

US EPA ARCHIVE DOCUMENT

Delaware Code Annotated
7 DC, 6002 - 6010(g)(4), Chapter 63
1982 supplement

Statutes directed at control of pollution in the environment are intended to encompass infinitely variable conditions. — Flexibility and adaptability are required in meeting factual situations which could not have been foreseen by the General Assembly. *State v. Braun*, Del. Super., 378 A.2d (1977).

Subchapter II. Powers and Duties of Secretary and Department.

§ 6002. Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(8) [Repealed].

(16) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, and product chemicals, and industrial, municipal and agricultural waste discharged into water.

(21) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under this chapter, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

(27) "Categorical pretreatment standard" means a pretreatment standard which applies to industrial users in a specific industrial subcategory.

(28) "Discharge or indirect discharge" means the discharge or the introduction of pollutants from any nondomestic source into a POTW.

(29) "Industrial user" means a source of indirect discharge. The term "industrial user" shall include, but not be limited to, the original source of the indirect discharge as well as the owners or operators of any intervening connections, other than those owned or operated by the receiving POTW, which convey the indirect discharge to the POTW.

(30) "POTW pretreatment program" means a program administered by a POTW for the purpose of enforcing pretreatment standards in accordance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.

(31) "Pretreatment standard" means any pollutant discharge limit promulgated by the Administrator of the United States Environmental Protection Agency in accordance with § 307(b) and (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) and (c), or by the Secretary, which applies to industrial users.

(32) "Publicly owned treatment works" or "POTW" means either:

property in such a manner as to discharge air contaminants into the atmosphere where the law requires the owner to first obtain a permit. There is no vested right to continue causing injury to another even when such injury has occurred in the past. *State v. Braun*, Del. Super., 378 A.2d 640 (1977).

There is no specific requirement that a party charged with failing to make monthly reports be a "discharger" within subsection(a)(2) of this section. Where the State has proved that a defendant voluntarily applied for a permit and the Secretary, pursuant to his power under this section, issued him one, and the permit required monthly reports from the

permitholder, which defendant failed to supply, the State has met its burden. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

Jury finding of responsibility for monthly reports. — A jury may find that while a defendant is not a "discharger," he is responsible, as holder of the permit, for making the required monthly reports. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

Availability of variance. — Any apparent harshness in subsection (b)(1) of this section or § 6002(3) of this title is mitigated by the availability of a variance under § 6011 of this title. *State v. Braun*, Del. Super., 378 A.2d 640 (1977).

§ 6004. Same — Application; hearing.

(a) Any person desiring to obtain a permit required by § 6003 of this title or a variance or an application to establish a redemption center shall submit an application therefor in such form and accompanied by such plans, specifications, and other information as required by applicable statute or regulation.

(b) Upon receipt of an application in proper form (except an application concerning a source of water or a sewerage system for 3 or fewer families or open burning, on which the Secretary may act without public notification), the Secretary shall advertise in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State (1) the fact that the application has been received, (2) a brief description of the nature of the application, and (3) the place at which a copy of the application may be inspected. The Secretary shall hold a public hearing on an application, if he receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. Such notice shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case the longer time shall be stated. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact. (7 Del. C. 1953, § 6004; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 1; 61 Del. Laws, c. 503, § 3.)

Revisor's note. — Section 2 of 61 Del. Laws, c. 503, provides: "With the exception of § 6059(3), this act shall become effective July 12, 1979, or 60 days after beverage container legislation containing provisions similar to this act has been enacted in the States of Maryland and Pennsylvania, whichever is later; § 6059(3) shall become effective 1 year after the remaining provisions of this act shall have become effective."

Section 4 of 61 Del. Laws, c. 503, provides: "If

any provision of this chapter or the application thereof to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of this chapter shall not be affected thereby."

Section 1 of 63 Del. Laws, c. 174, repealed § 2 of 61 Del. Laws, c. 503.

Section 2 of 63 Del. Laws, c. 174, provides: "61 Del. Laws, c. 503, as amended by this act, shall become effective 1 year after the enactment of

this act into law, with the exception of § 6059(3) thereof which shall become effective 2 years after the enactment of this act into law; provided, nevertheless, that this chapter, as amended by this act, shall not become effective until the General Assembly appropriates the funds necessary for carrying out its provisions." The act was signed by the Governor on July 14, 1981.

