated by reference, a generator shall:

(1) Complete the manifest form in its entirety and distribute manifest copies in accordance with the instructions included with 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 with more than four different waste streams in one shipment.

(4) Ensure that the required information on all copies, including photocopies, of the manifest is legible to the Department, transporter and designated facility.

(5) A generator shall designate only one permitted facility to handle the waste described on the manifest.

§ 262a.21. Aquisition of manifests.

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

§ 262a.22. Number of copies.

(a) 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.

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

(1) The generator shall enter the date of shipment in the designated space on the manifest.

(2) If the out-of-state manifest does not include generator-state copies which would be submitted to the Department, the generator shall submit copies, such as photocopies, of the manifest as signed by the generator and first transporter and as signed upon receipt by the designated facility.

(b) The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.23(e) (relating to notification of shipments of hazardous waste to a facility in an authorized state which has not yet received authorization to regulate a newly designated hazardous waste).

Subchapter D. RECORDKEEPING AND REPORTING

Sec.
262a.41. Biennial report.
262a.42. Exception reporting

§ 262a.41. Biennial report.

Regarding the requirements incorporated by reference, the following replaces the introductory paragraph in 40 CFR 262.41 (relating to biennial report):

A generator who ships hazardous waste offsite to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year. The biennial report shall be submitted on EPA Form 8700—13A as modified by the Department, shall cover generator activities during the previous year and shall include the following information:

§ 262a.42. Exception reporting.

Regarding the requirements incorporated by reference, the phrase "for the region in which the generator is located" contained in 40 CFR 262.42 (relating to exception reporting) is not incorporated by reference.

Subchapter E. EXPORTS OF HAZARDOUS WASTE

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

§ 262a.55. Exception report.

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

§ 262a.56. Annual reports.

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

§ 262a.57. Recordkeeping.

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

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

Sec.
262a.80. Applicability.

§ 262a.80. Applicability.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart 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, be maintained on the premises where the waste is generated, be available on the premises for inspection by any representative of the Department and be submitted to the Department upon request. The strategy may

designate certain production processes as confidential. 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 established a source reduction program. This program 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, quantify the projected reduction in weight or toxicity of waste to be achieved by each method or procedure and specify when each method or procedure will be implemented.

(3) If the person or municipality has not established a source reduction program as described in paragraph (2), it shall develop a strategy including 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)

§ 263.10. (Reserved).

§ 262.11. (Reserved).

§ 262.13. (Reserved).

§§ 263.20—263.27. (Reserved).

§ 263.30. (Reserved).

§ 263.32. (Reserved).

CHAPTER 263a. 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, 40 CFR Part 263 (relating to standards applicable to transporters of hazardous waste) is incorporated by reference.

(b) Relative to 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.

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

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter storing hazardous waste at a transfer facility for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan. This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the storage.

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan. This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § 263a.30, § 261a.5(d), § 266a.70(1) or § 266b.50, a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

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

(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 completed as required by the instructions supplied with the form.

(3) Deposit with the Department a collateral bond conditional upon compliance by the licensee with the act, this article, 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 relevant additional information it may require.

(c) Upon receiving the application and the information required in subsection (b), the Department evaluates the application for a license and other relevant information and issues or denies 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 is valid for 2 years unless the Department determines that circumstances justify issuing a license for 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 usable 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 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. Manifest system.
263a.21. Compliance with 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. Manifest system.

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

(2) In addition to the requirements incorporated by reference, a transporter shall print or type his name.

§ 263a.21. Compliance with the manifest.

In addition to the requirements incorporated by reference:

(1) A transporter may not accept or transport hazardous waste if the number or type of containers or quantity of waste to be transported does not correspond with the number, type or quantity stated on the manifest.

(2) A transporter shall assure the manifest is properly completed.

§ 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 are 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. For purposes of this section:

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

(2) A metric ton is converted to a standard ton by dividing the metric ton by a factor of 0.91.

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

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

(ii) Liters are converted to tons using a factor of 2.1 pounds per liter.

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

(h) Fees are based on the quantities listed on the manifest by the treatment, storage or disposal facility (TSD) or, when not specified by the TSD, as provided 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 minimum civil penalty of $500 for submissions which are less than 15 days late, and $500 per day for each day thereafter.

(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 transportation, 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 or approved by the Department, and the bond is approved by the Department.

(c) The bond shall 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, but a minimum of $10,000.

(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 are 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 are 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 are irrevocable. The Department may accept a letter of credit not revocable 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 owner or 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) Letters of credit are 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 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 that could result in suspension or revocation of the bank's charter or license to do business.

(h) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the licensee is 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.

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

(j) The Department will declare forfeit all a licensee's bonds if the Department finds that the licensee violated any requirements of the act, this article, terms and conditions of a license or a Department order issued to the licensee when the Department finds that the licensee failed to remedy a violation promptly.

(k) Remedies provided in law for violation of the act, this article 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)

§ 264.1. (Reserved).

§§ 264.11—264.17. (Reserved).

§§ 264.31—264.35. (Reserved).

§ 264.37. (Reserved).

§§ 264.51—264.56. (Reserved).

§§ 264.70—264.82. (Reserved).

§ 264.90. (Reserved).

§ 264.91. (Reserved).

§§ 264.96—264.100. (Reserved).

§§ 264.110—264.115. (Reserved).

§§ 264.117—264.119. (Reserved).

§ 264.140. (Reserved).

§§ 264.171—264.180. (Reserved).

§§ 264.190—264.199. (Reserved).

§§ 264.220—264.225. (Reserved).

§§ 264.227—264.231. (Reserved).

§§ 264.250—264.258. (Reserved).

§§ 264.270—264.273. (Reserved).

§ 264.276. (Reserved).

§§ 264.278—264.282. (Reserved).

§§ 264.300—264.305. (Reserved).

§ 264.309. (Reserved).

§ 264.310. (Reserved).

§§ 264.312—264.316. (Reserved).

§§ 264.340—264.345. (Reserved).

§ 264.347. (Reserved).

§§ 264.351—264.353. (Reserved).

§§ 264.500—264.505. (Reserved).

§§ 264.520—264.522. (Reserved).

§§ 264.600—264.603. (Reserved).

Appendices A—E. (Reserved).

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

Subchapter A. GENERAL

(*Editor's Note:* The provisions of Subchapter S adopted May 1, 1999, effective upon delegation of the corrective action program to the Department by the EPA.)

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

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

(b) Relative to the requirements incorporated by reference:

(1) 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) and Appendix VI (relating to political jurisdictions in which compliance with 40 CFR 264.18(a) (relating to location standards) shall be demonstrated are not incorporated by reference.

(2) Instead of 40 CFR 264.1(b), this chapter applies to an owner or operator of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapters 261a and 266a and § 270a.60 (relating to identification and listing of hazardous waste; standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule).

(3) Instead of 40 CFR 264.1(g)(2), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent the requirements are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) 40 CFR 264.1(g)(6) (relating to elementary neutralization unit and wastewater treatment unit) is not incorporated by reference. The owner or operator of an elementary neutralization unit or wastewater treatment unit may satisfy permitting requirements by complying with § 270a.60(b)(1).

(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).

Subchapter B. GENERAL FACILITY 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 EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste provided that the conditionally exempt small quantity generator is in compliance with § 261.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements for recyclable materials utilized for precious metal recovery) or universal waste transporters in compliance with § 266b.50 (relating to applicability of standards for universal waste transporters).

§ 264a.12. Required notices.

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.12 (relating to required notices).

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

(a) In addition to the requirements incorporated by reference, before an owner or operator of a facility that treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department a notification that the facility intends to accept an additional waste stream generated by the specified generator. This notification shall include information that is specified in the facility's permit.

(b) If the notification information required in subsection (a) is not required by the facility's permit, the owner or operator shall submit the information required by § 265a.13 (relating to general and generic waste analysis) until the permit is amended to require the notification information.

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

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility 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, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.
264a.56. Emergency procedures.

§ 264a.56. Emergency procedures.

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department or the Department's Central Office by telephone at (717) 787-4343.

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.
264a.71. Use of the manifest system.
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) 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 manifest approved by the Department, unless a manifest is not required by 40 CFR 262.20(e) (relating to the manifest general requirements).

(2) 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, as required.

§ 264a.75. Biennial report.

Relative to the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

§ 264a.78. Hazardous waste management fee.

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazardous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

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

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 264a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to 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 date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

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

(e) For purposes of assessing fees incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) 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 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds 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.

(g) 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.

(h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.

(i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator will be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

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

(a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information

shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.

(1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit Forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55D.

(2) The owner or operator of an offsite captive disposal facility shall submit Forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit Forms ER-WM-55I, ER-WM-55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

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

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

(1) Failure to submit hazardous waste management fees as required by § 264a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 264a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste management fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility 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, or the Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

§ 264a.81. Assessment of penalties; minimum 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 regulations thereunder, this section sets forth minimum 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 hazardous waste management fees as required by § 264a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 264a.78(c), the Department will assess a minimum civil penalty of $500 for submissions which are less than 15 days late, and $500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of $1,000.

§ 264a.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

(1) Land disposal facilities—$2,500.

(2) Surface impoundments—$2,500.

(3) Commercial treatment—$2,000.

(4) Captive treatment—$700.

(5) Storage—$550.

(6) Incinerators—$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

§ 264a.83. Administration fees during closure.

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

(1) The closure activities will, of necessity, take longer than 180 days to complete or the following:

(i) The facility has the capacity to receive additional wastes.

(ii) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site.

(iii) Closure of the facility would be incompatible with continued operation of the site.

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

(3) The demonstrations referred to in § 264a.112(d) and this section shall be made as follows:

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

(ii) The demonstrations in this section shall be made at least 30 days prior to the expiration of the 180-day period.

(b) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

(1) Land disposal facilities—$100.

(2) Impoundments—$100.

(3) All other facilities—$50.

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Sec.

§ 264a.97. General groundwater monitoring requirements.

In addition to the requirements incorporated by reference:

(1) The owner or operator shall keep records of analyses and evaluations of groundwater quality, surface elevations and flow rate and direction determinations required under 40 CFR Part 264, Subpart F (relating to releases from solid waste management units).

(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) (relating to detection monitoring program), for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR 264.97(h), 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) 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).

§ 264a.101. Corrective action for solid waste management units.

In 40 CFR 264.101(b) (relating to corrective action for solid waste management units), the reference to Subpart S does not apply until 40 CFR Part 264, Subpart S is effective in this Commonwealth.

Subchapter G. CLOSURE AND POSTCLOSURE

Sec.

§ 264a.115. Certification of closure.

The owner or operator shall satisfy § 264a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 264.143(i) (relating to financial assurance for closure).

§ 264a.120. Certification of completion of postclosure care.

The owner or operator shall satisfy § 264a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 264.145(i) (relating to financial assurance for postclosure care).

Subchapter H. FINANCIAL REQUIREMENTS

Sec.

§ 264a.141. Definitions.

In addition to the terms defined in 40 CFR 264.141 (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 hazardous waste management system: general) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

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 facility owner or operator and 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 and other similar establishments 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 facility owner or operator, and is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

Surety company—A corporation licensed to do business as a surety in this Commonwealth.

§ 264a.143. Financial assurance for closure.

40 CFR 264.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 264.143(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

§ 264a.145. Financial assurance for postclosure care.

40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 264.145(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

§ 264a.147. Liability requirements.

The substitition of terms as specified in § 260a.3(a)(5) (relating to citations related to Federal regulations) does not apply to 40 CFR 264.147(g)(2) and (i)(4) (relating to liability requirements).

§ 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.

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

§ 264a.150. State assumption of responsibility.

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

§ 264a.151. Wording of instruments.

