

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 260a, 261a, 262a, 263a, 264a,  
265a, 266a, 266b, 267a, 269a AND 270a ]

### Hazardous Waste Regulations

The Environmental Quality Board (Board) proposes to amend Chapters 260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 267a, 269a and 270a and add Chapter 267a (relating to standards for owners and operators of hazardous waste facilities operating under a standardized permit) to read as set forth in Annex A. This proposed rulemaking updates the hazardous waste management program regulations.

This proposed rulemaking was adopted by the Board at its meeting of May 16, 2007.

#### A. Effective Date

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

#### B. Contact Persons

For further information, contact D. Richard Shipman, Chief, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Kurt Klappkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Under sections 105, 402 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, welfare and property, and the air, water and other natural resources of this Commonwealth. Sections 303 and 305(e)(2) of the HSCA grant the Board the power and duty to promulgate regulations to carry out the provisions of the HSCA. Sections 5, 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

This proposed rulemaking addresses the Secretary's directive to review and revise the Department regulations to implement the goals in the Administration's priorities of increased environmental protection and improved human quality of life.

The proposed rulemaking includes revisions to remove obsolete provisions and correct inaccurate references currently in the regulations; delete the outdated coproduct transition scheme; simplify the hazardous waste manifest system; update the financial assurance requirements for bonding; expand and clarify the universal waste requirements; and add provisions for standardized permits.

The specific Administration priorities addressed in this proposed rulemaking include the following:

- Improving the permitting process by incorporating the Federal standardized permits provision and including regulatory provisions to accomplish this.

- Changing the bonding requirements to improve the reliability of money available to properly close a hazardous waste facility. Replacing the financial test and corporate guarantee with the option to use an insurance policy as a closure bond mechanism.

- Making a minor correction to the regulations for corrective action for solid waste management units will eliminate an impediment for the Commonwealth to receive Federal authorization, which would provide increased flexibility and further encourage brownfields redevelopment opportunities.

- Simplifying the reporting requirements for hazardous waste manifests and universal wastes to eliminate unnecessary reports and reduce paperwork requirements.

- Adding two new universal wastes that encourage recycling and proper management of hazardous wastes that might otherwise be disposed improperly.

#### E. Summary of Regulatory Requirements

##### *Chapter 260a. Hazardous Waste Management System: General*

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

This proposed rulemaking rescinds this section because the coproduct transition language is obsolete. This language was previously necessary to transition materials that were classified as coproducts and therefore not regulated as waste under the regulations prior to incorporating the Federal definition of "solid waste" on May 1, 1999. The deadline for transitioning was May 1, 2001.

##### *Chapter 261a. Identification and Listing of Hazardous Waste*

##### *§ 261a.8. Requirements for universal waste.*

This proposed rulemaking amends language to include new materials that may be managed as universal waste (oil-based finishes and photographic solutions) and deletes mercury-containing devices. A parallel regulation in 40 CFR (relating to protection of environment) is incorporated in 25 Pa. Code (relating to environmental protection) by reference. This causes the Pennsylvania-specific universal waste for mercury-containing devices to be redundant and not necessary.

*Chapter 262a. Standards Applicable to Generators of Hazardous Waste*

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

New language excludes the University Laboratories XL Project—Laboratory Environmental Management Standard from incorporation of Federal regulations by reference. These unincorporated citations apply only to specific university laboratories in Massachusetts and Vermont.

*§ 262a.12. EPA identification numbers.*

This proposed rulemaking removes the exception to substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) because the Department now issues United States Environmental Protection Agency (EPA) ID numbers. This proposed rulemaking adds the requirement for a generator to submit a subsequent notification if the name of the facility changes and clarifies a subsequent notification when there is a change of “generator status” instead of “facility class.”

*Subchapter B. Manifest*

*§§ 262a.20—262a.23.*

Changes to the manifest system in the incorporated Federal regulations that were published as a final rule at 70 FR 10776 (March 4, 2005), known as the uniform manifest rule, have made Pennsylvania-specific requirements obsolete. Therefore, Pennsylvania-specific requirements in §§ 262a.20—262a.23 are being rescinded.

*§ 262a.41. Biennial report.*

This section is rescinded because it is no longer necessary to modify the EPA report form for use in this Commonwealth.

*§ 262a.100. Source reduction strategy.*

This proposed rulemaking corrects an incorrect cross reference to 40 CFR.

*Chapter 263a. Transporters of Hazardous Waste*

*§ 263a.12. Transfer facility requirements.*

This proposed rulemaking removes Pennsylvania-specific manifest requirements for transfer facilities. These requirements are no longer necessary because of the incorporated Federal uniform manifest requirements.

*§ 263a.13. Licensing.*

This proposed rulemaking removes an inaccurate cross-reference to § 263a.30 (relating to immediate action).

*§ 263a.20. Manifest system.*

*§ 263a.21. Compliance with the manifest.*

These sections are rescinded because the Pennsylvania-specific manifest requirements are redundant because of the Federal uniform manifest rule adopted on March 4, 2005.

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

*§ 263a.26. Assessment of penalties.*

These sections are rescinded to remove regulatory provisions for civil penalties. The provision has never been used. The Department still has the authority to assess penalties for failure to submit fees, submission of falsified information, failure to submit documentation that no fee was due or failure to meet the time schedule for submission of fees.

*Chapter 264a. Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities*

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

This proposed rulemaking clarifies the reference to 40 CFR Part 264, Appendix VI (relating to political jurisdictions in which compliance with 40 CFR 264.18(a) must be demonstrated) that is excluded from incorporation by reference.

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

This section is rescinded because the Pennsylvania-specific manifest requirements are redundant because of the Federal uniform manifest rule adopted on March 4, 2005.

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

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

These sections are rescinded to remove regulatory provisions for civil penalties. The provision has never been used. The Department still has the authority to assess penalties for failure to submit fees, submission of falsified information, failure to submit documentation that no fee was due or failure to meet the time schedule for submission of fees.

*§ 264a.83. Administration fees during closure.*

This proposed rulemaking moves closure requirements from this section to § 264a.115 (relating to certification of closure), as suggested by the EPA, for clarity purposes, during authorization update review.

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

This section is rescinded because it prevented the Commonwealth from being approved by the EPA for authorization to implement the RCRA Corrective Action Program.

*§ 264a.115. Certification of closure.*

This proposed rulemaking adds certification of closure provisions from § 264a.83 (relating to administration fees during closure).

