

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Architectural and Industrial Maintenance Coatings

The Environmental Quality Board (Board) proposes to establish Chapter 130, Subchapter C (relating to architectural and industrial maintenance coatings) to read as set forth in Annex A.

The amendments propose to add definitions in § 130.302 for terms that are used in the substantive sections of Chapter 130 (relating to standards for products). Section 130.301 (relating to applicability) will apply to any person who supplies, sells, offers for sale, or manufactures architectural and industrial maintenance coatings for use in this Commonwealth. Section 130.303 (relating to standards) establishes volatile organic compound (VOC) content limits for those coatings. Section 130.304 (relating to container labeling requirements) establishes requirements related to labeling of coatings subject to this rule. Section 130.305 (relating to reporting requirements) establishes reporting requirements for products subject to this proposed rulemaking. Section 130.306 (relating to compliance provisions and test methods) provides for established test methods for coatings to determine compliance with this proposed rulemaking.

This notice is given under Board order at its meeting of October 16, 2001.

A. *Effective Date*

This proposed rulemaking will be effective immediately upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663, or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005), which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Purpose*

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to

ambient ozone while engaged in activity that involves physical exertion. Though the symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this proposed rulemaking is to reduce the VOCs emitted from architectural and industrial maintenance (AIM) coatings. This proposed rulemaking is part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout this Commonwealth. A Federal AIM coatings rule was promulgated in 1998. However, the Federal rule did not provide the expected cost-effective and creditable VOC emission reductions originally anticipated by this Commonwealth and many other states. To capture additional emission reductions, the Commonwealth is proposing to adopt this rulemaking, which is based on the Ozone Transport Commission (OTC) model rule, to reduce the allowable VOC content of AIM coatings. The Commonwealth has used the California Air Resources Board (CARB) regulations, the OTC model rule, and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth. As a result, the Commonwealth's proposed rulemaking includes most, if not all, of the product categories covered in California, with limits effective at a later date than California. To maximize consistency, emission limits for specific product categories in many cases are identical to those used in California.

This proposed rulemaking sets specific VOC content limits, in grams per liter, for 46 AIM coating categories and requires more stringent VOC content limits than the Federal rule. Some of the limits are currently in effect in California and are known to be technologically feasible. Other limits in California have future effective dates. The proposed compliance date for the Commonwealth limits is January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating coatings and substituting coatings with compliant coatings that are already on the market.

Manufacturers producing AIM coatings would be responsible for developing and distributing compliant coatings for sale at the retail and wholesale levels. In addition, any person who sells, supplies or offers for sale AIM coatings would also be held accountable. Consumers would not be affected by this proposed rulemaking in that, they should not notice any changes in the AIM coatings performance or quality. However, consumers may experience a cost increase for certain paint products. Cost data developed by E.H. Pechan & Associates indicate the cost per ton of VOC reductions under the proposed AIM regulation to be approximately \$6,400 per ton of reductions. Based on this estimate of cost and estimated average emission reductions of approximately 1.7 pounds of VOC per person, the average consumer could experience cost increases of approximately \$5.50 per year for AIM coatings. However, an analysis conducted by Aberdeen Proving Grounds indicates that low VOC coatings are available that will result in average savings of approximately \$1.76 per gallon compared with higher VOC coatings.

The proposed rulemaking contains VOC content requirements for a wide variety of AIM coatings, including graphic arts coatings, lacquers, primers and stains, to

name a few. It also contains administrative requirements for labeling and reporting. There is a reporting requirement, such that manufacturers may be required to submit information to the Commonwealth upon request. There are a number of test methods that would be used to demonstrate compliance with this proposed rulemaking. Some of these test methods include those promulgated by the EPA and South Coast Air Quality Management District of California. Enforcement of the coatings' VOC content limits and other requirements would be done by the Commonwealth. Because the Commonwealth in conjunction with other northeastern states has met over the past 18 months with representatives of National trade associations and related industries, it is important that these regulations be implemented consistently and uniformly. Any deviation from the regulations by altering the limits set forth in the proposed rulemaking may hinder the ability of manufacturers to comply with the regulations.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At its July 26, 2001, meeting, the AQTAC recommended adoption of the proposed rulemaking. The AQTAC also recommends that the Department continue aggressive efforts with other states to support National standards for these coatings. In addition, the AQTAC is specifically seeking comments on whether the coating limits are achievable, whether the anticipated emission reductions are achievable, the increased costs to citizens of this Commonwealth, and whether averaging can be a compliance option.

The proposal was also reviewed by the Small Business Assistance Program Compliance Advisory Committee on July 25, 2001.

E. Summary of Regulatory Requirements

This proposed adoption of Chapter 130, Subchapter C, includes the following definitions of terms that will be used in the substantive provisions of the regulations. The new definitions include: "antifouling coating," "architectural coating," "bitumens," "bituminous roof coating," "bituminous roof primer," "bond breaker," "coating," "concrete curing compound," "dry fog coating," "exempt compound," "fire-retardant coating," "flat coating," "high-temperature coating," "industrial maintenance coating," "low-solids coating," "magnesite cement coating," "mastic texture coating," "metallic pigmented coating," "nonflat coating," "nonflat high-gloss coating," "pretreatment wash primer," "quick-dry enamel," "quick-dry primer, sealer, and undercoater," "recycled coating," "roof coating," "rust-preventive coating," "specialty primer, sealer and undercoater," "temperature-indicator safety coating," "VOC—volatile organic compound," "VOC content" and "wood preservative."

Proposed § 130.301 requires that persons who supply, sell, offer for sale or manufacture an architectural or industrial maintenance coating for use within this Commonwealth sell compliant coatings as required under this subchapter. Proposed § 130.303 sets forth the quantity of VOC per liter that cannot be exceeded for coatings that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. VOC content limits are established for nonspecialty coating categories and specialty coatings. The number of coating categories that are regulated under this rule is approximately 46. Proposed § 130.304 requires that each manufacturer of coatings subject to this rule shall supply specific information on the coating container in which the coating is sold or distributed. Some of the information that must be dis-

played includes date-code, VOC content and thinning recommendations, to name a few. Proposed § 130.305 requires that manufacturers shall submit annual reports to the Department, upon request by the Department, that specify the number of gallons sold in the State and the methods used by the manufacturer to calculate State sales. Proposed § 130.306 sets forth the method for calculating the VOC content of the coatings and the test methods, which are incorporated by reference, that are subject to the provisions of this proposed rulemaking.

This proposed rulemaking, if approved, will be submitted to the EPA as an amendment to the State Implementation Plan (SIP).