40 CFR 264.151 (relating to wording of the instruments) is not incorporated by reference.

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

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 264a.160 (relating to bond amount determination), 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 files 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 is 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 permitted or treated as having a permit, shall cease accepting hazardous waste unless the owner or operator submits a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

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

(a) The Department accepts 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 prescribes and furnishes the forms for bond instruments.

(c) Bonds are 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. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(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 does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator 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 of receipt of the notice of cancellation, the owner or operator shall provide the Department with a replacement bond under § 264a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 264a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for a owner or operator, on all facilities owned or operated by the owner or operator, 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 is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint 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 obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values 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 uses 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 are subject to the following conditions:

(1) The Department requires that certificates of deposit are 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 the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

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

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

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

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

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

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

(1) The letter of credit is a standby 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 be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the owner's or operator's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.

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

(4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for at least a 1 year period if the following conditions are met and stated in the credit:

(i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail 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 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 subchapter.

(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 waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that 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) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relating to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture.

§ 264a.157. Phased deposits of collateral.

(a) An owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that 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 owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits $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 owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The owner or operator deposits 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 makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates 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 accumulates and becomes part of the bond amount until the owner or 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 is 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 an owner or operator to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond is 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 owner or operator submits and the Department approves acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of 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 owner or operator.

§ 264a.159. Reissuance of permits.

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

§ 264a.160. Bond amount determination.

(a) The Department determines 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. This is done 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 subchapter.

(b) This amount is based on the permit applicant's written estimate submitted under 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.

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that 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 exceed 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, requiring an additional amount of bond determined under 40 CFR 264.142 and 264.144.

(4) 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 subchapter and the terms and conditions of the permit or orders of the Department.

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

If an owner or operator 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 owner or operator, and if the owner or operator 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 owner or operator 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 determines 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 owner or operator 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. The bond release may be requested 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 for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility 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) The name of the owner or operator and 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) 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) Closure or postclosure certification for full bond release requests.

(6) Other information 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 of receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility 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 in section 505(a) of the act (35 P. S. § 6018.505(a)).

§ 264a.166. Closure and postclosure certification.

(a) The owner or operator shall submit a request for closure or postclosure certification upon completion of closure or postclosure of the facility in accordance with 40 CFR 264.115 or 264.120 (relating to certification of closure; and certification of completion of postclosure care).

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

(c) If the Department determines that the facility 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 owner or operator that closure or postclosure was effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure 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 owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility 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 in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, 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 owner or operator setting forth the schedule of measures the owner or operator 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 owner or operator to deposit a separate bond under § 264a.164 (relating to separate bonding for a portion of

a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) 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 or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

§ 264a.168. Bond forfeiture.

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

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes 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 owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with the requirements of this article, the act, 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 owner or operator fails, 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 owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or has action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes 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 owner or operator, 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 owner or operator 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.173. Management of containers.

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application. In addition, a 40-foot setback from a building shall be maintained for all outdoor container storage of reactive or ignitable hazardous waste.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

§ 264a.180. Weighing or measuring facilities.

Weighing or measuring facilities, if necessary or when required by the Department, shall weigh hazardous wastes brought to the treatment, storage or disposal facility, except for captive facilities that handle liquids or flowable wastes—less than 20% solids—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.

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator 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 in accordance with 40 CFR 264.191 (relating to assessment of existing tank system's integrity).

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

In addition to the requirements incorporated by reference, an owner or operator of existing tank systems shall comply with 40 CFR 264.193 (relating to containment and detection of release) by January 16, 1995, except that an owner operator 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 their contents.

§ 264a.195. Inspections.

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected 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) The Department may, upon written application from a person who is subject to this provision, grant a variance from this provision. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision 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 provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

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) 40 CFR 264.251(c)(5) (relating to leak detection systems not located completely above the seasonal high water table) is not incorporated by reference.

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 tobacco and crops intended for direct human consumption may not be grown on hazardous waste land treatment facilities.

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) The Department may, upon written application from a person who is subject to this section, grant a variance from this section. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision 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 provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

(3) 40 CFR 264.301(l) (relating to landfills located in the State of Alabama) is not incorporated by reference.

Subchapter W. DRIP PADS

Sec.
264a.570. Applicability.

§ 264a.570. Applicability.

Instead of 40 CFR 264.570(a), 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-off to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

Subchapter DD. CONTAINMENT BUILDINGS

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

§ 264a.1100. Applicability.

Instead of the effective date of February 18, 1993, found in 40 CFR 264.1100 (relating to applicability), the effective date is January 11, 1997.

§ 264a.1101. Design and operating standards.

In addition to the requirements incorporated by reference:

(1) An owner or operator 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)

§ 265.1. (Reserved).
§§ 265.11—265.17. (Reserved).
§§ 265.31—265.35. (Reserved).
§ 265.37. (Reserved).
§§ 265.51—265.56. (Reserved).
§§ 265.70—265.82. (Reserved).
§§ 265.90—265.94. (Reserved).
§§ 265.110—265.115. (Reserved).
§§ 265.117—265.119. (Reserved).
§ 265.140. (Reserved).
§ 265.142. (Reserved).
§ 265.144. (Reserved).
§§ 265.171—265.178. (Reserved).
§§ 265.190—265.201. (Reserved).
§ 265.220. (Reserved).
§ 265.222. (Reserved).
§ 265.223. (Reserved).
§ 265.225. (Reserved).
§ 265.226. (Reserved).
§§ 265.228—265.230. (Reserved).
§ 265.270. (Reserved).
§ 265.272. (Reserved).
§ 265.273. (Reserved).
§ 265.276. (Reserved).
§§ 265.278—265.282. (Reserved).
§ 265.300. (Reserved).
§ 265.302. (Reserved).
§ 265.309. (Reserved).
§ 265.310. (Reserved).
§§ 265.312—265.315. (Reserved).
§§ 265.340—265.342. (Reserved).
§ 265.345. (Reserved).
§ 265.347. (Reserved).
§ 265.351. (Reserved).
§ 265.370. (Reserved).
§ 265.373. (Reserved).
§ 265.375. (Reserved).
§ 265.377. (Reserved).
§ 265.381. (Reserved).
§ 265.382. (Reserved).
§§ 265.400—265.406. (Reserved).
§§ 265.430—265.433. (Reserved).
§ 265.435. (Reserved).
§§ 265.440—265.448. (Reserved).
§§ 265.450—265.452. (Reserved).
§§ 265.460—265.462. (Reserved).
§ 265.470. (Reserved).

§§ 265.500—265.505. (Reserved).

§§ 265.520—265.522. (Reserved).

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

Subchap.
A. GENERAL
B. GENERAL FACILITY STANDARDS
D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES
E. MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING
G. CLOSURE AND POSTCLOSURE
H. FINANCIAL REQUIREMENTS
I. USE AND MANAGEMENT OF CONTAINERS
J. TANK SYSTEMS
P. THERMAL TREATMENT

Subchapter A. GENERAL

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

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

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

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

(1) 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 to this section.

(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, Chapter 261a, 266a or § 270a.60 (relating to identification and listing of hazardous waste; management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule) instead of 40 CFR 265.1(b).

(3) Instead of 40 CFR 265.1(c)(6), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent they are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

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

Subchapter B. GENERAL FACILITY STANDARDS

Sec.
265a.11. Identification number and transporter license.
265a.12. Required notices.
265a.13. General and generic waste analysis.
265a.15. General inspection and construction inspection requirements.
265a.18. Location 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 without an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste if the conditionally exempt small quantity generator is in compliance with § 261a.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements for recyclable materials utilized for precious metal recovery) or universal waste transporters in compliance with § 266b.50 (relating to applicability of standards for universal waste transporters).

§ 265a.12. Required notices.

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.12 (relating to required notices).

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

In addition to the requirements incorporated by reference:

(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a report which the owner or operator shall retain for 3 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) 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, an owner or operator shall submit a schedule for construction of a hazardous waste management facility 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.56. Emergency procedures.

§ 265a.56. Emergency procedures.

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department, or the Department's Central Office by telephone at (717) 787-4343.

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Sec.
265a.71. Use of the manifest system.
265a.75. Biennial report.
265a.78. Hazardous waste management fee.
265a.79. Documentation of hazardous waste management fee submission.
265a.80. Civil penalties for failure to submit hazardous waste management fees.
265a.81. Assessment of penalties; minimum penalties.
265a.82. Administration fees.
265a.83. Administration fees during closure.

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

In addition to the requirements incorporated by reference:

(1) An owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by a manifest approved by the Department, unless a manifest is not required by 40 CFR 262.20(e) (relating to general requirements).

(2) 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, as required.

§ 265a.75. Biennial report.

Relative to the requirements incorporated by reference, the owner or operator shall submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

§ 265a.78. Hazardous waste management fee.

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazard-

ous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

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

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 265a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to 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 date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

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

(e) For purposes of assessing fees, incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) 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 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds 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.

(g) 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.

(h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.

(i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

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

(a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.

(1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55D only.

(2) The owner or operator of an offsite captive disposal facility shall submit forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit forms ER-WM-55I, ER-WM-55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

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

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

(1) Failure to submit hazardous waste management fees as required by § 265a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 265a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste managment fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility 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, or the

Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

§ 265a.81. Assessment of penalties; minimum 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 regulations thereunder, this section sets forth minimum 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 hazardous waste management fees as required by § 265a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 265a.78(c), the Department will assess a minimum civil penalty of $500 for submissions which are less than 15 days late, and $500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of $1,000.

§ 265a.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

(1) Land disposal facilities—$2,500.

(2) Surface impoundments—$2,500.

(3) Commercial treatment—$2,000.

(4) Captive treatment—$700.

(5) Storage—$550.

(6) Incinerators—$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

§ 265a.83. Administration fees during closure.

(a) Within 90 days after receiving the final volume of hazardous waste, or 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the site or dispose of onsite all hazardous waste in accordance with the approved closure plan. The Department may approve in writing a longer period if the owner or operator demonstrates one of the following:

(1) The activities required to comply with this subsection will, of necessity, take longer than 90 days to complete, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(2) The facility has additional capacity under its permit, someone other than the present owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

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

(1) The closure activities will, of necessity, take him longer than 180 days to complete, and the owner or operator will continue to take measures necessary to ensure safety to human health and the environment.

(2) The facility has additional capacity under its permit, someone other than the owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(c) The demonstrations referred to in subsections (a) and (b) shall be made as follows:

(1) The demonstrations in subsection (a) shall be made at least 30 days prior to the expiration of the 90-day period in subsection (b).

(2) The demonstrations in subsection (b) shall be made at least 30 days prior to the expiration of the 180-day period in subsection (b).

(d) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

(1) Land disposal facilities—$100.

(2) Impoundments—$100.

(3) Other facilities—$50.

Subchapter G. CLOSURE AND POSTCLOSURE

Sec.
265a.115. Certification of closure.
265a.120. Certification of completion of postclosure care.

§ 265a.115. Certification of closure.

The owner or operator shall satisfy § 265a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 265.143(h) (relating to final assurance for closure).

§ 265a.120. Certification of completion of postclosure care.

The owner or operator shall satisfy § 265a.166 (relating to closure and postclosure certification) instead of the reference to § 265.145a(h) (relating to financial assurance for postclosure care).

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

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 facility owner or operator 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 and other similar establishments 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 facility owner or operator, 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.

Surety company—A corporation licensed to do business as a surety in this Commonwealth.

§ 265a.143. Financial assurance for closure.

40 CFR 265.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 265.143(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

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

40 CFR 265.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 265.145(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.)

§ 265a.147. Liability requirements.

The substitution of terms as specified in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.147(g)(2) and (i)(4) (relating to liability requirements).

§ 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.

Relative to 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.