*Subchapter H. Financial Requirements*

The financial test and corporate guarantee is proposed to be deleted based on the Department's experience with companies suddenly losing the ability to meet the requirements of the financial test with no means of replacing collateral available or entering bankruptcy. The use of closure insurance is proposed to replace the financial test. This is provided for in the Federal regulations.

The proposed rulemaking clarifies that only new facilities that are applying for a new permit are eligible for phased deposit of collateral. An existing facility could enter forfeiture early in the phased deposit stage and not have adequate bond to cover closure costs.

The proposed rulemaking revises bond forfeiture wording to specify that moneys from forfeited bonds will first be used to properly close the facility for which the bond was forfeited (same as municipal and residual waste regulations).

*§ 264a.195. Inspections.*

This section, regarding hazardous waste tank inspection frequency, is proposed to be rescinded. A request for interpretation from the Pennsylvania Chamber of Business and Industry brought to the attention of Department

staff that this section may conflict with Federal regulations otherwise incorporated by reference. This section originally supplemented the incorporated Federal regulations by adding a requirement that tanks be inspected every 72 hours when not operating if waste remains in the tank. The incorporated Federal regulations require tanks to be inspected at least once each operating day. Since tanks are designed to contain an accumulation of hazardous waste, the Department has taken the position that, when waste is in the tank, it is operating and shall be inspected once every 24 hours.

*Chapter 265a. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities*

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

This section is rescinded because the Pennsylvania-specific manifest requirements are redundant because of the Federal uniform manifest rule adopted on March 4, 2005.

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

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

These sections are rescinded to remove regulatory provisions for civil penalties. The provision has never been used. The Department still has the authority to assess penalties for failure to submit fees.

*§ 265a.83. Administration fees during closure.*

This proposed rulemaking moves closure requirements from this section to § 265a.115 (relating to certification of closure), as suggested by the EPA, for clarity purposes, during authorization update review.

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the tank. The incorporated Federal regulations require tanks to be inspected at least once each operating day. Since tanks are designed to contain an accumulation of hazardous waste, the Department has taken the position that, when waste is in the tank, it is operating and shall be inspected once every 24 hours.

*Chapter 266a. Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities*

*§ 266a.70. Applicability and requirements.*

This proposed rulemaking corrects a typographical error that incorrectly refers to § 270a.60(b)(6) (relating to references) as the precious metal reclamation permit-by-rule provision. The correct citation is § 270a.60(b)(5).

*Chapter 266b. Universal Waste Management*

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

This proposed rulemaking deletes mercury-containing devices; the incorporated Federal regulations now include mercury-containing equipment with equivalent requirements. This proposed rulemaking lists two new Pennsylvania-specific materials to be eligible for management as universal wastes: oil-based finishes and photographic processing solutions.

*§ 266b.3. Definitions.*

This proposed rulemaking deletes mercury-containing devices and moves the definitions to the beginning of the subchapter. This proposed rulemaking adds technical definitions for the two new materials that are being proposed as Pennsylvania-specific materials to be eligible for management as universal wastes under this proposed rulemaking (oil-based finishes and photographic solutions).

*§ 266b.4. Applicability—oil-based finishes.*

This proposed section describes which oil-based finishes will be eligible for management as universal wastes.

*§ 266b.5. Applicability—photographic solutions.*

This proposed section describes which photographic solutions will be eligible for management as universal wastes.

*Subchapter B. Small Quantity Handlers of Universal Waste*

This subchapter is amended by adding standards and labeling/marketing requirements applicable to the two new materials which are being proposed as Pennsylvania-specific materials to be eligible for management as universal wastes under this proposed rulemaking (oil-based finishes and photographic solutions). This proposed rulemaking deletes the management standards for mercury-containing devices.

*Subchapter C. Large Quantity Handlers of Universal Waste*

This subchapter is amended by adding standards and labeling/marketing requirements applicable to the two new materials which are being proposed as Pennsylvania-specific materials to be eligible for management as universal wastes under this proposed rulemaking (oil-based finishes and photographic solutions). This proposed rulemaking deletes the management standards for mercury-containing devices.

*Chapter 267a. Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit*

This proposed chapter incorporates by reference 40 CFR Part 267 (relating to standards for owners and operators of hazardous waste facilities operating under a standardized permit) along with proposed Chapter 270a, Subchapter I (relating to procedures for standardized permit), that provides standards for hazardous waste facilities operating under a standardized permit that was published on September 8, 2005, as a final Federal regulation. The rule streamlines the hazardous waste permitting process for tanks, containers and containment buildings. It applies to onsite facilities and facilities controlled by the same company as the offsite generator. The standardized permit provision provides a streamlined process for generators of hazardous waste to obtain a permit to store wastes for more than 90 days. A standardized permit process is also available to companies that generate hazardous waste at various locations but want to establish a treatment facility at one generation location for hazardous wastes generated at all locations.

*Chapter 269a. Siting*

*§ 269a.50. Environmental assessment considerations.*

A proposed amendment replaces the Board as the jurisdictional designee of natural areas or wild areas with a more generic designee as a State or Federal agency. The legislation that established the Department of Conservation and Natural Resources (DCNR) and the Department as two separate agencies from the Department of Environmental Resources effectively changed the designee of these areas from the Board to the DCNR. The details for making these determinations are dealt with in guidance documents that assist applicants for siting hazardous waste facilities.

*Chapter 270a. Hazardous Waste Permit Program*

*§ 270a.2. Definitions.*

The proposed rulemaking adds the definition of "standardized permit."

*§ 270a.6. References.*

The proposed rulemaking corrects a typographical error in the citation to 40 CFR 270.6 (relating to references).

*§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.*

Changes were made to 40 CFR Part 124 (relating to procedures for decisionmaking), the general requirements for Federal permit issuance that affect hazardous waste permits. The Board's regulations do not incorporate 40 CFR Part 124 by reference; these changes are in the areas of 25 Pa. Code that are regulatory analogs to 40 CFR Part 124.

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

The proposed rulemaking clarifies requirements and time frames for public notice for Class 3 modifications.

*§ 270a.51. Continuation of existing permits.*

Changes were made to 40 CFR Part 124, the general requirements for Federal permit issuance that affect hazardous waste permits. Pennsylvania regulations do not incorporate 40 CFR Part 124 by reference; these changes are in the areas of 25 Pa. Code that are regulatory analogs to 40 CFR Part 124.

