

**Notice of Proposed Rulemaking
Department of Environmental Protection**

ENVIRONMENTAL QUALITY BOARD

**[25 Pa. Code Chapters 260a - 266a, 266b, 267a, 270a]
(Hazardous Waste Management)**

PREAMBLE

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code, Chapters 260a (relating to Hazardous Waste Management System: General), 261a (relating to Identification and Listing of Hazardous Waste), 262a (relating to Standards Applicable to Generators of Hazardous Waste), 263a (relating to Transporters of Hazardous Waste), 264a (relating to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities), 265a (relating to Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities), 266a (relating to Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities), 266b (relating to Universal Waste Management) and 270a (relating to the Hazardous Waste Permit Program) to update the hazardous waste management program. The Board proposes to add a new Chapter 267a (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit) to 25 Pa. Code. These amendments and additions are set forth in Annex A.

This proposal was adopted by the Board at its meeting of _____.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact 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 Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (<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, 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 HSCA grant the Board the power and duty to promulgate regulations to carry out the provisions of that act. 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*

These changes are being proposed to address the Secretary's directive to review and revise all DEP regulations to implement the goals contained 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 co-product 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 proposal 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 regulation for corrective action for solid waste management units will eliminate an impediment for Pennsylvania 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.* Deletes the coproduct transition language, which 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.* Revises language to include new materials that may be managed as universal waste (oil-based finishes and photographic solutions). Deletes mercury-containing devices from 25 Pa. Code universal waste. 40 CFR now has a parallel regulation which is incorporated in 25 Pa. Code 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.* Excludes 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.* Removes exception to substitution of terms in §260a.3 because the Department now issues EPA ID numbers. Adds the requirement for a generator to submit a subsequent notification if the name of the facility changes. 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 final rule on March 4, 2005, known as the Uniform Manifest rule, have made Pennsylvania-specific requirements obsolete. The Pennsylvania-specific requirements are being deleted.

§262a.41. *Biennial report.* This section is deleted entirely because it is no longer necessary to modify the EPA report form for use in Pennsylvania.

§262a.100. *Source Reduction Strategy*. Corrects an incorrect cross reference to 40 CFR.

Chapter 263a. Transporters of Hazardous Waste

§263a.12. *Transfer facility requirements*. Removes Pennsylvania-specific manifest requirements for transfer facilities. These are no longer necessary because of the incorporated federal uniform manifest requirements.

§263a.13. *Licensing*. Removes an inaccurate cross-reference to §263a.30 (in Subchapter C. Hazardous Waste Discharges, regarding immediate action).

§263a.20. *Manifest system, and §263a.21 Compliance with the manifest*. Pennsylvania-specific manifest requirements being deleted as redundant because of the federal uniform manifest rule finalized on March 4, 2005.

§263a.25. *Civil penalties for failure to submit hazardous waste transporter fees, and §263a.26. Assessment of penalties*. Sections deleted to remove regulatory provision for civil penalties. This 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*. Clarifies the reference to the federal Appendix VI to 40 CFR Part 264 that is excluded from incorporation by reference.

§264a.71. *Use of the manifest system*. Pennsylvania-specific manifest requirements being deleted as redundant because of the federal uniform manifest rule finalized on March 4, 2005.

§264a.80. *Civil penalties for failure to submit hazardous waste management fees, and §264a.81. Assessment of penalties; minimum penalties*. Sections deleted to remove regulatory provision for civil penalties. This 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*. Moves closure requirements from this section to §264a.115 of Chapter 264, Subchapter G, Closure and Post Closure, as suggested by EPA, for clarity purposes, during Authorization update review.

§264a.101. Corrective action for solid waste management units. Deletes the provision that will prevent Pennsylvania from being approved by EPA for authorization to implement the RCRA Corrective Action program.

§264a.115. Certification of closure. Inserts certification of closure provisions from §264a.83.

Chapter 264a, Subchapter H. Financial Requirements. The financial test and corporate guarantee is proposed to be eliminated 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.

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.

Revises bond forfeiture wording to specify that monies 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, relating to hazardous waste tank inspection frequency, is proposed to be deleted. A request for interpretation from the PA 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 must 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. Pennsylvania-specific manifest requirements being deleted as redundant because of the federal uniform manifest rule finalized on March 4, 2005.

§265a.80. Civil penalties for failure to submit hazardous waste management fees, and §265a.81. Assessment of penalties; minimum penalties. Sections deleted to remove regulatory provision for civil penalties. This 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. Moves closure requirements from this section to §265a.115 of Chapter 264, Subchapter G, Closure and Post Closure, as suggested by EPA, for clarity purposes, during Authorization update review.

§265a.115. Certification of closure. Inserts certification of closure provisions from §265a.83.

Chapter 265a, Subchapter H. Financial Requirements. The financial test and corporate guarantee is proposed to be eliminated 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 of 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.

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.

Revises bond forfeiture wording to specify that monies 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).