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

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

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 265a.160 (relating to bond amount determination), 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 files 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 permitted or treated as issued a permit, shall cease accepting hazardous waste unless the owner or operator has submitted a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator has submitted an insufficient bond amount, the Depart-

ment will require the owner or operator to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

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

(a) The Department accepts 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 prescribes and furnishes the forms for bond instruments.

(c) Bonds are 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. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(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 does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator 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 owner or operator shall provide the Department with a replacement bond under § 265a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 265a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for an owner or operator, on all facilities owned or operated by the owner or operator, 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 is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint 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 obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values 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 uses 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 are subject to the following conditions:

(1) The Department requires 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 the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

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

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

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

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

(7) The Department does not accept certificates of deposit from banks that failed or delayed to make payment on defaulted certificates of deposit.

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

(1) The letter of credit is a standby 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 be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter

of credit so issued is supported by the customer's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.

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

(4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for which at least a 1 year 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 of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail 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 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 subchapter.

(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 waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that 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) and 40 CFR 265.145(e) (relating to financial assurance for post-closure care) except for the provision of 40 CFR 265.143(e)(10)(i) (relating to financial assurance for closure) as specified in § 264a.143(a) (relating to financial assurance for closure). This is replaced by the procedures of § 265a.168 (relating to replacement of bond).

§ 265a.157. Phased deposits of collateral.

(a) A permit applicant, or an owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that 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 owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits $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 owner or operator submits 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 owner or operator deposits 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 makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates 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 accumulates and becomes part of the bond amount until the owner or 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 is 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 owners or operators to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond as 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 owner or operator submits and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of 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 owner or operator.

§ 265a.159. Reissuance of permits.

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

§ 265a.160. Bond amount determination.

(a) The Department determines 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. This is done 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 subchapter.

(b) This amount is based on the owner's or operator's written estimate submitted under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

§ 265a.162. Bond amount adjustments.

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that 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 exceed 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, requiring an additional amount of bond determined under 40 CFR 265.142 and 265.144.

(4) 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 subchapter and the terms and conditions of the permit or orders of the Department.

§ 265a.163. Failure to maintain adequate bond.

If an owner or operator 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 owner or operator, and if the owner or operator 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 owner or operator 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 determines 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 owner or operator 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. The bond release may be requested 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 for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility 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 owner or operator 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 post-closure care).

(5) Closure or postclosure certification for full bond release requests.

(6) 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 owner or operator.

(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 in section 505(a) of the act (35 P. S. § 6018.505).

§ 265a.166. Closure and postclosure certification.

(a) The owner or operator shall submit a request for closure certification upon completion of closure of the facility in accordance with the provisions of 40 CFR

265.115 and 265.120 (relating to certification of closure; and certification of completion of postclosure care).

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

(c) If the Department determines that the facility 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 owner or operator that closure or postclosure effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure 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 owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility 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 or postclosure, 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 owner or operator setting forth the schedule of measures which the owner or operator 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 owner or operator to deposit a separate bond under § 265a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) 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 or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

§ 265a.168. Bond forfeiture.

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

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes 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 owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, 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 owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has 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 owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes 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 owner or operator, 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 owner or operator 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

§ 265a.173. Management of containers.

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. In addition, a 40-foot setback from a building shall be maintained for all outdoor container storage or reactive or ignitable hazardous waste.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

§ 265a.175. Containment and collection system.

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

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

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

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

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

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

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

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

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

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

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

§ 265a.179. Containment.

40 CFR 264.175 (relating to containment) is incorporated by reference.

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.

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator 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 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.

In addition to 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 their contents.

§ 265a.195. Inspections.

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected 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)

§§ 266.20—266.24. (Reserved).

§§ 266.30—266.35. (Reserved).

§§ 266.40—266.44. (Reserved).

§ 266.70. (Reserved).

§ 266.80. (Reserved).

§ 266.90. (Reserved).

§ 266.91. (Reserved).

§§ 266.100—266.104. (Reserved).

§§ 266.201—266.206. (Reserved).

§§ 266.210—266.220. (Reserved).

§§ 266.230—266.240. (Reserved).

§§ 266.250—266.256. (Reserved).

§§ 266.260—266.262. (Reserved).

§ 266.270. (Reserved).

§§ 266.280—266.283. (Reserved).

CHAPTER 266a. 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
F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY
G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED
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.

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.

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

Sec.
266a.40. Applicability.
266a.41. Prohibitions.
266a.42. Generators of waste oil burned for energy recovery.
266a.43. Marketers of waste oil burned for energy recovery.
266a.44. Burners of waste oil burned for energy recovery.

§ 266a.40. Applicability.

(a) *General.* Unless otherwise stated in this section, this subchapter applies to waste oil that is burned for energy recovery in a unit that is not regulated under 40 CFR Part 264, Subpart 0; 40 CFR Part 265, Subpart 0; Chapter 264a, Subchapter O or Chapter 265a, Subchapter O, except as provided by subsections (c) and (e). The waste oil is termed "waste oil fuel." Waste oil fuel includes fuel produced from waste oil by processing, blending or other treatment.

(b) *Heating value and permit requirements.*

(1) Waste oil having less than 8,000 Btus per pound is not a fuel, and if hazardous, may be burned only in a hazardous waste incinerator, or a boiler or industrial furnace regulated under 40 CFR Part 266, Subpart H (relating to hazardous waste burned in boilers and industrial furnaces) or Chapter 266a, Subchapter H (relating to hazardous waste burned in boilers and industrial furnaces).

(2) Except as provided in subsection (d), the blending or mixing of waste oils that are hazardous under Chapter 261a (relating to criteria, identification and listing of hazardous waste) is allowed only under a hazardous waste treatment permit. This does not preclude a generator from storing compatible waste oils in a single tank prior to disposal or recycling. Waste oil that is either nonhazardous or that is identified in subsection (d) may be blended or mixed with other nonhazardous waste oil under a residual waste processing permit.

(c) *Waste oil mixed with hazardous waste.* Except as provided by subsection (d)(2), waste oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under 40 CFR Part 266, Subpart H or Chapter 266a, Subchapter H.

(d) *Waste oil burned for energy recovery.* Waste oil burned for energy recovery is subject to regulation under this subchapter rather than as hazardous waste fuel if it is a hazardous waste solely because it does one of the following:

(1) Exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) or Chapter 261a, Subchapter C (relating to characteristics of hazardous waste), if it is not mixed with a hazardous waste.

(2) Contains hazardous waste generated only by a person subject to the special requirements for conditionally exempt small quantity generators under 40 CFR 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) or § 261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators).

(e) *Waste oil burned for energy recovery and fuel produced from waste oil.* Waste oil burned for energy recovery, and fuel produced from waste oil by processing, blending or other treatment, is subject to this subchapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Waste oil fuel that does not exceed the specifications in the following table is termed "on-specification waste oil fuel" and is subject only to the requirements of this section and the analysis and recordkeeping requirements under § 266a.43(b)(1) and (6) (relating to marketers of waste oil burned for energy recovery). Waste oil fuel that exceeds any specification level is termed "off-specification waste oil fuel" and subject to the requirements of this subchapter. Applicable standards for burning used oil containing PCBs are imposed by 40 CFR 761.20(e) (relating to prohibitions for PCBs).

Constituent/Property	*Allowable Level*
Arsenic	Maximum 5 ppm
Cadmium	Maximum 2 ppm
Chromium	Maximum 10 ppm
Lead	Maximum 100 ppm
Total halogens	Maximum 1,000 ppm
Flash point	Minimum 100°F (38°C)

(f) Storage and transportation of waste oil fuel shall comply with Chapter 299 (relating to the storage and transportation of residual waste).

(g) Burners of waste oil fuel shall comply with the applicable residual waste permitting requirements for the burning of waste oil in Chapter 287 (relating to residual waste management—general provisions).

§ 266a.41. Prohibitions.

(a) A person may market off-specification waste oil for energy recovery only to burners:

(1) Or other marketers who have notified the EPA and the Department of their waste oil management activities stating the location and general description of the activities, and who have an EPA identification number.

(2) Who burn the waste oil in an industrial furnace or boiler identified in subsection (b) and have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality Control, or written approval from the Bureau of Air Quality Control if the fuel is burned in Allegheny or Philadelphia Counties if Allegheny or Philadelphia County is issued first.

(b) Off-specification waste oil may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in 40 CFR 260.10 (relating to definitions) or § 260a.10 (relating to definitions).

(2) Boilers, as defined in 40 CFR 260.10 or § 260a.10, that are identified as one of the following:

(i) An industrial boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) A utility boiler used to produce electric power, steam or heated or cooled air or other gases or fluids for sale.

(3) A waste oil-fired space heater if:

(i) The heater burns only waste oil that the owner or operator generates or waste oil received from do-it-yourself oil changers who generate waste oil as household waste.

(ii) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.

(iii) The combustion gases from the heater are vented to the ambient air.

§ 266a.42. Generators of waste oil burned for energy recovery.

(a) Except as provided in subsections (b) and (c), a generator of waste oil is not subject to this subchapter.

(b) A generator who markets waste oil directly to a burner is subject to § 266a.43 (relating to standards applicable to marketers of waste oil burned for energy recovery).

(c) A generator who burns waste oil is subject to § 266a.44 (relating to standards applicable to burners of waste oil burned for energy recovery).

§ 266a.43. Marketers of waste oil burned for energy recovery.

(a) A person who markets waste oil fuel is termed a "marketer." Except as provided in this section, a marketer includes a generator who markets waste oil fuel directly to a burner, a person who receives waste oil from a generator and produces, processes or blends waste oil fuel from these waste oils, including a person sending blended or processed waste oil to a broker or other intermediary and a person who distributes but does not process or blend waste oil fuel. The following persons are not marketers subject to this subchapter:

(1) A waste oil generator and collector who transports waste oil received only from a generator, unless the generator or collector markets the waste oil directly to a person who burns it for energy recovery. A person who burns some waste oil fuel for purposes of processing or other treatment to produce waste oil fuel for marketing is considered to be burning incidentally to processing. A generator and collector who markets to incidental burners is not a marketer subject to this subchapter.

(2) A person who markets only waste oil fuel that meets the specification under § 266a.40(e) (relating to applicability) and who is not the first person to claim the oil meets the specification; that is, a marketer who does not receive waste oil from a generator or initial transporter and marketer who neither receives nor markets off-specification waste oil fuel.

(b) A marketer is subject to the following requirements:

(1) *Analysis of waste oil fuel.* Waste oil fuel is subject to this subchapter unless the marketer obtains analyses or other information documenting that the waste oil fuel meets the specification under § 266a.40(e).

(2) *Prohibitions.* The prohibitions under § 266a.41(a) (relating to prohibitions) apply.

(3) *Notification.* Notification shall be made to the EPA and the Department stating the location and general description of waste oil management activities. If a marketer has previously notified the EPA or the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an EPA identification number, the marketer shall renotify to identify his waste oil management activities.

(4) *Invoice system.*

(i) When a marketer initiates a shipment of off-specification waste oil, the marketer shall prepare and send the receiving facility an invoice containing the following information:

(A) An invoice number.

(B) The marketer's own EPA identification number and the EPA identification number of the receiving facility.

(C) The names and addresses of the shipping and receiving facilities.

(D) The quantity of off-specification waste oil to be delivered.

(E) The dates of shipment or delivery.

(F) The following statement: "This waste oil is subject to Pennsylvania Department of Environmental Protection regulation under 25 Pa. Code 266a and/or U.S. EPA regulation under 40 CFR Part 266."

(ii) Waste oil that meets the definition of "hazardous material" in 49 CFR 171.8 (relating to definitions and abbreviations) shall be shipped in accordance with the applicable United States Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 171—180 (relating to research and special programs administration, Department of Transportation).