*§ 270a.60. Permits-by-rule.*

The proposed rulemaking deletes a defunct notification deadline and adds a clarifying provision establishing that thermal treatment activities are not eligible to operate under the generator treatment in accumulation containers, tanks and containment buildings permit-by-rule.

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

The proposed rulemaking deletes Class 2 permit modification as a "significant change" (suggested by the EPA during authorization update review).

*Subchapter I. Procedures for RCRA standardized permit*

*§ 270a.201. Incorporation by reference, scope and applicability.*

This proposed subchapter incorporates an analog to 40 CFR Part 124, Subpart G (relating to procedures for RCRA standardized permit). These permits are for generators who store waste for more than 90 days or treat hazardous waste in containers, tanks or containment buildings that do not qualify for generator treatment permit-by-rule. This permit is also available for accepting offsite waste from another generator that has the same owner. The standardized permit utilizes standard permit procedures simplifying the permit process. A standardized permit is not available for thermal treatment.

*Note:* New 40 CFR Part 270, Subchapter J (relating to RCRA standardized permits for storage and treatment units) is incorporated by reference.

*F. Benefits, Costs and Compliance*

*Benefits*

The proposed rulemaking will clarify some ambiguous provisions and eliminate redundant provisions and typographical errors. The proposed rulemaking includes new requirements that address the Secretary's directive to review and revise Department regulations to implement the goals in the Administration's priorities of increased environmental protection and improved human quality of life. The proposed rulemaking 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 Cost*

Most of the proposed amendments include clarifications and corrections that impose no new compliance costs. The proposed amendment to eliminate the Corporate Guarantee as an option to satisfy the closure/postclosure bond requirement will impose a cost on the 16 companies that utilize the Corporate Guarantee to satisfy the bond requirement at 23 facilities. The total amount of the closure/postclosure liability covered at those facilities is \$44,449,600. Replacement using a surety, some form of collateral or an insurance policy is estimated to cost the companies from 1% to 5% of the liability amount. The 1% to 5% range is approximately \$444,500 to \$2,222,500. Some proposed requirements are intended to reduce compliance costs, such as the new universal wastes and the standardized permit. The implementation of the uniform manifest should provide cost saving 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 a final-form rulemaking, the Department will prepare a fact sheet specifically addressing certain changes made by this

proposed rulemaking. 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 amendments and necessary technical guidance documents will also be available on the Department's website.

*Paperwork Requirements*

This proposed rulemaking will result in a net reduction of paperwork requirements by implementing the uniform manifest and reducing other manifest and universal waste reporting requirements. Other proposed amendments do not affect paperwork requirements.

*G. Pollution Prevention*

For this proposed rulemaking, the Department will not require additional pollution prevention efforts. The Department already provides pollution prevention educational material as part of its hazardous waste program. There is an existing requirement for hazardous waste generators to develop a source reduction strategy. The new universal wastes will help assure proper recycling or disposal that will facilitate pollution prevention by providing alternatives to inappropriate disposal of these wastes, preventing the hazardous constituents from polluting the air, land and water. The Department is actively involved with the EPA in the National Partnership for Environmental Priorities (NPEP) program. The NPEP program targets priority pollutants to reduce or eliminate them in products (which are frequently disposed at end of life) and wastes as the result of manufacturing products.

*H. Sunset Review*

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

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 22, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. 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 comments, recommendations or objections raised.

*J. Public Comments*

*Written comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th 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 September 12, 2007. 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 September 12, 2007. 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 and must also be received by the Board by September 12, 2007. A subject heading of the proposal and a return name and address must be included in each transmission.

KATHLEEN A. MCGINTY,  
*Chairperson*

**Fiscal Note:** 7-409. 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 C. RULEMAKING PETITIONS**

§ 260a.30. [ **Variations from classification as a solid waste** ] (Reserved).

[ **The coproduct transition scheme is as follows:**

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

**(2) To qualify under paragraph (1), a person producing, selling, transferring, possessing or using a material as a coproduct not exempt from regulation under other provisions of this article shall submit by August 13, 1999, a written notification to the Department that the exemption in paragraph (1) applies to the person's activity. ]**

**CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

**Subchapter A. GENERAL**

§ 261a.8. **Requirements for universal waste.**

In addition to the requirements incorporated by reference, [ **mercury-containing devices** ] **oil-based finishes and photographic solutions** as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under Chapter 266b (relating to universal waste management).

**CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

\* \* \* \* \*

**Subchapter A. GENERAL**

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

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR 262.10(g) (relating to purpose, scope and applicability), the term "section 3008 of the act" is replaced with "Article VI of the Solid Waste Management Act (35 P.S. §§ 6018.601—6018.617)." **40 CFR 262.10(j) and (k) (relating to purpose, scope, and applicability) and 262 Subpart J (relating to University Laboratories XL Project—Laboratory Environmental Management Standard) are not incorporated by reference.**

**§ 262a.12. EPA identification numbers.**

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

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

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

\* \* \* \* \*

(v) The generator's **[ facility class ] generator status** changes, except when the **[ facility class ] generator status** change is temporary.

**(vi) The name of the facility changes.**

\* \* \* \* \*

*(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of §§ 262a.20—262a.23 and 262a.41, which appears in 25 Pa. Code pages 262a-3, 262a-4 and 262a-5, serial pages (294489) to (294491).)*

**Subchapter B. (Reserved)**

**§§ 262a.20—262a.23. (Reserved).**

**Subchapter D. RECORDKEEPING AND REPORTING**

**§ 262a.41. (Reserved).**

**Subchapter I. SOURCE REDUCTION STRATEGY**

**§ 262a.100. Source reduction strategy.**

\* \* \* \* \*

(f) A person or municipality that generates hazardous waste may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR **[ 261.41 ] 262.41(a)(5)—(7)** (relating to biennial report).

**CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE**

**Subchapter A. GENERAL**

**§ 263a.12. Transfer facility requirements.**

In addition to the requirements incorporated by reference:

**[ (3) 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, the subsequent transporter's 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(c), § 266a.70(1) or § 266b.50 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators; applicability and requirements; and applicability), a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

\* \* \* \* \*

**Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING**

**§ 263a.20. Manifest system.**

**[ (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.

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

**(1) A transporter shall print or type 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. ]**

*(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of §§ 263a.21, 263a.25 and 263a.26, which appears in 25 Pa. Code pages 263a-5, 263a-7 and 263a-8, serial pages (294501) and (294503) to (294504).)*

- § 263a.21. (Reserved).
- § 263a.25. (Reserved).
- § 263a.26. (Reserved).