Effect of amendments. — 59 Del. Laws, c. 537, effective July 26, 1974, rewrote the second sentence of subsection (b) and inserted the present third sentence.

61 Del. Laws, c. 503, inserted "or an application to establish a redemption center" in subsection (a).

Delegation of legislative authority to Secretary held constitutionally valid. — The safeguards of this section and §§ 6008(a), 6009(a) and 6011(b) of this title provide a sufficient deterrent and remedy to protect against arbitrary action by the Secretary, and therefore, there is no constitutional infirmity on the ground of invalid delegation of legislative authority. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

§ 6005. Enforcement; civil penalties; expenses.

(b) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6003 of this title, or any order of the Secretary, shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty imposed by Superior Court of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought. If the violation has been completed and there is a substantial likelihood that it will reoccur, the Secretary may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(c) Any person who is found to have violated this chapter, or a rule, or regulation, or condition of a permit issued pursuant to § 6003, or an order of the Secretary, shall be liable for all expenses incurred by the Department (1) in abating the violation or (2) controlling a pollution incident related to the violation or (3) cleanup and restoration of the environment. Such expenses shall include, but not be limited to, the costs of investigation, legal assistance, public hearings, materials, equipment, manpower, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations, or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the liable person. In the event the liable person desires to challenge the detailed billing submitted by the Secretary, such person shall request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to the billing of expenses submitted by the Secretary. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based on the record, and enter an order which shall contain reasons supporting the decision. An appeal of the decision of the Secretary may be perfected to Superior Court within 30 days of the decision of the Secretary. In the event a liable person fails or refuses to pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in the Superior Court. This

subsection shall not be affected by the appeal provisions of § 6008 of this title.

(d) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter. (7 Del. C. 1953, § 6005; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 2, 3.)

Effect of amendment. — 59 Del. Laws, c. 537, effective July 26, 1974, inserted the present second and third sentences of paragraph (1) of subsection (b) and added subsections (c) and (d).

As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Company may have duty to remove source of air pollution from its premises even where the source of the pollution was dumped on its property by unknown persons

acting without authorization. Failure to exercise due care in removing the pollutant may subject the company to liability under this section. *Dover Prods. Co. v. Olney*, Del. Supr., 428 A.2d 18 (1981).

Air pollution resulting from unauthorized dumping of carcasses on company's property does not subject the company to liability under this section. *Dover Prods. Co. v. Olney*, Del. Supr., 428 A.2d 18 (1981).

§ 6006. Public hearings.

Any public hearing held by the Secretary or the Board concerning any regulation, permit application, alleged violation or variance request shall be conducted as follows:

(5) The Secretary may establish a fee schedule for applications and hearings, and may collect from the applicant or from a violator finally adjudged guilty, the necessary expenses of the Department for conducting the hearing, or a reasonable fee for processing an application, or both. Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds. (7 Del. C. 1953, § 6006; 59 Del. Laws, c. 212, § 1; 63 Del. Laws, c. 322, § 105(a).)

Revisor's note. — Section 2 of 63 Del. Laws, c. 322, provides: "Any previous act inconsistent with this act is hereby repealed to the extent of such inconsistency."

Section 3 of 63 Del. Laws, c. 322, provides: "If any provision of this act, or of any rule, regulation or order thereunder or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is

held invalid shall not be affected thereby."

Effect of amendment. — 63 Del. Laws, c. 322, effective June 30, 1982, added the last two sentences in subdivision (5).

As the rest of the section was not affected by the amendment, it is set out in this Supplement.

Former provisions of section indicated procedure to be used for continuing, existing problem. *State v. Getty Oil Co.*, Del. Super., 305 A.2d 327 (1973).

§ 6007. Environmental Appeals Board created; composition; quorum; rules and regulations; appeal deposits.