(5) *Required notices.*

(i) Before a marketer initiates the first shipment of off-specification waste oil to a burner or other marketer,

the marketer shall obtain a one-time written and signed notice from the burner or marketer certifying that:

(A) The burner or marketer has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(B) If the recipient is a burner, the burner will burn the off-specification waste oil only in an industrial furnace or boiler identified in § 266a.41(b).

(ii) Before a marketer accepts the first shipment of off-specification waste oil from another marketer subject to the requirements of this section, the marketer shall provide the marketer with a one-time written and signed notice certifying that the marketer has notified the EPA and the Department of his waste oil management activities.

(6) *Recordkeeping.*

(i) *Waste oil fuel that meets the specification.* A marketer who first claims under subsection (b)(1) that waste oil fuel meets the specification shall keep copies of analyses, or other information relied upon to make the determination, of waste oil for 3 years. The waste oil fuel is not subject to further regulation unless it is subsequently mixed with hazardous waste or mixed with waste oil so that it no longer meets the specification. The marketers shall also record in an operating log and keep for 3 years the following information on each shipment of waste oil fuel that meets the specification:

(A) The name and address of the facility receiving the shipment.

(B) The quantity of waste oil fuel delivered.

(C) The date of shipment or delivery.

(D) A cross reference to the record of waste oil analysis, or other information relied upon to make the determination that the oil meets the specification, required under this subparagraph.

(ii) *Off-specification waste oil fuel.* A marketer who receives or initiates an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received or prepared. In addition, a marketer shall keep a copy of each certification notice that the marketer receives or sends for 3 years from the date the marketer last engages in an off-specification waste oil fuel marketing transaction with the person who sends or receives the certification notice.

§ 266a.44. Burners of waste oil burned for energy recovery.

An owner or operator of a facility that burns waste oil fuel is a "burners" and is subject to the following requirements:

(1) *Prohibition.* The prohibition under § 266a.41(b) (relating to prohibitions) applies.

(2) *Notification.* A burner of off-specification waste oil fuel and burner of waste oil fuel who is the first to claim that the oil meets the specification provided under § 266a.40(e) (relating to applicability), except a burner who burns specification oil that he generates, shall notify the EPA and the Department stating the location and general description of waste oil management activities. A burner of waste oil fuel that meets the specifications who receives the oil from a marketer that previously notified the EPA and the Department is not required to notify. An owner or operator of a waste oil-fired space heater that burns waste oil fuel under § 266a.41(b)(2) is exempt from this notification requirement. Even if a burner has previously notified the EPA and the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an identification number, the burner shall renotify to identify his waste oil management activities.

(3) *Required notices.* Before a burner accepts the first shipment of off-specification waste oil fuel from a marketer, the burner shall provide the marketer a one-time written and signed notice certifying that:

(i) The burner has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(ii) The burner will burn the waste oil only in an industrial furnace or boiler identified in § 266a.41(b).

(4) *Waste oil fuel analysis.*

(i) Waste oil fuel burned by the generator is subject to this subchapter unless the burner obtains analysis (or other information) documenting that the waste oil meets the specification provided under § 266a.40(e).

(ii) Burners who treat off-specification waste oil fuel by processing, blending or other treatment to meet the specification provided under § 266a.40(e) shall obtain analyses or other information that documents the waste oil meets the specification.

(5) *Recordkeeping.* A burner who receives an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received. Burners shall also keep copies of analyses of waste oil fuel as may be required by paragraph (4) for 3 years. In addition, the burner shall keep a copy of each certification notice that he sends to a marketer for 3 years from the date the burner receives off-specification waste oil from that marketer.

Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

Sec.
266a.70. Applicability and requirements.

§ 266a.70. Applicability and requirements.

In addition to the requirements incorporated by reference:

(1) A transporter transporting recyclable materials utilized for precious metal recovery in accordance with 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a license for the transportation of those materials if the transporter complies with:

(i) The EPA identification number requirements of 40 CFR 263.11 (relating to EPA identification number).

(ii) The hazardous waste transporter fee requirements of § 263a.23 (relating to hazardous waste transportation fee).

(2) An owner or operator of facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F is subject to § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment under § 270a.60(b)(6) (relating to permits by rule).

Subchapter G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Sec.
266a.80. Applicability and requirements.

§ 266a.80. Applicability and requirements.

(a) In addition to the requirements incorporated by reference, the owner or operator of a facility treating spent, lead-acid batteries prior to the reclamation of spent lead-acid batteries is subject to the requirements of § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment of the batteries under § 270a.60(b)(3) (relating to permits by rule).

(b) Sections 264a.82, 265a.82 and 270a.3 (relating to administration fees; and payment of fees) § 270a.3, do not apply to a facility that stores spent batteries before reclaiming them.

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Sec.
266a.100. Applicability.

§ 266a.100. Applicability.

The reference to "Part 279 of this chapter" in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

CHAPTER 266b. UNIVERSAL WASTE MANAGEMENT

Subchap.
A. GENERAL
B. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE
C. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE
D. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS
E. STANDARDS FOR DESTINATION FACILITIES

Subchapter A. GENERAL

Sec.
266b.1. Incorporation by reference and scope.

§ 266b.1. Incorporation by reference and scope.

Except as expressly provided in this chapter, 40 CFR Part 273 (relating to standards for universal waste management) is incorporated by reference.

Subchapter B. SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE

Sec.
266b.10. Applicability.

§ 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. LARGE QUANTITY HANDLERS OF UNIVERSAL WASTES

Sec.
266b.30. Applicability.

§ 266b.30. Applicability.

(a) 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.

(b) The substitution of terms in § 260a.3(a)(3) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 273.32(a)(3) and 273.40(b) and (c) (relating to notification; and exports).

Subchapter D. UNIVERSAL WASTE TRANSPORTERS

Sec.
266b.50. Applicability.

§ 266b.50. Applicability.

(a) 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.

(b) The substitution of terms in § 260a.3(a)(3) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 273.56 (relating to exports).

Subchapter E. STANDARDS FOR DESTINATION FACILITIES

Sec.
266b.60. Applicability.

§ 266b.60. Applicability.

Relative to the requirements incorporated by reference, 40 CFR 273.60(b) (relating to applicability) is not incorporated by reference.

CHAPTER 267. (Reserved)

§ 267.1. (Reserved).

§ 267.2. (Reserved).

§§ 267.11—267.30. (Reserved).

§§ 267.41—267.46. (Reserved).

§§ 267.51—267.62. (Reserved).

CHAPTER 268a. LAND DISPOSAL RESTRICTIONS

Subchap.
A. GENERAL

Subchapter A. GENERAL

Sec.
268a.1. Incorporation by reference, purpose, scope and applicability.

§ 268a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 268 (relating to land disposal restrictions), except for 40 CFR 268.5, 268.6, 268.13, 268.42(b) and 268.44, and its appendices are incorporated by reference.

(b) Relative to 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), and the term "Administrator" in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.40(b) (relating to applicability of treatment standards).

CHAPTER 269. (Reserved)

§ 269.1. (Reserved).

§§ 269.11—269.14. (Reserved).

§§ 269.21—269.29. (Reserved).

§§ 269.41—269.50. (Reserved).

§§ 269.101—269.103. (Reserved).

§ 269.111. (Reserved).

§§ 269.121—269.124. (Reserved).

§ 269.131. (Reserved).

§ 269.132. (Reserved).

§§ 269.141—269.143. (Reserved).

§§ 269.151—269.155. (Reserved).

§§ 269.161—269.163. (Reserved).

§ 269.201. (Reserved).

§ 269.211. (Reserved).

§ 269.221. (Reserved).

§ 269.231. (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 269a. SITING

Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

GENERAL PROVISIONS

SCOPE AND APPLICABILITY

PHASE I EXCLUSIONARY CRITERIA

PHASE II CRITERIA

GENERAL PROVISIONS

§ 269a.1. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Active water supply—A water supply in use prior to both the receipt of a permit application and the establishment of a public participation program for a hazardous waste management facility.

Facility site—All contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application.

Wetland—An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes, but is not limited to, wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan, the United States Fish and Wildlife National Wetland Inventory and wetland areas designated by a river basin commission.

(b) All other words and terms not defined in this subchapter have the meanings ascribed to them in § 260a.10 (relating to definitions).

SCOPE AND APPLICABILITY

§ 269a.11. Scope and applicability.

The requirements of this chapter apply to siting of hazardous waste treatment and disposal facilities. The hazardous waste treatment or disposal facility shall satisfy all other applicable requirements of this article. The criteria for siting hazardous waste treatment and disposal facilities are divided into two phases as described in §§ 269a.12 and 269a.13 (relating to Phase I; and Phase II).

§ 269a.12. Phase I.

Phase I exclusionary criteria are established in §§ 269a.21—269a.29 (relating to Phase I exclusionary criteria) and prohibit the siting of a hazardous waste treatment or disposal facility in an excluded area delineated under these criteria. The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area. Phase I criteria apply to hazardous waste treatment or disposal facilities, except for the following:

(1) A facility sited and substantially constructed in good faith prior to the effective date of this chapter.

(2) Modifications to a facility within the existing facility site.

§ 269a.13. Phase II.

(a) Phase II criteria are established in §§ 269a.41—269a.50 (relating to Phase II criteria) and identify further environmental, social and economic factors which may affect the suitability of a location for a proposed facility. Phase II criteria apply to hazardous waste treatment or disposal facilities and modifications. If a facility site does not satisfy a Phase II criteria, the applicant shall submit additional information and analyses to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.

(b) The Department will provide notice to municipal officials and other interested persons in order to solicit further information regarding potential effects of a failure to meet Phase II criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, will determine whether the proposed design, construction and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criterion.

(c) After evaluating Phase II criterion individually, the Department will evaluate the facility's overall compliance with the Phase II criteria, and will identify risks that have not been eliminated through mitigation measures. If risks to the public health or safety, or to significant natural, scenic, historic or aesthetic values remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste treatment or disposal facility, the Department may in-

clude conditions in the permit which eliminate or reduce the identified risks or may deny the permit application.

§ 269a.14. Distances.

The distances from a facility to a feature or structure described in these criteria shall be measured from the perimeter of the facility site.

PHASE I EXCLUSIONARY CRITERIA

§ 269a.21. Water supply.

(a) Landfill, land treatment and surface impoundment facilities may not be sited in the following locations:

(1) Within 1/2 mile of a well or spring used for a community water supply.

(2) Within 1/2 mile of either side of a stream or impoundment for a distance of 5 stream miles upstream of a surface water intake for a community water supply.

(3) Within 1/2 mile of an offsite private or noncommunity public well or spring used as an active water supply, unless prior to operation of the facility the applicant demonstrates the availability of an acceptable permanent alternative supply of like quantity, yield and quality to the existing supply, and provides financial assurance that the alternate supply will be made available at no additional cost to the water supply owner for a period of time that shall be no less than the bond liability period established in section 505(a) of the SWMA (35 P. S. § 6018.505(a)). If a permit is granted, it shall include a permit condition which requires installation of the alternative water supply prior to operation of the facility.

(b) A permanent alternative supply may be provided through the development of a new well with a distribution system, interconnection with a public water supply, extension of a private water supply or similar proposals, but it may not include provision of bottled water or a water tank supplied by a bulk water hauling system.

(1) The applicant shall demonstrate good faith efforts to reach agreement with the water supply owner regarding the provision of an acceptable permanent alternative water supply.

(2) If the applicant is unable, despite good faith efforts, to reach agreement with the water supply owner, the applicant shall demonstrate to the Department that an acceptable permanent alternative water supply is available, has been offered and will be provided to the water supply owner.