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

**Subchapter A. GENERAL**

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

\* \* \* \* \*

(b) Relative to the requirements incorporated by reference:

(1) 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs) and Appendix VI to Part 264—(relating to political jurisdictions in which compliance with 40 CFR 264.18(a) [relating to location standards must] shall be demonstrated are not incorporated by reference.

\* \* \* \* \*

**Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING**

*(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of §§ 264a.71, 264a.80 and 264a.81, which appears in 25 Pa. Code pages 264a-4, 264a-7 and 264a-8, serial pages (294510) and (294513) to (294514).)*

- § 264a.71. (Reserved).
- § 264a.80. (Reserved).
- § 264a.81. (Reserved).
- § 264a.83. Administration fees during closure.

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

- (1) The closure activities will, of necessity, take longer than 180 days to complete or the following:
  - (i) The facility has the capacity to receive additional wastes.
  - (ii) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site.
  - (iii) Closure of the facility would be incompatible with continued operation of the site.

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the un-closed but inactive facility. Under 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 40 CFR 264.112(d) and this section shall be made as follows:

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

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

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

\* \* \* \* \*

**Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS**

**§ 264a.101. [ Corrective action for solid waste management units ] (Reserved).**

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

**Subchapter G. CLOSURE AND POSTCLOSURE**

**§ 264a.115. Certification of closure.**

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

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

- (1) The closure activities will, of necessity, take longer than 180 days to complete or the following:
  - (i) The facility has the capacity to receive additional wastes.
  - (ii) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site.
  - (iii) Closure of the facility would be incompatible with continued operation of the site.

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the un-closed but inactive facility. Under 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 will be in writing.

(3) The demonstrations referred to in 40 CFR 264.112(d) and this section shall be made as follows:

- (i) The demonstrations in 40 CFR 264.112(d) shall be made at least 30 days prior to the expiration of the 60-day period.
- (ii) The demonstrations in this section shall be made at least 30 days prior to the expiration of the 180-day period.

**Subchapter H. FINANCIAL REQUIREMENTS**

**§ 264a.143. Financial assurance for closure.**

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

(a) The Department accepts the following types of bond:

\* \* \* \* \*

(3) A bond pledging [ a corporate guarantee ] closure insurance.

\* \* \* \* \*

(b) The Department prescribes and furnishes the forms which shall be used for bond instruments.

\* \* \* \* \*

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

\* \* \* \* \*

(e) [ Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relating to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture. ] Bonds pledging closure insurance shall be subject to the requirements of 40 CFR 264.143(e) (relating to financial assurance for closure).

**§ 264a.157. Phased deposits of collateral.**

(a) An owner or operator may post a collateral bond in phased deposits for a new hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of

issuance of the permit or permit amendment, according to all of the following requirements:

\* \* \* \* \*

**§ 264a.168. Bond forfeiture.**

\* \* \* \* \*

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

\* \* \* \* \*

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund. Use moneys received from the forfeiture of bonds, and interest accrued, first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from, the facility upon which liability was charged on the bonds. Excess moneys may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

\* \* \* \* \*

**Subchapter J. TANK SYSTEMS**

**§ 264a.195. [ Inspections ] (Reserved).**

[ In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components. ]

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

**Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING**

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to delete the text of §§ 265a.71, 265a.80 and 265a.81, which appears in 25 Pa. Code pages 265a-6, 265a-8 and 265a-9, serial pages (294524) and (254970) to (254971).)

**§ 265a.71. (Reserved).**

**§ 265a.80. (Reserved).**

**§ 265a.81. (Reserved).**

**§ 265a.83. Administration fees during closure.**

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

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

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



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

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

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

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

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

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

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

\* \* \* \* \*

**Subchapter G. CLOSURE AND POSTCLOSURE**

**§ 265a.115. Certification of closure.**

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

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

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

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

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

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

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

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

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

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

**Subchapter H. FINANCIAL REQUIREMENTS**

**§ 265a.143. Financial assurance for closure.**

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(b) The Department prescribes and furnishes the forms, which shall be used for bond instruments.

\* \* \* \* \*

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

\* \* \* \* \*

(e) [ Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure) and 40 CFR 265.145(e) (relating to financial assurance for post-closure care) except for the provision of 40 CFR 265.143(e)(10)(i) (relating to financial assurance for closure) as specified in § 264a.143(a) (relating to financial assurance for closure). This is replaced by the procedures of § 265a.168 (relating to bond forfeiture). ] Bonds pledging closure insurance shall be subject to the requirements of 40 CFR 265.143 (d) (relating to financial assurance for closure).

§ 265a.157. [ Phased deposits of collateral ] (Reserved).

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

(1) The owner or operator submits a collateral bond form to the Department.

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

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

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

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

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

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

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

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), [ or fails to make timely deposits of bond in accordance with the schedule submitted under § 265a.157 (relating to phased deposits of collateral), ] the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

§ 265a.168. Bond forfeiture.

\* \* \* \* \*

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

\* \* \* \* \*

(4) [ Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund. ] Use moneys received from the forfeiture of bonds, and interest accrued, first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from the facility upon which liability was charged on the bonds. Excess moneys may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

\* \* \* \* \*

Subchapter J. TANK SYSTEMS

§ 265a.195. [ Inspections ] (Reserved).

[ In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components. ]

CHAPTER 266a. MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

§ 266a.70. Applicability and requirements.

In addition to the requirements incorporated by reference:

\* \* \* \* \*

(2) An owner or operator of facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F is subject to § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment under § 270a.60(b) [ (6) ] (5) (relating to permits by rule).

CHAPTER 266b. UNIVERSAL WASTE MANAGEMENT

Subchapter A. GENERAL

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

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

(b) [ In addition to the requirements incorporated by reference in 40 CFR 273.1(a) (relating to scope), mercury-containing devices as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under this chapter.

(c) In addition to the requirements incorporated by reference in 40 CFR 273.4 (relating to applicability—mercury thermostats), mercury-containing devices as defined in § 266b.3 are included as wastes subject to the standards specified for thermostats in this chapter.

