PART 273 - STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Subpart A - General

Section 273.1 Scope.

(a) This part establishes requirements for managing the following:
(1) Batteries as described in §273.2;
(2) Pesticides as described in §273.3; and
(3) Thermostats as described in §273.4.
(b) This part provides an alternative set of management standards in lieu of regulation under Parts 260 through 272.

Section 273.2 Applicability-batteries.

(a) Batteries covered under Part 273. (1) The requirements of this part apply to persons managing batteries, as described in §273.6, except those listed in paragraph (b) of this section.
(2) Spent lead-acid batteries which are not managed under Part 266, Subpart G, are subject to management under this part.
(b) Batteries not covered under Part 273. The requirements of this part do not apply to persons managing the following batteries:
(1) Spent lead-acid batteries that are managed under Part 266, Subpart G.
(2) Batteries, as described in §273.6, that are not yet wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (c) of this section.
(3) Batteries, as described in §273.6, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C.
(c) Generation of waste batteries. (1) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).
(2) An unused battery becomes a waste on the date the handler decides to discard it.

Section 273.3 Applicability-pesticides.

(a) Pesticides covered under Part 273. The requirements of this part apply to persons managing pesticides, as described in §273.6, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or cancelled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under Part 273. The requirements of this part do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with §262.70. (§262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with §261.7(b)(3));

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in Parts 260 through 268 and 122;

(3) Pesticides that are not wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in Part 261, Subpart D or if it exhibits one or more of the characteristics identified in Part 261, Subpart C.

(c) When a pesticide becomes a waste. (1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under §261.2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this Part 273. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under §261.2, does not cause the pesticide to be a solid waste (i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including this Part 273. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

Section 273.4 Applicability-mercury thermostats.

(a) Thermostats covered under Part 273. The requirements of this part apply to persons managing thermostats, as described in §273.6, except those listed in paragraph (b) of this section.

(b) Thermostats not covered under Part 273. The requirements of this part do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under Part 261 of these regulations. Paragraph (c) of this section describes when thermostats become wastes.

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C.

(c) Generation of waste thermostats. (1) A used thermostat becomes a waste on the date it is discarded (e.g., sent for reclamation).

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

Section 273.5 Applicability - household and conditionally exempt small quantity generator waste.

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this part:

(1) Household wastes that are exempt under §261.4(b)(1) and are also of the same type as the universal wastes defined at §273.6; and/or

(2) Conditionally exempt small quantity generator wastes that are exempt under §261.5 and are also of the same type as the universal wastes defined at §273.6.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this part must manage the commingled waste under the requirements of this part.

Section 273.6 Definitions.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in §273.13(a) and (c) and §273.33(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

"Large Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) Is a new animal drug under FFDCA section 201(w), or

(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this section.

"Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate more than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of §273.13(c)(2) or §273.33(c)(2).

"Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Part 273:

(a) Batteries as described in §273.2;

(b) Pesticides as described in §273.3; and

(c) Thermostats as described in §273.4.

"Universal Waste Handler":

(a) Means:

(1) A generator (as defined in this section) of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

(1) A person who treats (except under the provisions of §273.13(a) or (c), or §273.33(a) or (c)), disposes of, or recycles universal waste; or

(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

Subpart B - Standards for Small Quantity Handlers of Universal Waste

Section 273.10 Applicability.

This subpart applies to small quantity handlers of universal waste (as defined in §273.6).

Section 273.11 Prohibitions.

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in §273.17; or by managing specific wastes as provided in §273.13.

Section 273.12 Notification.

A small quantity handler of universal waste is not required to notify DNREC of universal waste handling activities.

Section 273.13 Waste management.

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

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

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevent releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this Section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of Part 265, Subpart J, except for §265.197(c), §265.200, and §265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

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

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

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

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

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of §262.34;

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

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

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

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

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

(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in Part 261, Subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it is subject to Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Section 273.14 Labeling/marking.

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies), or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

(d) Universal waste thermostats (i.e., each thermostat), or a container in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)".

Section 273.15 Accumulation time limits.

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

Section 273.16 Employee training.

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

Section 273.17 Response to releases.

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with Part 262.

Section 273.18 Off-site shipments.

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of Subpart D of this part while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under Parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Section 273.19 Tracking universal waste shipments.

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

Section 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination must:

(a) Comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Subpart E of Part 262 of these regulations; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

Subpart C - Standards for Large Quantity Handlers of Universal Waste

Section 273.30 Applicability.

This subpart applies to large quantity handlers of universal waste (as defined in §273.6).

Section 273.31 Prohibitions.

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in §273.37; or by managing specific wastes as provided in §273.33.

Section 273.32 Notification.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Regional Administrator, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in §273.3(a)(1) and who has sent notification to EPA as required by Part 265 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler (e.g, batteries, pesticides, thermostats);

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time and the types of universal waste (e.g., batteries, pesticides, thermostats) the handler is accumulating above this quantity.

Section 273.33 Waste management.

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

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

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of Part 265, Subpart J, except for §§ 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

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

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

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

(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of §262.34;

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

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

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

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

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

(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in Part 261, Subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules (e.g., remaining thermostat units).

(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Section 273.34 Labeling/marking.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with the any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

(d) Universal waste thermostats (i.e., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s).

Section 273.35 Accumulation time limits.

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

Section 273.36 Employee training.

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

Section 273.37 Response to releases.

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the material resulting from the release, and is subject to Part 262.

Section 273.38 Off-site shipments.

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of subpart D of this part while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR Parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

Section 273.39 Tracking universal waste shipments.

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats);

(3) The date the shipment of universal waste left the facility.

(c) Record retention. (1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

Section 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination must:

(a) Comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Subpart E of Part 262 of these regulations; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

Subpart D - Standards for Universal Waste Transporters

Section 273.50 Applicability.

This subpart applies to universal waste transporters (as defined in §273.6).

Section 273.51 Prohibitions.

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in §273.54.

Section 273.52 Waste management.

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR Part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under §262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste".

Section 273.53 Storage time limits.

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of Subparts B or C of this part while storing the universal waste.

Section 273.54 Response to releases.

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of Parts 260 through 268 and 122. If the waste is determined to be a hazardous waste, the transporter is subject to Part 262.

Section 273.55 Off-site shipments.

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR Part 172.

Section 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

Subpart E - Standards for Destination Facilities

Section 273.60 Applicability.

(a) The owner or operator of a destination facility (as defined in 273.6) is subject to all applicable requirements of Parts 264, 265, 266, 268, 122, and 124 of these regulations, and the notification requirements under 7 Del. C., Chapter 63:

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with §261.6(c)(2).

Section 273.61 Off-site shipments.

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The EPA regional office will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

Section 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

Subpart F - Import Requirements

Section 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this part, immediately after the waste enters the United States, as indicated below:

(a) A universal waste transporter is subject to the universal waste transporter requirements of Subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of Subpart E of this part.

Subpart G - Petitions to Include Other Wastes Under Part 273

Section 273.80 General.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to this part may petition for a regulatory amendment under this subpart and §§ 260.20 and 260.23.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Secretary that regulation under the universal waste regulations of Part 273 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 260.20(b). The petition should also address as many of the factors listed in 273.81 as are appropriate for the waste or waste category addressed in the petition.

(c) The Administrator will evaluate petitions using the factors listed in §273.81. The Secretary will grant or deny a petition using the factors listed in §273.81. The decision will be based on the weight of evidence showing that regulation under Part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

Section 273.81 Factors for petitions to include other wastes under Part 273.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of Part 261 of these regulations, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of Part 261 of these regulations. (When a characteristic waste is added to the universal waste regulations of Part 273 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in §260.10 and 273.6 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of Part 273;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to §§ 273.13, 273.33, and 273.52; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under Part 273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.

(g) Regulation of the waste or category of waste under Part 273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

PART 279 - Standards for the Management of Used Oil

Subpart A - Definitions

Section 279.1 Definitions

Terms that are defined in §§260.10, 261.1 of these regulations, and Part A, Section 2 of Delaware Regulations Governing Underground Storage Tanks have the same meanings when used in this part.

"Aboveground tank" means a tank used to store or process used oil that is not an underground storage tank as defined in Part A, Section 2 of Delaware Regulations Governing Underground Storage Tanks (UST).

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Do-it-yourselfer used oil collection center" means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

"Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the State in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either (1) A continuous on-site installation program has begun, or

(2) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the tank to be completed within a reasonable time.

"Household 'do-it-yourselfer' used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

"Household 'do-it-yourselfer' used oil generator" means an individual who generates household "do-it-yourselfer" used oil.

"New tank" means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

"Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosine, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

"Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.

"Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.

"Tank" means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Used oil aggregation point" means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

"Used oil burner" means a facility where used oil not meeting the specification requirements in §279.11 is burned for energy recovery in devices identified in §279.61(a).

"Used oil collection center" means any site or facility that is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and accepts/aggregates and stores used oil collected from used oil generators regulated under Subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of §279.24. Used oil collection centers may also accept used oil from household do-it-yourselfers.

"Used oil fuel marketer" means any person who conducts either of the following activities:
(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or
(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 of this part.

"Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

"Used oil processor/re-refiner" means a facility that processes used oil.

"Used oil transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to §279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under Subpart F of this part.

"Used oil transporter" means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.
(Revised July 23, 1996)

Subpart B - Applicability

§279.10 Applicability.

This section identifies those materials which are subject to regulation as used oil under this part. This section also identifies some materials that are not subject to regulation as used oil under this part, and indicates whether these materials may be subject to regulation as hazardous waste under Parts 260 through 266, 268, 122, and 124 of these regulations.

(a) Used oil. DNREC presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in §279.11, the regulations of this part apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of Part 261 of these regulations.
(b) Mixtures of used oil and hazardous waste
(1) Listed hazardous waste.
(i) Mixtures of used oil and hazardous waste that is listed in Subpart D of Part 261 of these regulations are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122, and 124 of these regulations, rather than as used oil under this part.
(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations). EPA

Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, (202) 783-3238 (document number 955-001-00000-1).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described §279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metal working oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixing of used oil and hazardous waste that solely exhibits one or more hazardous waste characteristic identified in Subpart C of Part 261 are prohibited. Such incidental mixtures are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122 and 124 of these regulations.

