

US EPA ARCHIVE DOCUMENT

SECTION A
PROGRAM DESCRIPTION

STATE OF DELAWARE**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT****HAZARDOUS WASTE MANAGEMENT BRANCH****PROGRAM DESCRIPTION****I. INTRODUCTION****A. General Background**

The State of Delaware was granted full authorization for the base hazardous waste program on December 14, 1983. Delaware's authorized program was codified on January 31, 1986. The State continues in its efforts to maintain primacy over its hazardous waste program by adopting regulations as required by Section 3006(b) and 40 CFR Part 271, Subpart A. By doing so, the State maintains a program that is consistent and equivalent with the intent of the Federal RCRA program.

B. Purpose of Program Description

The purpose of this revised Program Description is to describe how the state of Delaware implements its Hazardous Waste Management Program. The Program Description contains elements from the approved base program in addition to non-HSWA Clusters I through V, HSWA Clusters I and II, and RCRA Cluster I revisions adopted between June 22, 1984 and July 26, 1994.

(See Attachment 1 -- Summary of Checklists).

II. PROGRAM SCOPE, STRUCTURE AND COVERAGE

Delaware's Hazardous Waste Program contains the basic principles to qualify for re-authorization and to maintain our existing program authorization. These principles include:

- Equivalent/No Less Stringent Program
- Consistent Program
- Notice and Hearing in Permit Process
- Adequate Enforcement
- Availability of information

A. Equivalent/No Less Stringent.

Delaware is required to maintain a program that is equivalent to and no less stringent than the federal program. Delaware's Hazardous Waste Management Program is equivalent to and no less stringent in the following general categories of hazardous waste management activities:

- Classification of wastes as hazardous, via the provisions for identification and listing of hazardous waste. (7 Delaware Code Chap. 63, §6305, DRGHW Part 261);
- Notification of hazardous waste management activities. (7 Delaware Code Chapter 63, §6304, DRGHW Parts 262, 263 and 265);
- Generation of hazardous waste. (7 Delaware Code Chap. 63, §6306, DRGHW Part 262);
- Transportation of hazardous waste. (7 Delaware Code Chap. 63, §6306, DRGHW Part 263);
- TSD facility construction and operation. (DRGHW Parts 264-265).
- Permitting of TSD facilities. (Part 122); and
- Tracking of hazardous wastes from point of generation to final disposition via the manifest system. (DRGHW Parts 262, 263, 264 and 265).

(See Attachment 1 -- Summary of Checklists)

Delaware's program for hazardous waste management continues to meet the requirements of the federal program with the adoption of revision packages dated September 24, 1984, February 5, 1985, November 21, 1985, May 8, 1986, August 29, 1988, August 17, 1990, and portions of revision packages adopted June 19, 1992, November 19, 1993 and July 26, 1994 as indicated in Attachment 1 - Summary of Checklists. These revisions to the basic program are equivalent to and no less stringent than the federal program. Some of the revisions included in this package are:

- generator requirements to use the national uniform manifest (Part 262) (See Attachment 2 -- Delaware Hazardous Waste Manifest);
- generator requirements for satellite accumulation (Part 262);
- state availability of information as required by the Hazardous Waste Disclosure Regulations;
- generators and TSD requirements for tanks (Part 264 and 265);
- requirements for conducting treatability studies (Part 262);
- re-classification and changes to the permit modification process (Part 122);
- requirements for miscellaneous units (Part 264 and 265);
- requirements for small quantity generators (Part 262);
- requirements for Burners, Blenders and Marketers (Part 266);
- requirements for land disposal restriction (Part 268);
- transporter requirements for permits to haul hazardous waste
- Low level radioactive wastes mixed with hazardous wastes regulated in a manner consistent with the EPA RCRA Program. The hazardous components of the waste must be managed in accordance with DRGHW;
- TCLP Revisions;
- Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038).

B. Consistent Program.

Delaware has adopted 7 Delaware Code, Chapter 63 which is consistent with the language found within RCRA, Section 3002. The Delaware Regulations Governing Hazardous Waste are consistent with the regulations found in 40 CFR, Part 260 - 271. Therefore, the State statutory and regulatory language for regulating generators is consistent with the federal requirements.

C. More Stringent Program.

The State has all the elements of the federal program noting the following differences:

- the State has chosen to regulate the activity of hazardous waste transportation, Part 263, subpart E;
- the State requires all applications be signed by a principal executive officer, Part 122, subpart B;
- the State takes immediate enforcement action upon determination that a Part A is deficient, Part 122, subpart G;
- the State does not exclude waste pickle liquor from the definition of hazardous waste, Part 261, subpart A;
- the State has no delisting provisions, Part 260, subpart C;
- generators utilizing satellite accumulation areas, DRGHW Section 262.34(c), must immediately comply with DRGHW Section 262.34(a) as soon as the 55 gallons of hazardous waste or 1 quart of acutely hazardous waste limit is attained;
- generators are required to submit Annual Reports, DRGHW Section 262.41(a);
- A Hydrological Report is required with the submission of a Part B application;
- All solvents rented by a recycler to a user must be manifested when the spent solvent is transported off the user's site to the recycler;
- the State prohibits underground injection of hazardous waste, Part 122, subpart F;
- Owner/operator must notify the Secretary 180 days prior to beginning closure activities, Part 264, subpart G.