F. Benefits and Costs

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

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which will reduce emissions. The proposed rulemaking will also result in reduced levels of hazardous air pollutants (HAPs) throughout this Commonwealth. In addition, the proposed rulemaking will reduce citizen exposure to a variety of VOCs, including HAPs that are used in a variety of AIM coatings.

Compliance Costs

Under this proposed rulemaking it is estimated that the reduction of VOC content of the affected AIM coatings will cost approximately \$6,400 per ton of VOC emissions reduced. Based on this cost data and an average per capita AIM coating VOC emissions estimate, it is estimated that the average per capita coating cost increase under this proposed rulemaking will be approximately \$5.50 per year.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community with understanding the new requirements and how to comply with them. This will be accomplished through the Department's compliance assistance program.

Paperwork Requirements

The regulatory revisions will not increase the paperwork that is already generated by the normal course of business practices.

G. Sunset Review

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 29, 2001, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

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

I. *Public Comments.*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding this proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by February 22, 2002. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by February 22, 2002. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by February 22, 2002.

J. *Public Hearings.*

The Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held at 1 p.m. as follows:

January 15, 2002, Department of Environmental Protection, Southwest Regional Office, Waterfront A & B Conference Room, 400 Waterfront Drive, Pittsburgh, PA.

January 18, 2002, Department of Environmental Protection, Southcentral Regional Office, Susquehanna River Conference Room, 909 Elmerton Avenue, Harrisburg, PA.

January 23, 2002, Department of Environmental Protection, Southeast Regional Office, Main Conference Room, Lee Park, 555 North Lane, Conshohocken, PA.

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

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

DAVID E. HESS,
Chairperson

Fiscal Note: 7-371. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter C. ARCHITECTURAL AND INDUSTRIAL MAINTENANCE COATINGS

- Sec. 130.301. Applicability.
- 130.302. Definitions.
- 130.303. Standards.
- 130.304. Container labeling requirements.
- 130.305. Reporting requirements.
- 130.306. Compliance provisions and test methods.

§ 130.301. Applicability.

This subchapter applies to a person who supplies, sells, offers for sale or manufactures an architectural or industrial maintenance coating for use within this Commonwealth, as well as a person who applies or solicits the application of an architectural or industrial maintenance coating within this Commonwealth except for:

- (1) An architectural or industrial maintenance coating that is sold or manufactured for use outside of this Commonwealth or for shipment to other manufacturers for reformulation or repackaging.
- (2) An aerosol coating product.
- (3) An architectural or industrial maintenance coating that is sold in a container with a volume of 1 liter (1.057 quart) or less.

§ 130.302. Definitions.

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

Antifouling coating—A coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating shall be registered with the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 136—136y).

Architectural coating—A coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements or to curbs. Coatings applied in shop applications or to nonstationary structures such as airplanes, ships, boats, railcars and automobiles, and adhesives are not considered architectural coatings for the purposes of this rule.

Bitumens—Black or brown materials including, but not limited to, asphalt, tar, pitch and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

Bituminous roof coating—A coating that incorporates bitumens that is labeled and formulated exclusively for roofing.

Bituminous roof primer—A primer that incorporates bitumens that is labeled and formulated exclusively for roofing.

Bond breaker—A coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

Coating—An architectural or industrial maintenance coating or a material applied onto or impregnated into a substrate for protective, decorative or functional purposes. The materials include, but are not limited to, paints, varnishes, sealers and stains.

Concrete curing compound—A coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

Dry fog coating—A coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

Exempt compound—A compound identified as exempt under the definition of VOC that is applicable to this section. Exempt compounds content of a coating shall be determined by EPA Reference Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (revised February 1993), incorporated by reference in § 130.306(e)(10) (relating to compliance provisions and test methods).

Fire-retardant coating—A coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with Federal, State and local building code requirements.

(i) The fire-retardant coating and the testing agency shall be approved by building code officials.

(ii) The fire-retardant coating shall be tested in accordance with ASTM E 84-99, incorporated by reference in § 130.306(e)(7).

Flat coating—A coating that is not defined under any other definition in this subchapter and that registers gloss less than 15 on an 85-degree meter or less than 5 on a 60° meter according to ASTM D 523-89 (1999), incorporated by reference in § 130.306(e)(3).

High-temperature coating—A high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

Industrial maintenance coating—A high performance architectural coating, including primers, sealers, undercoaters, intermediate coats and topcoats, formulated for application to substrates exposed to one or more of the following extreme environmental conditions and labeled as specified in § 130.304(a)(4) (relating to container labeling requirements):

(i) Immersion in water, wastewater or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation.

(ii) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions.

(iii) Repeated exposure to temperatures above 121°C (250°F).

(iv) Repeated (frequent) heavy abrasion, including mechanical wear and repeated scrubbing with industrial solvents, cleansers or scouring agents.

(v) Exterior exposure of metal structures and structural components.

Low-solids coating—A coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

Magnesite cement coating—A coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

Mastic texture coating—A coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

Metallic pigmented coating—A coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in § 130.306(e)(4).

Nonflat coating—A coating that is not defined under any other definition in this subchapter and that registers a gloss of 15 or greater on an 85-degree meter and 5 or greater on a 60-degree meter according to ASTM D 523-89 (1999), incorporated by reference in § 130.306(e)(3).

Nonflat high gloss coating—A nonflat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM D 523-89 (1999), incorporated by reference in § 130.306(e)(3).

Pretreatment wash primer—A primer that contains a minimum of 0.5% acid, by weight, when tested in accordance with ASTM D 1613-96, incorporated by reference in § 130.306(e)(5), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

Quick-dry enamel—A nonflat coating that is labeled as specified in § 130.304(a)(8) and that is formulated to have the following characteristics:

(i) Is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27°C (60° and 80°F).

(ii) When tested in accordance with ASTM D 1640-95, incorporated by reference in § 130.306(e)(6), sets to touch in 2 hours or less, is tack-free in 4 hours or less, and dries hard in 8 hours or less by the mechanical test method.

(iii) Has a dried film gloss of 70 or above on a 60-degree meter according to ASTM D523-89.

Quick-dry primer, sealer and undercoater—A primer, sealer or undercoater that is dry to the touch in 30 minutes and can be recoated in 2 hours when tested in accordance with ASTM D 1640-95, incorporated by reference in § 130.306(e)(6).

Recycled coating—An architectural coating formulated so that at least 50% of the total weight consists of secondary and postconsumer coating, with at least 10% of the total weight consisting of postconsumer coating.