(3) Conditionally exempt small quantity generator hazardous waste. Mixing of used oil and conditionally exempt small quantity generator hazardous waste regulated under §261.5 of these regulations is prohibited. Such incidental mixtures are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122 and 124 of these regulations.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to this part, and

(ii) If applicable are subject to the hazardous waste regulations of Parts 124, 260 through 266, 268, and 122 of these regulations.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this part.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this part.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this part.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Subpart C of this part.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to this part, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Parts 260 through 266, 268, 122, and 124 of these regulations as provided in §261.3(c)(2)(i) of these regulations.

(2) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this part.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to this part, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Parts 260 through 266, 268, 122, and 124 of these regulations if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this part.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either §402 or §307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this part. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility. (1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this part.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of § 279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this part until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Part 279, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e).

(Revised July 23, 1996, August 21, 1997)

§279.11 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with §§279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part.

Table 1 - Used Oil Not exceeding Any Specification Level Is Not Subject to This Part When Burned for Energy Recovery[1]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum.[2]

FOOTNOTE: [1]The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see §279.10(b)).
FOOTNOTE: [2]Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under §279.10(b)(1). Such used oil is subject to Subpart H of Part 266 of these regulations rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

NOTE: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

§279.12 Prohibitions.

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Parts 264 or 265 of these regulations.

(b) Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited.

(c) Burning in particular units. Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in §260.10 of these regulations;

(2) Boilers, as defined in §260.10 of these regulations, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of §279.23.

(3) Hazardous waste incinerators subject to regulation under Subpart O of Parts 264 or 265 of these regulations.

Subpart C - Standards for Used Oil Generators

§279.20 Applicability.

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under this part.

(2) Vessels. Vessels at sea or at port are not subject to this subpart. For purposes of this subpart, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this subpart once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of this subpart.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this subpart.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this part.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of §279.24 (a) and (b), must also comply with Subpart E of this part.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with Subpart F of this part.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to Section 402 or Section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewaters;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to §279.10(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to §279.23.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of §279.23, must also comply with Subpart G of this part.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part.

(5) Generators who dispose of used oil must also comply with Subpart I of this part.

(Revised July 23, 1996)

§279.21 Hazardous waste mixing.

(a) **[Reserved].**

(b) The rebuttable presumption for used oil of §279.10(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of §279.10(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units.

(Amended August 21, 1997)

§279.22 Used oil storage.

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Delaware Regulations Governing Underground Storage Tanks (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of the Delaware Regulations Governing Underground Storage Tanks (UST) which has occurred after the effective date of Delaware's used oil program, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Amended August 21, 1997)

§279.23 On-site burning in space heaters.

Generators may burn used oil in used oil-fired space heaters provided that:

(a) The heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators;

(b) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

(c) The combustion gases from the heater are vented to the ambient air.

§279.24 Off-site shipments.

Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers and a Delaware Waste Transporter Permit.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is authorized by the state to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) Tolling Agreements. Used oil generators may arrange for used oil to be transported by a transporter without an identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as lubricant, cutting oil, or coolant. The contract (known as a "tolling agreement") must indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processor/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

(Amended August 21, 1997)

Subpart D - Standards for Used Oil Collection Centers and Aggregation Points

§279.30 Do-it-yourselfer used oil collection centers.

(a) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) DIY used oil collection center requirements. Owners or operators of all DIY used oil collection centers must comply with the generator standards in Subpart C of this part.

§279.31 Used oil collection centers.

(a) Applicability. This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under Subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of §279.24(a). Used oil collection centers may also accept used oil from household do-it-yourselfers.

(b) Used oil collection center requirements. Owners or operators of all used oil collection centers must:

(1) Comply with the generator standards in Subpart C of this part; and
(2) Be authorized by the state to manage used oil.
(Amended August 21, 1997)

§279.32 Used oil aggregation points owned by the generator.

(a) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of §279.24(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points must comply with the generator standards in Subpart C of this part.

Subpart E - Standards for Used Oil Transporter and Transfer Facilities

§279.40 Applicability.

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.
(1) This subpart does not apply to on-site transportation.
(2) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in §279.24(a).
(3) This subpart does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in §279.24(b).
(4) This subpart does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this part. Except as provided in paragraphs (a)(1) through (a)(3) of this section, this subpart does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.
(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States.
(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in §261.7 of these regulations prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of §279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.
(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) of this section:
(1) Transporters who generate used oil must also comply with Subpart C of this part;
(2) Transporters who process or re-refine used oil, except as provided in §279.41, must also comply with Subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with Subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part; and

(5) Transporters who dispose of used oil must also comply with Subpart I of this part.

(Amended August 21, 1997)

§279.41 Restrictions on transporters who are not also processors or re-refiners.

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in Subpart F of this part.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in Subpart F of this part.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in Subpart F of this part.

(Revised July 23, 1996)

§279.42 Notification.

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of 7 Del. C., §6304(a) must comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Secretary of their used oil activity by submitting either:

(1) A completed "State of Delaware Notification of Regulated Waste Activity Form" (8700-12); or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);

(vi) Location of all transfer facilities at which used oil is stored;

(vii) Name and telephone number for a contact at each transfer facility.

§279.43 Used oil transportation.

(a) Deliveries. A used oil transporter must deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number, and a Delaware Waste Transporter permit;

(2) A used oil processing/re-refining facility who has obtained an EPA identification number;

(3) An off-specification used oil burner facility who has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR Parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR Parts 171 through 180.

(c) Used oil discharges.

(1) In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(2) If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(3) An air, rail, highway, or water transporter who has discharged used oil must:

(i) Give notice, if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675), and give notice as required by Delaware regulations "Reporting of a Discharge of a Pollutant or Air Contaminant" to DNREC ((800) 662-8802 or (302) 739-4580); and

(ii) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(4) A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.

(5) A transporter must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

§279.44 Rebuttable presumption for used oil.

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of §279.10(b)(1)(ii), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. (202) 783-3238 (Document Number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in §279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFC are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the transporter for at least 3 years.
(Revised July 23, 1996)

§279.45 Used oil storage at transfer facilities.

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil transporters are also subject to the standards in Delaware Regulations for Underground Storage Tanks (UST) for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under Subpart F of these regulations.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(d) Secondary containment for containers. Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) Secondary containment for new aboveground tanks. New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(g) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(h) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of the Delaware Regulations Governing Underground Storage Tanks (UST) which has occurred after the effective date of Delaware's used oil program, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Amended August 1, 1995, August 21, 1997)

§279.46 Tracking.

(a) Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5)(i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery must include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery;

(5)(i) Except as provided in paragraph (b)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters must maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) Record retention. The records described in paragraphs (a), (b), and (c) of this section must be maintained for at least three years.

(Revised July 23, 1996)

§279.47 Management of residues.

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in §279.10(e).

Subpart F - Standards for Used Oil Processors and Re-Refiners

§279.50 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this subpart do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in §279.41; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in §279.61(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil must also comply with Subpart C of this part;

(2) Processors/re-refiners who transport used oil must also comply with Subpart E of this part;

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery must also comply with subpart G of this part. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to Subpart G of this part:

(i) The used oil is burned in an on-site space heater that meets the requirements of §279.23; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part; and

(5) Processors/re-refiners who dispose of used oil also must comply with Subpart I of this part.

§279.51 Notification.

(a) Identification numbers. Used oil processors and re-refiners who have not previously complied with the notification requirements of 7 Del. C., §6304(a) must comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Secretary of their used oil activity by submitting either:

(1) A completed "Delaware Notification of Regulated Waste Activity Form" (8700-12); or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity (i.e., process only, process and re-refine);

(vi) Location of the processor or re-refiner facility.

§279.52 General facility standards.

(a) Preparedness and prevention. Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) Required equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section:

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) Access to communications or alarm system. (i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities. (i) The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processors and re-refiners facilities must comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (b) (1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, 40 CFR Part 1510, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this part.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (b)(5) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in paragraph (b)(6) of this section. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analyses.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water of chemical agents used to control fire and heat-induced explosions).

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He must immediately notify either the government official designated as the on-scene coordinator for the geographical area (in the applicable regional contingency plan under 40 CFR Part 1510), or the National Response Center (using their 24-hour toll free number 800/424-8802), and give notice as required by Delaware regulations Reporting of a Discharge of a Pollutant or Air Contaminant to DNREC ((800) 662-8802 or (302) 739-4580). The report must include:

(1) Name and telephone number of reporter;

(2) Name and address of facility;

(3) Time and type of incident (e.g., release, fire);

(4) Name and quantity of material(s) involved, to the extent known;

(5) The extent of injuries, if any; and

(6) The possible hazards to human health, or the environment, outside the facility.

(v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure build-up, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator must notify the Secretary, and appropriate State and local authorities that the facility is in compliance with paragraphs (b)(6)(viii)(A) and (B) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator must note in the operating record the time, date and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Secretary. The report must include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident (e.g., fire, explosion);

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(Amended August 21, 1997)

§279.53 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of §279.10(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator must make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh PA 15250-7954, (202) 783-3238 (Document Number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
(Revised July 23, 1996, August 21, 1997)

§279.54 Used oil management.

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil processors/re-refiners are also subject to the Delaware Regulations Governing Underground Storage Tanks (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under Part 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) Secondary containment for containers. Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Secondary containment for new aboveground tanks. New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

(g) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of the Delaware Regulations Governing Underground Storage Tanks (UST) which has occurred after the effective date of Delaware's used oil program, the owner/operator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(h) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

(i) At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under these regulations.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (h)(1)(i) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (§265.310 of these regulations).

(2) Containers. Owners and operators who store used oil in containers must comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil must be removed from the site;

(ii) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Part 261 of these regulations.

(Amended August 1, 1995, August 21, 1997)

§279.55 Analysis plan.

Owners or operators of used oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of §279.53 and, if applicable, §279.72. The owner or operator must keep the plan at the facility.