(See Attachment 1 -- Summary of Checklists)

D. Notice and Hearing in the Permit Process.

RCRA standards stipulate that no state permit program may be authorized unless it meets the requirements found in RCRA §7004(b)(2). This section of RCRA addresses the requirements for notices and hearings in the permitting process. Delaware complies with RCRA §7004(b)(2) by providing advance notice of its intent to take a permit action by publication of such notice in major and local newspapers in the State and by broadcasting the announcement over local radio stations. See 7 Delaware Code, Chap. 60 and the Delaware Regulations Governing Hazardous Waste, Part 124. Additionally, the State provides written notice to persons who have expressed interest by placing their name or organization on a correspondence listing.

E. Adequate Enforcement.

The principal objectives of the Division's enforcement are to achieve a high degree of compliance, to consider overall Federal objectives where applicable (EPA Enforcement Response Policy dated December 21, 1987) and to ensure case by case consistency within the framework of DNREC/DOJ enforcement authorities. (See Attachment 3, Secretary's Enforcement Policy for the Division of Air and Waste Management and the Division of Water Resources dated April 3, 1987). 7 Delaware Code, Chap. 63 provides the appropriate authority for all waste enforcement actions. Such enforcement actions include administrative orders, civil actions and criminal actions. (See Enforcement Process and Attachment 5). Delaware also provides for public participation in the enforcement process by allowing intervention as a right in any civil or administrative action, as well as, citizen suits consistent with RCRA §7002.

F. Availability of Information.

The Division's Hazardous Waste Management Program provides for the public availability of information obtained by the program. Such information is available to the public in accordance with Chap. 63, §6304(c) of the Hazardous Waste Disclosure Regulations. These regulations make information available in substantially the same manner, and to the same degree as RCRA §3006(f). Please refer to State procedures for a detailed explanation of Delaware's availability of information.

III. STATE AGENCY RESPONSIBILITIES

The Department of Natural Resources and Environmental Control is the primary agency responsible for hazardous waste management and is the agency responsible for administering the RCRA program in Delaware. More specifically, the Hazardous Waste Management Branch of the Waste Management Section within the Division of Air & Waste Management (DAWM) has primary responsibility for carrying out the duties and responsibilities related to compliance, monitoring and enforcement for treatment, storage and disposal facilities as well as generators and transporters of hazardous waste.

IV. STAFFING AND FUNDING

A. Staffing

The Hazardous Waste Management Branch consists of 3 managers, 10 technical, and 4 administrative support staff. (See Attachment 4 -- HWMB Organizational Chart)

Managers

Program Manager II (PMII) - The PMII is responsible for managing the Hazardous Waste Branch. Management includes planning, coordinating and overseeing completion of the Branch's responsibilities, and general personnel management.

Program Manager I (PMI) - The PMI is responsible for managing the Treatment, Storage or Disposal Permitting Group or the Compliance, Monitoring and Development Group. Management includes planning, coordinating and overseeing completion of recommendations, and general personnel management.

Technical

Environmental Scientist (ES) - Environmental Scientists are responsible for the scientific aspects of compliance, monitoring, permitting, closure, corrective action and program development activities. Specific responsibilities include completion of facility inspections, review of facility investigative work plans and reports, and development of statutes and regulations.

At the present time one staff member has an active "secret" level security clearance from recent military service. This staff member could be utilized if necessary to deal with low-level radioactive mixed hazardous waste activities.

Environmental Engineer (EE) - Environmental Engineers are responsible for the engineering aspects of compliance monitoring, permitting, closure, corrective action and program development activities. Specific activities include completion of facility inspections, review of facility remedial action work plans and reports, and development of statutes and regulations.

Hydrologist (HYD) - Hydrologists are responsible for the hydrogeologic aspects of compliance monitoring, permitting, closure, corrective action and program development activities. Specific activities include completion of facility inspection, review of facility investigative work plans and reports, and development of statutes and regulations.

Environmental Enforcement Officer (EPO) - The Environmental Enforcement Officer investigates initial hazardous waste complaints, especially those complaints dealing with releases or abandonment. Specific activities include both civil and criminal investigations. The EPO, during normal activities, will investigate and/or recommend that the HWMB conduct compliance evaluations at sites thought to be non-notifiers. The EPO may assist the Branch in conducting compliance investigations.

Administrative Support

Senior Secretary (SSEC) - The Senior Secretary is responsible for coordinating the completion of Branch administrative activities.