(3) The Department will determine that an alternative permanent water supply is acceptable if the quality and quantity satisfy requirements for public water supplies under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) and Chapter 109 (relating to safe drinking water). The Department may require the alternative water supply to provide higher quality, quantity or yield of water than that required to be delivered by public water systems if the water supply owner demonstrates that the higher quality, quantity or yield is necessary to continue a preexisting use of substantial economic value.

§ 269a.22. Flood hazard areas.

(a) Surface impoundment, landfill and land treatment facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated.

(b) Treatment and incineration facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated unless the industrial use on the proposed site was in existence as of October 4, 1978, which is the effective date of the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

§ 269a.23. Wetlands.

Treatment and disposal facilities may not be sited in wetland areas.

§ 269a.24. Oil and gas areas.

Surface impoundments, landfill and land treatment facilities may not be sited over active or inactive oil and gas wells or gas storage areas located within or beneath the facility site. The term "active or inactive oil and gas wells or gas storage areas" has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

§ 269a.25. Carbonate bedrock areas.

Surface impoundments, landfill and land treatment facilities may not be sited over limestone or carbonate formations, where the formations are greater than 5 feet in thickness and present at the topmost geologic unit. Areas mapped by the Pennsylvania Geologic Survey as underlain by formations shall be excluded unless competent geologic studies demonstrate the absence of formations under the facility site.

§ 269a.26. National natural landmarks and historic places.

Treatment and disposal facilities may not be sited within National Natural Landmarks designated by the National Park Service or historic sites listed on the National Register of Historic Places, unless the statute under which the designation or listing has been made authorizes the operation of the facilities in these areas.

§ 269a.27. Dedicated lands in public trust.

Treatment and disposal facilities may not be sited on lands in public trust, including State, county or municipal parks, units of the National Parks System, State forests, the Allegheny National Forest, State game lands, property owned by the Historical and Museum Commission, a National wildlife refuge, National fish hatchery or National environmental center unless the agency administering the lands has been given authority by statute or ordinance to allow the operation of the facilities on these lands.

§ 269a.28. Agricultural areas.

Treatment and disposal facilities may not be sited in agricultural areas established under the Agricultural Area Security Law (3 P. S. §§ 901—915) or in farmlands identified as Class I agricultural land by the Soil Conservation Service.

§ 269a.29. Exceptional value waters.

Treatment and disposal facilities may not be sited in watersheds of exceptional value waters.

PHASE II CRITERIA

§ 269a.41. Water supply.

(a) The applicant shall determine whether a proposed surface impoundment, landfill or land treatment facility is within the groundwater recharge area for public or private water supplies. The applicant shall delineate the position of the proposed facility site within relevant groundwater flow systems. The applicant shall identify all public and private water supplies and water treatment plants which may potentially be adversely affected by groundwater flow associated with the proposed hazardous waste facility, such as the water supplies located downgradient in the flow path from the facility.

(b) For water supplies or water treatment plants which may be affected by the proposed facility, the applicant shall submit a detailed hydrogeologic study including information addressing the following:

(1) Hydraulic conductivity of the aquifer for the water supplies.

(2) Hydraulic conductivity of the geologic deposits underlying the proposed facility.

(3) Assessment of the influence of faults, fractures or other structural geologic features upon hydraulic conductivity and groundwater flow directions.

(4) Pumping rates of water supply wells and the areal extent and configuration of the cone of pumping depression associated with these wells in relation to the groundwater table of the surrounding areas.

(c) For water supplies or water treatment plants which the hydrogeologic study required in subsection (b) indicate, may be adversely affected by the proposed facility, the applicant shall demonstrate:

(1) The hydrogeologic characteristics of the proposed facility site and adjacent areas assure that implementation of a groundwater monitoring well program will provide protection of water supplies or water treatment plants from potential contamination.

(2) The feasibility of providing a permanent alternative water supply acceptable to the water supply owner of like quantity and quality to the existing supply at no additional cost to the owner.

§ 269a.42. Geology.

(a) *Faults.* Landfill, land treatment and surface impoundment facilities are deemed to be acceptable if located 1 mile or more from a major structural feature. A major structural feature is a fault mapped by the Pennsylvania Geologic Survey or the United States Geological Survey at a scale of 4 miles to the inch. If the proposed facility is within 1 mile of a major structural feature, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the proposed facility design with the faults in the area.

(b) *Bedrock depth.* For surface impoundment, landfill and land treatment facilities, a depth to bedrock of 15 feet or more shall be considered acceptable. Where the construction of the proposed facility required excavation, the final depth to bedrock shall be considered. The applicant shall address lesser bedrock depths by providing information and analysis to allow the Department to assess the compatibility of the design and construction of the proposed facility with the bedrock depth.

(c) *Slopes.* Slopes less than 15% for surface impoundment, landfill and land treatment facilities shall be considered acceptable. The applicant shall address greater slopes by submitting information and analysis to allow the Department to assess the compatibility of the design and construction measures for the proposed facility that would minimize adverse effects.

(d) *Landslide prone areas.* If a facility site is in a landslide prone area or is adjacent to a landslide prone area, the applicant shall submit information and analyses to allow the Department to assess whether the design measures provide adequate protection from potential landslides.

(e) *Oil and gas wells.* Surface impoundment, landfill and land treatment facilities shall be considered acceptable if the applicant can establish that abandoned oil and gas wells and gas storage areas do not exist within the proposed facility site. The term "abandoned oil and gas wells and gas storage areas" has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605). If abandoned facilities exist, the applicant shall provide information and analysis to allow the Department to assess the probability and degree of subsurface discharges to be expected from the existence of abandoned oil and gas wells and gas storage areas within the facility site after wells are plugged.

(f) *Carbonate areas.* Where surface impoundment, landfill or land treatment and disposal facilities are proposed over areas underlain by carbonate bedrock, the applicant shall provide information and analysis to allow the Department to assess the prevalence of solution channels and the potential for sinkholes at the facility site.

(g) *Hydrogeology.* A surface impoundment, landfill or land treatment facility may not be located in an area underlain by coarse unconsolidated deposits, such as well sorted valley fill deposits and heavily fractured bedrock. If any other facility is to be located in an area underlain by coarse unconsolidated deposits the applicant shall provide information and analyses to allow the Department to further assess the facility site to determine the environmental impact of these subsurface conditions.

(h) *Seismic risk zones.* If a proposed treatment or disposal facility is within a 5-mile radius of earthquake epicenters as mapped by the Pennsylvania Geologic Survey or the United States Geological Survey, the applicant shall specify design measures necessary to withstand potential seismic events, and the Department will determine whether the proposed design measures provide adequate protection from potential earthquake damage.

§ 269a.43. Soils.

(a) *pH.* Land farming facilities located so the soil pH within the proposed facility is 6.0 or greater shall be deemed to be acceptable. If the proposed facility cannot meet the soil pH requirements of this subsection, the applicant shall provide information and analysis to allow the Department to assess the ability of the proposed facility to mitigate adverse environmental effects resulting from incompatible soil pH.

(b) *Cation exchange capacity.* Surface impoundment, landfill and land treatment facilities located so that the capacity of the soil to exchange cations expressed as a sum for all exchangeable cations is 15 milliequivalents per 100 grams of soil or greater shall be deemed to be acceptable. If the cation exchange capacity is less than 15, the applicant shall provide information and analyses to allow the Department to assess the soil cation exchange capacity in relation to the potential for migration of contaminants from the proposed facility.

§ 269a.44. Mineral bearing areas.

(a) *Ownership of mineral rights.*

(1) Surface impoundment, landfill and land treatment facilities shall be deemed to be acceptable if the applicant owns the mineral rights within the proposed facility and the area has not been previously mined.

(2) If the applicant does not own all the mineral rights within the proposed facility, the applicant shall determine the ownership of mineral rights conveyed with the property deed to the proposed facility. The applicant shall provide a certification based on a property title search, that ownership of all mineral rights, including coal, oil and gas is or will be held by the applicant and that these rights will not be severed from the property as long as hazardous waste remains on the property.

(b) *Surface subsidence risk.* If any part of a proposed facility site has been previously mined by deep or surface mining methods, the applicant shall provide the results of an engineering study of the proposed site by a competent geotechnical engineer. The study shall allow the Department to assess the probability and degree of surface subsidence and the methods which have been used or are proposed to stabilize the surface. Additionally, the applicant shall provide assurance that minerals providing support will not be mined as long as hazardous waste remains onsite.

§ 269a.45. Land use.

(a) *New facilities.* Treatment and disposal facilities located on lands either designated for industrial use by existing municipal zoning or indicated as industrial in officially adopted county or municipal comprehensive plans or land use maps are deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the design of the proposed facility with zoning or land use controls. Where no zoning exists, the applicant shall provide information and analysis to allow the Department to assess compatability with existing land use.

(b) *Existing facilities.* Treatment and disposal facilities located on sites where solid waste or hazardous waste operations—treatment, storage, recovery and disposal—or both, are currently being conducted under authority of the act are deemed to comply with the land use criterion.

§ 269a.46. Transportation standards.

(a) *Access.* Treatment and disposal facilities within 5 miles travel distance of interstate or limited access highways and served by roads capable of handling anticipated truck traffic or served by a dedicated limit access highway shall be deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the proximity of the proposed facility to interstate highways, the effect upon the operation of the proposed facility and the effect of the proposed facility upon the community in the transportation corridor to and from the facility. The applicant shall provide a plan for highway improvements, if necessary.

(b) *Structures along transportation corridor.* Treatment and disposal facility sites where the transportation corridor between the entrance to a facility and the nearest interstate or limited access highway is the primary access for less than five residential dwellings per road mile with no schools, community parks or hospitals, are deemed to be acceptable. If these criteria are not met, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

(c) *Transportation restrictions.* Treatment and disposal facility sites are deemed to be acceptable if there are less than four intersections per mile between the entrance to the facility and the nearest interstate or limited access highway. If there are four or more intersections per mile, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

§ 269a.47. Safety services.

Treatment and disposal facilities are deemed to be acceptable if located within an area with adequate safety services. The applicant shall provide information and analyses to allow the Department to assess the adequacy of fire protection, police, ambulance and other necessary safety services available and willing to provide services to the proposed facility. In all cases, the applicant shall also comply with 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; contingency plan and emergency procedures) and Chapter 264a, Subchapter D (relating to contingency plan and emergency procedures).

§ 269a.48. Proximity of facilities and structures.

Treatment and disposal facility sites are deemed to be acceptable if the distance from the facility to an airport, school, community park, hospital, church, retail center or nursing home, is greater than 1 mile. If this criterion cannot be met, the applicant shall provide information and analyses to allow the Department to assess the effect the proposed facility will have on the use of these facilities.

§ 269a.49. Economic criteria.

(a) A treatment or disposal facility which does not adversely affect the economy of the host and contiguous municipalities and municipalities contiguous to the transportation corridor to the nearest interstate or limited access highway is deemed to be acceptable without further assessment. If the facility will result in a net loss of revenues to local jurisdictions, the applicant shall provide information and analysis to allow the Department to assess compensation needed to offset actual net loss of revenues to local jurisdictions caused by the proposed facility.

(b) If a treatment or disposal facility will result in a net increase in the cost of services provided by local government, the applicant shall provide information and analyses to allow the Department to assess compensation needed to offset net increases in cost of services.

(c) If a treatment or disposal facility will adversely affect the local economy, the applicant shall provide information and analyses to allow the Department to assess employment and future economic development generated as a result of the location of the facility which may offset a decrease in the local economy.

(d) If a treatment or disposal facility will result in a net increase in cost for monitoring the facility by local government, the applicant shall provide information and analyses to allow the Department to assess the need for compensation for technical assistance which may offset these costs. The applicant shall assess provisions for site access by local government.

(e) The applicant shall provide information and analyses to allow the Department to assess a change in market value of property within the local government caused by operation of the treatment or disposal facility and means by which operation of the proposed facility may offset the change.