(a) Rebuttable presumption for used oil in §279.53. At minimum, the plan must specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of Part 261 of these regulations; or

(B) A method shown to be equivalent under §§260.20 and 260.21 of these regulations;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the parameters specified in § 279.53; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in §279.72. At a minimum, the plan must specify the following if §279.72 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of Part 261 of these regulations; or

(B) A method shown to be equivalent under §260.20 and 260.21 of these regulations;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in §279.72; and

(3) The type of information that will be used to make the on-specification used oil fuel determination.

§279.56 Tracking.

(a) Acceptance. Used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Delivery. Used oil processor/re-refiners must keep a record of each shipment of used oil that is shipped to a used oil burner, processor/ re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(2) The name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§279.57 Operating record and reporting.

(a) Operating record.

(1) The owner or operator must keep a written operating record at the facility.

(2) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility;

(i) Records and results of used oil analyses performed as described in the analysis plan required under §279.55; and

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in §279.52(b).

(b) Reporting. A used oil processor/re-refiner must report to the Secretary, in the form of a letter, on an annual basis (by March 1 of each year), the following information concerning used oil activities during the previous calendar year;

(1) The EPA identification number, name, and address of the processor/re-refiner;

(2) The calendar year covered by the report; and

(3) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil is processed/re-refined, including the specific processes employed.

§279.58 Off-site shipments of used oil.

Used oil processors/re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number and Delaware Waste Transporter Permit.

§279.59 Management of residues.

Owners and operators who generate residues from the storage, processing, or re-fining of used oil must manage the residues as specified in §279.10(e).

Subpart G - Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

§279.60 Applicability.

(a) General. The requirements of this subpart apply to used oil burners except as specified in paragraphs (a)(1) and (a)(2) of this section. A used oil burner is a facility where used oil not meeting the specification requirements in §279.11 is burned for energy recovery in devices identified in §279.61(a). Facilities burning used oil for energy recovery under the following conditions are not subject to this subpart:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of §279.23; or

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(b) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated below.

(1) Burners who generate used oil must also comply with Subpart C of this part;

(2) Burners who transport used oil must also comply with Subpart E of this part;

(3) Except as provided in §279.61(b), burners who process or re-refine used oil must also comply with Subpart F of this part;

(4) Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part; and

(5) Burners who dispose of used oil must comply with Subpart I of this part.

(c) Specification fuel. This subpart does not apply to persons burning used oil that meets the used oil fuel specification of §279.11, provided that the burner complies with the requirements of Subpart H of this part.

(Amended August 21, 1997)

§279.61 Restrictions on burning.

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in §260.10 of this chapter;

(2) Boilers, as defined in §260.10 of these regulations, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of §279.23; or

(3) Hazardous waste incinerators subject to regulation under Subpart O of Parts 264 or 265 of these regulations.

(b)(1) With the following exception, used oil burners may not process used oil unless they also comply with the requirements of Subpart F of this part.

(2) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

§279.62 Notification.

(a) Identification numbers. Used oil burners who have not previously complied with the notification requirements of 7 Del. C., §6304(a) must comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the Secretary of their used oil activity by submitting either:

(1) A completed Delaware Notification of Regulated Waste Activity Form (8700-12); or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

§279.63 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of §279.10(b)(1)(ii), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner must determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) If the used oil has been received from a processor/re-refiner subject to regulation under Subpart F of this part, using information provided by the processor/re-refiner.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. (202) 783-3238 (Document Number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in §279.24(c), to reclaim metalworking oils/fluids. The presumption does not apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the burner for at least 3 years.

(Revised July 23, 1996, August 21, 1997)

§279.64 Used oil storage.

Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil burners are also subject to the Delaware Regulations Governing Underground Storage Tank (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store oil at burner facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) Secondary containment for containers. Containers used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Secondary containment for existing aboveground tanks. New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(f) Labels.

(1) Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

(g) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of the *Delaware Regulations Governing Underground Storage Tanks* (UST) which has occurred after the effective date of Delaware's used oil program, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

(Amended August 21, 1997)

§279.65 Tracking.

(a) Acceptance. Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number and Delaware Waste Transporter Permit Number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Record retention. The records described in paragraph (a) of this section must be maintained for at least three years.

§279.66 Notices.

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified EPA stating the location and general description of his used oil management activities; and

(2) The burner will burn the used oil only in an industrial furnace or boiler identified in §279.61(a).

(b) Certification retention. The certification described in paragraph (a) of this section must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

§279.67 Management of residues.

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in §279.10(e).

Subpart H - Standards for Used Oil Fuel Marketers

§279.70 Applicability.

(a) Any person who conducts either of the following activities is subject to the requirements of this subpart:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11.

(b) The following persons are not marketers subject to this subpart:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processor/re-refiners who incidently burn used oil are not marketers subject to this subpart;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of §279.11.

(c) Any person subject to the requirements of this subpart must also comply with one of the following:

(1) Subpart C of this part - Standards for Used Oil Generators;

(2) Subpart E of this part - Standards for Used Oil Transporters and Transfer Facilities;

(3) Subpart F of this part - Standards for Used Oil Processors and Re-refiners; or

(4) Subpart G of this part - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

§279.71 Prohibitions.

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in §279.61(a).

§279.72 On-specification used oil fuel.

(a) Analysis of used oil fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of §279.11 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) Record retention. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under §279.11, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

(Amended August 1, 1995)

§279.73 Notification.

(a) Identification numbers. A used oil fuel marketer subject to the requirements of this subpart who has not previously complied with the notification requirements of 7 Del. C., §6304(a) must comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Secretary of their used oil activity by submitting either:

(1) A completed Delaware Notification of Regulated Waste Activity Form (8700-12); or

(2) A letter requesting an EPA identification number. The letter should include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity (i.e., generator directing shipments of off-specification used oil to a burner).

(Amended August 21, 1997)

§279.74 Tracking.

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number and Delaware Waste Transporter Permit Number of the transporter who delivers the used oil to the burner;

(4) The EPA identification number of the burner;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(b) On-specification used oil delivery. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under §279.11 must keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under §279.72(a).

(c) Record retention. The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

§279.75 Notices.

(a) Certification. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he must obtain a one-time written and signed notice from the burner certifying that:

(1) The burner has notified DNREC stating the location and general description of used oil management activities; and

(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in §279.61(a).

(b) Certification retention. The certification described in paragraph (a) of this section must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

Subpart I - Standards for Use as a Dust Suppressant and Disposal of Used Oil

§279.80 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

§279.81 Disposal.

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of Parts 260 through 266, 268, 122 and 124 of these regulations.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with the requirements of 40 CFR Parts 257 and 258.

§279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited.

(Amended July 26, 1994)

Part 122 - The Hazardous Waste Permit Program

Subpart A - General Program Requirements

Subpart B - Permit Application

Subpart C - Permit Conditions

Subpart D - Changes to Permits

Subpart A - General Program Requirements

Section 122.1 Purpose and scope of Part 122.

(a) Coverage. These regulations require a permit for the treatment, storage, or disposal of any hazardous waste as identified or listed in Part 261.

Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit and for any unit which closes after effective date of these regulations, and during any post-closure care period require under §264.117 and during any compliance period specified under §264.96 including any extension of the compliance period under §264.96(c). The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:

(i) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if they comply with the requirements of §122.60(c) (permit-by-rule for POTWs).

(ii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a State hazardous waste permit for ocean disposal from the barge or vessel itself if they comply with the requirements of §122.60(a) (permit-by-rule for ocean disposal barges and vessels).

(2) Specific exclusions. The following persons are among those who are not required to obtain a State hazardous waste permit:

(i) Generators who accumulate hazardous waste on site for less than the time periods provided in §262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in §262.70 of these regulations.

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this part by §261.4 or §261.5 (small generator exemption).

(iv) Owners or operators of totally enclosed treatment facilities as defined in §260.10.

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in §260.10.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less.

(vii) Persons adding absorbent material to waste in a container (as defined in §260.10 of these regulations) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; §264.17(b), §264.171, and §264.172 of these regulations are complied with.

(3) Further exclusions.

(i) A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste.

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which when discharged becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(4) Permits for less than an entire facility. DNREC may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(viii) Universal waste handlers and universal waste transporters (as defined in 260.10) managing the wastes listed below. These handlers are subject to regulation under Part 273.

(A) Batteries as described in 273.2;

(B) Pesticides as described in 273.3; and

(C) Thermostats as described in 273.4.

(Amended August 29, 1988; August 10, 1990; June 19, 1992)

Section 122.2 Definitions.

The following definitions apply to Parts 122 and 124. Terms not defined in this section have the meaning given by 7 Del. C., Chapter 63.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"**Application**" means the DNREC forms for applying for a permit, including any additions, revisions or modifications to the forms; including any approved modifications or revisions. Application also includes the information required by the Secretary under §122.14 - §122.29 (contents of the Part B application).

"**Closure**" means the act of securing a Hazardous Waste Management facility pursuant to the requirements of Part 264.

"**Component**" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

"**Corrective action management unit or CAMU**" means an area within a facility that is designated by the Secretary under Part 264, Subpart S for the purpose of implementing corrective action requirements under §264.101 and 7 Del. C., Chapter 63. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

"**CWA**" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 92-217 and Pub. L. 95-576; 33 USC §1251, et seq.

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

"**Disposal facility**" means a facility or part of a facility at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"**DNREC**" means the Delaware Department of Natural Resources and Environmental Control.

"**Draft permit**" means a document prepared under §124.6 indicating the Secretary's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in §124.5, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in §124.5 is not a "draft permit." A proposed permit is not a draft permit.

"**Elementary neutralization unit**" means a device which:

(a) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in §261.22 of these regulations, or are listed in Subpart D of Part 261 of these regulations only for this reason; and

(b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in §260.10 of these regulations.

"**Environmental Protection Agency (EPA)**" means the United States Environmental Protection Agency.

"**EPA**" means the United States Environmental Protection Agency.

"**Existing hazardous waste management (HWM) facility**" or existing facility means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(a) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(b)(1) A continuous on-site, physical construction program has begun; or

(2) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

"**Facility or activity**" means any HWM facility or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under 7 Del. C., Chapter 63.