Secretary (SEC) - The Secretary is responsible for completion of administrative activities assigned. The Secretary is also responsible for processing FOIA requests.

Mini-micro Specialist (MMS) - The Mini-micro Specialist is responsible for the data management systems operated by the Branch. Specific responsibilities include data entry, software development, hardware maintenance, and general integration of the systems.

B. Funding

Budget requirements for the Hazardous Waste Management Branch are currently acquired from three sources.

- Non-appropriated Special Funds (NSF) Federal Grant
- General Funds
- Appropriated Special Funds (Fees or ASF)

The following table summarizes the current branch positions and their funding source.

STAFFING AND FUNDING SOURCES

		1994 (Actual)	1995 (Actual)	1996 (Planned)
PMII	059360	.75GF	GF	GF
PMI	061782	NSF	NSF	NSF
PMI	054952	NSF	NSF	NSF
ES	058682	NFS	NSF	NSF
ES	056690	NSF	NSF	NSF
ES	08355	NSF	NSF	NSF
ES	056689	NSF	NSF	NSF
ES	064882	---	---	NSF
ES	061677	ASF	ASF	ASF
EE	08318	NSF	NSF	NSF
EE	054951	NSF	NSF	NSF
EE	08330	NSF	NSF	NSF
EE	NEW	---	---	NSF
HYD	08354	GF	GF	GF
EPO	053562	ASF	ASF	ASF
SSEC	061781	ASF	ASF	ASF
SEC	08315	NSF	NSF	NSF
SEC	083130	NSF	NSF	NSF
MMS	64318	.5NSF	.5NSF	.5NSF

For FFY95 the budget will consist of 75% NSF and 25% GF & ASF. As in other states, the HWMB has attempted to reduce its dependency on general fund money through the use of appropriate permit fees and cost recovery.

In future fiscal years the branch will continue to depend on federal funds. In order to expand into new areas of responsibility, an increase in federal funds will be required. The HWMB will continue to pursue fee and cost recovery options.

(See Attachment 4 -- Staffing & Funding)

V. STATE PROCEDURES

A. Permitting Procedures

Treatment, Storage, or Disposal Facilities (TSD). Seven Delaware Code and the DRGHW require that all facilities treating, storing, or disposing of hazardous waste obtain a permit prior to the construction and operation of a waste management facility. Permitting requirements are essentially identical to the requirements of the federal program. To accommodate implementation of recently promulgated federal regulations, the State and EPA Region III closely coordinate joint permitting activities. Following is an overview of the joint permit process:

1. *Identify Need for Permit.* One (1) year before a facility's operating permit is expected to expire or the State anticipates making a permit decision for a newly regulated facility, the State will provide guidance to the facility and request submittal of a Part B application. Permitted facilities are required to submit the application six (6) months prior to expiration of the existing permit; newly regulated facilities are required to submit the Part B within six (6) months after receipt of the submittal request [See 40 CFR & DRGHW, §122.10(e)].

To aid in obtaining a complete application, the State, EPA, and the facility may meet to discuss the scope of the application to review relevant guidance. This meeting commonly takes the form of an initial site visit.

2. *Completeness and Technical Review.* Upon receipt of the permit application, the State performs a completeness and technical review. In this review, the State identifies those provisions of the application for which the State has no enforceable regulation. The State informs EPA of these provisions and if appropriate provides EPA with a recommendation for consideration. Through cooperative coordination with EPA, a determination of completeness is made. In the event the application is found incomplete, the State will issue a Notice of Deficiency (NOD). Unless special circumstances warrant, the NOD will require submission of additional information within thirty (30) days [See 40CFR & DRGHW, §124.3(c)].
3. *Enforcement.* If the applicant fails or refuses to correct the deficiencies cited in the NOD, the State and EPA may jointly deny the permit and take appropriate enforcement action.
4. *Draft Permit.* If the application is found complete the State will prepare a draft permit for public notice. The State will consult with EPA in developing permit

conditions utilizing those regulations for which the State does not have a comparable enforceable regulation [See 40CFR & DRGHW, §124.6].

5. *EPA Review.* Prior to public notice the State will provide the following to EPA for review and concurrence:

- a joint draft permit or proposal to deny permit issuance for public notice;
- a draft joint public notice and radio announcement;
- a joint fact sheet; and
- a complete application if not previously provided.

The State most commonly requests that EPA provide suggested revisions or concurrence regarding the EPA enforceable permit conditions within thirty (30) days; experience demonstrates a much faster response time. The faster response time may be attributed to cooperative coordination throughout the joint permitting process.