(d) In addition to the requirements incorporated by reference in 40 CFR 273.6 (relating to definitions), mercury-containing devices as defined in § 266b.3 are included as wastes listed in the definition of “universal waste.” ]

In addition to the requirements incorporated by reference in 40 CFR 273.1 (relating to scope), oil-based finishes as defined in § 266b.3 (relating to definitions) are included as waste listed in the definition of “universal waste.”

(c) In addition to the requirements incorporated by reference in 40 CFR 273.1, photographic solutions as defined in § 266b.3 are included as waste listed in the definition of “universal waste.”

§ 266b.2. [ Applicability—mercury-containing devices ] (Reserved).

[ (a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing mercury-containing devices as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following mercury-containing devices:

(1) Mercury-containing devices that are not yet wastes under Chapter 261a (relating to identification and listing of hazardous waste). Subsections (c) and (d) describe when mercury-containing devices become wastes.

(2) Mercury-containing devices that are not hazardous waste. A mercury-containing device is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) A used mercury-containing device becomes a waste on the date it is discarded or sent for reclamation.

(d) An unused mercury-containing device becomes a waste on the date the handler discards it. ]

§ 266b.3. Definitions.

In addition to the definitions incorporated by reference in 40 CFR [ 273.6 ] 273.9 (relating to definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

[ *Mercury-containing device*—A product or component of a product (excluding batteries) which contains elemental mercury that is necessary for operation of the device. ]

*Oil-based finishes*—

(i) Any paint or other finish that may exhibit, or is known to exhibit, a hazardous waste characteristic, or which contains a listed hazardous waste, and is in original packaging, or otherwise appropriately contained and clearly labeled.

(ii) Examples of oil-based finishes include, but are not limited to, oil-based paints, lacquers, stains and aerosol paint cans.

*Photographic solutions*—Silver-bearing waste streams resulting from photographic processing solutions or rinse water.

§ 266b.4. Applicability—oil-based finishes.

(a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing oil-based finishes as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following oil-based finishes:

(1) Oil-based finishes that are not yet wastes under Chapter 261a (relating to identification and listing of hazardous waste). Subsections (c) and (d) describe when oil-based finishes become wastes.

(2) Oil-based finishes that are not hazardous waste. An oil-based finish is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) Used oil-based finishes become a waste on the date they are discarded or sent for reclamation.

(d) Unused oil-based finishes become a waste on the date the handler discards them.

§ 266b.5. Applicability—photographic solutions.

(a) In addition to the requirements incorporated by reference in 40 CFR Part 273 (relating to standards for universal waste management), this chapter applies to persons managing photographic solutions as defined in § 266b.3 (relating to definitions), except those listed in subsection (b).

(b) This section does not apply to persons managing the following photographic solutions:

(1) Photographic solutions that are not yet wastes under Chapter 261a (relating to identification and listing of hazardous waste). Subsections (c) and (d) describe when photographic solutions become wastes.

(2) Photographic solutions that are not hazardous waste. A photographic solution is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste).

(c) Used photographic solutions become a waste on the date they are discarded or sent for reclamation.

(d) Unused photographic solutions become a waste on the date the handler discards it.

**Subchapter B. SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE**

§ 266b.11. Waste management for universal waste [mercury-containing devices] oil-based finishes.

[In addition to the requirements incorporated by reference in 40 CFR 273.13 (relating to waste management), the following apply:

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

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

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

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

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34 (relating to accumulation time).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury found in 29 CFR Part 1910, Subpart Z (relating to toxic and hazardous substances).

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

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

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

(3) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste):

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

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

(4) If the mercury, residue or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of Chapters 261a—265a. The handler is considered the generator of the mercury, residues or other waste and is subject to Chapter 262a (relating to standards applicable to generators of hazardous waste).

(5) If the mercury, residue or other solid waste is not hazardous, the handler shall manage the waste in compliance with the applicable municipal or residual waste regulations found in Articles VIII and IX (relating to municipal waste management; and residual waste management). ]

A small quantity handler of universal waste oil-based finishes shall manage oil-based finishes, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste oil-based finishes shall contain oil-based finishes that show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the oil-based finish and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may not process oil-based finishes (including opening, blending, filtering, and the like).

§ 266b.12. [Labeling/marketing] Waste management for universal waste photographic solutions.

[In addition to the requirements incorporated by reference in 40 CFR 273.14 (relating to labeling/marketing), a small quantity handler of universal waste shall label each mercury-containing device, or a container in which the device is contained, with one of the following phrases: “universal waste mercury-containing device(s),” or “waste mercury-containing device(s)” or “used mercury-containing device(s).” ]

A small quantity handler of universal waste photographic solutions shall manage waste photographic solutions, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste photographic solutions shall manage the photographic solutions in a lidded container. The container must be closed, structurally sound, compatible with the photographic solutions, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may not process photographic solutions (for example, including, but not limited to, opening, blending, filtering, and the like.).

**§ 266b.29. Labeling/markings.**

In addition to the requirements incorporated by reference in 40 CFR 273.14 (relating to labeling/markings), a small quantity handler of universal waste shall label:

(1) Each container of universal waste oil-based finish, or the container in which universal waste oil-based finishes are contained, with "universal waste oil-based finish" or "waste oil-based finish."

(2) Each container of universal waste photographic solutions, or the container in which universal waste photographic solutions are contained, with "universal waste photographic solutions" or "waste photographic solutions."

**Subchapter C. LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE**

**§ 266b.31. Waste management for universal waste [mercury-containing devices] oil-based finishes.**

[In addition to the requirements incorporated by reference at 40 CFR 273.33 (relating to waste management), the following apply:

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

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

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

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

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34 (relating to accumulation time).

(iv) Immediately transfers mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34.

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury found in 29 CFR Part 1910, Subpart Z (relating to toxic and hazardous substances).

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

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

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

(3) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing devices shall determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste):

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

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

(4) If the mercury, residue or other solid waste, exhibits a characteristic of hazardous waste, it shall be managed in compliance with applicable requirements of Chapters 261a–265a and Chapter 266a, Subchapters C and F–H. The handler is considered the generator of the mercury, residue or other waste and is subject to Chapter 262a (relating to standards applicable to generators of hazardous waste).