(f) The Environmental Appeals Board shall adopt such rules and regulations as are necessary to provide procedures and to provide costs which shall apply

to appeals to the Environmental Appeals Board. Prior to adopting any such rules and regulations, the Board shall designate a day, time and place for a public hearing on such proposed rules and regulations or for any amendments to existing or proposed rules and regulations. The Board shall give 30 days notice of such hearing by publication in a newspaper of general circulation in the State and shall make copies of such proposed regulations and rules or amendments to existing rules and regulations available to the public upon request. In any appeal to the Board there shall be required a \$40 deposit to cover such costs as are incurred during the appeal.

(g) Any fees charged by the Environmental Appeals Board pursuant to subsection (f) of this section shall be deposited in a special account in the name of the Environmental Appeals Board and shall be used solely for the costs and expenses of that Board in holding its hearings and proceedings. (7 Del. C. 1953, § 6007; 59 Del. Laws, c. 212, § 1; 60 Del. Laws, c. 201, § 1.)

Effect of amendment. — 60 Del. Laws, c. 201, effective July 9, 1975, added subsections (f) and (g).

As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

§ 6008. Appeal to Board.

(f) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Court of Chancery may stay the action pending disposition of the appeal. (7 Del. C. 1953, § 6008; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, § 4.)

Effect of amendment. — 59 Del. Laws, c. 537, effective July 26, 1974, added subsection (f).

As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Delegation of legislative authority to Secretary held constitutionally valid. —

The safeguards of subsection (a) of this section and §§ 6004, 6009(a) and 6011(b) of this title provide a sufficient deterrent and remedy to protect against arbitrary action of the Secretary, and therefore, there is no constitutional infirmity on the ground of invalid delegation of legislative authority. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

§ 6009. Appeal from Board's decision.

(a) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Board, may appeal to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the decision of the Board.

(c) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Board or the Court of Chancery may stay the action pending disposition of the appeal. (7 Del. C. 1953, § 6009; 59 Del. Laws, c. 212, § 1; 59 Del. Laws, c. 537, §§ 5, 6.)

Revisor's note.

Section 7 of 59 Del. Laws, c. 537, repealed subsection (d), which is set out in the Revisor's note in the original.

Effect of amendment. — 59 Del. Laws, c. 537, effective July 26, 1974, in the first sentence of subsection (a), deleted "aggrieved by any decision of the Board" following "jointly or severally" and inserted "aggrieved by any decision of the Board" following "the State." The act also, in subsection (c), inserted "of the Secretary" and substituted "Board or the Court of Chancery" for "Secretary or the Superior Court."

As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

Delegation of legislative authority to Secretary held constitutionally valid. — The safeguards of subsection (a) of this section and §§ 6004, 6008(a) and 6011(b) of this title provide a sufficient deterrent and remedy to protect against arbitrary action by the Secretary, and therefore, there is no constitutional infirmity on the ground of invalid delegation of legislative authority. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

§ 6010. Rules and regulations; plans.

(e) The Secretary shall formulate, amend, develop and implement, after public hearing, a State solid waste plan in accordance with the requirements of subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as amended, and any regulations thereunder, hereafter referred to as RCRA: provided, however, that such plan shall be formulated in coordination with the Delaware Solid Waste Authority and shall include provisions of the statewide solid waste management plan adopted by the Delaware Solid Waste Authority pursuant to § 6403(j) of this title which reflect the applicable functions and activities of the Delaware Solid Waste Authority under Chapter 64 of this title.

(g)(1) The Secretary, after notice and public hearing, shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps with the meaning of this chapter. At a minimum such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(2) On the date as determined under paragraph (3) below, the open dumping of solid waste or hazardous waste and the establishment of new open dumps is prohibited and all solid waste, including solid waste originating in other states but not including hazardous waste, shall be utilized for resource recovery or disposed of in sanitary landfills, within the meaning of this chapter, or otherwise disposed of in an environmentally sound manner, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under paragraph (5) below.

(3) Except as provided in paragraphs (4) and (5) below, the prohibition contained in paragraph (2) above shall take effect on the date of promulgation of regulations containing criteria under paragraph (1) or on the date of approval of the state solid waste plan under § 4007 of RCRA, whichever is later.