6. *Joint Public Notice.* Shortly after receipt of EPA concurrence, the State performs the distribution of the public notice. Distribution includes mailing a copy of the draft permit to the applicant and informing interested state and federal agencies, as well as the public, that a draft permit has been prepared and is available for review and comment. The period allowed for public comment is a minimum of forty-five (45) days. The State may also schedule a public hearing during the public comment period [See 40 CFR and DRGHW, §§124.10 and 124.12].
7. *Response to Comments.* Upon closure of the public comment period, the State considers all comments made during the public notice period in making a final permit determination. In response to the comments raised, the State prepares a response document reviewing the State's considerations and identifying changes to the draft permit, if any. In the event comments are received regarding EPA's portion of the permit, the State may draft or ask EPA to develop those portions of the response document [See 40CFR & DRGHW, §124.17].
8. *Permit Determination.* Upon agreement between EPA and the State regarding the conditions for the permit issuance or denial, the permit determination is made. A signature page, delineating EPA's and the State's enforceable authorities, is forwarded first to the State's then to EPA's signature authorities. The State's enforceable conditions become effective upon both signatures. EPA's enforceable conditions become effective thirty (30) days after the final signature unless an appeal is made.
9. *Permit Appeal.* The EPA and State appeal process proceeds independently in accordance with applicable state or federal regulations. Environmental permits issued by the State may be appealed before the Environmental Appeals Board (EAB) in accordance with the provisions of 7 Delaware Code, Chapters 60 and 63, §§6007, 6008, 6009, and 6313 respectively. The EAB is a quasi-judicial review board that was created to hear appeals of decisions of the Secretary. The Board

consists of 7 Delaware residents, appointed by the Governor with the advice and consent of the Senate.

A request for an appeal before the Board must be submitted in written form and detail concisely the interest which has been substantially affected; an allegation that the decision is improper; and the reasons why the decision is improper. The statement must be accompanied by a deposit of \$40.00 to defray any costs.

10. *Modifications to Permits.* Permit modifications are divided into three classes; Class 1, 2 and 3.

Modifications within Classes 1 and 2 are those which do not substantially alter existing permit conditions in everyday facility operations. Class 3 modifications substantially alter a facility's operating practices.

Class 1 modifications cover the correction of small errors in a permit, routine changes, or records. (For the most part these changes do not require prior Department approval). The permittee must notify the Department of the change of permit condition and the necessity for such a change. The permittee must also notify persons on the facility mailing list within 90 days of making the modification. The facility mailing list is available from the Department. For those Class 1 modifications requiring prior approval, the facility must notify the Department by certified mail requesting approval. Once approval has been granted by the Department, the facility must proceed as above.

Class 2 permit modifications cover changes that are necessary to allow the facility to operate under the constraints of common variations in the types and quantities of waste managed, changes in technologies, or regulatory changes which can be implemented without substantially altering the design specifications or management practices set forth in the facility permit.

In order to make a Class 2 modification, the permittee is required to submit to the Department a request for modification that describes the changes to be made. The request must include supporting documentation and justification for the requested Class 2 change. The permittee must also notify persons on the facility mailing list and publish a notice in a local newspaper. A copy of the permit modification request and supporting documents is made available for public inspection, usually through the Department.

Within 90 days of receiving the Class 2 modification request the Department will either approve the request, with or without changes, or deny the request.

Class 3 modifications are utilized to cover changes that significantly alter facility operations. The facility must submit a modification request to the Department identifying the change or changes to be made to the permit, explaining why the change is necessary and supporting the Class 3 modification. The facility is encouraged to consult with the Department prior to this submittal.

The facility must also notify persons on the mailing list and publish a notice in a local newspaper. A public hearing must be held not fewer than 15 days after and not more than 15 days before the end of the comment period. At the conclusion of the comment period, a draft permit modification is prepared. The draft permit modification is public noticed allowing a 45 day comment period. A public hearing will be held if requested. The permit modification will then be issued or denied.

B. Closure Procedures

Each facility must have an approved closure plan which meets the regulatory requirements, including the closure performance standard outlined in DRGHW Parts 264 and 265, §§264.111 and 265.111. The Department has prepared a Closure Plan Guideline document which outlines format, deliverables, and the administrative review process.

Permitted facilities have an approved closure plan as a portion of the issued permit. Permitted facilities must notify the Department at least 180 days prior to the expected commencement date of closure.

Facilities operating under interim status must notify and submit their closure plans at least 180 days prior to their expected day of closure. The Department will either approve the submitted closure plan or issue a Notice of Deficiency (NOD). The permittee has 30 days to correct the cited deficiencies. Should that response be unsatisfactory, the Department may modify the plan. This plan then becomes the approved closure plan.

Facilities are required to remove all hazardous waste from waste management units addressed in the plan within 90 days of approval of the facility closure plan or receipt of the final volume of hazardous waste. The facility then has an additional 90 days to complete closure. Under certain conditions, the Department may issue an extension to the 180 day period.

C. Permitting Procedures - Transporters

Seven Delaware Code, Chapters 60 and 63, and DRGHW, Part 263 requires all transporters of hazardous waste to obtain a permit from the Department. This requirement is broader in scope than the federal program and is funded through non-federal funding.