(5) If the mercury, residues or other solid waste is not hazardous, the handler shall manage the waste in compliance with the applicable municipal or residual waste regulations found in Articles VIII and IX (relating to municipal waste management; and residual waste management). ]

A large quantity handler of universal waste oil-based finishes shall manage oil-based finishes, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste oil-based finishes shall contain oil-based finishes that show evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the oil-based finish, and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may not process oil-based finishes (for example including, but not limited to, opening, blending, filtering, and the like).

**§ 266b.32. [Labeling/markings] Waste management for universal waste photographic solutions.**

[In addition to the requirements incorporated by reference in 40 CFR 273.34 (relating to labeling/markings), a large quantity handler of universal waste shall label each mercury-containing device, or a container in which the device is contained, with one of the following phrases: "universal waste mercury-containing device(s)," or "waste mercury-containing device(s)" or "used mercury-containing device(s)."]

A large quantity handler of universal waste photographic solutions shall manage waste photographic solutions, in their original or otherwise appropriate and labeled packaging, in a way that prevents releases of universal waste or a component of a universal waste to the environment, as follows:

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

(2) A large quantity handler of universal waste may not process photographic solutions (for example including, but not limited to, opening, blending, filtering, and the like).

§ 266b.39. Labeling/markings.

In addition to the requirements incorporated by reference in 40 CFR 273.34 (relating to labeling/markings), a large quantity handler of universal waste shall label:

(1) Each container of universal waste oil-based finish, or the container in which universal waste oil-based finishes are contained, with "universal waste oil-based finish" or "waste oil-based finish."

(2) Each container of universal waste photographic solutions, or the container in which universal waste photographic solutions are contained, with "universal waste photographic solutions" or "waste photographic solutions."

(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)

CHAPTER 267a. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

Subchap.

- A. GENERAL
E. MANIFEST SYSTEM, RECORDKEEPING, REPORTING, AND NOTIFYING
H. FINANCIAL REQUIREMENTS

Subchapter A. GENERAL

Sec.

267a.1. Incorporation by reference, purpose, scope and applicability.

§ 267a.1. Incorporation by reference, purpose, scope and applicability.

40 CFR Part 267 (relating to standards for owners and operators of hazardous waste facilities operating under a standardized permit) is incorporated by reference.

Subchapter E. MANIFEST SYSTEM, RECORDKEEPING, REPORTING, AND NOTIFYING

Sec.

267a.71. Use of the manifest system.
267a.75. Reporting requirements.

§ 267a.71. Use of the manifest system.

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 267.71(d) (relating to use of the manifest system).

§ 267a.75. Reporting requirements.

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

Subchapter H. FINANCIAL REQUIREMENTS

Sec.

267a.143. Financial assurance for closure.
267a.148. Incapacity of owners or operators, guarantors, or financial institutions.
267a.150. State assumption of responsibility.
267a.151. Wording of the instruments.

§ 267a.143. Financial assurance for closure.

40 CFR 267.143(f) and (g) (relating to financial assurance for closure) are not incorporated by reference. Additionally, all references to those subsections or use of the financial test or the guarantee are not incorporated by reference.

§ 267a.148. Incapacity of owners or operators, guarantors, or financial institutions.

Regarding the requirements incorporated by reference, the reference to 40 CFR 267.143(g) (relating to financial assurance for closure) in 40 CFR 267.148(a) (relating to incapacity of owners or operators, guarantors, or financial institutions) is not incorporated by reference.

§ 267a.150. State assumption of responsibility.

40 CFR 267.150 (relating to state assumption of responsibility) is not incorporated by reference.

§ 267a.151. Wording of the instruments.

40 CFR 267.151(a) (relating to wording of the instruments) is not incorporated by reference.

CHAPTER 269a. SITING

Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

PHASE II CRITERIA

§ 269a.50. Environmental assessment considerations.

\* \* \* \* \*

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

\* \* \* \* \*

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service; or a natural area or wild area designated by [ the EQB ] a State or Federal agency,

the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

\* \* \* \* \*

**CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM**

**Subchapter A. GENERAL INFORMATION**

**§ 270a.2. Definitions.**

(a) The definitions for "disposal," "person," "standardized permit" and "storage" are not incorporated by reference.

\* \* \* \* \*

(c) The term "standardized permit" means a permit issued under Subchapter I (relating to procedures for standardized permit) and 40 CFR Part 270, Subpart J (relating to RCRA standardized permits for storage and treatment units) authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Department's discretion.

**§ 270a.6. References.**

Regarding the requirements incorporated by reference, the term "Federal Register" retains its meaning and is not replaced by the term "Pennsylvania Bulletin" when used in 40 CFR [ 270a.6 ] 270.6 (relating to references).

**Subchapter D. CHANGES TO PERMITS**

**§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.**

Instead of the procedures required in 40 CFR Part 124 (relating to procedures for decisionmaking), permits are modified, terminated or revoked and reissued in accordance with the following:

\* \* \* \* \*

(3) If the Department tentatively decides to modify, terminate or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, 270.42(c) or 270.43, the Department prepares a draft permit under § 270a.10(c) (7)–(10) (relating to general application requirements) incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits, **other than under 40 CFR 270.41(b)(3)**, the Department requires the submission of a new application. **In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the permittee shall comply with the appropriate requirements in Subchapter I (relating to procedures for standardized permit).** The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

\* \* \* \* \*

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

\* \* \* \* \*

(c) Applicants seeking a Class 3 permit modification shall also comply with § 270a.83 (relating to preapplica-

tion public meeting and notice). **Instead of the public notice and public meeting time frames contained in the introductory paragraph of 40 CFR 270.42(c)(2) and (4) (relating to permit modification at the request of the permittee), applicants seeking a Class 3 permit modification shall comply with the time frames under § 270a.83(b) and (d).**

**Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS**

**§ 270a.51. Continuation of existing permits.**

\* \* \* \* \*

(e) The conditions of an expired standardized 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 and complete Notice of Intent under 40 CFR 124.202(b) (relating to how do I as a facility owner or operator apply for a standardized permit?) requesting coverage under a RCRA standardized 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).

(f) When the Department notifies a permittee that the permittee is not eligible for a standardized permit (see 40 CFR 124.206 (relating to in what situations may I require a facility owner or operator to apply for an individual permit?)), the conditions of the expired permit will continue if the permittee submits a timely and complete application for a new permit within 60 days after the notification.