(4) To assist in the formulation of the state solid waste plan, the Secretary, utilizing the criteria adopted pursuant to paragraph (1) above, shall

Sec. 6314. Variances.		Sec. 6316. Funds.
6315. Interference personnel.	with Department	6317. Interstate cooperation.

Revisor's note. — Section 5 of 62 Del. Laws, c. 412, provides: "No hazardous waste treatment facility shall be granted a permit for a period of 6 months from July 11, 1980, until such time as the Department or Commission has promulgated rules and regulations relating

to the storage, treatment, transportation or disposal of hazardous wastes or any hazardous waste treatment facility, whichever comes first."

This chapter became effective upon the signature of the Governor on July 11, 1980.

Subchapter I. Hazardous Waste

§ 6301. Findings; purpose.

(a) The General Assembly finds that:

(1) Continuing technological progress, increases in the amounts of manufacture and the abatement of air and water pollution have resulted in ever-increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

(3) The knowledge and technology necessary to alleviate adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are believed to be generally available at costs within the financial capability of those who generate such wastes, but that such knowledge and technology are not widely used;

(4) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this chapter are:

(1) To protect the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes; and

(3) To assure the safe and adequate management of hazardous wastes within this State. (62 Del. Laws, c. 412, § 3.)

§ 6302. Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Activity" means construction, operation or use of any facility, site, property or device.

(2) "Department" means the Department of Natural Resources and Environmental Control of the State.

(3) "Commission" means the Commission on the Transportation of Hazardous Materials.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land, water or into the air so that such hazardous waste or any constituent thereof may enter the environment to be emitted into the air, or discharged into any waters, including groundwaters.

(5) "Division" means the Division of Environmental Control.

(6) "Generation" means the act or process of producing hazardous waste materials.

(7) "Hazardous wastes" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

(8) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

(9) "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transport.

(10) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body.

(11) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control, or his duly authorized designee.

(12) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Chapter 60 of this title, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

(13) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(14) "Transport" means the movement of wastes from the point of generation to the point of storage, treatment or disposal.

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

(16) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility upon premises where hazardous waste has been generated. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 1.)

Effect of amendment. — 63 Del. Laws, c. 164, effective July 14, 1981, rewrote subdivision (10).

§ 6303. Hazardous waste management plan.

(a) The Department is authorized to study and investigate the problems of hazardous waste control and management in Delaware, and shall develop and publish after public hearing a statewide hazardous waste management plan, which shall include, but not be limited to:

(1) A description of the sources of hazardous waste generation within the State, including the types and quantities of such wastes, and the location of hazardous waste generators, disposal facilities and storage sites;

(2) A description of current hazardous waste management practices and costs, including treatment and disposal, within the State;

(3) An informational reporting system of hazardous waste quantities generated and disposed of in the State;

(4) Criteria for the siting of hazardous waste disposal facilities;

(5) Information on methods of reuse, recycling and reduction of hazardous wastes, including the feasibility of establishing facilities, institutions or requirements for the purpose of encouraging the reuse, recycling, reduction and utilization of hazardous wastes for useful purposes.

(b) In carrying out any studies or investigations under this section, the Department shall seek the cooperation and advice of the Delaware Solid Waste Authority. (62 Del. Laws, c. 412, § 3.)

§ 6304. Prohibitions; records.

(a) No person shall generate, store, transport, treat or dispose of hazardous wastes in this State without reporting such activity to the Department as required by this chapter and regulations promulgated hereunder.

(b) No person shall generate, store, treat, transport or dispose of hazardous wastes within this State except in compliance with this chapter and regulations hereunder.

(c) Information obtained by the Department under § 6305(a)(10) of this title or pursuant to any other provisions of this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Department certifies

such information to be proprietary. The Department may make such certification where any person shows to the satisfaction of the Department that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this subsection shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter or the Resources Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended from time to time. Prior to disclosure of proprietary information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter or Pub. L. 94-580, as amended.

(d) It shall be unlawful for any person to destroy, alter or conceal any records maintained and in existence as of July 11, 1980, with respect to any generation, treatment, disposal, storage or transportation of hazardous waste during or subsequent to any such operation. This requirement applies equally to facilities and sites closed prior to July 11, 1980. The Secretary shall prescribe by regulation terms and conditions upon which records shall be kept, including the period of retention.