"**Facility mailing list**" means the mailing list for a facility maintained by DNREC in accordance with §124.10(c)(viii).

"**Functionally equivalent component**" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"**Ground water**" means water below the land surface in a zone of saturation.
"**Hazardous waste**" means a hazardous waste as defined in §261.3.
"**Hazardous Waste Management facility (HWM facility)**" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).
"**Injection well**" means a well into which fluids are being injected.
"**In operation**" means a facility which is treating, storing, or disposing of hazardous waste.
"**Manifest**" means the shipping document originated and signed by the generator which contains the information required by Subpart B of Part 262.
"**National Pollutant Discharge Elimination System (NPDES)**" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.
"**New HWM facility**" means a Hazardous Waste Management facility which began operation or for which construction commenced after November 19, 1980.
"**Off-site**" means any site which is not on-site.
"**On-site**" means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.
"**Owner or operator**" means the owner or operator of any facility or activity subject to regulation under RCRA.
"**Permit**" means an authorization, license, or equivalent control document issued by DNREC to implement the requirements of this part and Part 124. Permit does not include interim status (Subpart G of this part), or any permit which has not yet been the subject of final DNREC action, such as a draft permit or a proposed permit.
"**Permit-by-rule**" means a provision of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of §122.60.
"**Person**" means an individual, association, partnership,corporation, municipality, State or Federal agency, or an agent or employee thereof.
"**Physical construction**" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.
"**Publicly owned treatment works (POTW)**" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.
"**RCRA**" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609 and Pub. L. 96-482, 42 USC §6901, et seq.)
"**Regional Administrator**" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.
"**Schedule of compliance**" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with 7 Del. C., Chapter 63 and regulations.
"**SDWA**" means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900; 42 USC §3001, et seq.).
"**Secretary**" means the Secretary of DNREC.
"**Site**" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.
"Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.
"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.
"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 wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
"UIC" means the Underground Injection Control Program under Part C of the Safe Drinking Water Act, including an approved program.
"Underground injection" means a well injection.
"Underground source of drinking water (USDW)" means an aquifer or its portion:
(a)(1) Which supplies any public water system; or
(2) Which contains a sufficient quantity of ground water to supply a public water system; and
(i) Currently supplies drinking water for human consumption; or
(ii) Contains fewer than 10,000 mg/l total dissolved solids; and
(b) Which is not an exempted aquifer.
"USDW" means underground source of drinking water.
"Wastewater treatment unit" means a device which:
(a) Is part of a wastewater treatment facility which is subject to regulation under either §402 or §307(b) of the Clean Water Act; and
(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in §261.3 of these regulations, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations; and
(c) Meets the definition of tank or tank system in §260.10 of these regulations.
(Amended August 10, 1990, August 1, 1995)

Section 122.3 Noncompliance and program reporting by the Secretary

The Secretary shall prepare quarterly and annual reports as detailed below. The Secretary shall submit any reports required under this section to the Regional Administrator. For purposes of this section only, hazardous waste permittees shall include hazardous waste interim status facilities, when appropriate.
(a) Quarterly reports. The Secretary shall submit quarterly narrative reports for major facilities as follows:
(1) Format. The report shall use the following format:
(i) Information on noncompliance for each facility;
(ii) Alphabetize by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.
(iii) For each entry on the list, include the following information in the following order;
(A) Name, location, and permit number of the noncomplying permittee.
(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.
(C) The date(s) and a brief description of the action(s).

(D) Status of the instance(s) of noncompliance with the data of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) Instances of noncompliance to be reported. Any instances on noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under §122.41 or §122.42 because of the permittee's noncompliance.

(iii) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Secretary and thus impede the review of the status of compliance.

(v) Noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2)(i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or migration of fluids into an Underground Source of Drinking Water (USDW).

(B) When the Secretary determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods and any violation of one or more requirements in each of four consecutive reporting periods, or migration of fluids into an Underground Source of Drinking Water (USDW).

(C) When the Secretary determines significant permit non-compliance or other significant event has occurred, such as a fire or explosion.

(vi) All other statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) Annual Reports.

(1) Annual noncompliance report. Statistical reports shall be submitted by the Secretary on nonmajor Hazardous Waste permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) In addition to the annual noncompliance report, the Secretary shall prepare a "program report" which contains information (in a manner and form prescribed by the Regional Administrator) on generators and transporters; the permit status of regulated facilities; and summary information on the quantities and types of hazardous wastes generated, transported, stored, treated, and disposed during the preceding year. This summary information shall be reported in a manner and form prescribed by the Administrator and shall be reported according to EPA characteristics and lists of hazardous wastes in Part 261.

(c) Schedule.

(1) For all quarterly reports. On the last working day of May, August, November, and February, the State Secretary shall submit to the Regional Administrator information concerning noncompliance with State permit requirements by major facilities in the State in accordance with the following schedule.

Quarters Covered By Reports On Non Compliance By Major Discharges (Date for completion of reports)

January, February, and March	May 31[1]
April, May, and June	Aug. 31[1]
July, August, and September	Nov. 30[1]
October, November, and December	Feb. 28[1]

[1] Reports must be made available to the public for inspection and copying on this date.

(Amended August 21, 1997)

Section 122.4 Effect of a permit.

(a) Compliance with a State hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with 7 Del. C., Chapter 63 except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under Part 268 of these regulations restricting the placement of hazardous wastes in or on the land; or

(3) Are promulgated under Part 264 of these regulations regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of §122.42 Class 1* permit modifications.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(Amended August 1, 1995)

Section 122.5 - [Reserved].

Section 122.6 References.

(a) When used in Part 122 of these regulations, the following publications are incorporated by reference: (See 260.11 References)

(Amended May 8, 1986; August 29, 1988; August 10, 1990; June 19, 1992, July 23, 1996)

Subpart B - Permit Application

Section 122.10 General application requirements.

(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Secretary as described in this section and §122.70 through §122.73. Persons currently authorized with interim status shall apply for permits when required by the Secretary. Persons covered by hazardous waste permits by rule (§122.60) need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in §122.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in §122.65.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner must also sign the permit application.

(c) Completeness. The Secretary shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Secretary receives an application from and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in paragraph (j) of this section. The Secretary may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(d) Information requirement. All applicants for hazardous waste permits shall provide information set forth in §122.13 and applicable sections in §§122.14 - 122.29 to the Secretary, using the application form provided by the Secretary.

(e) Existing HWM facilities and interim status qualifications.

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under 7 Del. C., Chapter 63 that render the facility subject to the requirement to have a hazardous waste permit must submit Part A of their permit application no later than:

(i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in Part 265 or 266, or

(ii) Thirty days after the date they first become subject to the standards set forth in Part 265 or 266, whichever first occurs.

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

(2) The EPA Administrator may by publication in the FEDERAL REGISTER extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that:

(i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(ii) such confusion is attributed to ambiguities in 40 CFR Parts 260, 261, 265, or 266 regulations.

(3) The DNREC Secretary or EPA Administrator may by compliance order issued under 7 Del. C., §6309 or RCRA §3008 extend the date by which the owner or operator of an existing hazardous waste management facility must submit Part A of their permit application.

(4) At any time after promulgation of these regulations the owner and operator of an existing HWM facility may be required to submit Part B of their permit application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application at any time.

(5) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under Part 124.

(6) Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in §122.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under 7 Del. C., Chapter 63 that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B application in accordance with the dates specified in §122.73.

(f) New HWM facilities.

(1) Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective hazardous waste permit.

(2) An application for a permit for a new HWM facility (including both Part A and Part B) maybe filed any time after promulgation of those standards in Part 264, applicable to such facility. The application shall be filed with the Secretary. All applications must be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding paragraph (f)(1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator and the Secretary if the Administrator approves under §(6)(e) of the Toxic Substances Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a hazardous waste permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under 7 Del. C., Chapter 63.

(g) Updating permit applications.

(1) If any owner or operator of a HWM facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Secretary, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in addition to those listed or designated under the existing State program, if the facility is treating, storing, or disposing of any of those newly listed or designated waste; or

(ii) As necessary to comply with provisions of §122.72 for changes during interim status. Revised Part A applications necessary to comply with the provisions of §122.72 shall be filed with the Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (g)(1) of this section does not receive interim status as to the wastes not covered by duly filed Part A applications.

(h) Reapplications. Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Secretary. (The Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(i) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under §§122.10(d), 122.13, 122.14 - 122.21 for a period of at least 3 years from the date the application is signed.

(j) Exposure information.

(1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in paragraph (j)(1) of this section.

(k) The Secretary may require a permittee or an applicant to submit information in order to establish permit conditions under §§122.32(b)(2) and 122.50(d) of these regulations.
(Amended June 19, 1992, August 21, 1997)

Section 122.11 Signatories to permit applications and reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation; by a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship; by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency; by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Secretary shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Secretary.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Section 122.12 Confidentiality of information.

(a) In accordance with 7 Del. C., §6304, any information submitted to DNREC pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, DNREC may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 7 Del. C., §6304.

(b) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

Section 122.13 Contents of Part A.

Part A of the hazardous waste application shall include the following information:

(a) The activities conducted by the applicant which require it to obtain a permit under Hazardous Waste Regulations.

(b) Name, mailing address, telephone number and location, including latitude and longitude of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and phone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities,

(1) A scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and

(2) Photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes listed or designated under Part 261 to be treated, stored, or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under Hazardous Waste Regulations.

(2) UIC program under the SWDA.

(3) NPDES program under the CWA.

(4) Prevention of significant Deterioration (PSD) program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(8) Dredge or fill permits under §404 of the CWA.

(9) Other relevant environmental permits, including State permits.

(l) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or other wise known to the applicant within 1/4 mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

(Amended August 1, 1995)

Section 122.14 Contents of Part B: General Requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§122.14-122.29 applicable to the facility. The Part B information requirements presented in §§122.14-122.29 reflect the standards promulgated in Part 264. These information requirements are necessary in order for DNREC to determine compliance with the Part 264 standards. It is recommended that the applicants contact DNREC for information on the format of Part B applications. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the Secretary may make allowance for submission of such information on a case-by-case basis. Information required in Part B shall be submitted to the Secretary and signed in accordance with requirements in §122.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer.