§ 269a.50. Environmental assessment considerations.

(a) The purpose of the criteria in this section is to assist the Department in evaluating the potential impact of a proposed treatment or disposal facility on natural, scenic, historic and aesthetic values of the environment under PA. CONST. ART. I, § 27. The Department will determine whether significant environmental harm will occur after reviewing the applicant's environmental assessment report submitted in compliance with this chapter and after consulting with the applicant and relevant governmental agencies.

(b) If the Department determines that there is a significant impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the environmental incursion to a minimum. If, after consideration of mitigation measures, the Department finds that significant environmental harm will occur, the Department will evaluate the social and economic benefits of the proposed facility to determine whether the harm outweighs the benefits. The evaluation of environmental harm shall include, at a minimum, a consideration of the impact of the proposed facility on the 15 types of environmental resources described in this subsection. There may be additional potentially affected natural, scenic, historic or aesthetic values which the Department is constitutionally obligated to protect that will be considered for proposed facilities in some locations. In those instances, the Department will identify additional potential impacts for the applicant. The following criteria may not be construed as an attempt to limit or restrict the responsibilities of a Commonwealth agency under PA. CONST. ART. I, § 27.

(1) If the proposed facility is located within 1 mile of the corridor of a stream or river designated as a National or State wild, scenic, recreational, pastoral or modified recreation river under the National Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287), or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29) the applicant shall provide information and analyses to allow the Department to determine whether the proposed facility conforms to the designating statutes, land management guidelines and studies or plans for the corridor.

(2) If the proposed facility is located within 1 mile of the nearest bank of a stream or river listed as a 1-A priority for study by the Department as a State wild, scenic, recreational, pastoral or modified recreational river; or mandated by the United States Congress for study or determined by the United States Park Service to meet the criteria for study for potential inclusion into the National Wild and Scenic Rivers System, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the river or stream.

(3) If the proposed facility is located within 1 mile of a unit of the National Parks System; a State, county or municipal park; a recreational facility operated by the United States Army Corps of Engineers; a State forest picnic area; or the Allegheny River Reservoir in the Allegheny National Forest; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the park or other recreation areas listed in this subsection.

(4) If the facility is located within 1 mile of the footpath of the Appalachian Trail or other State designated trail, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the Appalachian Trail or other State designated trail.

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service; or a natural area or wild area designated by the EQB, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

(6) If the facility is located within 1 mile of or within an identified potential impact area of a National wildlife refuge, National fish hatchery or National environment center operated by the United States Fish and Wildlife Service, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the wildlife reserve, fish hatchery or environmental center.

(7) If the facility is located within 1 mile of a historic property owned by the Historical and Museum Commission, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the historic property.

(8) If the facility is located within 1 mile of a historic site listed in the National Register of Historic Places, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on historic sites.

(9) If the facility is located within 1/4 mile of a historic site listed in the Pennsylvania Inventory of Historic Places or an archaeological site listed in the Pennsylvania Archaeological Site Survey, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the historical or archaeological site.

(10) If the facility is located within 1 mile of the boundary of a State forest or State game land or the proclamation boundary of the Allegheny National Forest, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the forest, game and or resources.

(11) If the facility is located within an area which is a habitat of a rare, threatened or endangered species of plant or animal protected by the Endangered Species Act of 1973 (7 U.S.C.A. § 136 and 16 U.S.C.A. §§ 460r-1, 460l-9, 668 dd, 715i, 715s, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), or recognized by the Fish and Boat Commission or Game Commission; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse effects on the species or habitate and mitigation measures the applicant has proposed to deal with adverse impacts.

(12) If the facility will result in an increase in the peak discharge rate of stormwater drainage from the project site, the applicant shall demonstrate that the proposed facility is in conformance with the official stormwater management plan required by the Storm Water Management Act (32 P. S. §§ 680.1—680.17), and the proposed facility will manage the runoff in a manner that otherwise adequately protects health and property from injury.

(13) If a facility is proposed to be located in a watershed for which a formal written request for designation as exceptional value waters has been received by the Department or the EQB, the applicant shall provide information and analyses to allow the Department to assess the impact of the proposed facility on the pending designation.

(14) If the facility generates a wastewater discharge which could degrade waters designated as high quality waters under Chapter 93 (relating to water quality standards) or waters for which a formal written request for designation as high quality waters has been received by the Department or the EQB, the applicant shall demonstrate:

(i) The discharges are justified as a result of necessary economic or social development which is of significant public value.

(ii) The discharges, alone or in combination with other anticipated discharges of pollutants to the waters, will not preclude a use presently possible in the waters and downstream from the waters, and will not result in a violation of the numerical water quality criteria specified in § 93.9 (relating to designated water uses and water quality criteria) which are applicable to the receiving waters.

(15) If a proposed facility is to be located on prime or unique agricultural land as defined by the Soil Conservation Service, lands currently in agricultural use, or lands of Statewide importance as designated by the Soil Conservation Service, the applicant shall provide information and analyses to allow the Department to assess the proposed facility's consistency with Commonwealth policy, such as Executive Order 1982-3 regarding agricultural lands at 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

Subchapter B. CERTIFICATES OF PUBLIC NECESSITY

GENERAL PROVISIONS

CONFLICT OF INTEREST

APPLICATION REQUIREMENTS

EQB PROCEDURE

PUBLIC REVIEW AND COMMENT

CRITERIA FOR ISSUING CPNs

EQB DECISION

GENERAL PROVISIONS

§ 269a.101. Definitions.

(a) The following words and terms when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CPN—Certificate of public necessity.

Chairperson—Chairperson of the EQB.

Impact assessment—A report, analysis or module previously prepared by or on behalf of the applicant to comply with existing Federal or State permitting or regulatory requirements. The term includes solid waste management permit modules and analyses submitted to meet the requirements of Subchapter A (relating to siting hazardous waste treatment and disposal facilities) and established State and Federal permitting requirements.

(b) Words and terms not otherwise defined in this section have the meanings in §§ 260a.10 and 269a.1 (relating to definitions; and definitions).

§ 269a.102. Scope and applicability.

This subchapter establishes application requirements and procedures governing the review and consideration of an application for a CPN from the EQB under section 105 of the act (35 P. S. § 6018.105). A permittee of a hazardous waste treatment or disposal facility may apply for a CPN under this subchapter.

§ 269a.103. CPN.

(a) The EQB has the power and its duty is to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of CPNs for the establishment of hazardous waste treatment and disposal facilities.

(b) Issuance of a CPN by the EQB shall suspend and supersede local laws, including zoning ordinances, which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility.

(c) The suspension and supersession granted by the CPN is explicitly extended to a person to whom the CPNs are issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of the person.

CONFLICT OF INTEREST

§ 269a.111. Conflict of interest.

A member or alternate of the EQB or staff designated to review any aspect of an application for a CPN who may have a potential conflict of interest as described in the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), the State Adverse Interest Act (71 P. S. §§ 776.1—776.7a) and 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employes) or other applicable codes of conduct shall immediately notify the Chairperson of the potential conflict. The Chairperson will advise the EQB of the potential conflict. The EQB may recommend that the member, alternate or staff abstain from participation in the proceedings or may seek a ruling regarding the conflict under the applicable ethics law or code of conduct.

APPLICATION REQUIREMENTS

§ 269a.121. Eligible applicants.

An applicant for a CPN shall have:

(1) Permits necessary for construction and operation of a new or modified facility from the Department or the Federal agency authorized to issue permits in this Commonwealth.

(2) Implemented impact assessments and public participation programs related to obtaining those permits.

§ 269a.122. Application.

The applicant shall submit eight copies of the following items in an application for a CPN to the Chairperson by certified mail:

(1) The hazardous waste permit issued for the treatment or disposal facility by the Department or the Federal agency, or both, authorized to issue permits in this Commonwealth.

(2) Documentation of the applicant's receipt of other State and Federal permits necessary for construction and operation of the facility.

(3) Impact assessments related to the facility.

(4) Local laws and ordinances, if any, which the applicant believes may preclude or prohibit the establishment of a hazardous waste treatment or disposal facility on the proposed site.

(5) A narrative description, including supporting documentation and appropriate references, demonstrating the extent to which the applicant has complied with §§ 269a.151—269a.155 (relating to criteria for issuing CPNs).

(6) Other information the applicant feels will help the EQB determine if a CPN is warranted based upon the criteria in §§ 269a.151—269a.155.

(7) A summary of the application which describes the type of facility for which this CPN is requested and includes a summary of paragraphs (1)—(6). The summary shall be five pages or less in length.

§ 269a.123. Application fee.

(a) An application shall be accompanied by a one-time minimum nonrefundable application fee of $1,500.

(b) The applicant shall reimburse the Board for actual expenses incurred for reviewing and acting on the application beyond the expenses covered by the minimum fee.

(c) An applicant resubmitting a CPN application for the same facility is exempt from the minimum fee but is responsible for the expenses incurred by the Board for reviewing and acting upon the application.

§ 269a.124. Public notice of application submitted to the EQB.

(a) The applicant shall provide written notice by certified mail of its submission of an application for a CPN to the EQB within 10 days of the submittal to:

(1) The host municipality and host county.

(2) Other counties within 10 miles and other municipalities within 1 mile of the proposed facility.

(3) The landowners adjacent to the proposed site.

(b) The applicant shall publish a notice of the submission of the CPN application in a display advertisement in two newspapers of general circulation in the county of the proposed site once a week for 2 successive weeks and send proof of publication of this notice to the EQB.

(c) The notices required by this section shall also include the name, address and telephone number of the applicant, including the name and location—municipality and county—of the facility, a brief description of the business conducted or activity described in the application, and a contact person in the applicant's office from whom interested citizens may obtain further information.

(d) Acceptable proof of notice required by this section will include certified mail receipts and proof of publication from newspaper publishers.

EQB PROCEDURE

§ 269a.131. Complete application.

(a) Upon receipt of an application for a CPN by the Board, the application shall be reviewed for completeness.

(b) The Chairperson will notify the EQB that an application has been received at the first EQB meeting following its receipt. The EQB will determine whether an application for a CPN is complete within 60 days of the Chairperson's notification to the EQB.

(c) Upon a determination by the EQB that the application is complete, the Chairperson will initiate the public review and comment procedures outlined in §§ 269a.132 and 269a.141 (relating to local government representatives; and initial public notice) and notify the applicant. The Chairperson will provide a copy of the complete application to the host county and host municipality.

(d) An application determined to be incomplete shall be returned to the applicant with an explanation of why the application is incomplete.

(e) After the application is determined to be complete, the EQB reserves the right to request additional information relevant to its decision under section 105(f) and (g) of the act (35 P. S. § 6018.105(f) and (g)).

§ 269a.132. Local government representatives.

(a) When the EQB has accepted a complete CPN application for consideration, the EQB will ask the governing body of the host county and the governing body of the host municipality—township, borough, town, home rule municipality or city—to each name one representative who will be invited to be present during EQB deliberations and hearings on the application and receive copies of materials given EQB members during the consideration of an application accepted for review.

(b) The role of the local government representative shall be to participate in the deliberations of the EQB as it considers the application. The representatives will not have voting rights on the EQB.

(c) A local government representative will be reimbursed for expenses incurred in participating with the EQB as outlined in Management Directive 230.10 (Travel and Subsistence Allowances), issued by the Governor's Office through the Directives Management System. See 4 Pa. Code Chapter 1, Subchapter A (relating to directives management system). This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

PUBLIC REVIEW AND COMMENT

§ 269a.141. Initial public notice.

The EQB will issue a press release and publish a notice in the *Pennsylvania Bulletin* and two newspapers of general circulation in the county of the proposed facility once a week for 2 successive weeks. The notices and press release shall state that the EQB is considering a complete application for a CPN, and shall include the following items:

(1) The name, address and telephone number of the applicant.