(e) The Secretary shall issue such orders as may be necessary to carry out his duties under this chapter.

(f) Except with respect to its powers as set forth in the Hazardous Materials Transportation Act, §§ 8223-8230 of Title 29, the Commission shall serve in an advisory capacity to the Secretary and may consider all matters relating to the implementation of this chapter and regulations promulgated thereunder.

(g) No person shall transport or deliver hazardous waste to any facility operated by or on behalf of the Delaware Solid Waste Authority. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 372, § 1.)

Effect of amendment. — 63 Del. Laws, c. 372, effective July 8, 1982, added subsection (g).

§ 6305. Regulations.

(a) The Secretary shall, after notice and public hearing, promulgate and revise as appropriate:

(1) a. Criteria, consistent with those promulgated by the United States Environmental Protection Agency under § 3001 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, for identifying the characteristics of hazardous waste and for listing hazardous waste, and

b. Regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes (within the meaning of § 6302(7) of this title based on the criteria promulgated in subparagraph a. of this paragraph.

(2) Regulations for the storage, treatment, and disposal of hazardous waste, including regulations regarding contingency plans for effective action to minimize unanticipated damage from the treatment, storage or disposal of such hazardous waste and regulations prescribing conditions and time periods upon which generators may accumulate hazardous wastes on site without a permit;

(3) Regulations setting forth requirements for permit applications and specifying the terms and conditions, including duration, under which the Department shall issue, modify, review, suspend, revoke or deny such permits as may be required by this chapter;

(4) Regulations establishing standards and procedures for the safe operation and maintenance of hazardous waste treatment, storage and disposal facilities or sites, including requirements for closing, long-term care and termination of treatment, storage and disposal facilities or sites. The Secretary may, where appropriate, establish separate standards for new and existing sites. Requirements may be adopted under this paragraph applicable to facilities and sites closed prior to July 11, 1980, which requirements shall be applicable to former and present owners and operators, as may be deemed appropriate;

(5) Regulations specifying those hazardous wastes which are not compatible, and which may not be stored or disposed of together without appropriate prior treatment to make them compatible;

(6) Regulations establishing procedures and requirements for the reporting of the generation, storage, transportation, treatment or disposal of hazardous wastes;

(7) Regulations establishing standards and procedures for the training of personnel engaged in treatment, storage or disposal activities at hazardous waste sites or facilities;

(8) Regulations establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(9) Regulations which may provide for a reasonable schedule of fees for payment to the Department by hazardous waste generators, transporters and owners of treatment, storage or disposal facilities or sites to defray the cost of administering this chapter. Any fees collected under this paragraph shall be appropriated to the Department for purposes of administering this chapter. Such regulations shall not provide for any annual fee in excess of \$2,500 or in the case of small business concerns, any annual fee in excess of \$100;

(10) Regulations which prescribe:

- a. The establishment and maintenance of such records, including period of retention;
- b. The making of such reports;
- c. The taking of such samples and the performing of such tests or analyses;
- d. The installing, calibrating, using and maintaining of such monitoring equipment or methods; and

e. The providing of such other information as may be necessary to achieve the purposes of this chapter;

(11) Regulations setting forth criteria regarding the level of financial responsibility required for permit issuance under § 6307(h)(1) of this title and criteria pertaining to appropriate measures for preventing damage to public health, safety and the environment under § 6307(h)(2) of this title.

(b) In complying with this section, the Secretary may consider the variations within the State in geology, population density and such other facts as may be relevant to the management of hazardous wastes.

(c) The Secretary, in consultation with the Commission and after notice and public hearings, shall issue regulations for the transportation, containerization and labeling of hazardous wastes. Such regulations shall be consistent with and no more stringent than applicable rules or regulations issued by the United States Environmental Protection Agency and Department of Transportation, and consistent with and no more stringent than any other regulations issued pursuant to this chapter and the Hazardous Materials Transportation Act of 1979, §§ 8223-8230 of Title 29. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 2.)

Effect of amendment. — 63 Del. Laws, c. 164, effective July 14, 1981, rewrote paragraph (1) of subsection (a).