(b) General information requirements. Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of these regulations.

(3) A copy of the waste analysis plan required by §264.13(b) and, if applicable §264.13(c).

(4) A description or the security procedures and equipment required by §264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by §264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§264.227, 264.255 and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to;

(i) Prevent hazards in unloading operations (for example, ramps, special forklifts);

(ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible waste as required to demonstrate compliance with §264.17 including documentation demonstrating compliance with §264.17(c).

(10) Traffic pattern,estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

(i) In order to determine the applicability of the seismic standard [§264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[Comment: If the county or election district is not listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with §264.18(a).]

(ii) If the facility is proposed to be located in an are a listed in Appendix VI of Part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either;

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

(1) Published geologic studies,

(2) Aerial reconnaissance of the area within a five-mile radius from the facility,

(3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feed of the facility, or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass with 200 feet of the portions of the facility, no faults pass with 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area with a distance of no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses,the location of faults found.

[Comment: The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.]

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain. This identification must include the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, construction, operating, or maintaining the facility to with stand washout from as 100-year flood.

[Comment: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year flood plain. However, where the FIA map excludes an area (usually areas of the floodplain less that 200 feet in width), thee areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

(iv) Owners and operators of facilities located in the 100-year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., flood walls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (A) and (B) above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(2) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulation under Parts 122, 124, 264 and 265 of these regulations.

(3) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(4) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with §264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with §264.16. A brief description of now training will be designed to meet actual job tasks in accordance with requirements in §264.16(a)(3).

(13) A copy of the closure plan and, where applicable, the post- closure plan required by §§264.112, 264.118, and 264.197. Include, where applicable, as part of the plans, specific requirements in §§264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under §264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with §264.142 and a copy of the documentation required to demonstrate financial assurance under §264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 264.144 plus a copy of the documentation required to demonstrate financial assurance under 264.145. For a new facility, a copy of the required documentation may be submitted may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of §264.147. For a new facility, documentation showing the amount of insurance meeting the specification of §264.147(a) and, if applicable, §264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal.

(18) [Reserved]

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet 0, or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittent streams.

(iv) Surrounding land uses (residential, commercial, agricultural, recreational).

(v) A wind rose (i.e., prevailing wind-speed and direction).

(vi) Orientation of the map (north arrow).

(vii) Legal boundaries of the HWM facility site.

(viii) Access control (fences, gates).

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, process sewerage systems, loading and unloading areas, fire control facilities, etc.)

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

[Note: For large HWM facilities the Department will allow the use of other scales on a case by case basis.]

(20) Applicants may be required to submit such information as may be necessary to enable the Secretary to carry out his duties under other State laws.

(21) For land disposal facilities, if a case-by-case extension has been approved under §268.5 or a petition has been approved under §268.6, a copy of the notice of approval for the extension or petition is required.

(c) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in §264.90(b) of these regulations:

(1) A summary of the ground-water monitoring data obtained during the interim status period under §§265.90-265.94, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property,including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic map required under paragraph (b)(19) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under §264.95,the proposed location of ground-water monitoring wells as required under §264.97, and, to the extent possible, the information required in paragraph (c)(2) of this section.

(4) A description of any plume of contamination that has entered the ground-water from a regulated unit at the time that the application was submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix IX, of Part 264 of these regulations, constituent throughout the plume or identifies the maximum concentrations of each Appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of §264.97.

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of §264.98. This submission must address the following items specified under §264.98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of §264.99. Except as provided in §264.98(g)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of §264.100. unless the owner or operator obtains written authorization in advance from the Secretary to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with §264.99, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with §264.97 and §264.99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in §264.94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of §264.97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under §264.94 Table 1, or if ground water monitoring conducted at the time of permit application under §§265.90-265.94 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of §264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Secretary that alternate concentration limits will protect human health and the environment after considering the criteria listed in §264.94. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of §264.99 and paragraph (c)(6) of this section. To demonstrate compliance with §264.100, the owner or operator must address, at a minimum, the following items:

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the ground water as set forth in §264.94;

(iii) Detailed plans and an engineering report describing the corrective action to be taken;

(iv) A description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action; and

(v) The permit may contain a schedule for submittal of the information required in paragraphs (c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Secretary prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.

(ii) Designation of type of unit.

(iii) General dimensions and structural description (supply any available drawings).

(iv) When the unit was operated.

(v) Specifications of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or wells, where the Secretary ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(Amended June 19, 1992, August 1, 1995)

Section 122.15 Specific Part B information requirements for containers.

Except as otherwise provided in §264.170, owners or operators of facilities that store containers of hazardous waste must provide the following additional information:

(a) A description of the containment system to demonstrate compliance with §264.175. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with §264.175(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with §264.176 (location of buffer zone and containers holding ignitable or reactive wastes) and §264.177(c) (location of incompatible wastes), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with §264.177(a) and (b), and §264.17(b) and (c).

Section 122.16 Specific Part B information requirements for tank systems.

Except as otherwise provided in §264.190, owners and operators of facilities that use tanks to store or treat hazardous waste must provide the following additional information:

(a) A written assessment that is reviewed and certified by an independent, qualified, registered professional engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§264.191 and 264.192;

(b) Dimensions and capacity of each tank;

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents),

(d) A diagram of piping, instrumentation, and process flow for each tank system;.

(e) A description of materials and equipment used to provide external corrosion protection, as required under §264.192(a)(3)(ii);

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with §264.192(b), (c), (d) and (e);

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of §264.193(a), (b), (c), (d), (e), and (f);

(h) For tank systems for which a variance from requirements of §264.193 is sought (as provided by §264.193(g));

(1) Detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility, or

(2) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment.

(i) Description of the controls and practices to prevent spills and overflows, as required under §264.194(b); and

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of §§264.198 and 264.199.

(Amended November 21, 1985; August 29, 1988)

Section 122.17 Specific Part B information requirements for surface impoundments.

Except as otherwise provided in §264.220, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments must provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated and maintained to meet the requirements of §§ 264.19, 264.221, 264.222, and 264.223 of these regulations, addressing the following items:

(1) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by §264.221(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(2) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of §264.221(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by §264.221(d), (e), or (f) of these regulations, submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance (CQA) plan if required under §264.19 of this chapter;

(5) Proposed action leakage rate, with rationale, if required under §264.222 of these regulations, and response action plan, if required under §264.223 of these regulations;

(6) Prevention of overtopping; and

(7) Structural integrity of dikes;

(c) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of §264.226(a), (b), and (d) of these regulations. This information must be included in the inspection plan submitted under §122.14(b)(5);

(d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under §264.226(c). For new units, the owner or operator must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under §264.227(b) and (c). This information should be included in the contingency plan submitted under §122.14(b)(7);

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under §264.228(a)(l). For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how §264.228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under §122.14(b)(13);

(g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how §264.229 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how §264.230 will be complied with; and

(i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundments is or will be designed, constructed, operated, and maintained to meet the requirements of §264.231. This submission must address the following items as specified in §264.231:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; August 29, 1988, August 1, 1995)

Sec. 122.18 Specific Part B requirements for waste piles.

Except as otherwise provided in §264.250, owners and operators of facilities that store or treat hazardous waste in waste piles must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to §264.251 and Subpart F of Part 264 as provided by §264.250(c) or §264.90(2), an explanation of how the standards of §264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements of §264.90(b)(2) will be met;

(c) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated and maintained to meet the requirements of §§ 264.19, 264.251, 264.252, and 264.53 of these regulations, addressing the following items:

(1)(i) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of §264.251(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by §264.251(b) of these regulations, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of §264.251(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by §264.251(d), (e), or (f) of these regulations, submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under §264.19 of these regulations;

(v) Proposed action leakage rate, with rationale, if required under §264.252 of these regulations, and response action plan, if required under §264.253 of these regulations;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable.

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of §264.254(a), (b) and (c) of these regulations. This information must be included in the inspection plan submitted under §122.14(b)(5);

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of §264.256 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how §264.257 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under §264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how 264.310(a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under §122.14(b)(13);

(i) A waste management plan for DNREC Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in §264.250(c)) is or will be designed, constructed, operated, and maintained to meet the requirements of §264.259. This submission must address the following items as specified in §264.259:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; May 8, 1986; August 29, 1988, August 1, 1995)

Section 122.19 Specific Part B requirements for incinerators.

(a) When seeking an exemption under §264.340(b) or (c) of these regulations (ignitable, corrosive, or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations, solely because it is ignitable (Hazard Code 1) or corrosive (Hazard Code C) or both; or

(2) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations solely because it is reactive (Hazard Code R) for characteristics other than those listed in 264.23(a)(4) and (5) of these regulations, and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Part 261, Subpart C of these regulations; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in §264.23(a)(1), (2), (3), (6), (7), or (8) of these regulations, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with 264.62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity (if applicable), or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII, of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and §122.6, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and §122.6.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in §264.343 of these regulations.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system (type/feed).

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in paragraph (c)(1) of this section. This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in §264.343 of these regulations,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(6) The expected incinerator operation information to demonstrate compliance with §264.343 and §264.345 of these regulations including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in paragraph (c)(I) of this section, sufficient to allow the Secretary to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under §264.345 of these regulations) operating conditions that will ensure that the performance standards in §264.345 of these regulations) operating conditions that will ensure that the performance standards in §264.343 of these regulations will be met by the incinerator.

(3) [Reserved]

(Amended July 23, 1996)

Section 122.20 Specific Part B requirements land disposal treatment.