Roof coating—A nonbituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radia-

tion. Metallic pigmented roof coatings, which qualify as metallic pigmented coatings, will not be considered in this category, but will be considered to be in the metallic pigmented coatings category.

Rust-preventive coating—A coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces and labeled as specified in § 130.304(a)(6).

Specialty primer, sealer and undercoater—A coating labeled as specified in § 130.304(a)(7) and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM D 4214-98, incorporated by reference in § 130.306(e)(7).

Temperature-indicator safety coating—A coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

VOC—Volatile organic compound—For the purposes of this subchapter, the term means any volatile compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, and:

(i) Excluding the following:

- (A) Methane.
- (B) Methylene chloride (dichloromethane).
- (C) 1,1,1-trichloroethane (methyl chloroform).
- (D) trichlorofluoromethane (CFC-11).
- (E) Dichlorodifluoromethane (CFC-12).
- (F) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113).
- (G) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114).
- (H) Chloropentafluoroethane (CFC-115).
- (I) Chlorodifluoromethane (HCFC-22).
- (J) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123).
- (K) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124).
- (L) 1,1-dichloro-1-fluoroethane (HCFC-141b).
- (M) 1-chloro-1,1-difluoroethane (HCFC-142b).
- (N) Trifluoromethane (HFC-23).
- (O) Pentafluoroethane (HFC-125).
- (P) 1,1,2,2-tetrafluoroethane (HFC-134).
- (Q) 1,1,1,2-tetrafluoroethane (HFC-134a).
- (R) 1,1,1-trifluoroethane (HFC-143a).
- (S) 1,1-difluoroethane (HFC-152a).

(T) Cyclic, branched or linear, completely methylated siloxanes.

(ii) Excluding the following classes of perfluorocarbons:

- (A) Cyclic, branched or linear, completely fluorinated alkanes.
- (B) Cyclic, branched or linear, completely fluorinated ethers with no unsaturations.
- (C) Cyclic, branched or linear, completely fluorinated tertiary amines with no unsaturations.

(D) Sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds only to carbon and fluorine.

(iii) Excluding the following low-reactive organic compounds which have been exempted by the U.S. EPA:

- (A) Acetone.
- (B) Ethane.
- (C) Parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).
- (D) Perchloroethylene.
- (E) Methyl acetate.

VOC content—The weight of VOC per volume of coating, calculated according to the procedures specified in § 130.306(a).

Wood preservative—A coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act.

§ 130.303. Standards.

(a) *VOC content limits.* Except as provided in subsections (b), (c) and (h), a person after January 1, 2005, may not:

(1) Manufacture, blend or repackage for sale within this Commonwealth a coating subject to this subchapter.

(2) Supply, sell or offer for sale within this Commonwealth a coating subject to this subchapter.

(3) Solicit for application or apply within this Commonwealth, an architectural or industrial maintenance coating with a VOC content in excess of the corresponding limit specified in Table 1.

(b) *Most restrictive VOC limit.* If on the container of an architectural or industrial maintenance coating, or a label or sticker affixed to the container, or in sales, advertising or technical literature supplied by a manufacturer or a person acting on their behalf, a representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Table 1, then the most restrictive VOC content limit applies. This provision does not apply to the following coating categories:

- (1) Lacquer coatings (including lacquer sanding sealers).
- (2) Metallic pigmented coatings.
- (3) Shellacs.
- (4) Fire-retardant coatings.
- (5) Pretreatment wash primers.
- (6) Industrial maintenance coatings.
- (7) Low-solids coatings.
- (8) Wood preservatives.
- (9) High-temperature coatings.
- (10) Temperature-indicator safety coatings.
- (11) Antenna coatings.
- (12) Antifouling coatings.
- (13) Flow coatings.
- (14) Bituminous roof primers.
- (15) Specialty primers, sealers and undercoaters.

(c) *Sell-through of architectural or industrial maintenance coatings.* An architectural or industrial maintenance coating manufactured prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) may be sold, supplied or offered for sale until _____ (*Editor's Note:* The blank refers to a date 3 years after the effective date of adoption of this proposal.). In addition, an architectural or industrial maintenance coating manufactured before _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) may be applied, both before and after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) so long as the architectural or industrial maintenance coating complied with the standards in effect at the time the coating was manufactured. This subsection does not apply to an architectural or industrial maintenance coating that does not display the date or date code required by § 130.304(a) (relating to container labeling requirements).

(d) *Painting practices.* Architectural or industrial maintenance coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging or other means, shall be closed when not in use. These containers include, but are not limited to, drums, buckets, cans, pails, trays or other application containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(e) *Thinning.* A person who applies or solicits the application of an architectural or industrial maintenance coating may not apply a coating that is thinned to exceed the applicable VOC limit specified in Table 1.

(f) *Rust-preventive coatings.* A person may not apply or solicit the application of a rust-preventive coating for industrial use, unless the rust-preventive coating complies with the industrial maintenance coating VOC limit specified in Table 1.

(g) *Coatings not listed in Table 1.* For an architectural or industrial maintenance coating that does not meet the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat coating or a nonflat coating, based on its gloss as defined in § 130.302 (relating to definitions), and the corresponding flat or nonflat coating limit applies.

(h) *Lacquers.* Notwithstanding the provisions of subsection (a), a person or facility may add up to 10% by volume of VOC to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70% and temperature below 65°F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

Table 1

VOC Content Limits for Architectural and Industrial Maintenance Coatings

The VOC content limits are effective on January 1, 2005, and are expressed in grams of VOC per liter¹ of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. "Manufacturers' maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

¹ Conversion factor: 1 pound VOC per gallon (U.S.) = 119.95 grams per liter.

<i>Coating Category</i>	<i>VOC Content Limit</i>
<i>Nonspecialty Coatings</i>	
Flat Coatings	100
Nonflat Coatings	150
Non-flat-High-Gloss Coatings	250
<i>Specialty Coatings</i>	
Antenna Coatings	530
Antifouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Clear Wood Coatings	
• Clear Brushing Lacquers	680
• Lacquers (including lacquer sanding sealers)	550
• Sanding Sealers (other than lacquer sanding sealers)	350
• Varnishes	350
Concrete Curing Compounds	350
Dry Fog Coatings	400
Faux Finishing Coatings	350
Fire-Resistive Coatings	350
Fire-Retardant Coatings	
• Clear	650
• Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500
High-Temperature Coatings	420
Industrial Maintenance Coatings	340
Low-Solids Coatings	120
Magnesite Cement Coatings	450
Mastic Texture Coatings	300
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
Pretreatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust-Preventative Coatings	400
Shellacs	
• Clear	730
• Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Traffic Marking Coatings	150
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

§ 130.304. Container labeling requirements.