§ 6306. Generation and transportation of hazardous waste.

(a) Within 90 days of the effective date of regulations promulgated under this chapter setting forth criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes, any person generating or transporting hazardous waste within this State shall submit to the Department a description of the source of the hazardous wastes, including the types and quantities thereof, and the location of the generating facility, as well as the storage and disposal sites.

(b) Any person generating hazardous waste shall comply with all requirements, as set forth in regulations under this chapter, respecting accurate identification through labeling practices of any containers used for the storage, transport or disposal of such hazardous wastes.

(c) Any person generating or transporting hazardous waste shall, in accordance with duly promulgated regulations, use a manifest system to assure that all hazardous waste generated is designated for treatment, storage or disposal in facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued pursuant to this chapter or pursuant to the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended).

(d) Any person generating any solid waste shall be responsible for any testing necessary to determine whether any material generated by them is a hazardous waste according to Department approved testing procedures.

(e) This chapter and regulations applicable to transporters of hazardous waste shall apply equally to those persons transporting hazardous wastes

generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof, as well as to persons transporting hazardous waste into, through or out of the State. (62 Del. Laws, c. 412, § 3.)

§ 6307. Hazardous waste treatment, disposal and storage facilities and sites.

(a) Within 90 days of the effective date of regulations promulgated under this chapter setting forth criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes, any person operating, substantially altering or constructing a hazardous waste treatment, storage or disposal facility or site shall report such activity to the Department, together with a description of the facility, the types and quantities of any solid and hazardous wastes treated, stored or disposed of, the location of the facility, the storage or disposal capacity of the facility and the source of the wastes treated, stored or disposed of.

(b) Beginning 180 days after the effective date of regulations adopted for this purpose, no person shall construct, substantially alter or operate any hazardous waste treatment, storage or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Secretary for such facility, site or activity, except that generators may accumulate hazardous wastes on site without a permit for such periods and upon such conditions as the Secretary may by regulation prescribe.

(c) Any person desiring to obtain a permit required under this section shall submit an application therefor in such form and accompanied by such plans, specifications and other information as required by applicable statute or regulation, including the requirements of subsection (h) of this section.

(d) Permits issued under this section shall be issued under such terms and conditions as the Secretary may prescribe by regulations promulgated under the authority of § 6305 of this title.

(e) Operating permits shall be issued for a period of time as prescribed by regulations and may be revoked by the Secretary for failure to comply with the requirements of this chapter and regulations thereunder.

(f) Any permit issued under this section may be revoked by the Secretary at any time when the permittee fails to comply with the terms and conditions of the permit, provided, that no permit shall be revoked until the Secretary has provided the permittee with the opportunity for an adequate hearing, and with written notice of the intent of the Secretary to revoke the permit and the reasons for such revocation. Any appeal from an order of the Secretary revoking any permit shall not operate to stay the revocation.

(g) Any person who: (1) Owns or operates a facility required to have a permit under this section which facility is in existence on the effective date of regulations under § 6305(a) of this title; (2) has complied with the requirements of subsection (a) of this section; and (3) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the

Secretary or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(h) No permit shall be issued to operate any hazardous waste treatment, storage or disposal facility or site except as provided in subsection (g) of this section, unless that facility or site submits to the Department the following:

(1) Evidence of financial responsibility in such form and amount as the Department may determine, pursuant to duly promulgated regulations, to be necessary to insure that, upon abandonment, cessation or interruption of the operation of the facility or site, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment;

(2) Evidence that the personnel engaged in the treatment, disposal or storage of hazardous wastes have met such qualifications as to training as the Department may prescribe pursuant to § 6305(a)(7) of this title.

(i) Any person acquiring rights of ownership, possession or operation in a facility or site granted a permit under this section for the disposal, storage or treatment of hazardous waste at any time after the site or facility has been granted a permit or has begun to accept such waste shall, in addition to the original permittee, be subject to all requirements of the permit approved for the site or the facility, including the requirements of subsection (j) of this section. Upon acquisition of the rights, and application to the Department, the Department shall issue a new permit if the previous permittee is no longer connected with the operation of the site or facility and if the proposed permittee meets all requirements of the applicable statutes and regulations.