The following is an overview of the permit process:

1. *Completeness Review.* When an application for a transporter permit is received, it is reviewed for completeness and content. In the event that an application is determined to be deficient, a Notice of Deficiency (NOD) will be issued. In most cases, the applicant will be required to correct the deficiencies or submit additional information within thirty (30) days.
2. *Public Notice.* Applications for transporter permit are placed on public notice for 15 days in accordance with 7 Delaware Code, §6004. A public hearing may be held on any application if a meritorious request for a hearing is received within the

specified time frame as advertised in the public notice. The Department may also hold a public hearing if it has been determined to be in the best interest of the State.

3. *Permit Determination.* After the completeness review and public notice period, if an application successfully satisfies all requirements, a permit is issued.
4. *Enforcement.* If the applicant fails or refuses to correct deficiencies cited in a NOD, the State may deny the permit and take appropriate enforcement action.
5. *Appeal.* In the event a permit is denied, the applicant may appeal the denial in accordance with the provisions of 7 Delaware Code, Chap. 60.

D. Notification

All hazardous waste generators (i.e. generators of greater than 1000 kilograms of hazardous waste, or 1 kilogram of acutely hazardous waste, in a calendar month) and owners/operators of hazardous waste treatment, storage and disposal facilities are required to notify the state of their hazardous waste activity. The regulated community must submit to the Delaware Department of Natural Resources and Environmental Control, Hazardous Waste Management Branch (HWMB) notification of hazardous waste activities (pursuant to 7 Delaware Code, Chap. 63, §§6306(a) and/or 6307(a) and one or more of the citations within the DRGHW, §§262.12, 263.11, 264.11 and 265.11.)

Notifications are submitted on the current Notification of Regulated Waste Activity Form (NRWAF) (EPA Form 8700-12). Completed NRWAF's are submitted to the HWMB. Each NRWAF is stamped with the date of receipt. The forms are then reviewed for completeness. The notifier is then contacted for minor changes or clarifications as needed.

In the case of a major correction or the necessity to incorporate missing information, the NRWAF is returned to the notifier. Upon receipt of a satisfactorily completed NRWAF, the HWMB enters the form into a logbook by company name, date received, type of notification (first or subsequent) and date the form is forwarded to EPA Region III for the issuance of the permanent EPA Identification Number.

Following the issuance of the identification number, EPA Region III forwards to the notifier a verification of the issued identification number. This verification is supplied on EPA Form 8700-12B. EPA Region III then returns to the HWMB the NRWAF indicating the issued number, as well as an indication that the verification was mailed to the notifier. The HWMB records this information into the aforementioned logbook. As the manifest tracking system does not currently interface with the RCRIS handler database, it is then necessary for the notifier information to be incorporated into the handler database of the manifest tracking system. Once incorporated, the notification form and verification copy are incorporated into the Branch files.

The HWMB may also issue State of Delaware provisional identification numbers for one time emergency shipments of hazardous waste. A provisional identification number may

be obtained by contacting the HWMB by phone and providing information as to the generator, generator site, type and amount of waste generated, the Delaware permitted transporter to be utilized, and the name and location of the designated TSD facility. It is also necessary for the generator to complete a Notification of Regulated Activity form (EPA Form 8700-12) and submit the completed form to the HWMB within ten days of the issuance of the provisional number. Once the completed NRWAF form is returned to the HWMB, the form is incorporated into the HWMB generator files.

E. Manifest Procedures

Delaware has adopted the EPA Uniform Hazardous Waste Manifest Form (EPA form 8700-22, Rev 9-88) as its own. An out-of-state generator uses the Delaware manifest form when his hazardous waste is shipped to the single Delaware TSD facility accepting off-site hazardous waste. An in-state generator uses a Delaware manifest form when the state where the receiving TSD is located can not supply a manifest form. The State's manifest program is broader in scope than the federal program by requiring the shaded areas on the manifest to be completed.

The Delaware Hazardous Waste Management Branch receives about 25 to 50 copies of manifests each working day. One part of the manifest consists of copy 7 which the generator sends to the Branch informing that hazardous waste has been shipped off-site. The other part consists of copy 2 which the receiving TSD facility sends detailing receipt of waste. Usually within a day, all of the data on each manifest copy received is entered into our Manifest Tracking System. This process reveals incorrect Delaware generator ID numbers and manifest copies with missing information. Personal contact is then initiated with the generator to amend these deficiencies.

F. Annual Report Procedures

The Delaware Regulations Governing Hazardous Waste (DRGHW, Section 262.41) require large quantity generators (those generating greater than 1000 kilograms of hazardous waste or more than 1 kilogram of acutely hazardous waste) per calendar month, and treatment, storage and disposal facilities to comply with an annual reporting requirement. Therefore, the requirements of DRGHW, §262.41 are more stringent than the corresponding federal requirements.

The State utilizes EPA forms 8700-13 and 8700-13A for submittal of annual reports.