(a) Effective January 1, 2005, each manufacturer of architectural or industrial maintenance coatings subject to this subchapter shall display the information listed in paragraphs (1)—(8) on the coating container (or label) in which the coating is sold or distributed.

(1) *Date code.* The date the architectural or industrial maintenance coating was manufactured, or a date code

representing the date, shall be indicated on the label, lid or bottom of the container. If the manufacturer uses a date code for a coating, the manufacturer shall file an explanation of each code with the Department upon _____. (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.)

(2) *Thinning recommendations.* A statement of the manufacturer's recommendation regarding thinning of the architectural or industrial maintenance coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural or industrial maintenance coatings with water. If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

(3) *VOC content.* Each container of a coating subject to this subchapter shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in § 130.306 (relating to compliance provisions and test methods). The equations in § 130.306(a)(1) and (2) shall be used to calculate VOC content.

(4) *Industrial maintenance coatings.* In addition to the information specified in paragraphs (1)–(3), each manufacturer of an industrial maintenance coating subject to this subchapter shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the following descriptions:

- (i) "For industrial use only."
- (ii) "For professional use only."
- (iii) "Not for residential use."
- (iv) "Not intended for residential use."

(5) *Clear brushing lacquers.* The labels of clear brushing lacquers shall prominently display the statements "For brush application only," and "This product must not be thinned or sprayed."

(6) *Rust-preventive coatings.* The labels of rust-preventive coatings shall prominently display the statement "For Metal Substrates Only."

(7) *Specialty primers, sealers and undercoaters.* The labels of specialty primers, sealers and undercoaters shall prominently display one or more of the following descriptions:

- (i) "For blocking stains."
- (ii) "For fire-damaged substrates."
- (iii) "For smoke-damaged substrates."
- (iv) "For water-damaged substrates."
- (v) "For excessively chalky substrates."

(8) *Quick-dry enamel.* The labels of quick-dry enamels shall prominently display the words "Quick Dry" and the dry-hard time.

(9) *Nonflat high gloss coatings.* The labels of nonflat high gloss coatings shall prominently display the words "High Gloss."

§ 130.305. Reporting requirements.

Upon request by the Department, each manufacturer of an architectural or industrial maintenance coating subject to this subchapter shall, on or before April 1 of each

calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of coating sold in the State during the preceding calendar year and shall describe the method used by the manufacturer to calculate State sales.

§ 130.306. Compliance provisions and test methods.

(a) *Calculation of VOC content.* For the purpose of determining compliance with the VOC content limits in § 130.303 Table 1 (relating to VOC content limits for architectural and industrial maintenance coatings), the VOC content of a coating shall be determined by using the procedures described in this subsection or subsection (b), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

(1) With the exception of low solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of water and exempt compounds. Determine the VOC content using Equation 1 as follows:

$$\text{Equation 1: VOC Content} = \frac{(Ws - Ww - Wec)}{(Vm - Vw - Vec)}$$

Where:

- VOC content = grams of VOC per liter of coating
- Ws = weight of volatiles, in grams
- Ww = weight of water, in grams
- Wec = weight of exempt compounds, in grams
- Vm = volume of coating, in liters
- Vw = volume of water, in liters
- Vec = volume of exempt compounds, in liters

(2) For low solids coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using Equation 2 as follows:

$$\text{Equation 2: VOC Content (ls)} = \frac{(Ws - Ww - Wec)}{(Vm)}$$

Where:

- VOC Content (ls) = the VOC content of a low solids coating in grams per liter of coating
- Ws = weight of volatile, in grams
- Ww = weight of water, in grams
- Wec = weight of exempt compounds, in grams
- Vm = volume of coating, in liters

(b) *VOC content of coatings.* To determine the physical properties of a coating in order to perform the calculations in subsections (a) and (b), the reference method for VOC content is EPA Reference Method 24, incorporated by reference in this section, except as provided in subsections (c) and (d). An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91 (revised February 1996), incorporated by reference in this section. The exempt compounds content shall be determined by SCAQMD Method 303-91 (revised August 1996), incorporated by reference in subsection (d)(10). To determine the VOC content of a coating, the manufacturer may use EPA Reference Method 24, or an alternative method, as provided in subsection (c), formulation data, or another reasonable means for predicting that the coating has been formulated as intended—for example, quality assurance checks and recordkeeping. If there are inconsistencies between the results of a Reference Method 24 test and another means for determining VOC content, the Reference Method 24 results will govern, except when

an alternative method is approved as specified in § 130.306(c). The Department may require the manufacturer to conduct a Reference Method 24 analysis.

(c) *Alternative test methods.* Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subsection (b) may be used if approved in writing by the Department and the EPA.

(d) *Methacrylate traffic coating markings.* Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of EPA Reference Method 24 (found at 40 CFR 59, Subpart D, Appendix A), incorporated by reference in subsection (e)(13)). This method has not been approved for methacrylate multicomponent coatings used for other purposes than as traffic marking coatings or for other classes of multicomponent coatings.

(e) *Test methods.* The following test methods are incorporated herein by reference and shall be used to test coatings subject to the provisions of this rule:

(1) *Flame spread index.* The flame spread index of a fire-retardant coating shall be determined by ASTM E 84-99, "Standard Test Method for Surface Burning Characteristics of Building Materials."

(2) *Fire-resistance rating.* The fire-resistance rating of a fire-resistive coating shall be determined by ASTM E 119-98, "Standard Test Methods for Fire Tests of Building Construction Materials."

(3) *Gloss determination.* The gloss of a coating shall be determined by ASTM D 523-89 (1999), "Standard Test Method for Specular Gloss."

(4) *Metal content of coatings.* The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples."

(5) *Acid content of coatings.* The acid content of a coating shall be determined by ASTM D 1613-96, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products."

(6) *Drying times.* The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D 1640-95, "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," (see section § 130.302, QuickDry Enamel and Quick-Dry Primer, Sealer, and Undercoater). The tack-free time of a quick-dry enamel coating shall be determined by the mechanical test method of ASTM D 1640-95.

(7) *Surface chalkiness.* The chalkiness of a surface shall be determined using ASTM D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films."

(8) *Exempt compounds—siloxanes.* Exempt compounds that are cyclic, branched or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with this section by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," Bay Area Air Quality Management District (BAAQMD) Manual of Procedures, Volume III, adopted November 6, 1996.