Except as otherwise provided in §264.270, owners and operators of facilities that use land treatment to dispose of hazardous waste must provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under §264.272. The description must include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the warts;

(2) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(3) Any specific laboratory or field test that will be conducted, including

(i) The type of test (e.g., column leaching, degradation);

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(vi) Characteristics of the unit that will be simulated in the demonstration, concluding treatment zone characteristics, climatic conditions, and operating practices;

(b) A description of a land treatment program, as required under §264.271. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with §264.273(a) including:

(i) Waste application method and rate;

(ii) Measure to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content;

(3) Provisions for unsaturated zone monitoring, including:

(i) Sampling equipment, procedures, and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in §264.278(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to §264.13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of §264.273. This submission must address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under §122.14(b)(5);

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under §264.276(a) will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made;

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and date evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(e) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of §264.276(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under §264.280(a)(8) and §264.280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under §122:14(b)(13);

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of §264.281 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how §264.282 will be complied with.

(i) A waste management plan for EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of §264.283. This submission must address the following items as specified in §264.283:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; August 29, 1988)

Section 122.21 Specific Part B information requirements for landfills.

Except as otherwise provided in §264.300, owners and operators of facilities that dispose of hazardous waste in landfills must provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated and maintained to meet the requirements of §§ 264.19, 264.301, 264.302, and 264.303 of these regulations, addressing the following items:

(1)(i) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of §264.301(a) of these regulations. If an exemption from the requirement for a liner is sought as provided by §264.301(b) of these regulations, submit detailed plans, and engineering and hydrogeologic reports, as appropriate, describing alternate designs and operating practices that will,

in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of §264.301(c) of these regulations. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by §264.301(d), (e), or (f) of these regulations, submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under §264.19 of these regulations;

(v) Proposed action leakage rate, with rationale, if required under §264.302 of these regulations, and response action plan, if required under §264.303 of these regulations.

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(c) If an exemption from Subpart F of Part 264 is sought, as provided by §264.302(a), the owner or operator must submit detailed plans and an engineering report explaining the location of the saturated zone in relation to the landfill, the design of a double liner system that incorporates a leak detection system between the liners, and a leachate collection and removal system above the liners;

(d) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of §264.303(a), (b), and (c) of these regulations. This information must be included in the inspection plan submitted under §122.14(b)(5);

(e) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with §264.310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with §264.310(b). This information should be included in the closure and post-closure plans submitted under §122.14(b)(13);

(f) If ignitable or reactive wastes will be landfilled, an explanation of how §264.312 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how §264.313 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of §264.314(a) will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of §264.315 or §264.326, as applicable, will be complied with;

(j) A waste management plan for DNREC Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of §264.317. This submission must address the following items as specified in §264.317:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990, August 1, 1995, August 21, 1997)

Section 122.22 - Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) Trial burns-(1) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by §266.104 of these regulations, standards to control particulate matter provided by §266.105 of these regulations, standards to control metals emissions provided by §266.106 of these regulations, or standards to control hydrogen chloride or chlorine gas emissions provided by §266.107 of these regulations must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with §122.66.

(i) A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of §§ 266.104 through 266.107 of these regulations and paragraphs (a)(2) through (a)(5) of this section; and

(ii) The owner or operator may submit data in lieu of a trial burn, as prescribed in paragraph (a)(6) of this section.

(2) Waiver of trial burn for DRE-(i) Boilers operated under special operating requirements. When seeking to be permitted under §§ 266.104(a)(4) and 266.110 of these regulations that automatically waive the DRE trial burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by §266.110 of these regulations.

(ii) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by §§ 266.104(a)(5) and 266.109(a) of these regulations that waive the DRE trial burn, the owner or operator must submit:

(A) Documentation that the device is operated in conformance with the requirements of §266.109(a)(1) of these regulations.

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in Appendix VIII of Part 261 of these regulations, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on analytical techniques specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see §260.11).

(C) Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in paragraph (a)(2)(ii)(B) of this section using procedures provided by §266.109(a)(2)(ii) of these regulations.

(D) Results of emissions dispersion modeling for emissions identified in paragraphs (a)(2)(ii)(C) of this section using modeling procedures prescribed by §266.106(h) of these regulations. The Secretary will review the emission modeling conducted by the applicant to determine conformance with these procedures. The Secretary will either approve the modeling or determine that alternate or supplementary modeling is appropriate.

(E) Documentation that the maximum annual average ground level concentration of each constituent identified in paragraph (a)(2)(ii)(B) of this section quantified in conformance with paragraph (a)(2)(ii)(D) of this section does not exceed the allowable ambient level established in Appendices IV or V of Part 266. The acceptable ambient concentration for emitted constituents for which a specific Reference Air Concentration has not been established in Appendix IV or Risk-Specific Dose has not been established in Appendix V is 0.1 micrograms per cubic meter, as noted in the footnote to Appendix IV.

(3) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by §266.106 (b) and (e) of these regulations that control metals emissions without requiring a trial burn, the owner or operator must submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the concentration of each metal controlled by §266.106 (b) or (e) of these regulations in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

(iii) Documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by §266.106 (b) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

(iv) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by §266.106 (b)(3) through (b)(5) of these regulations;

(v) Documentation of compliance with the provisions of §266.106(b)(6), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by §266.106(b)(7) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feed stocks.

(4) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of §266.109(b) which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with paragraphs (a)(2)(ii) and (a)(3) of this section.

(5) Waiver of trial burn for HCl and Cl_2. When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for total chloride and chlorine provided by §266.107 (b)(1) and (e) of these regulations that control emissions of hydrogen chloride (HCl) and chlorine gas (Cl_2) without requiring a trial burn, the owner or operator must submit:

(i) Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

(ii) Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

(iii) Documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by §266.107(b)(1) or (e) of these regulations will not be exceeded during the averaging period provided by that paragraph;

(vi) Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by §266.107(b)(3) of these regulations;

(v) Documentation of compliance with the provisions of §266.107(b)(4), if applicable, for facilities with multiple stacks;

(vi) Documentation that the facility does not fail the criteria provided by §266.107(b)(3) for eligibility to comply with the screening limits; and

(vii) Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(6) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with §§ 266.104 through 266.107 of these regulations and §122.66 by providing the information required by §122.66 from previous compliance testing of the device in conformance with §266.103 of these regulations, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by §122.66 must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The Secretary shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under §266.102 of these regulations) operating conditions that will ensure

conformance with §266.102(c) of these regulations. In addition, the following information shall be submitted:

(i) For a waiver from any trial burn:

(A) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

(B) The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

(C) Such supplemental information as the Secretary finds necessary to achieve the purposes of this paragraph.

(ii) For a waiver of the DRE trial burn, the basis for selection of POHCs used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in §266.104(a) of these regulations. This analysis should specify the constituents in Appendix VIII, Part 261 of these regulations, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHCs in the hazardous waste for which burn data are provided.

(b) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under §266.104(f) of these regulations shall submit the following information at a minimum:

(1) Documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;

(2) Documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(3) Test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;

(4) Trial burn plan to:

(i) Demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and

(ii) Identify the types and concentrations of organic compounds listed in Appendix VIII, Part 261 of these regulations, that are emitted when burning hazardous waste in conformance with procedures prescribed by the Secretary;

(5) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and

(6) Such other information as the Secretary finds necessary to achieve the purposes of this paragraph.

(c) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under §266.106(f) of these regulations, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of §266.106(c) or (d) and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the Secretary finds necessary to achieve the purposes of this paragraph.

(d) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any pre-alarm systems that may be used.

(e) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in §266.111 of these regulations) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by §266.111 of these regulations.

(f) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of §266.112 of these regulations must submit information adequate to demonstrate conformance with those provisions.
(Amended July 26, 1994)

Section 122.23 Specific Part B information requirements for miscellaneous units.

Except as otherwise provided in §264.600, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of §§264.601 and 264.602; and

(3) For disposal units, a detailed description of the plan to comply with the post-closure requirements of §264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of §264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of §264.601 and the Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(e) Any additional information determined by the Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of §264.601.
(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990)

Section 122.24 Specific Part B information requirements for process vents.

Except as otherwise provided in §264.1, owners and operators of facilities that have process vents to which Subpart AA of Part 264 applies must provide the following additional information:

(a) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart AA on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart AA, an implementation schedule as specified in §264.1033(a)(2).

(b) Documentation of compliance with the process vent standards in §264.1032, including:

(1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(3) Information and data used to determine whether or not a process vent is subject to the requirements of §264.1032.

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of §264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in §264.1035(b)(3).

(d) Documentation of compliance with §264.1033, including:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by §264.1033(k).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in §260.11) or other engineering texts acceptable to the Secretary that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in §264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of §264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(Amended August 1, 1995)

Section 122.25 Specific Part B information requirements for equipment.

Except as otherwise provided in §264.1, owners and operators of facilities that have equipment to which Subpart BB of Part 264 applies must provide the following additional information:

(a) For each piece of equipment to which Subpart BB of Part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of Part 264 Subpart BB on the effective date that the facility becomes subject to the provisions of Part 264 or 265 Subpart BB, an implementation schedule as specified in §264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in §264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under §264.1064. The Secretary may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by §264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in §260.11) or other engineering texts acceptable to the Secretary that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in §264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(Amended August 1, 1995)

§122.26 Special Part B information requirements for drip pads.

Except as otherwise provided by §264.1 of these regulations, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to Subpart F of Part 264 of these regulations, as provided by §264.90 of these regulations, detailed plans and an engineering report describing how the requirements of §264.90(b)(2) of these regulations will be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of §264.573 of these regulations, including the as-built drawings and specifications. This submission must address the following items as specified in §264.571 of these regulations:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of §264.573 of these regulations. This information should be included in the inspection plan submitted under §122.14(b)(5) of this part;

(15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of §264.573 of these regulations; and

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under §264.575(a) of these regulations. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how §264.310 (a) and (b) of these regulations will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under §122.14(b)(13).

(Amended November 19, 1993)

Section 122.27-122.28 [Reserved]

Section 122.29 Permit Denial.

The Secretary may, pursuant to the procedures in Part 124, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

(Amended June 19, 1992)

Subpart C - Permit Conditions

Section 122.30 Conditions applicable to all permits.

The following conditions apply to all hazardous waste permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) Duty to comply. The permittee must comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See §122.61). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of 7 Del. C., Chapter 63 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) Duty to mitigate. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper

operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. The permit does not convey any property rights of an sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Secretary, within a reasonable time, any relevant information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Secretary, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by 7 Del. C., Chapter 63, any substances or parameters at any location.