In late December of the reporting year, the HWMB mails a copy of the report instructions and forms to each in-state large quantity generator and/or TSDF. Completed reports are due on or before March 1 of the succeeding year. Upon receipt, the HWMB reviews each report for completeness and correctness. Incomplete or incorrectly completed forms are returned to the generator/TSDF. Failure to submit a completed report by March 1 will lead to the issuance of an enforcement letter.

Annual report data is incorporated into a designated database. The data collected in the biennial reporting year of 1987 was incorporated into a dBase file, whereas data compiled from the biennial reporting year was entered directly into the EPA supplied Biennial

Reporting System (BRS) software. Submitted information may then be verified by comparing the annual report data with manifest data received by the State. The State retains in hard copy all submitted annual report forms.

G. Waste End Assessment Procedures

Delaware is authorized by 7 Delaware Code Chapter 63, §6319 to impose a fee on generators and/or treatment, storage and disposal facilities (TSDF) of hazardous waste within the State. The waste-end assessment fee and report requirements are broader in scope than the Federal Program. The requirements encourage sound management of hazardous waste and hazardous waste minimization.

Delaware hazardous waste generators/TSDFs are required to submit, on a quarterly basis, a waste end assessment report on Department supplied forms. The reports are used to calculate an assessment on the generator/TSDF for hazardous waste generated and the method of disposal utilized. The fee is based on the amount of waste generated and the disposal method utilized. The fee schedule is detailed in 7 Delaware Code Chapter 63, §6319(f) & (g). Failure to submit a required report or pay any assessed fee may be subject to enforcement action pursuant to 7 Delaware Code Chapter 63, §6319(e) and (j).

The Statute also provides for claims of resource recovery which, if granted, exempt the waste of a Delaware hazardous waste generator/TSDF from the waste-end assessment fee. Claims of resource recovery must be supported by a demonstration to the Department that at least 75% of a usable product can be recovered. Any unrecoverable waste will remain subject to the waste-end assessment fee.

Received waste-end assessment data are entered into a database which may be utilized for tracking, trend analysis, and report generation. Submitted waste-end data may be verified through comparison of the data with information compiled from annual reports and/or manifests.

H. Compliance Monitoring Procedures

Potential hazardous waste violations are identified via routine inspections and/or through citizen complaints. Inspections are conducted by the HWMB at LQG, SQG, and TSD facilities on a routine basis averaging about 2 to 4 per month during the course of the year. These inspections are conducted following the procedures discussed below.

1. *Pre-Inspection Procedure.* Manifest Review: The inspector reviews the hazardous waste manifests in the DNREC files for the subject company. A list is made of all manifest copies sent to the DNREC HWMB by the generator for which no copy was sent to the HWMB by the receiving waste disposal facility. Also as part of the review, waste shipments are compiled according to waste stream types, amounts, shipment dates and destinations.

For generators with only occasional shipments, up to 3 years of manifests are reviewed so the inspector can identify waste streams as recurring or one-time shipments.

For generators who generate only a few types of wastes which are shipped off-site each month, 1 1/2 years of manifests are reviewed.

From this compilation and review of the manifests the inspector determines the following:

- classification - LQG, SQG or Conditionally Exempt Small Quantity Generator;
 - hazardous waste shipments for which the Department has received a generator signed copy but has not received a TSD signed copy;
 - the wastes shipped off in bulk rather than in containers. This indicates the generator may have an accumulation tank;
 - those shipments of hazardous waste which the generator has exported;
 - those shipments of hazardous waste which took longer than 45 days to arrive at the TSD and for which the Department has not received an exception report;
 - those waste streams that are shipped out less frequently than every 90 days (for LQG) or less frequently than 180 days (for SQG);
 - those waste streams which appear to have ceased and those which appear to have started and their differences in waste codes;
 - shipments of hazardous waste which appear to have been generated by spills resulting in contaminated soils or absorbent materials;
 - differences in the generator's waste description and the description by the receiving TSD as recorded in the discrepancy indication space;
2. *Annual Report Review.* For large quantity generators (LQG), the inspector conducts a detailed review of the most recent annual report and determines the following:
- completeness of annual report submitted by generator;
 - differences in the amounts shown on the manifests and annual reports.
3. *Permit Review.* For generators which are also permitted or interim status TSDs, the inspector reviews the permit or permit application (for interim status facilities) and updated financial assurance submissions and determines the following:
- types and numbers of permitted units;
 - types of wastes which are permitted for those units;
 - financial assurance inadequacies regarding closure or insurance.
4. *State Files.* For any generator, the inspector reviews past inspection checklists, past inspection reports and past enforcement actions. Air and water pollution agency files for the facility are reviewed regarding waste streams from pollution control when, in the judgement of the inspector, the complexity of the facility will make it difficult to understand the origin of all the waste streams.