(9) *Exempt compounds—parachlorobenzotrifluoride (PCBTF).* The exempt compound parachlorobenzotrifluoride shall be analyzed as an exempt compound for

compliance with this section by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," found in BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995.

(10) *Exempt compounds.* The content of compounds exempt under EPA Method 24 shall be analyzed by SCAQMD Method 303-91 (Revised 1993), "Determination of Exempt Compounds," found in SCAQMD "Laboratory Methods of Analysis for Enforcement Samples."

(11) *VOC content of coatings.* The VOC content of a coating shall be determined by EPA Method 24 found in "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings."

(12) *Alternative VOC content of coatings.* The VOC content of coatings may be analyzed by either EPA Reference Method 24 or SCAQMD Method 304-91 (Revised 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials, found in "SCAQMD Laboratory Methods of Analysis for Enforcement Samples."

(13) *Methacrylate traffic marking coatings.* The VOC content of methacrylate multicomponent coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR Part 59, Subpart D, Appendix A, "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings," (September 11, 1998).

[Pa.B. Doc. No. 01-2226. Filed for public inspection December 14, 2001, 9:00 a.m.]

[25 PA. CODE CHS. 260a—265a AND 270a] Hazardous Waste Management

The Environmental Quality Board (Board) proposes to amend Chapters 260a—265a and 270a to update the hazardous waste management program. These amendments are proposed to read as set forth in Annex A.

This proposal was adopted by the Board at its meeting of October 16, 2001.

A. Effective Date

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

B. Contact Persons

For further information contact Rick Shipman, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments to the proposed rulemaking appears in Section I. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The proposed amendments are available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid

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

D. Background and Purpose

The hazardous waste management regulations were amended at 29 Pa.B. 2367 (May 1, 1999) in accordance with the Regulatory Basics Initiative (RBI) and Executive Order 1996-1. Since that time, the Commonwealth's hazardous waste management program received final authorization for changes made to its hazardous waste program under the Resource Conservation and Recovery Act from the United States Environmental Protection Agency (EPA) (65 CFR 57734). This proposed rulemaking provides the opportunity to make any changes necessary to update that program authorization.

In addition, the Department now has over 2 years experience implementing these regulations. Several of the changes contained in this proposed rulemaking were developed to address issues raised since the RBI rulemaking and correct problems identified over the past 2 years.

E. Summary of Regulatory Requirements

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

1. Codification of a statutory requirement.

The Department has a general policy not to duplicate statutory definitions or provisions in regulations unless a compelling reason exists to do so. The hazardous waste regulations contain provisions that incorporate by reference large portions of the Federal hazardous waste regulations. The controlling statutory authority in the Commonwealth is the SWMA. However, when the SWMA and the Federal regulations touch on the same subject, the SWMA governs that subject in this Commonwealth. As a result, the Commonwealth hazardous waste regulations contain some provisions that duplicate SWMA requirements where the Federal regulations vary from the commands of the SWMA. In addition, there are some subjects that the SWMA explicitly regulates, and on which the Federal regulations are silent. The proposed rulemaking duplicates SWMA provisions in two instances. This duplication is necessary to eliminate confusion over the incorporation by reference of contradictory Federal regulations and to establish requirements when the Federal regulations are silent. The first is in § 260a.10 (relating to definitions) where the proposed rulemaking

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

The second is in § 263a.13(b)(4) and (j) (relating to licensing). In accordance with section 403(b) of the SWMA, the proposed rulemaking adds the requirement that a transporter of hazardous waste prepare and carry a preparedness, prevention and contingency (PPC) plan to address potential discharges or spills of hazardous waste. The incorporated Federal regulations do not contain that requirement.

2. Restoration of provisions that were deleted in the May 1999 RBI rulemaking.

Several of the changes in the proposed rulemaking reinstate requirements that were part of the Commonwealth hazardous waste program prior to the May 1999 RBI rulemaking. Because of the general approach of broadly incorporating the Federal hazardous waste regulations by reference, some existing regulations that helped to clarify how the program operates were inadvertently deleted. Generally speaking, these requirements remain in effect based on the requirements of the SWMA and the Department's interpretation of the hazardous waste regulations. Having them reinstated in the regulations serves to clarify the Department's approach to the hazardous waste program and inform the regulated community of proper compliance methods. In several cases, the regulated community and regional Department staff have noted the problems caused by the absence of these long-standing provisions.

An example of this category of changes is in § 261a.3 (relating to definition of "hazardous waste"). The proposed amendments reinstate the requirement to manage waste as hazardous until waste determination is completed. The requirement for generators of solid waste to make a determination as to whether or not the waste is hazardous is found at 40 CFR 262.11 (relating to hazardous waste generation). It is silent, however, on the issue of management of the waste until the determination is complete. Reinstating this requirement in the regulation establishes a firm position to what would otherwise be an ambiguous provision in the regulations.

There have been many inquiries from the regulated community and questions from Department personnel about when spills must be reported. The proposed § 262a.43 (relating to additional reporting) reestablishes the conditions, amounts, standards and procedures for reporting spills and discharges of hazardous waste and hazardous materials. This section also restores the provision that a Department official may authorize immediate removal of spilled hazardous wastes or materials if necessary to protect the health and safety of the public and the environment.

Reinstating the following provisions accomplishes similar goals: § 262a.11 (relating to hazardous waste determination) clarifies that the Department retains the independent authority to make a waste determination; § 262a.12(b)(1)(iv) (relating to EPA identification numbers) requires subsequent notification when a generator's facility class changes; § 262a.12(b)(2) explicitly states that a generator is only allowed to offer hazardous waste to a Department-licensed transporter; § 263a.13(j) requires a copy of the contingency plan to be on a hazard-

ous waste transport vehicle; § 263a.26(c) (relating to assessment of penalties) notes that the penalty for falsification is a minimum of \$1,000 (rather than a flat \$1,000); § 265a.13 (relating to general and generic waste analysis) clarifies that the report that must be submitted is a "Module 1" report; and § 270a.60(a) (relating to permits by rule) notes that an owner or operator must give notice to the Department prior to operating under a permit by rule.

3. Clarification of ambiguous requirements.

The third broad category of proposed amendments addresses ambiguous requirements identified during the implementation of the RBI regulations over the past 2 years. These changes do not, however, have pre-RBI counterparts that the Department can reinstate in the proposed amendments.

Several of the proposed amendments in this category relate to containment and contingency plans. Section 403(b) of the SWMA states:

(b) It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:

* * * * *

(10) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.

(11) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(12) Immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the department and take immediate steps to contain and clean up the spill or discharge.