**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. **[ Existing permit-by-rule facilities shall comply with the notification requirements by December 8, 2003. ]**

\* \* \* \* \*

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

\* \* \* \* \*

(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:

\* \* \* \* \*

(vi) **Treatment activities involving thermal treatment are not eligible to operate under this permit-by-rule.**

\* \* \* \* \*

**Subchapter H. PUBLIC NOTICE AND HEARINGS**

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

(a) *Applicability.*

\* \* \* \* \*

(3) For the purposes of this section, a "significant change" is a change that would qualify as a [ **Class 2 or** ] Class 3 permit modification under 40 CFR 270.42 (relating to permit modification at the request of the permittee) and § 270a.42 (relating to permit modification at the request of the permittee).

(4) **This section also applies to hazardous waste management facilities for which facility owners or operators are seeking coverage under a RCRA standardized permit (see 40 CFR Part 270, Subpart J (relating to RCRA standardized permits for storage and treatment units)), including renewal of a standardized permit for the units, when the renewal is proposing a significant change in facility operations, as defined at 40 CFR 124.211(c) (relating to what types of changes may I make to my standardized permit?).**

(5) 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.

(b) Prior to the submission of a Part B RCRA permit application for a facility, **or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR Part 270, Subpart J)**, the applicant shall hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection (b), and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, under 40 CFR 270.14(b) (relating to contents of Part B: general requirements), **or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR Part 270, Subpart J).**

\* \* \* \* \*

*(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)*

### **Subchapter I. PROCEDURES FOR STANDARDIZED PERMIT**

Sec.

- 270a.201. Incorporation by reference, scope and applicability.
- 270a.202. Applying for a standardized permit.
- 270a.203. Switching from an individual RCRA permit to a standardized permit.
- 270a.204. Procedures for preparing a draft standardized permit.
- 270a.205. Procedures for preparing a final standardized permit.
- 270a.206. Requirement to apply for an individual permit.
- 270a.207. Requirements for standardized permit public notices.
- 270a.208. Opportunities for public comments and hearings on draft standardized permit decisions.
- 270a.209. Response to comments.
- 270a.210. Procedures to appeal a final standardized permit.
- 270a.212. Making routine changes.
- 270a.214. Making significant changes.

#### **§ 270a.201. Incorporation by reference, scope and applicability.**

(a) Except as expressly provided in this subchapter, 40 CFR Part 124, Subpart G (relating to procedures for RCRA standardized permit) is incorporated by reference.

(b) The reference to § 124.2 in the introductory paragraph to 40 CFR 124.200 (relating to what is a RCRA standardized permit?) is replaced with § 270a.2(c) (relating to definitions).

#### **§ 270a.202. Applying for a standardized permit.**

Relative to the requirements incorporated by reference, the reference to 40 CFR 124.31 (relating to pre-application public meeting and notice) is replaced with § 270a.83 (relating to preapplication public meeting and notice).

#### **§ 270a.203. Switching from an individual RCRA permit to a standardized permit.**

Relative to the requirements incorporated by reference, the reference to 40 CFR 124.5 (relating to modification, revocation and reissuance, or termination of permits) is replaced with § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits), and the reference to 40 CFR 124.204 (relating to what must I do as the Director of the regulatory agency to prepare a draft standardized permit?) is replaced with § 270a.204 (relating to procedures for preparing a draft standardized permit).

#### **§ 270a.204. Procedures for preparing a draft standardized permit.**

40 CFR 124.204 (relating to what must I do as the director of the regulatory agency to prepare a draft standardized permit?) is not incorporated by reference. Draft standardized permits are prepared in accordance with the following:

(1) The Department will review the Notice of Intent and supporting information submitted by the facility owner or operator.

(2) The Department will determine whether the facility is or is not eligible to operate under the standardized permit.

(i) If the facility is eligible for the standardized permit, the Department may propose terms to include in a supplemental portion. If the Department determines that these terms and conditions are necessary to protect human health and the environment and cannot be imposed, coverage under the standardized permit will be denied.

(ii) If the facility is not eligible for the standardized permit, the Department will tentatively deny coverage under the standardized permit. Cause for ineligibility may include the following:

(A) Failure of the owner or operator to submit all the information required under 40 CFR 270.275 (relating to what information must I submit to the permitting agency to support my standardized permit application?).

(B) Information submitted that is required under 40 CFR 270.275 is determined to be inadequate.

(C) The facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(D) A demonstrated history of significant noncompliance with applicable requirements.

(E) Permit conditions cannot ensure protection of human health and the environment.

(3) The Department will prepare a draft permit decision within 120 days after receiving the Notice of Intent and supporting documents from a facility owner or operator. The tentative determination under this section to



deny or grant coverage under the standardized permit, including any proposed site-specific conditions in a supplemental portion, constitutes a draft permit decision. The Department may notify the permit applicant and take up to an additional 30 days to prepare a draft permit decision if determined necessary to complete review of documents submitted with the Notice of Intent.

(4) The Department's draft permit decision will be accompanied by a statement of basis or fact sheet as provided for in § 270a.10(c)(10)–(12) (relating to general application requirements and permit issuance procedures).

**§ 270a.205. Procedures for preparing a final standardized permit.**

40 CFR 124.205 (relating to what must I do as the director of the regulatory agency to prepare a final standardized permit?) is not incorporated by reference. Final standardized permits are prepared in accordance with the following: The Department will consider all comments received during the public comment period under § 270a.208 (relating to opportunities for public comments and hearings on draft standardized permit decisions) in making a final permit decision.

**§ 270a.206. Requirement to apply for an individual permit.**

40 CFR 124.206 (relating to in what situations may I require a facility owner or operator to apply for an individual permit?) is not incorporated by reference.

(1) The Department may determine that a facility is not eligible for the standardized permit based on the following:

(i) The facility does not meet the criteria in 40 CFR 124.201 (relating to who is eligible for a standardized permit?).

(ii) The facility has a demonstrated history of significant noncompliance with regulations or permit conditions.

(iii) The facility has a demonstrated history of submitting incomplete or deficient permit application information.

(iv) The facility has submitted incomplete or inadequate materials with the Notice of Intent.

(2) If the Department determines that a facility is not eligible for the standardized permit, the Department will inform the facility owner or operator that it shall apply for an individual permit.

(3) The Department may require a facility that has a standardized permit to apply for and obtain an individual permit. An interested person may petition the Department to take action under this paragraph. Cases when the Department may require an individual permit include the following:

(i) The facility is not in compliance with the terms and conditions of the standardized permit.