(j) Monitoring and records.

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by §264.73(b)(9) of these regulations, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Secretary at any time. The permittee shall maintain records of all ground-water quality and ground-water surface elevations, for the active life of the facility, and for the post-closure care period as well.

(3) Records for monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) Signatory requirement. All applications, reports, or information submitted to the Secretary shall be signed and certified. (See §122.11)

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste;

and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in §122.42, until:

(i) The permittee has submitted to the Secretary by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Secretary has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in paragraph (l)(2)(i) of this section, the permittee has not received notice from the Secretary of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) Transfers. This permit is not transferable to any person except after notice to the Secretary. The Secretary may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See §122.40)

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

(iii) A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Secretary may waive the five day written notice requirement in favor of a written report within fifteen days.

(7) Manifest discrepancy report: If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report, including a copy of the manifest, to the Secretary. (See §264.72)

(8) Unmanifested waste report: This report must be submitted to the Secretary within 15 days of receipt of unmanifested waste. (See §264.76)

(9) Annual report: An annual report must be submitted covering facility activities during the calendar year. (See §264.75)

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (L)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (L)(6) of this section.

(11) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, it shall promptly submit such facts or information.
(Amended May 8, 1986; August 29, 1988; August 10, 1990)

Section 122.31 Requirements for recording and Reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Part 264 and Part 266. Reporting shall be no less frequent than specified in the above regulations.
(Amended August 10, 1990)

Section 122.32 Establishing permit conditions.

(a) In addition to conditions required in all permits (§122.30), the Secretary shall establish conditions, as required on a case-by-case basis, in permits under §122.50 (duration of permits), §122.33(a) (schedules of compliance) and §122.31 (monitoring).

(b)(1) Each Hazardous Waste Permit shall include permit conditions necessary to achieve compliance with 7 Del. C., Chapter 63 and regulations, including each of the applicable requirements specified in Parts 264 and 266 through 268. In satisfying this provision, the Secretary may incorporate applicable requirements of Parts 264 and 266 through 268 directly into the permit or establish other permit conditions that are based on these parts.

(2) Each permit issued under 7 Del. C., Chapter 63 shall contain terms and conditions as the Secretary determines necessary to protect human health and the environment.

(c) For a DNREC issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a Federal statutory or regulatory requirement (including any interim final regulation) which takes effect prior to issuance of the permit (except as provided in 40 CFR §124.86(c) for RCRA permits being processed under Subpart E or F of 40 CFR Part 124). For DNREC and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in §122.41.

(d) New or reissued permits, and to the extent allowed under §122.41, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in §122.31.

(e) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.
(Amended May 8, 1986; August 29, 1988; August 10, 1990, August 21, 1997)

Section 122.33 Schedules for compliance.

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Delaware Code and regulations.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Secretary in writing, of its compliance or noncompliance with the interim or final requirements.

(b) Alternative schedules of compliance. A hazardous waste permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and for treatment and storage HWM facilities, closing pursuant to applicable requirements; and for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Secretary may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirement;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Secretary, such as resolution of the board of directors of a corporation.

Section 122.34 - 122.39 [Reserved]

Subpart D - Changes to Permit

Section 122.40 Transfer of permits.

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under §122.40(b) or §122.41(b)(2)) to identify the new permittee and incorporate such other requirements as may be necessary under 7 Del. C., Chap. 63.

(b) Changes in the ownership or operation control of a facility may be made as a Class 1 modification with prior written approval of the Secretary in accordance with §122.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Part 264, Subpart H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Secretary by the new owner or operator of compliance with Subpart H, the Secretary shall notify the old owner or operator that he or she no longer needs to comply with Subpart H as of the date of demonstration.
(Amended August 10, 1990)

Section 122.41 Modification or revocation and reissuance of permits.

When the Secretary receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see §122.30), receives a request for revocation and reissuance under §124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Secretary may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See §124.5(c)(2).) If cause does not exist under this section, the Secretary shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Secretary shall approve or deny the request according to the procedures of §122.42. Otherwise, a draft permit must be prepared and other procedures in Part 124 followed.

(a) Causes for modification. The following are causes for modification, but not revocation and reissuance, of permits; the following may be causes for revocation and reissuance, as well as modification, when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Secretary has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

(4) Compliance schedules. The Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Secretary under §122.50(d), the Secretary shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 124, 260-266, and 122.

(b) Causes for modification or revocation and reissuance. The following are causes to modify or alternately, revoke and reissue a permit:

(1) Cause exists for termination under §122.43, and the Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Secretary has received notification (as required in the permit, see §122.40 of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.
(Amended May 8, 1986; August 29, 1988; August 10, 1990)

Section 122.42 Permit modification at the request of the permittee.

(a) **Class 1 modifications.**

(1) Except as provided in paragraph (a)(2) of this section, the permittee may put into effect Class 1 modifications listed in Appendix I of this section under the following conditions:

(i) The permittee must notify the Secretary concerning the modification by certified mail or other means that establish proof of delivery within 7 calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide the applicable information required by §§122.13 through 122.21, and §§122.62 and 122.63.

(ii) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the Secretary in accordance with §124.10(c)(viii), and the appropriate units of State and local government, as specified in §124.10(c)(iv). This notification must be made within 90 calendar days after the change is put into effect. For the Class I modifications that require prior Secretary approval, the notification must be made within 90 calendar days after the Secretary approves the request.

(iii) Any person may request the Secretary to review, and the Secretary may for cause reject, any Class 1 modification. The Secretary must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of this section by a footnote may be made only with the prior written approval of the Secretary.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in §122.42(b) for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the Secretary of this decision in the notice required in §122.42(b)(1).

(b) **Class 2 modifications.**

(1) For Class 2 modifications, listed in Appendix I of this section, the permittee must submit a modification request to the Secretary that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 2 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by §§122.13 through 122.21, 122.62, and 122.63.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Secretary and to the appropriate units of State and local government as specified in §124.10(c)(iv) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within 7 days before or after the date of submission of the modification request, and the permittee must provide to the Secretary evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, in accordance with §122.42(b)(5), and the name and address of a DNREC contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting held in accordance with §122.42(b)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a DNREC contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the DNREC contact person."

(3) The permittee must place a copy of the permit modification request and support documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting not earlier than 15 days after the publication of the notice required in paragraph (b)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the DNREC contact identified in the public notice.

(6)(i) No later than 90 days after receipt of the notification request, the Secretary must:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request;

(C) Determine that the modification request must follow the procedures in §122.42(c) for Class 3 modifications for the following reasons:

(*1*) There is significant public concern about the proposed modification; or

(*2*) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days, or

(E) Notify the permittee that he or she will decide on the request within the next 30 days.

(ii) If the Secretary notifies the permittee of a 30-day extension of a decision, the Secretary must, no later than 120 days after receipt of the modification request:

(A) Approve the modification request, with or without changes, and modify the permit accordingly;

(B) Deny the request; or

(C) Determine that the modification request must follow the procedures in §122.42(c) for Class 3 modifications for the following reasons:

(*1*) There is significant public concern about the proposed modification; or

(*2*) The complex nature of the change requires the more extensive procedures of Class 3.

(D) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days;

(iii) If the Secretary fails to make one of the decisions specified in paragraph (b)(6)(ii) of this section by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal DNREC action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Part 265. If the Secretary approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraphs (b)(6)(i), (ii), or (iii) of this section, such action cancels the temporary or automatic authorization.

(iv)(A) In the case of an automatic authorization under paragraph (b)(6)(iii) of this section, or a temporary authorization under paragraph (b)(6)(i)(D) or (ii)(D) of this section, if the Secretary has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a

notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(*1*) The permittee has been authorized temporarily to conduct the activities describe in the permit modification request, and

(*2*) Unless the Secretary acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(B) If the owner/operator fails to notify the public by the date specified in paragraph (b)(6)(iv)(A) of this section, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(v) Except as provided in paragraph (b)(6)(vii) of this section, if the Secretary does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a Class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under §122.41 or §122.42. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Part 265.

(vi) In making a decision to approve or deny a modification request, including a decision to issue a temporary authorization or to reclassify a modification as a Class 3, the Secretary must consider all written comments submitted to the DNREC during the public comment period and must respond in writing to all significant comments in his or her decision.

(vii) With the written consent of the permittee, the Secretary may extend indefinitely or for a specified period the time 46-C periods for final approval or denial of a modification request or for reclassifying a modification as a Class 3.

(7) The Secretary may deny or change the terms of a Class 2 permit modification request under paragraphs (b)(6)(i) through (iii) of this section for the following reasons:

(i) The modification request is incomplete;

(ii) The requested modification does not comply with the appropriate requirements of Part 264 or other applicable requirements; or

(iii) The conditions of the modification fail to protect human health and the environment.

(8) The permittee may perform any construction associated with a Class 2 permit modification request beginning 50 days after the submission of the request unless the Secretary establishes a later date for commencing construction and informs the permittee in writing before day 60.

(c) **Class 3 modifications.**

(1) For Class 3 modifications listed in Appendix I of this section, the permittee must submit a modification request to the Secretary that:

(i) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(ii) Identifies that the modification is a Class 3 modification;

(iii) Explains why the modification is needed; and

(iv) Provides the applicable information required by §§122.13 through 122.22, 122.62, 122.63 and 122.66.

(2) The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the Secretary and to the appropriate units of State and local government as specified in §124.10(c)(iv) and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the Secretary evidence of the mailing and publication. The notice must include:

(i) Announcement of a 60-day comment period, and a name and address of a DNREC contact to whom comments must be sent;

(ii) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with §122.42(c)(4);

(iii) Name and telephone number of the permittee's contact person;

(iv) Name and telephone number of a DNREC contact person;

(v) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(vi) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the DNREC contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting not earlier than 15 days after the publication of the notice required in paragraph (c)(2) of this section and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The commend period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the DNREC contact identified in the notice.

(6) After the conclusion of the 60-day comment period, the Secretary must grant or deny the permit modification request according to the permit modification procedures of Part 124. In addition, the Secretary must consider and respond to all significant written comments received during the 60-day comment period.