The Department has received several inquiries from regulated entities regarding compliance with these requirements. Therefore, this proposed rulemaking contains new language that clarifies how a person can comply with the containment and contingency plan requirements of the SWMA.

First, proposed § 262a.34 (relating to accumulation time) requires secondary containment for generator storage of hazardous waste in containers. Second, § 263a.12 (relating to transfer facility requirements) adds proposed requirements for secondary containment and PPC plan preparation for hazardous waste transfer facilities. The proposed amendments accomplish this through reference to § 263a.13(b)(4).

The proposed amendment to § 264a.97 (relating to general groundwater monitoring requirements) specifies the frequency of the analyses required by that section. The proposed amendment eliminates setback requirements contained in § 264a.173(2) (relating to management of containers) for reactive or ignitable waste. This provision, which is not mandated, created an arbitrary distance requirement where safe management could allow a closer storage distance, and duplicated certain fire safety requirements (For example, see 37 Pa. Code § 13.1 (relating to relative location to property)).

The proposed rulemaking deletes § 265a.175 (relating to containment and collection system). This section is

redundant since the Federal containment and collection system requirements are already incorporated by reference for interim status facilities in § 265a.179 (relating to containment).

The proposed rulemaking adjusts the fee schedule for permit modifications by amending § 270a.3 (relating to payment of fees). The amendment is proposed because Class 2 permit modifications are generally much less complex than Class 3 modifications, which demand less time and resources from the Department for review. Appendix I to 40 CFR 270.42 (relating to permit modification at the request of the permittee) contains tables classifying the various types of permit modifications as Class 1, 2 or 3. These tables are incorporated by reference in § 270a.1(a) (relating to incorporation by reference, scope and applicability).

Proposed amendments to § 270a.51 (relating to continuation of existing permits) clarify when an expired permit continues in effect. This language is needed since the Federal counterpart in 40 CFR 270.51 (relating to continuation of expired permits) explicitly applies only to permits issued by the EPA. The proposed amendment matches the Federal regulation and will clarify this issue.

The proposed amendments to § 270a.60 eliminate the application of siting criteria for permit-by-rule facilities. These proposed amendments are contained in § 270a.60(b)(2)(ii), (3)(ii), (4)(ii) and (5)(ii). Permits-by-rule are generally intended to assure proper management of hazardous waste without causing overly burdensome regulation. If an issue arises regarding siting of a particular permit-by-rule facility, the Department retains the authority in § 270a.60(a) to require an owner or operator to obtain an individual permit for the facility. Under § 264a.18 (relating to location standards), the siting criteria would apply to that permit.

Finally, the proposed rulemaking eliminates the separate exceptions to the "blanket substitution of terms" contained in §§ 262a.55, 262a.56 and 262a.57 (relating to exception report; annual reports; and recordkeeping) by deleting those sections and replacing them with a new § 262a.50 (relating to applicability) that contains the "blanket exclusion of terms."

4. Manifest completion requirements or clarifications.

The fourth category of changes in the proposed rulemaking are changes addressing the administration of the manifest program for tracking the movement of hazardous waste in this Commonwealth. This series of proposed amendments is designed to clarify ambiguous requirements for all parties involved, streamline the manifesting process and ensure that the Department receives proper notification in a timely fashion.

First, the proposed change to § 262a.20(1) (relating to general requirements) clarifies that a generator does not need to send a generator copy of the manifest to the Department unless specifically required to do so. Section 262a.21 (relating to acquisition of manifests) requires Commonwealth generators of hazardous waste to use a Commonwealth manifest if the destination state for the hazardous waste does not require use of a manifest. This proposed amendment is important for tracking the waste while it remains within this Commonwealth. Several amendments are proposed to § 262a.23 (relating to use of the manifest). These proposed amendments require legible information on the manifest, clarify submission requirements for Commonwealth generators when the destination facility is out-of-State and prohibit alteration of the Manifest Tracking Number.

The proposed amendment to § 263a.12(4) clarifies the responsibilities of hazardous waste transporters when a shipment is transferred from one transporter to another at a transfer facility. This is another proposed amendment identified by Department staff as necessary to implement the hazardous waste program.

The proposed amendments to § 263a.20 (relating to manifest system) give specific manifest handling guidance to subsequent transporters of hazardous waste. The proposed amendment to § 263a.21 (relating to compliance with the manifest) requires a transporter to accept only complete manifests from a hazardous waste generator and prohibits alteration of the Manifest Tracking Number. Finally, the proposed amendment to § 264a.71 (relating to use of the manifest system) requires use of a Commonwealth manifest, accounts for bulk shipment discrepancies and requires legible information by a permitted facility; the proposed amendment to § 265a.71 (relating to use of the manifest system) contains the same requirements for an interim status facility.

5. *Typographical errors*

Several sections of the May 1999 RBI rulemaking contained minor typographical errors or omissions. Rather than submit a separate rulemaking for minor corrections, the Department decided to wait to make these minor changes until a broader rulemaking package was developed to update the hazardous waste program. These errors or omissions are corrected by this proposed rulemaking. The proposed rulemaking contains corrections to §§ 263a.24(b), 264a.83(a)(2) and (3), 270a.42, 270a.60(b)(1)(iv) and (5), 270a.62, 270a.66, 270a.81 and 270a.83.

F. *Benefits, Costs and Compliance*

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

Benefits

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

Compliance Costs

The proposed amendments are clarifications and corrections; there are no new requirements being proposed. As a result, there are no additional costs imposed. In some cases, such as the clarification that certain manifest copies do not need to be submitted to the Department, there may be cost savings to the regulated community.

Compliance Assistance Plan

As with previous hazardous waste management regulations, the Department's compliance assistance efforts will take three forms. Following promulgation as final-form rulemaking, the Department will prepare a fact sheet specifically addressing certain changes made by the proposed amendments. The Department will also continue to work with the regulated community to explain impacts from the proposed rulemaking and necessary operational changes to remain in compliance. Information concerning these proposed amendments and necessary technical guidance documents will also be available on the Department's website.

Paperwork Requirements

The proposed amendments will result in a net reduction in paperwork requirements because the clarifying provision included states that a hazardous waste generator is no longer required to submit generator copies of manifests to the Department. Other proposed amendments do not affect paperwork requirements.

G. *Sunset Review*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 29, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

I. *Public Comments*

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

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

DAVID E. HESS,
Chairperson

Fiscal Note: 7-364. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchapter B. DEFINITIONS

§ 260a.10. Definitions.