(2) The location and description of the proposed facility.

(3) A description of the process followed by the EQB to consider an application for a CPN.

(4) The location of a local docket where application materials can be reviewed by interested persons in the host municipality or county.

(5) An invitation to interested persons to include their name on a mailing list established by the EQB to receive future notices concerning the CPN application.

§ 269a.142. Local docket and mailing list.

(a) The EQB will establish a docket in a publicly accessible location in the host municipality or county as near as practical to the proposed facility where materials related to the EQB's consideration of the CPN application can be made available to the public for review.

(b) The EQB will establish and maintain a mailing list of persons interested in receiving notices concerning the CPN application.

(c) If the docket is located in a publicly-owned or operated building, the EQB will compensate the building owner or operator for the cost of maintaining the docket for public review. This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

§ 269a.143. Public hearing.

(a) The EQB will schedule at least one public hearing on the application in the host municipality or county within 90 days of the acceptance of a complete application for consideration.

(b) Notice of the hearing will be given 30 days before the hearing by the EQB as outlined in § 269a.141 (relating to initial public notice) and to those on the mailing list in § 269a.142 (relating to local docket and mailing list).

(c) A minimum of three members of the EQB will be present at a hearing scheduled on the application. The hearing shall be transcribed and the transcript shall be available to the EQB for review.

(d) The public comment period will remain open for comments for at least 30 days after the last public hearing on the application.

(e) The public comment period may be extended up to 60 days by the EQB if significant new information is forthcoming that warrants the extension.

CRITERIA FOR ISSUING CPNs

§ 269a.151. General criterion.

The EQB will evaluate the information received from the applicant, the comments received on the application during the comment period and other relevant information in reaching its decision on the application.

§ 269a.152. Conformance with the Hazardous Waste Facilities Plan.

(a) The EQB will determine the extent to which the facility is in conformance with the Hazardous Waste Facilities Plan (Plan) as adopted and amended by the EQB.

(b) The EQB will determine whether the facility is needed as defined by the Plan and whether the facility is consistent with the waste management hierarchy outlined in the Plan.

§ 269a.153. Impact on adjacent populated areas.

(a) The EQB will determine the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to the facility.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria under §§ 269a.46 and 269a.48 (relating to transportation standards; and proximity of facilities and structures).

§ 269a.154. Local health, safety, economic impact and planning.

(a) The EQB will determine the impact of the facility on the borough, township, town, home rule municipality or city in which the facility is located in terms of health, safety, cost and consistency with local planning.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria in §§ 269a.45, 269a.47 and 269a.49 (relating to land use; safety services; and economic criteria).

§ 269a.155. Public participation.

(a) The EQB will consider the extent to which the applicant has implemented guidelines developed by the EQB at Chapter 24 (relating to model procedure for meaningful public participation—statement of policy) relating to public participation in the location of a hazardous waste treatment and disposal facility as significant evidence of the applicant's willingness to provide the public with a meaningful opportunity to participate in the evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

(b) The EQB will also consider cooperative agreements developed between the applicant and host county and host municipality as further evidence of meaningful public participation.

(c) The EQB will determine the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in the evaluation of alternative sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

EQB DECISION

§ 269a.161. Deadline for decision.

(a) The EQB will issue its decision on the application within 180 calendar days of its determination that the application is complete.

(b) The EQB may consider extending the deadline for decision if one of the following occurs:

(1) The applicant and host county and host municipality make a written recommendation to the Board for an extension because they are close to agreement on cooperative agreements that would resolve key issues.

(2) The EQB extends the public comment period under § 269a.143 (relating to public hearing).

(c) The extension will be for 60 days or less.

(d) The EQB will have 60 days after an extension to issue its decision.

§ 269a.162. Record of decision.

(a) A written record of decision outlining the findings of the EQB under each of the criteria established in §§ 269a.151—269a.155 (relating to criteria for issuing CPNs) will be issued by the EQB.

(b) The record of decision will include a summary of comments received by the EQB on the CPN application and a response indicating how the comments were considered by the EQB.

§ 269a.163. Public notice of decision.

(a) The Chairperson will notify the applicant in writing of the EQB decision on the application for a CPN within 10 days.

(b) The Chairperson will also notify in writing the host municipality, the host county and persons identified on

the mailing list established under § 269a.142 (relating to local docket and mailing list) of the EQB decision within 10 days.

(c) The Department will provide additional notice of the decision of the EQB as described in § 269a.141 (relating to initial public notice).

Subchapter C. HOST MUNICIPALITY FUND ALLOCATION

ELIGIBILITY

Sec.
269a.201. Eligibility.

COMPLIANCE

269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.

ALLOCATION

269a.221. Allocation of the Fund.

DISTRIBUTION

269a.231. Distribution of payments.

ELIGIBILITY

§ 269a.201. Eligibility.

A host municipality is eligible for a one time distribution from the Fund, under section 305 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305), for each qualifying facility, located in whole or in part, within its corporate boundary.

COMPLIANCE

§ 269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.

A host municipality will only receive a one time payment under § 269a.201 (relating to eligibility) for a commercial hazardous waste treatment or disposal facility, or portion thereof, that is identified as being needed by the Pennsylvania Hazardous Waste Facilities Plan.

ALLOCATION

§ 269a.221. Allocation of the Fund.

(a) The Department will identify qualifying facilities at the end of each calendar year. A municipality will become eligible for payment in the first calendar year that a qualifying facility is permitted and operating. Host municipalities are not required to submit an application or request to be eligible.

(b) A host municipality shall be eligible for a one time payment from the Fund if a qualifying facility is identified by the Department in whole, or in part, within the host municipality's corporate boundaries, and moneys remain in the Fund after requests for reimbursement under section 305(d)(1) of the act (35 P. S. § 6020.305) have been satisfied for the calendar year.

(c) When only one qualifying facility is identified, the host municipality shall receive the balance of the fund for that year, subject to subsection (b).

(d) When more than one qualifying facility is identified, the Department will allocate the available moneys using the following formula and method of calculation:

(1) The Hazardous Waste Site Ranking System established by the EPA, under Appendix A of 40 CFR 300 (relating to uncontrolled hazardous waste site ranking system; a users manual) will be used to assign a numerical value to each qualifying facility ranging from 1 to 100, considering:

(i) The toxicity, mobility and other characteristics of the hazardous waste.

(ii) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.

(2) For scoring purposes, an assigned value of 1 will be used for the observed release and containment factors in the hazard ranking system calculation.

(3) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, planned for treatment or disposal annually at the facility shall be calculated as a percentage of the total amount of hazardous waste treated or disposed of annually within this Commonwealth.

(4) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, generated in this Commonwealth will be calculated as a percentage of the hazardous waste treated or disposed of annually at the facility. The Department may require executed contracts or the facility's first year of manifest data from the owner or operator to determine this figure.

(5) If the total facility is not designated as needed by the Pennsylvania Hazardous Waste Facilities Plan, the percentage of the facility meeting the needs of the Pennsylvania Hazardous Waste Facilities Plan will be estimated by the Department.

(6) The numerical values derived in paragraphs (1)—(5) will be multiplied together to obtain a rating score for the qualifying facility.

(7) The rating scores will then be compared and a pro rata share of the available Fund monies will be allocated to the host municipiality based on these scores.

(8) If a qualifying facility is located in more than one host municipality, the allocation for that facility shall be distributed among the municipalities based on the percentage of the permitted facility within each municipality.

DISTRIBUTION

§ 269a.231. Distribution of payments.

The Department may require up to 1 year's operating data from a qualifying facility to determine the allocation for that facility. Allocation payments from the Fund will not be disbursed until the eligible reimbursements under section 305(d)(1) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305(d)(1)) have been made or funds encumbered for payment, and the Department has sufficient data to make the determinations required by § 269a.221 (relating to allocation of the Fund). The Department will make the determinations and either disburse or encumber the remaining moneys in accordance with current fiscal policy to assure payment within 1 year of determination of eligibility of the host municipality.

CHAPTER 270. (Reserved)

§§ 270.1—270.4. (Reserved).

§§ 270.11—270.13. (Reserved).

§ 270.21. (Reserved).

§ 270.22. (Reserved).

§§ 270.31—270.33. (Reserved).

§§ 270.41—270.43. (Reserved).

§ 270.60. (Reserved).

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter A. GENERAL INFORMATION

§ 270a.1. Incorporation by reference, scope and applicability.

(a) 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.

(b) Regarding the requirements incorporated by reference, the requirements of this chapter do not apply to an owner or operator of a facility specifically exempted under 40 CFR 270.1(c)(2) (relating to purpose and scope of these regulations) unless the facility is regulated under § 270a.60(b) (relating to permits by rule).

(c) The owner or operator of a facility eligible to operate under § 270a.60(b) (relating to permits by rule) is deemed to have a hazardous waste management permit if the applicable requirements of § 270a.60(b) are satisfied.

§ 270a.2. Definitions.

(a) The definitions for "disposal," "person" and "storage" are not incorporated by reference.

(b) 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.

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.

(2) If more than one permitted activity is located at a site, or more than one activity occurs, the fees are 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.

§ 270a.4. Effect of permit.

Regarding the requirements incorporated by reference, nothing in 40 CFR 270.4 (relating to effect of a permit) prohibits the Department from taking an enforcement action under section 602 of act (35 P. S. § 6018.602).

§ 270a.5. Noncomplying and program reporting by Director.

The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) do not apply to 40 CFR 270.5 (relating to noncompliance and program reporting by the Director).

§ 270a.6. References.

Regarding the requirements incorporated by reference, the term "*Federal Register*" retains its meaning and is not replaced by the term "*Pennsylvania Bulletin*" when used in 40 CFR 270a.6 (relating to references).

Subchapter B. PERMIT APPLICATION

§ 270a.10. General application requirements and permit issuance procedures.

(a) Regarding 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(e)(2) (relating to general application requirements).

(2) In 40 CFR 270.10(e)(3), the term "Department" is substituted for "administrator" and "sections 602 and 610 of the act" are substituted for "section 3008 of RCRA."

(3) The substitution of terms in § 260a.3 for the term "Administrator" does not apply to 40 CFR 270.10(f)(3).

(4) An application submitted under 40 CFR 270.10(f)(2) and (g)(1)(i) shall be submitted to the Department and not to the EPA.

(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).

(c) The following procedures are used in issuing a permit:

(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 complies with the application requirements for that permit and the signature and certification requirements of 40 CFR 270.11 (relating to signatories to permit applications and reports).

(3) The Department reviews for completeness every hazardous waste permit application for a new or existing hazardous waste management facility. Upon completing the review, the Department notifies the applicant in writing whether the application is complete. If the application is incomplete, the Department lists the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Department specifies in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department notifies 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 do 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 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 tentatively decides 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 is withdrawn and the Department will proceed to prepare a draft permit under paragraph (9).

(9) A draft permit prepared by the Department contains the following information:

(i) Conditions under this chapter and 40 CFR 270.30 and 270.32 (relating to conditions applicable to all permits; and establishing permit conditions).

(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 270.31.

(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 a public comment under § 270a.81(2) (relating to public hearings). The Department gives notice of the opportunity for public hearing under § 270a.81(2) and responds to comments under paragraph (13).

(11) The Department prepares a statement of basis for every draft permit for which a fact sheet under paragraph (12) is not prepared. The statement of basis describes 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 is sent to the applicant and, on request, to other persons.

(12) Preparation of fact sheets complies with the following:

(i) A fact sheet is 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 briefly sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department sends this fact sheet to the applicant and, on request, to other persons.

(ii) The fact sheet includes 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 proposed to be or being treated, stored or disposed.

