

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF ~~LAND RECYCLING AND~~ WASTE MANAGEMENT

DOCUMENT NUMBER: 250-3120-320

EFFECTIVE DATE: ~~October 25, 1990~~ Upon publication as final in the *Pennsylvania Bulletin*

TITLE: Execution of release forms by waste management field inspectors

AUTHORITY: This document is established in accordance with Sections 603 and 610 of Act 97 of 1980, the Solid Waste Management Act, as amended.

POLICY: It is the policy of the Bureau of Waste Management (BWM) that an employee ~~of the Bureau~~ shall not execute ~~(by signature,)~~ waivers of liability or released from liability as a ~~precondition to enter~~ thea facility for ~~the purpose of~~ conducting an inspections.

PURPOSE: This document provides policy and procedure for dealing with a situation where ~~a Bureau of Waste Management~~ employee is asked to sign a waiver of liability or release from liability as a condition to enter premises for the purpose of conducting an inspection. It is based on advice given by Department Counsel at the request of a field inspector via a memo of November 9, 1982, and on the Pennsylvania Supreme Court ruling "Commonwealth DER v. Blosenski Disposal Service of November 16, 1989."

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APPLICABILITY: This ~~directive document~~ applies to all BWM personnel and activities ~~of the Bureau of Waste Management~~ including, but not limited to: permitting, enforcement, resource recovery and planning, grants, monitoring and administration. ~~It will most frequently apply to a field inspector (Solid Waste Specialist) or a technical person (Engineer, Hydrogeologist, Soil Scientist, Chemist, etc.) in the Regional Offices but is applicable to any Bureau personnel that responsibilities of their position.~~

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 2

LOCATION: Volume 5 Tab 5

REFERENCES:

Act 97 of 1980, 35 P.S. Sec. 6018.1 et seq. (the Solid Waste Management Act as amended)

Act 93 of 1988, (the Infectious and Chemotherapeutic Waste Act)

Act 101 of 1988, 53 P.S. Sec. 4000.101 et seq. (the Municipal Waste Planning, Recycling, and Waste Reduction Act);

~~Act 108 of 1988, (the Hazardous Sites Cleanup Act).~~

SCOPE:

~~This directive identifies the procedures to be used when a Bureau of Waste Management employee encounters a situation where the owner/operator of a regulated facility or site requires the Bureau employee to sign a waiver of liability or release from liability as a precondition to entry on premises for the purpose of conducting an inspection.~~

PROCEDURES:

If a ~~Bureau-BWM~~ employee is refused permission to enter a regulated site or facility, the employee shall inform the owner/operator of ~~Department's-DEP's~~ representatives' rights to enter without qualification based on Section 608 of the Solid ~~W~~waste Management Act and ~~that~~ Section 610(7) specifically defines "unlawful conduct" as follows:

"(7) Refuse, hinder, obstruct, delay, or threaten any agency or employee of the Department in the course of performance of any duty under this Act, including but not limited to, entry and inspection under any circumstances. (Emphasis added)"

Under no circumstances shall any ~~BWM~~Bureau employee attempt to force entry onto any property ~~where the employee has~~after having been refused permission to do so. In this circumstance the employee shall obtain the name of the individual refusing permission and record the date and time of that refusal, then ~~immediately~~ immediately contact their ~~Regional Litigation Office~~immediate supervisor for guidance and assistance in obtaining a search warrant where entry has been refused. Employees should work through the Regional Litigation office when seeking to obtain a search warrant.

Important Note: The Commonwealth medical insurance policies may include the right of subrogation (i.e., the insurance carrier may assume any rights of action an employee may have against someone who injures an employee). A waiver of such rights of action for injuries sustained while on private property could result in the carrier's refusal to pay for any injuries.