From this the inspector determines the following:

- origins of the various waste streams;

- what safety and technical equipment may be necessary to conduct the inspection;
 - previous violations.
5. *On-site Record Review.* The inspector asks the plant representative to explain the manufacturing processes and to describe the safety equipment needed while on the plant premises. Details should be sought regarding the potential generation of hazardous waste from any of the following: solids build-ups in closed loop systems, unconverted reactants, contaminate solutes in phase separations and spent filter mediums.

For all generators, manifests and associated Part 268.7(a) land ban notifications are reviewed. The inspector obtains all copies of all TSD signed manifests and exception reports which may be missing from DNREC files. For LQGs with annual reports showing wastes not shown on manifests in the DNREC files, the inspector obtains copies of those missing manifests. For wastes shown on manifests in the DNREC files but not on the annual report, an understanding is reached on how the annual report needs to be amended. For LQGs and TSDs, training and inspection records are reviewed on-site. A copy of the contingency plan is obtained for a post-inspection review. For TSDs, copies of financial assurance documents, if they supersede documents previously reviewed, are obtained for post-inspection review. If manifests or the annual report shows the generator exports hazardous wastes, copies of documentation required by Part 268, Subpart E, are also obtained for post-inspection review. If there is a hazardous waste accumulation tank, copies of the documentation required by Part 265, Subpart J are obtained for post-inspection review.

From review of on-site records, the inspector determines:

- processes which might generate hazardous waste but do not appear on manifests or annual reports;
 - all hazardous waste accumulation tanks;
 - proper safety equipment for the outside inspection;
 - inadequate annual reports and missing land ban notifications.
 - compliance with recordkeeping requirements for EPA notifications of intent to import/export hazardous waste;
 - compliance with hazardous waste determination requirements for TCLP wastes.
6. *Outside Inspection.* The inspector is accompanied by plant personnel on a walk-through of the process areas. Particular attention is given to those areas which might generate hazardous waste but do not appear on the manifests or annual report. Locations manifested as spill sites are recorded. Manifests sometimes reveal that waste streams are shipped out less frequently than the time allowed for on-site accumulation. While at the process which generates such a waste stream, the inspector determines if waste generation is continuous and therefore the time allowed on site is exceeded, or if occasional, the time allowed is not exceeded.

While at hazardous waste accumulation areas or permitted units, inspection checklists are completed. For TSDs, permit conditions specific to the unit such as allowable waste codes and allowable amounts are checked. There are separate generator checklists for LQG container accumulation areas, LQG tank accumulation areas, SQG container accumulation areas, SQG tank accumulation areas and for satellite accumulation areas.

7. *Post-Inspection Office Review.* The inspector reviews all documentation obtained during the inspection to determine compliance with appropriate requirements.
8. *Ground Water Inspections.* CME and O&M inspections are conducted to evaluate the adequacy of ground water monitoring systems utilized at land disposal facilities.

The CME inspection determines adequate design and operation of GW monitoring systems to detect releases and to define the rate and extent of contaminant migration from a regulated unit.

The O&M inspection is conducted to determine how GW monitoring systems are operated and maintained.

I. Enforcement Procedures.

The Division's enforcement process begins with compliance monitoring (identification of violations) and then continues with classification of definitive violations and issuance of appropriate enforcement action.

1. *Violation Classification.* Violations identified during investigations are then classified by seriousness.

Class 1 violations are those violations which could result in a failure to:

- assure that hazardous waste is destined for and delivered to authorized treatment, storage or disposal facilities; or
- prevent releases of hazardous waste or constituents, both during the active and any applicable post-closure periods of the facility operation where appropriate; or
- assure early detection of such release; or
- perform emergency clean-up operation or other corrective action for releases.

Class 2 violations are defined in the negative. They include all violations that are not considered Class 1.

2. *Appropriate Actions.* Upon identification and classification of violations, the level of enforcement is chosen. The various levels of enforcement include the following:
 - a) Letter of Warning [§6309(a)(2)];
 - b) Notice of Violation [§6309(a)(1)];

- c) Initial Secretary's Order [§6309(a)(2)];
- d) Final Secretary's Order [§6309(a)(2)];
- e) Compliance Order or Compliance Schedule [§6309(a)(2)];
- f) Civil Action [§6309(b)];
- g) Criminal Action [§6309(f)];
- h) Imminent Hazard Order [§6308].

For a detailed description of each level please refer to the Hazardous Waste Management Enforcement Strategy in Attachment 5.

Typically, levels (a) and (b) are issued by the Hazardous Waste Management Branch. The more advanced administrative orders (c) through (e), and (h) are issued by the Secretary with consultation with the HWMB and the Attorney General's Office. Civil actions are referred directly to the Attorney General's Office. Criminal actions are investigated by the EPO Office and prosecuted by the EPO's and Attorney General's Office.

Delaware has provided, through 7 Delaware Code, Chapter 63, §6309, a review process for any decision or action (including enforcement actions and statutory/regulatory changes) taken by the Secretary that substantially effect any member of the regulated community. The review process allows an appeal by the appellant to the Environmental Appeals Board (EAB) on any decision or action taken by the Secretary. This includes any duly promulgated regulation or enforcement action. The appellant may then appeal to the Superior Court within 30 days of the EAB decision.