(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.80 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 also issues a response to comments. The response does the following:

(i) Specifies which provisions, if any, of the draft permit changed in the final permit decisions, and the reasons for the change.

(ii) Briefly describes responses to significant comments on the draft permit raised during the public comment period or during a hearing.

(14) The Department makes its response to public comments available to the public.

§ 270a.12. Confidentiality of information.

40 CFR 270.12 (relating to confidentiality of information) is not incorporated by reference. The confidentiality of information is 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 keeps confidential information in a secure repository and does not make the information available for inspection by the general public.

(4) The Department makes confidential information available to any State or Federal agency for the purpose of administration of any State or Federal law.

§ 270a.13. Contents of Part A of the permit application.

In addition to the requirements incorporated by reference, Part A of the permit application includes information to demonstrate compliance with the siting criteria in Chapter 269a (relating to siting).

§ 270a.14. Additional applicant requirements.

(a) In addition to the requirements incorporated by reference, permit applicants shall also comply with § 270a.83 (relating to preapplication public meeting and notice).

(b) 40 CFR 270.14(b)(20) (relating to contents of Part B: general requirements) is not incorporated by reference.

§ 270a.29. Permit denial.

(a) 40 CFR 270.29 (relating to permit denial), is not incorporated by reference.

(b) 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 § 270a.10(c) (relating to general application requirements). 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 is withdrawn and the Department proceeds to prepare a draft permit under § 270a.10(c).

Subchapter C. PERMIT CONDITIONS

Sec.
270a.32. Establishing permit conditions.

§ 270a.32. Establishing permit conditions.

40 CFR 270.32(a) and (c) (relating to establishing permit conditions) is not incorporated by reference. In 40 CFR 270.32(b)(2), the term "section 3005" is replaced with "sections 501—503 of the act" (35 P. S. §§ 6018.501—6018.503) and the term "state director" is deleted.

Subchapter D. CHANGES TO PERMITS

Sec.
270a.41. Procedures for modification, termination or revocation and reissuance of permits.

§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.

Instead of the procedures required in 40 CFR Part 124 (relating to procedures for decisionmaking), permits are modified, terminated or revoked and reissued in accordance with the following:

(1) The Department may modify, revoke and reissue, or terminate 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—270.43 (relating to modification or revocation and reissuance of permits; permit modification at the request of the permittee; and modification or revocation and reissuance of permits, and termination of permits) or 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.

(2) If the Department decides the request is not justified, the Department sends a brief written response giving a reason for the decision to the requester. The Department's refusal to modify, or revoke and reissue a permit under a request is not subject to public notice, comment or hearings.

(3) If the Department tentatively decides to modify, terminate or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, 270.42(c) or 270.43 the Department prepares a draft permit under § 270a.10(c) (7—10) (relating to general application requirements) 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 requires 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.

(4) In a permit modification under this section, only those conditions to be modified are reopened when a new draft permit is prepared. Other aspects of the existing permit 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 expired and is 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.

(5) If the Department tentatively decides to terminate a permit in accordance with the incorporated provisions of 40 CFR 270.43, it issues a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as a draft permit prepared under § 270a.10(c)(7—10).

(6) Class 1 modifications, as listed in the Appendix I to 40 CFR 270.42, are not subject to the requirements of this section.

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

(a) Instead of complying with 40 CFR Part 124.10(c)(ix) (relating to public notice of permit actions and public comment period) the permittee shall send a notice to those persons in § 270a.80(d)(iv).

(b) Instead of the appeal procedure in 40 CFR 245.19 (relating to appeal of RCRA, UIC, NPDES permits). The Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

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

§ 270a.43. Permit termination.

The procedures for permit termination are found in § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits).

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

Sec.
270a.51. Continuation of existing permits.

§ 270a.51. Continuation of existing permits.

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

Subchapter F. SPECIAL FORMS OF PERMITS

Sec.
270a.60. Permits by rule.
270a.62. Hazardous waste incinerator permits.
270a.64. Interim permits for UIC wells.
270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

§ 270a.60. Permits by rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule): In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the 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 owner or operator complies with the following requirements:

(i) The facility treats hazardous waste generated onsite.

(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 contingency plan and emergency procedures; permit conditions; and changes to permit).

(v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).

(vi) For the purposes of this subsection, the owner or operator of an elementary neutralization unit or wastewater treatment unit permit by rule facility may treat wastes 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 and 40 CFR 262.20 (relating to general requirements; and general requirements).

(vii) The Department may, under special circumstances, approve on a case-by-case basis the receipt and treatment of wastes generated offsite by a different generator for treatment at a facility regulated under this subsection without the treatment of the wastes resulting in the loss of permit by rule status under this subsection.

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit by rule, if the owner or operator complies with the following requirements:

(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).

(iv) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous by means of dilution.

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit by rule for treatment prior to the reclamation of the spent, lead-acid batteries, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, I—L and DD and Chapter 264a, Subchapters A, B, D, E, I—L and DD.

(4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a permit by rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD and 40 CFR Part 262 and 264, Subparts A—E and I, J and DD.

(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 subsec-

tion 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 that treats recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit by rule if the owner or operator complies with the following:

(i) The notification requirements of 40 CFR 264.11 (relating to identification number).

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

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

(1) With respect to any permit by rule facility under subsection (b)(3)—(6), the Department may, upon written application from a 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 a variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity results 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 will be at least as stringent as the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

§ 270a.62. Hazardous waste incinerator permits.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80(4)(i)(D)(E) and (F).

§ 270a.64. Interim permits for UIC wells.

40 CFR 270.64 (relating to interim permits for UIC wells) is not incorporated by reference.

§ 270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80(4)(i)(D)—(F) (relating to public notice and comment requirements).

Subchapter G. INTERIM STATUS

Sec.
270a.72. Changes during interim status.

§ 270a.72. Changes during interim status.

Relative to 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.
270a83. Preapplication public meeting and notice.
270a.84. Information repository.

§ 270a.80. Public notice and comment requirements.

(a) The Department gives public notice of the following actions:

(1) An application for a permit or a Class 2 or Class 3 permit modification is tentatively denied under §§ 270a.29 and 270a.41 and 40 CFR 270.29 and 270.41.

(2) A draft permit is prepared under § 270a.10(c) (relating to general application requirements).

(3) A hearing is scheduled under § 270a.81(b) (relating to public hearings).

(4) A closure/postclosure plan is received in accordance with the incorporated requirements of 40 CFR 264.112, 265.112, 264.118 or 265.118.

(b) A public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) provides for at least 45 days for public comment.

(c) The Department gives 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.

(d) The Department gives public notice of activities described in subsection (a) by the following methods:

(1) 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:

(i) The applicant.

(ii) An agency which the Department knows has issued or is required to issue a RCRA, underground injection control, prevention of significant deterioration (or other permit under the Clean Air Act), NPDES, 404, sludge management permit or ocean dumping permit under the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. No. 92-532, 86 Stat. 052) for the same facility or activity, including the EPA.

(iii) 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.

(iv) A person on a mailing list developed by the Department, that includes 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.

(v) Units of local government having jurisdiction over the area where the facility is located.

(vi) State agencies having authority under State statute with respect to the construction or operation of the facility.

(2) Publication of a notice in the *Pennsylvania Bulletin* and in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(3) In a manner constituting legal notice to the public under State statute.

(4) 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 forum or medium to elicit public participation.

(e) A public notice issued under this section shall contain the following minimum information:

(1) The name and address of the office processing the permit action for which notice is being given.

(2) The name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit.

(4) 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.

(5) A brief description of the comment procedures required by § 270a.81 (relating to public hearings), 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.

(6) Additional information which the Department considers necessary or proper.

(f) In addition to the general public notice described in subsection (e), the public notice of a hearing under § 270a.81(b) shall contain the following information:

(1) A reference to the date of previous public notices relating to the permit.

(2) The date, time and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable procedures.

(g) In addition to the general public notice described in subsection (e), a person identified in subsection (d)(1)(i) and (ii) 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.

(a) 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 is not already 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 considers comments in making its final decision and answers these comments as provided in § 270a.10(c) (relating to general application requirements and permit issuance procedures).

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

(1) The Department holds a public hearing whenever, on the basis of requests received under subsection (a), it determines that a significant degree of public interest in a draft permit exists.

(2) The Department may hold a public hearing whenever a hearing might clarify issues involved in the permit decision.

(3) The Department holds 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.

(4) The Department schedules, when possible, a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(5) The Department gives public notice of the hearing under subsection (a).

(6) A person may submit oral or written statements and data concerning the draft permit before, during or after the public hearing, as long as the Department receives the statements and data during the public comment period. 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 is automatically 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.

(7) The Department makes a tape recording or written transcript of the hearing available to the public.

§ 270a.82. Public availability of information.

(a) Information provided to the Department under this article is made available to the public in accordance with the current Departmental policy on public information. The Department makes 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.

(b) The Department releases 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:

(1) Permit applications and modifications.

(2) Annual reports.

(3) Closure plans.

(4) Notification of facility closure.

(5) Contingency plan incidence reports.

(6) Delisting petitions and other petitions for variances or waivers.

(7) Financial responsibility instruments.

(8) Environmental monitoring data, such as groundwater monitoring data.

(9) Transporter spill reports.

(10) International shipment reports.

(11) Manifest exception, discrepancy and unmanifested waste reports.

(12) EPA facility identification numbers.

(13) General correspondence with the facility.

(14) Enforcement orders.

(15) Inspection reports.

(16) Results of corrective action investigations.

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

(a) *Applicability*

(1) This section applies to RCRA Part B applications seeking initial permits for hazardous waste management units over which the Department has permit issuance authority.

(2) This section also applies to RCRA Part B applications seeking renewal of permits for the units, if the renewal application is proposing a significant change in facility operations.

(3) For the purposes of this section, a "significant change" is a change that would qualify as a Class 2 or Class 3 permit modification under 40 CFR 270.42 (relating to permit modification at the request of the permittee) and § 270a.42 (relating to permit modification at the request of the permittee).

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

(b) Prior to the submission of a Part B RCRA permit application for a facility, the applicant shall hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection (b), and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, under 40 CFR 270.14(b) (relating to contents of Part B: general requirements).

(d) The applicant shall provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Department upon request, documentation of the notice.

(1) The applicant shall provide public notice in the following forms:

(i) *Newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisidictions, if the Department determines that the publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) *Visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (2). If the applicant places the sign on the facility property, the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *Broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(iv) *Notice to the Department.* The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State and local government.

(2) The notices required under paragraph (1) shall include the following:

(i) The date, time and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including the address or a map—for example, a sketched or copied street map—of the facility location.

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.

(v) The name, address and telephone number of a contact person for the applicant.

§ 270a.84. Information repository.

(a) This section applies to applications seeking hazardous waste management permits for hazardous waste management units over which the Department has permit issuance authority.

(b) The Department assesses the need, on a case-by-case basis, for an information repository.

(1) When assessing the need for an information repository, the Department considers a variety of factors, including:

(i) The level of public interest.

(ii) The type of facility.

(iii) The presence of an existing repository.

(iv) The proximity to the nearest copy of the administrative record.

(2) If the Department determines, at any time after submittal of a permit application, that there is a need for a repository, the Department notifies the facility that it shall establish and maintain an information repository. See 40 CFR 270.30(m) (relating to conditions applicable to all permits) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain the documents, reports, data and information deemed necessary by the Department to fulfill the purposes for which the repository is established. The Department has the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. The Department specifies a more appropriate site if, due to problems with the location, hours of availability, access or other relevant considerations, the Department finds the site unsuitable for the purposes and persons for which it was established.

(e) The Department specifies requirements for informing the public about the information repository. At a minimum, the facility shall provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner or operator is responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Department may close the repository based on the factors in subsection (b).

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