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

* * * * *

Treatment—A method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume. The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

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

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

(b) In addition to the requirements incorporated by reference, when it is not immediately possible to determine if a material will be a hazardous waste, the material shall be managed as a hazardous waste until the determination is made that indicates it is not a hazardous waste.

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

* * * * *

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

* * * * *

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 262a.11. Hazardous waste determination.

In addition to the requirements incorporated by reference, a determination that a waste is not

hazardous under 40 CFR 262.11 (relating to hazardous waste determination) does not preclude the Department from determining the waste to be hazardous, using the characteristics and testing methods set forth in 40 CFR Part 261 (relating to identification and listing of hazardous waste).

§ 262a.12. EPA identification numbers.

* * * * *

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

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

[(1)] (i) * * *

[(2)] (ii) * * *

[(3)] (iii) * * *

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

(2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.

Subchapter B. MANIFEST

§ 262a.20. General requirements.

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

(1) Complete the manifest form in its entirety and distribute manifest copies in accordance with the instructions [included with] for the manifest [.], except that generators need not submit copies of manifests to the Department unless required by § 262a.23(a)(2) (relating to use of the manifest).

* * * * *

§ 262a.21. Acquisition of manifests.

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

(b) In addition to the requirements incorporated by reference, a generator shipping hazardous waste to a facility in a state that does not require use of its own state manifest shall use the Department's manifest.

§ 262a.23. Use of the manifest.

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

(1) The generator shall print or type his name and enter the date of shipment in the designated space on the manifest.

(2) If the out-of-state manifest does not include a generator-state [copies which would] copy to be submitted to the Department by the out-of-State designated facility, the generator shall submit [copies] a complete, legible copy, such as [photocopies] a photocopy, of the manifest as signed by the generator [and first transporter], all transporters and [as signed upon receipt by] the designated facility. This

copy shall be sent within 10 days of the generator's receipt of its signed copy from the designated facility.

(3) The generator shall obtain the printed or typed name of the transporter on the manifest.

(4) A generator may not use a hazardous waste manifest which has a preprinted Manifest Document Number or Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

* * * * *

Subchapter C. PRETRANSPORT REQUIREMENTS

§ 262a.34. Accumulation time.

In addition to the requirements incorporated by reference, a generator who accumulates hazardous waste onsite as specified in 40 CFR 262.34(a)(1)(i) (relating to accumulation time) shall also comply with Chapter 265a, Subchapter I (relating to use and management of containers).

Subchapter D. RECORDKEEPING AND REPORTING

§ 262a.43. Additional reporting.

In addition to the requirements incorporated by reference:

(1) Spills and discharges which are in amounts less than the reportable quantities, which do not result in discharges into surface or groundwater, and which are managed according to an approved contingency plan, need not be reported. The reportable quantities of the hazardous materials spilled or discharged onsite are set forth in Table 1. For any material with more than one hazard code, the most stringent reportable quantity applies. A discharge or spill into surface water or groundwater shall be reported regardless of quantity spilled or discharged.

TABLE 1

<i>Physical Form</i>	<i>Hazard Codes</i>			
	<i>Unit</i>	<i>H</i>	<i>T</i>	<i>I, C, R and E</i>
Liquids*	Gal	5	5	10
Solid	Lbs	10	100	1,000

*Liquids are flowable substances which contain less than 20% solids by dry weight. Flowable refers to fluid in the sense of pourable as a liquid.

(2) In the event of a discharge or spill equal to or greater than the reportable quantity of hazardous material, the generator shall take appropriate immediate action to protect the health and safety of the public and the environment and immediately notify the Department by telephone at (800) 541-2050 with the following information:

- (i) The name of the person reporting the spill.
- (ii) The name and identification number of the generator.
- (iii) The phone number where the person reporting the spill can be reached.
- (iv) The date, time and location of the spill.
- (v) A brief description of the incident.
- (vi) For each material involved in the spill:

(A) The shipping name, hazard class and U.N. Number.

(B) The estimated quantity of material spilled.

(vii) The extent of contamination of land, water or air, if known.

(3) If a discharge or spill of hazardous material occurs during onsite unloading, loading, storage or plan operation, and a Departmental official acting within the scope of his official responsibilities determines that immediate removal of the material is necessary to protect the health and safety of the public and the environment, that official may authorize in writing the removal of the material by transporters who do not have identification numbers or license and without the preparation of a manifest.

(4) A generator shall clean up a hazardous material discharge or spill that occurs during onsite unloading, loading, storage or plan operation, and take actions that may be required or approved by the Department so that the discharge or spill no longer presents a hazard to the health and safety of the public or environment.

(5) In addition, the generator shall file a written report on a reportable hazardous material discharge or spill with the Department within 15 days after the incident, and supply the Department with other information it may require or request that pertains to the discharge. The report on the hazardous material spill or discharge shall be entitled "Hazardous Waste Spill Report" and shall contain the following information:

- (i) The name, address and identification number of the generator and the date, time and location of the incident.
- (ii) A brief description of the circumstances causing the incident.
- (iii) A description of each of the hazardous materials involved in the incident, including the estimated quantity spilled by weight or volume.
- (iv) A legible copy of the manifest document, if applicable.
- (v) A description of a contamination of land, water or air that has occurred due to the incident.
- (vi) A description of the actions the generator intends to take to prevent a similar occurrence in the future.

Subchapter E. EXPORTS OF HAZARDOUS WASTE

§ 262a.50. Applicability.

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

§ 262a.55. [Exception report] (Reserved).

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

§ 262a.56. [Annual reports] (Reserved).

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

§ 262a.57. [Recordkeeping] (Reserved).

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

CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter storing hazardous waste at a transfer facility for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan as required by § 263a.13(b)(4) (relating to licensing). This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the storage.

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan as required by § 263a.13(b)(4). This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

(3) A transporter transferring hazardous waste from one transport vehicle to another, or from a transport vehicle to a loading dock or other area for temporary off-vehicle intransit storage shall do so only in areas protected by secondary containment.

(4) A transporter delivering hazardous waste to another transporter at a transfer facility shall do the following:

(i) Obtain the printed or typed name and signature of the subsequent transporter and the date of the transfer in the designated location on the manifest.

(ii) If the subsequent transporter is not present at the transfer facility while the delivering transporter is at the transfer facility, obtain the location address of the transfer facility, the printed or typed name and signature of the transfer facility operator, and the date of delivery to the transfer facility, assuring the information is entered in Item 15 of the manifest.

(iii) If neither the subsequent transporter nor a representative of the transfer facility is present, enter the location address of the transfer facility,

his printed or typed name and signature, and the date of delivery to the transfer facility in Item 15 of the manifest.