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

§ 266a.70. Applicability and requirements. Proposed modification to correct a typographical error that incorrectly refers to § 270a.60(b)(6) 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. Modified by eliminating mercury-containing devices; the incorporated federal regulations now include mercury-containing equipment with equivalent requirements. Listing two new Pennsylvania-specific

materials to be eligible for management as universal wastes under this proposed rulemaking, oil-based finishes and photographic processing solutions.

§ 266b.2. Definitions. Deletes mercury-containing devices and relocates the definitions to the beginning of the Subchapter. 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.3. Applicability – oil-based finishes. Proposed new section describing which oil-based finishes will be eligible for management as universal wastes.

§ 266b.4. Applicability – photographic solutions. Proposed new section describing which photographic solutions will be eligible for management as universal wastes.

Chapter 266b, Subchapter B. Small Quantity Handlers of Universal Waste. Modified 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). Removes the management standards for mercury-containing devices.

Chapter 266b, Subchapter C. Large Quantity Handlers of Universal Waste. Modified 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). Removes the management standards for mercury-containing devices.

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

This is a new Chapter that incorporates by reference 40 CFR Part 267 along with a new Subchapter I in 270a, that provides standards for HW 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 on-site facilities and facilities controlled by the same company as the off-site generator. The standardized permit provision provides a streamlined process for generators of hazardous waste to obtain a permit to store wastes for greater than ninety 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. Replaces the EQB (Environmental Quality 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 of Environmental Protection (DEP) as two separate agencies from the Department of Environmental Resources (DER) effectively changed the designee of these areas from the EQB 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. Adds the definition of “standardized permit.”

§ 270a.6. References. Corrects a typographical error in the 40 CFR 270.6 citation.

§ 270a.41. Procedures for modification, termination or revocation and reissuance of 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 Part 124 by reference; these changes are in the 25 Pa. Code areas that are regulatory analogs to Part 124.

§ 270a.42. Permit modification at the request of the permittee. Clarifies requirements and time frames for public notice for Class 3 modifications.

§ 270.51. 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 Part 124 by reference; these changes are in the 25 Pa. Code areas that are regulatory analogs to Part 124.

§ 270a.60. Permits-by-rule. Proposed to be modified by deleting a defunct notification deadline and adding 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. Eliminates Class 2 permit modification as a “significant change” (suggested by EPA during Authorization updated review).

Subchapter I. Procedures for RCRA standardized permit §270a.201.

This is a new Subchapter that incorporates an analog to 40 CFR 124, Subpart G (Procedures for RCRA standardized permit). These permits are for generators who store waste for more than 90 days or treatment in containers, tanks or containment buildings that do not qualify for generator treatment permit-by-rule. This permit is also available

for accepting off-site 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: The new 40 CFR Part 270 Subchapter J – RCRA Standardized Permits for Storage and Treatment Units is incorporated by reference.

F. Benefits, Costs and Compliance

Benefits

The proposed regulatory changes will clarify some ambiguous provisions and eliminate redundant provisions and typographical errors. The proposed changes include new requirements that address the Secretary's directive to review and revise all DEP regulations to implement the goals contained in the Administrations priorities of increased environmental protection and improved human quality of life. The proposal will also provide a basis to solicit formal comment from the USEPA for any 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 changes include clarifications and corrections that impose no new compliance costs. The proposal to eliminate the Corporate Guarantee as an option to satisfy the closure/post-closure bond requirement will impose a cost on the sixteen companies that utilize the Corporate Guarantee to satisfy the bond requirement at twenty-three facilities. The total amount of the closure/post closure liability covered at those facilities is \$44,449,600.00. Replacement using a surety, some form of collateral or an insurance policy is estimated to cost the companies from one to five percent of the liability amount. The one to five percent range is approximately \$444,500.00 to \$2,222,500.00. Some proposed new 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 final rulemaking, the Department will prepare a fact sheet specifically addressing certain changes made by this regulatory amendment. The Department will also continue to work with the regulated community to explain impacts from the proposed regulations and any necessary operational changes to remain in compliance. Information concerning these amendments and any necessary technical guidance documents will also be available on the Department's web site.

Paperwork Requirements

This regulation 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 changes do not affect paperwork requirements.

G. Pollution Prevention

For this proposed regulatory change the Department would require no 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 inappropriate disposal of these wastes, preventing the hazardous constituents from polluting the air, land and water. The Department is actively involved with USEPA in the National Pollution Elimination Partnership (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

These 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 _____, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

J. Public Comments

Written Comments--Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental

Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 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 _____ (within 60 days of publication in the Pennsylvania Bulletin). 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 _____ (within 60 days following publication in the Pennsylvania Bulletin). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final 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 _____ (within 60 days following publication in the Pennsylvania Bulletin). A subject heading of the proposal and a return name and address must be included in each transmission.

KATHLEEN A. MCGINTY,
Chairperson
Environmental Quality Board