(ii) Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

(4) If the Department requires a facility authorized by a standardized permit to apply for an individual permit, the Department will notify the facility owner or operator in writing that an individual permit application is required. The Department will include in this notice a brief statement of the reasons for the decision, a statement

setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual permit, the facility's standardized permit automatically terminates. The Department may grant additional time to file an application for an individual permit upon request from the facility owner or operator.

(5) When the Department issues an individual permit to an owner or operator otherwise subject to a standardized permit, the standardized permit for the facility will automatically cease to apply on the effective date of the individual permit.

**§ 270a.207. Requirements for standardized permit public notices.**

40 CFR 124.207 (relating to what are the requirements for public notices?) is not incorporated by reference.

(1) The Department will provide public notice of a draft standardized permit decision and an opportunity for the public to submit comments and request a hearing on the decision. The Department will provide the public notice to:

(i) The applicant.

(ii) Another agency that the Department knows has issued or is required to issue a RCRA, underground injection control, prevention of significant deterioration (or other permit under the Clean Air Act), NPDES, 404, sludge management permit, or ocean dumping permit under the Marine Protection, Research, and Sanctuaries Act of 1972, the act of October 23, 1972 (Pub. L. No. 92-532, 86 Stat. 52) for the same facility or activity, including the EPA.

(iii) Federal or State agencies with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, the Advisory Council on Historic Preservation, State historic preservation officers, and other appropriate government authorities, including any affected states.

(iv) Each person on a mailing list developed by the Department, which includes a person who submits to the Department a request in writing to be included on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State-funded newsletters, environmental bulletins or State law journals. The Department may update the mailing list periodically by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

(v) Units of local government having jurisdiction over the area where the facility is located or proposed to be located.

(vi) State agencies having authority under State statute with respect to the construction or operation of the facility.

(2) The Department will issue the public notice according to the following methods:

(i) Publication of a notice in the *Pennsylvania Bulletin* and in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(ii) In a manner constituting legal notice to the public under State statute.

(iii) Other methods reasonably calculated to give actual notice of the action in question to a person potentially

affected by it, including press releases or any other forum or medium to elicit public participation.

(3) The Department will include the following information in the public notice:

(i) The name and telephone number of the contact person at the facility.

(ii) The name and telephone number of the Department office, and a mailing address to which people may direct comments, information, opinions or inquiries.

(iii) An address to which people may write to be put on the facility mailing list.

(iv) The location where people may view and make copies of the draft standardized permit and the Notice of Intent and supporting documents.

(v) A brief description of the facility and proposed operations, including the address or a map of the facility location on the front page of the notice.

(vi) The date that the facility owner or operator submitted the Notice of Intent and supporting documents.

(4) At the same time the public notice under this section is issued, the Department will place the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the Notice of Intent and supporting documents, and the statement of basis or fact sheet in a location accessible to the public in the vicinity of the facility or at a Department office in the vicinity of the facility.

**§ 270a.208. Opportunities for public comments and hearings on draft standardized permit decisions.**

40 CFR 124.208 (relating to what are the opportunities for public comments and hearings on draft permit decisions?) is not incorporated by reference.

(1) The public notice that the Department issues under § 270a.207 (related to requirements for standardized permit public notices) will allow at least a 45-day public comment period for people to submit written comments on the draft standardized permit decision. The public comment period will automatically be extended to the close of a public hearing under this section. The hearing officer may also extend the public comment period by so stating at the hearing.

(2) During the public comment period, any interested person may submit written comments on the draft standardized permit and may request a public hearing. Requests for public hearings must be submitted in writing to the Department and state the nature of the issues proposed to be raised during the hearing.

(3) The Department will hold a public hearing if a written notice of opposition to a standardized permit and a request for a hearing is received within the public comment period under paragraph (1). The Department may also hold a public hearing at its discretion, whenever, for instance, a hearing may clarify one or more issues involved in the standardized permit decision.

(4) Whenever possible, the Department will schedule a hearing under this section at a location convenient to the nearest population center to the facility. The Department will give public notice of the hearing at least 30 days before the date of the hearing.

(5) The Department will give public notice of the hearing according to the methods in § 270a.207(a) and (b). A person may submit oral or written statements and data concerning the draft standardized permit before, during or after the public hearing, as long as the

Department receives the statements and data during the public comment period. The Department may set reasonable time limits upon the time allowed for oral statements and may require the submission of statements in writing. The Department will make a tape recording or written transcript of the hearing available to the public.

(6) Comments submitted in accordance with this section on the draft standardized permit decision may include the facility's eligibility for the standardized permit, the proposed supplemental conditions, if any, and the need for additional supplemental conditions.

**§ 270a.209. Response to comments.**

40 CFR 124.209 (relating to what are the requirements for responding to comments?) is not incorporated by reference.

(1) At the time the Department issues a final standardized permit, it will also respond to comments received during the public comment period on the draft standardized permit. The Department's responses will:

(i) Specify which additional conditions, if any, were changed in the final permit and the reasons for the change.

(ii) Briefly describe and respond to all significant comments on the facility's ability to meet the terms and conditions of the standardized permit, and on any additional conditions necessary to protect human health and the environment.

(2) The Department may request additional information from the facility owner or operator or inspect the facility if it determines that additional information is necessary to adequately respond to significant comments or to make decisions regarding the terms and conditions of the standardized permit.

(3) The Department will make its response to public comments available to the public.

**§ 270a.210. Procedures to appeal a final standardized permit.**

40 CFR 124.210 (relating to may I, as an interested party in the permit process, appeal a final standardized permit?) is not incorporated by reference. The final standardized permit will contain information regarding the procedures to follow to appeal the Department's final permit decision, including the decision that the facility is eligible for the standardized permit. The terms and conditions of the uniform portion of the standardized permit are not subject to appeal.

**§ 270a.212. Making routine changes.**

Regarding the requirements incorporated by reference, the reference to 40 CFR 124.10(c)(1)(ix) and (x) (relating to public notice of permit actions and public comment period) is replaced with § 270a.207(a) (relating to requirements for standardized permit public notices).

**§ 270a.214. Making significant changes.**

Regarding the requirements incorporated by reference, the reference to 40 CFR 124.31(d) (relating to pre-application public meeting and notice) is replaced with § 270a.83(d) (relating to preapplication public meeting and notice).

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