(j) The owner or operator of a permitted facility or site must conduct such maintenance, monitoring and surveillance, upon closure, abandonment, cessation or interruption of the operation of the facility or site, as the Secretary deems necessary to protect the public health and to prevent or control air, land, water or groundwater pollution. (62 Del. Laws, c. 412, § 3.)

§ 6308. Imminent hazards.

Notwithstanding any other provision of this chapter, the Secretary, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he determines to be necessary to protect the health of such persons or the environment. The action the Secretary may take includes, but is not limited to:

(1) Issuing an order directing the operator of the treatment, storage or disposal facility or site, or the custodian of such hazardous waste, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation;

(2) Issuing an order directing the persons who previously owned or operated a treatment, storage or disposal facility or site which constitutes such hazard and who are determined by the Secretary to be responsible for

activities causing the hazard, to take such steps as are necessary to prevent or eliminate the hazard;

(3) Enforcement action pursuant to § 6309 of this title. (62 Del. Laws, c. 412, § 3.)

§ 6309. Enforcement.

(a) (1) Whenever on the basis of any information the Secretary determines that any person is in violation of any requirement of this chapter, any condition or limitation in a permit or variance issued thereunder, or any rule or regulation, the Secretary shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the 30th day after the Secretary's notification, the Secretary may issue an order requiring compliance within a specified time period.

(2) If such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance and the Secretary may suspend or revoke any permit issued to the violator.

(3) Any order or any suspension or revocation of a permit shall become final unless, no later than 30 days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request, the Secretary shall conduct a public hearing in accordance with § 6312 of this title. In connection with any proceeding under this paragraph the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may promulgate rules for discovery procedures.

(4) Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Secretary determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(b) In lieu of the compliance order procedure in subsection (a) of this section, any person who violates a provision of this chapter, any condition or limitation in a permit issued pursuant to this chapter, any variance condition or limitation, any rule or regulation, or any order of the Secretary shall be liable for a civil penalty of not less than \$1,000 nor more than \$25,000 for each day of violation. The Superior Court shall have jurisdiction of offenses under this subsection.

(c) If the violation is continuing or if there is a substantial likelihood that it will reoccur, or if the Department receives information that the generation, storage, transportation, treatment or disposal of a hazardous waste presents an imminent and substantial hazard to public health or to the environment, the Secretary may, in addition to or in lieu of any other remedy provided in this chapter, seek a temporary restraining order or a preliminary or permanent injunction in the Court of Chancery.

(d) In any action brought under subsection (c) of this section, in addition to any equitable relief granted by the Court of Chancery, the Court may, in the

exercise of its ancillary jurisdiction, impose a civil penalty as provided for in subsection (b) of this section.

(e) In any civil action brought in the Court of Chancery pursuant to this section in which a temporary restraining order, a preliminary injunction or a permanent injunction is sought, upon a showing by the Secretary that a person has engaged in the acts or practices to be enjoined or restrained, a permanent or preliminary injunction, restraining order or other order may be granted.

(f) Any person who intentionally or knowingly violates a provision of this chapter, any condition or limitation in a permit issued pursuant to this chapter, any variance, condition or limitation, any rule or regulation, or any order of the Secretary, shall, in addition to or in lieu of any other remedy set forth herein, be subject, upon conviction, to a fine of not less than \$2,500 nor more than \$25,000 for each day of such violation, or shall be subject to imprisonment not to exceed 1 year, or both. If the conviction is for a violation committed after a 1st conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or by both. The Superior Court shall have jurisdiction of offenses under this subsection.

(g) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, manifest, label or other document filed or required to be maintained under this chapter, or under any permit, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not less than \$500 nor more than \$25,000 or by imprisonment for not more than 1 year or both. If the conviction is for a violation committed after a 1st conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or by both. The Superior Court shall have jurisdiction of offenses under this subsection.

(h) Each day of violation as specified in any action pursuant to the above subsections shall constitute a separate violation. (62 Del. Laws, c. 412, § 3.)

Subchapter II. Miscellaneous Provisions

§ 6310. Inspections; right of entry.