J. Availability of Information Procedures

1. *Disclosure of Information.* On August 29, 1988, the Division adopted pursuant to 7 Delaware Code, Chap. 63, §6304(c), the Hazardous Waste Disclosure Regulations. The procedures followed by the Division are discussed below.

All requests for records which are of general public interest are available to the public unless the records are exempt from disclosure. Examples of a general public document include:

- the Delaware Regulations Governing Hazardous Waste;
- documents which are on public notice;
- Press Releases;
- listings of State identified hazardous waste generators, transporters, TSD facilities;
- pamphlets and educational materials.

All requests for information not listed above must be made in writing. Upon receipt, the written request is processed by the Division's legal assistant. Typical requests would include review of an entire or portion of a generator, transporter or TSD file.

2. *Confidential Business Information (CBI)*. Pursuant to Section 5.03 of the Delaware Hazardous Waste Disclosure Regulations, claims of business confidentiality must be asserted by a person claiming confidentiality, or the State may release the information without further notice to the person. Upon submission of a written CBI claim, the Division's legal assistant reviews the validity of the claim using criteria set forth in section 5.03 of the Hazardous Waste Disclosure Regulations. A valid claim is properly designated with a CBI stamp and filed in a confidential file. The confidential file is only accessible to employees of the Division of Air and Waste Management. (Note: All employees of the Division are advised of the CBI procedures upon starting employment with the Division.)

VI. IMPACTS OF REVISIONS

A. Newly Regulated Handlers.

Since approval of our base program in 1984, Delaware's regulated universe has increased dramatically. The increases are, in large part, due to the new small quantity generators and marketers, blenders and burners requirements adopted since 1986.

<u>ACTIVITY TYPE</u>	<u>ESTIMATED NUMBER OF NOTIFIERS</u>	
	<u>1985</u>	<u>1994</u>
Generators (Total)	80	919
SQG	0	494
LQG	80	124
CESQG	0	301
Notifiers for TCLP	22	253
TSDs (Total)	18	13
Permitted	0	10
(Currently no commercial TSDFs)		
Interim Status	0	3
Transporters	15	63

The broader scope of the revised regulations has forced the State to actively identify new handlers. The following mechanisms have been implemented in order to identify new handlers.

SQG Identification - Workshops were conducted in 1986 and 1991. Inspection initiatives for 1986 and 1991 focused on auto body shops and dry cleaners.

LQG/SQG Identification - Universe comparisons of WWTP dischargers and generator universe.

Mixed Waste Generator Identification - Universe comparison of low-level radioactive waste generators to hazardous waste generators. Currently there are only 4 mixed waste generators in the state.

The HWMB continues to identify new handlers through targeting businesses suspected of generating hazardous waste. Currently there are no permitted commercial TSDFs in the state.

The increase in the regulated universe has obviously increased our inspection and analysis workload. Inspections in 1986 averaged 10 - 15 per year while in 1994 35 SQG, 19 LQG, 10 TSDs, 4 multimedia, and 2 used oil handler inspections were conducted. In addition, work years expended on an individual inspection have increased due to the following factors:

- Completion of facility-wide inspections as opposed to waste stream inspections;
- Completion of thorough reviews of in-house paperwork prior to inspection (see section IV H. Compliance monitoring procedures);
- Completion of the land ban portion of the inspection.

The increased workload in the compliance monitoring area has been managed via new staff, new training initiatives, and a more streamlined inspection process. (See section IV H. Compliance monitoring procedures).

B. Data Management.

The increased number of generators in the systems and the nature of some new requirements have necessitated the development of three new computerized databases.

1. *RCRIS*. On May 24, 1991, the State of Delaware was placed into full production for the RCRA Information System (RCRIS). Delaware was the first state in Region III to accomplish full implementation.

The State tracks generator compliance, monitoring, enforcement and TSD permitting activities through the RCRIS database. Use of the RCRIS database occurs through the RCRIS Memorandum of Understanding (MOU) which will be reviewed at least once a year during preparation of the annual State work plan in accordance with the Memorandum of Agreement (MOA). Data elements and database responsibilities and procedures are defined through the RCRIS Implementor of Record (IOR).

2. *Manifest Tracking System*. All manifest data is data entered into a computerized manifest tracking system developed in 1987. The system is designed to QA/QC information entered and generate summary reports.
3. *Annual Report/Biennial Report System (BRS)*. With the receipt of the 1989 Annual Report information, Delaware began usage of the EPA designed BRS computer software and at present utilizes the EPA mainframe for BRS data management. HWMB uses the various summary reports to predict trends in hazardous waste management.

VII. ESTIMATED REGULATED ACTIVITIES

Since this revision application covers 1984 to 1991, actual regulated activities are known and recorded under section VI - Newly Regulated Activities.