(iv) Assure all the information required by subparagraphs (i)—(iii) is legible on remaining copies of the manifest.

§ 263a.13. Licensing.

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

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

* * * * *

(4) In accordance with the Department's guidelines for contingency plans, submit a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste.

(5) ***

* * * * *

(j) A copy of the transporter contingency plan approved at licensure or approved as amended shall be carried on the transport vehicle while transporting hazardous waste.

Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

§ 263a.20. Manifest system.

[(1)] (a) 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)] (b) In addition to the requirements incorporated by reference [, a]:

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

(2) The second and any subsequent highway transporter shall print or type their name, and sign and date the manifest or continuation sheet in the designated location.

(3) A transporter shall obtain the printed or typed name of the subsequent transporter or representative of the designated facility.

§ 263a.21. Compliance with the manifest.

In addition to the requirements incorporated by reference:

* * * * *

(2) A transporter [shall assure the manifest is properly completed] may not accept a manifest from a generator unless it is completed in accordance with 40 CFR 262.20 and § 262a.20 (relating to general requirements).

(3) A transporter may not accept a hazardous waste manifest which has a preprinted Manifest

Document Number or Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

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

* * * * *

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

* * * * *

§ 263a.26. Assessment of penalties.

* * * * *

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

* * * * *

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

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

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

In addition to the requirements incorporated by reference:

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

* * * * *

(3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.

(4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

§ 264a.83. Administration fees during closure.

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

* * * * *

(2) [He] The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility. Under [§ 264a.112(d)] 40 CFR 264.112(d) (relating to closure plan; amendment of plan) and paragraph (1)(i), if operation of the site is recommenced, the Department may defer completion of closure activities until the new operation is terminated. The deferral shall be in writing.

(3) The demonstrations referred to in [§ 264a.112(d)] 40 CFR 264.112(d) and this section shall be made as follows:

(i) The demonstrations in [§ 264a.112(d)] 40 CFR 264.112(d) shall be made at least 30 days prior to the expiration of the 60-day period.

* * * * *

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

§ 264a.97. General groundwater monitoring requirements.

In addition to the requirements incorporated by reference:

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

* * * * *

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

§ 264a.173. Management of containers.

In addition to the requirements incorporated by reference:

* * * * *

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

* * * * *

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

Subchapter B. GENERAL FACILITY STANDARDS

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

In addition to the requirements incorporated by reference:

(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a Module 1 report which the owner or operator shall retain for 3 years. The report shall include the following information:

* * * * *

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

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

In addition to the requirements incorporated by reference:

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

* * * * *

(3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.

(4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

§ 265a.173. Management of containers.

In addition to the requirements incorporated by reference:

* * * * *

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

* * * * *

§ 265a.175. [Containment and collection system] (Reserved).

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

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

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

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

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

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

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

(e) Storage of flowable liquid wastes—less than 20% solids by dry weight and flowable—in contain-

ers of less than 110 gallons capacity shall be in accordance with the following criteria, unless otherwise approved by the Department:

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

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

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

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter A. GENERAL INFORMATION

§ 270a.3. Payment of fees.

40 CFR 270.3 is not incorporated by reference, and the following fees are established:

* * * * *

(3) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

* * * * *

(ii) [Class 2 and] Class 3 permit modifications—50% of fees listed in [subsection] paragraph (1).

(iii) Class 1 and Class 2 permit modifications—\$700.

Subchapter D. CHANGES TO PERMITS

§ 270a.42. Permit modification at the request of the permittee.

* * * * *

(b) Instead of the appeal procedure in 40 CFR [245.19] 124.19 (relating to appeal of RCRA, UIC,

NPDES permits)[. The], the Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) [Applications] Applicants seeking a Class [2 and] 3 permit [modifications] modification shall comply with § 270a.83 (relating to preapplication public meeting and notice).

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

§ 270a.51. Continuation of existing permits.

(a) 40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

(b) The conditions of an expired permit continue in force until the effective date of a new permit if the following conditions are met:

(1) The permittee has submitted a timely application which is a complete application for a new permit.

(2) The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(c) Permits continued under this section remain fully effective and enforceable.

(d) When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may choose to do one or more of the following:

(1) Initiate enforcement action based upon the permit which has been continued.

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit.

(3) Issue a new permit with appropriate conditions.

(4) Take other actions authorized by these regulations.

Subchapter F. SPECIAL FORMS OF PERMITS

§ 270a.60. Permits-by-rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule):

(1) In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the owner or operator gives prior notification to the Department on a form provided by the Department and the conditions listed are met.

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

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

(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

* * * * *

(iv) Chapter 264a, Subchapter D and 40 CFR Part 264 Subparts C and D (relating to preparedness and prevention and contingency plan and emergency procedures[; permit conditions; and changes to permit]).

* * * * *

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

* * * * *

(ii) The notification requirements of 40 CFR 264.11 (relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD, except for § 264a.18 (relating to location standards).

* * * * *

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit-by-rule for treatment prior to the reclamation of the spent, lead-acid batteries, if the owner or operator complies with the following requirements:

* * * * *

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, I—L and DD and Chapter 264a, Subchapters A, B, D, E, I—L and DD, except for § 264a.18.

(4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a permit-by-rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

* * * * *

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Parts 262 and 264, Subparts A—E and I, J and DD.

* * * * *

[(6)] (5) The owner or operator of a facility that treats recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit-by-rule if the owner or operator complies with the following:

* * * * *

(ii) The applicable requirements of Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Part 264, Subparts A—D, I, J and DD.

* * * * *

§ 270a.62. Hazardous waste incinerator permits.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all

persons listed in § 270a.80 [(4)(i)(D)(E) and (F)] (d)(1) (relating to public notice and comment requirements).

§ 270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80 [(4)(i)(D)—(F)] (d)(1) (relating to public notice and comment requirements).

Subchapter H. PUBLIC NOTICE AND HEARINGS

§ 270a.81. Public hearings.

* * * * *

(b) The Department follows the following procedures in a public hearing held under this subchapter:

* * * * *

(5) The Department gives public notice of the hearing under [subsection (a)] § 270a.80 (relating to public notice and comment requirements).

* * * * *

§ 270a.83. Preapplication public meeting and notice.

(a) *Applicability.*

* * * * *

(4) This section does not apply to **Class 1 or Class 2** permit modifications under 40 CFR 270.42 and § 270a.42 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

* * * * *

[Pa.B. Doc. No. 01-2227. Filed for public inspection December 14, 2001, 9:00 a.m.]