(a) For the purpose of developing or enforcing any regulation, permit or other requirement authorized by this chapter, any duly authorized employee of the Department may, upon presentation of appropriate credentials at any reasonable time:

- (1) Enter any place or conveyance where hazardous wastes are generated, stored, transported, treated or disposed of;
- (2) Inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes, and prior to leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained, and if requested, a portion of each such

sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator or agent in charge;

(3) Inspect and copy any records, reports, information or test results relating to the purposes of this chapter.

(b) Upon any refusal of entry, inspection, sampling or copying pursuant to this section, a duly authorized employee of the Department may apply for and obtain a warrant to allow such entry, inspection, sampling or copying in the manner established by the rules and law of criminal procedure.

(c) No duly authorized employee of the Department who enters upon premises, vehicles or equipment for purposes set forth in subsection (a) of this section shall have a cause of action against the owner, operator or occupier thereof for any injuries or damages sustained by such person while on the premises, vehicles or equipment unless such injuries or damages were intentional on the part of the owner, operator or occupier or were caused by the willful or wanton disregard of the rights of others. (62 Del. Laws, c. 412, § 3.)

§ 6311. Service of process on owners or operators who are nonresidents or corporations not incorporated in Delaware.

(a) Any nonresident person who, either in person or through others, owns or operates a facility or conducts an activity subject to this chapter or any nonresident who, either in person or through others, owns or operates a facility or conducts an activity outside the State, which while located outside the State causes or contributes to the discharge or disposal of hazardous wastes or substances into or upon the lands, air, surface water or groundwaters of the State shall be deemed thereby to have submitted himself to the jurisdiction of the courts of this State and to have appointed and constituted the Secretary of State of this State or his designee as his agent for the acceptance of legal process in any action under this chapter. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3112 of Title 10.

(b) Any corporation, not incorporated in this State, which itself or through others owns or operates a facility or conducts an activity subject to this chapter or any such corporation which itself or through others owns or operates a facility or conducts an activity outside the State, which while located outside the State causes or contributes to the discharge or disposal of hazardous wastes or substances into or upon the lands, air, surface water or groundwater of the State, shall be deemed thereby to have sufficient contacts with this State to have submitted itself to the jurisdiction of the courts of this State. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3111 of Title 10. (62 Del. Laws, c. 412, § 3.)

§ 6312. Public hearings.

Public hearings shall be held on any permit application, draft permit, permit modification, regulation, variance request, permit revocation or appeal to the Environmental Appeals Board in accordance with §§ 6004 and 6006 of this title. (62 Del. Laws, c. 412, § 3.)

§ 6313. Appeals.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with § 6008 of this title.

(b) Any person, a party to an appeal before the Board, substantially affected by a decision of the Board may appeal to the Superior Court in accordance with § 6009 of this title. (62 Del. Laws, c. 412, § 3.)

§ 6314. Variances.

Variances and temporary emergency variances may be granted by the Secretary from any regulation or permit condition adopted pursuant to this chapter in accordance with §§ 6011 and 6012 of this title, except that no variance shall be granted which would be inconsistent with the requirements of subsection (b) or (c) of § 3006 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 (or regulations promulgated thereunder) regarding equivalence or substantial equivalence of state programs for authorization or interim authorization whichever the case may be. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 3.)

Effect of amendment. — 63 Del. Laws, c. 164, effective July 14, 1981, added the exception at the end of the section.

§ 6315. Interference with Department personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any regulation, order, permit or decision promulgated or issued thereunder. (62 Del. Laws, c. 412, § 3.)

§ 6316. Funds.

The Department may cooperate with and receive moneys from the federal government, and any state or local government, or other appropriate source in carrying out its duties under this chapter. (62 Del. Laws, c. 412, § 3.)

§ 6317. Interstate cooperation.

The General Assembly encourages cooperative activities by the Department and the Commission with other states, interstate or regional organizations, and the federal government for the improved management of hazardous wastes; for improved, and so far as practicable, uniform state laws relating to the management of hazardous wastes; and compacts between this and other states for the improved management of hazardous wastes. (62 Del. Laws, c. 412, § 3.)