(d) **Other modifications.**

(1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit a Class 3 modification request to the DNREC, or he or she may request a determination by the Secretary that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the DNREC with the necessary information to support the requested classification.

(2) The Secretary shall make the determination described in paragraph (d)(1) of this section as promptly as practicable. In determining the appropriate class for a specific modification, the Secretary shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria:

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Secretary may require prior approval.

(ii) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to,

(A) Common variations in the types and quantities of the wastes managed under the facility permit,

(B) Technological advancements, and

(C) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(iii) Class 3 modifications substantially alter the facility or its operation.

(e) **Temporary authorizations.**

(1) Upon request of the permittee, the Secretary may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subsection. Temporary authorizations must have a term of not more than 180 days.

(2)(i) The permittee may request a temporary authorization for:

(A) Any Class 2 modification meeting the criteria in paragraph (e)(3)(ii) of this section, and

(B) Any Class 3 modification that meets the criteria in paragraph (3)(ii)(A) or (B) of this section; or that meets the criteria in paragraphs (3)(ii)(C) through (E) of this section and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(A) A description of the activities to be conducted under the temporary authorization;

(B) An explanation of why the temporary authorization is necessary; and

(C) Sufficient information to ensure compliance with Part 264 standards.

(iii) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the Secretary and to appropriate units of State and local governments as specified in §124.10(c)(iv). This notification must be made within seven days of submission of the authorization request.

(3) The Secretary shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the Secretary must find:

(i) The authorized activities are in compliance with the standards of Part 264;

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(A) To facilitate timely implementation of closure or corrective action activities;

(B) To allow treatment or storage in tanks, containers, or in containment buildings in accordance with Part 268;

(C) To prevent disruption of ongoing waste management activities;

(D) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(E) To facilitate other changes to protect human health and the environment.

(4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(i) The reissued temporary authorization constitutes the Secretary's decision on a Class 2 permit modification in accordance with paragraph (b)(6)(i)(D) or (ii)(D) of this section, or

(ii) The Secretary determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of paragraph (c) of this section are conducted.

(f) **Public notice and appeals of permit modification decisions.**

(1) The Secretary shall notify persons on the facility mailing list and appropriate units of State and local government within 10 days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The Secretary shall also notify such persons within 10 days after an automatic authorization for a Class 2 modification goes into effect under §122.42(b)(6)(iii) or (v).

(2) The Secretary's decision to grant or deny a Class 2 or 3 permit modification request under this section may be appealed under the appeal procedures of 7 Del. C., Chapter 63.

(3) An automatic authorization that goes into effect under §122.42(b)(6)(iii) or (v) may be appealed under the permit appeal procedures of 7 Del. C., Chapter 63; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal determination has been made pursuant to 7 Del. C., Chapter 63.

(g) **Newly listed or identified wastes.**

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under Part 261 of these regulations, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:

(i) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;

(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(iii) The permittee is in compliance with the applicable standards of Parts 265 and 266 of these regulations;

(iv) The permittee also submits a complete Class 2 or 3 modification request within 180 days of the effective date of the rule listing or identifying the waste, or subjecting the unit to RCRA Subtitle C management standards;

(v) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Part 265 of these regulations for groundwater monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she will lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25 percent capacity expansion limit for Class 2 modifications.

(h) **Permit modification list.**

The Secretary must maintain a list of all approved permit modifications and must publish a notice once a year in a Statewide newspaper that an updated list is available for review.

(Amended July 26, 1994, August 1, 1995)

Appendix I to §122.42 - Classification of Permit Modification

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the Secretary.	[1]1
b. Extension of final compliance date.	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the Secretary.	[1]1
7. Changes in ownership or operational control of a facility, provided the procedures of sec. 122.40(b) are followed.	[1]1
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with agency guidance or regulations.	1
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis method.	[1]1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.	[1]1
d. Other changes.	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with agency guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
b. Other changes	2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Ground-Water Protection

1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground-water monitoring system.	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.	1
2. Changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the Secretary.	[1]1
3. Changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the Secretary.	[1]1
4. Changes in point of compliance.	[1]2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):	
a. As specified in the groundwater protection standard.	3
b. As specified in the detection monitoring program.	2
6. Changes to a detection monitoring program as required by §264.98(j), unless otherwise specified in this appendix.	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by §§264.98(h)(4) and 264.99.	3
b. Changes to a compliance monitoring program as required by §264.99(k), unless otherwise specified in this appendix.	2
8. Corrective action program:	
a. Addition of a corrective action program as required by §§264.99(i)(2) and 264.100.	3
b. Changes to a corrective action program as required by §264.100(h), unless otherwise specified in this appendix.	2

D. Closure

1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the Secretary.	[1]1
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Secretary.	[1]1
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the Secretary.	[1]1
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the Secretary.	[1]1
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.	2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under §264.113 (d) and (e).	2
2. Creation of a new landfill unit as part of closure.	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.	3
b. Incinerators.	3
c. Waste piles that do not comply with §264.250(c).	3
d. Waste piles that comply with §264.250(c).	2
e. Tanks or containers (other than specified below).	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the Secretary.	[1]1

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan.	1
2. Extension of post-closure care period.	2
3. Reduction in the post-closure care period.	3
4. Changes to the expected year of final closure, where other permit conditions are not changed.	1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.	2

F. Containers

1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of ''use of practically available technology that yields the greatest environmental benefit'' contained in §268.8(a)(2)(ii), with prior approval of the Secretary. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	[1]1
2.	
a. Modification of a container unit without increasing the capacity of the unit.	2
b. Addition of a roof to a container unit without alteration of the containment system.	1
3. Storage of different wastes in containers, except as provided in (F)(4) below:	
a. That require additional or different management practices from those authorized in the permit.	3
b. That do not require additional or different management practices from those authorized in the permit.	2

Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage of treatment of different wastes in containers:	

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of ''use of practically available technology that yields the greatest environmental benefit'' contained in §268.8(a)(2)(ii). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	[1]1

G. Tanks

1: a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below.	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below.	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	2
d. After prior approval of the Secretary, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	[1]1
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of ''use of practically available technology that yields the greatest environmental benefit'' contained in §268.8(a)(2)(ii), with prior approval of the Secretary. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	[1]1
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided. -- The capacity difference is no more than 1500 gallons, -- The facility's permitted tank capacity is not increased, and -- The replacement tank meets the same conditions in the permit.	1
4. Modification of a tank management practice.	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in (G)(5)(c) below.	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in (G)(5)(d).	2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii). The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	[1]1
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1

Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.	3
2. Replacement of a surface impoundment unit.	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.	2
4. Modification of a surface impoundment management practice.	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §269.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in § 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)	1
6. Modifications of unconstructed units to comply with §§ 264.221(c), 264.222, 264.223, and 264.226(d)	1
7. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes	2

Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with §264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with §264.250(c).

1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.	2
2. Modification of waste pile unit without increasing the capacity of the unit.	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	1
4. Modification of a waste pile management practice.	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit.	3
b. That do not require additional or different management practices or different design of the unit.	2
6. Conversion of an enclosed waste pile to a containment building unit.	2

Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.	3
2. Replacement of a landfill.	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.	2
5. Modification of a landfill management practice.	2
6. Landfill different wastes:	
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).	1
7. Modifications of unconstructed units to comply with §§ 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304.	1

8. Changes in response action plan:
   a. Increase in action leakage rate 3
   b. Change in a specific response reducing its frequency or effectiveness. 3
   c. Other changes 2

Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent. 3
2. Modification of run-on control system. 2
3. Modify run-off control system. 3
4. Other modifications of land treatment unit component specifications or standards required in permit. 2
5. Management of different wastes in land treatment units:
   a. That require a change in permit operating conditions or unit design specifications. 3
   b. That do not require a change in permit operating conditions or unit design specifications. 2

Note: See sec. 122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment unit management practice to:
   a. Increase rate or change method of waste application. 3
   b. Decrease rate of waste application. 1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions. 2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops. 3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to §264.278(g)(2). 3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements. 3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or that replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements. 2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid. 2
13. Changes in sampling, analysis, or statistical procedure. 2
14. Changes in land treatment demonstration program prior to or during the demonstration. 2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the Secretary's prior approval has been received. [1]1

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the Secretary.	[1]1
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.	3
18. Changes in vegetative cover requirements for closure.	2

L. Incinerators, Boilers, and Industrial Furnaces:

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The Secretary may require a new trial burn to demonstrate compliance with the regulatory performance standards.	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3

c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
6. Burning different wastes:	
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The Secretary will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
Note: See §122.42(g) for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the Secretary.	[1]1
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the Secretary.	[1]1
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Secretary.	[1]1
8. Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit.	1
M. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased.	1
b. The replacement containment building meets the same conditions in the permit.	1
4. Modification of a containment building management practice.	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices.	3
b. That do not require additional or different management practices.	2

N. Corrective Action:

1. Approval of a corrective action management unit pursuant to §264.552	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to §264.553.	2

FOOTNOTE: [1]Class 1 modifications requiring prior Agency approval.
(Amended June 19, 1992; July 26, 1994, August 1, 1995)

Section 122.43 Termination of Permits.

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittees failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Secretary shall follow the applicable procedures in Part 124 in terminating any permit under this section.

Section 122.44 - 122.49 [Reserved]

Subpart E - Expiration and Continuation of Permits

Section 122.50 Duration of permits.

(a) DNREC permits shall be effective for a fixed term not to exceed 10 years.

(b) Except as provided in §122.51, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(d) Each permit for a land disposal facility shall be reviewed by the Secretary five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in §122.41.
(Amended May 8, 1986; August 10, 1990)

Section 122.51 Continuation of expiring permits.

(a) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under §122.14 and the applicable sections in 122.15-122.29 which is a complete application for a new permit; and

(2) The Secretary through no fault of the permittee, does not issue a new permit with an effective date under §124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) Effect. Permits continued under this section remain fully effective and enforceable.

(c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Secretary may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under §124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

Section 122.52 - 122.59 [Reserved]

Subpart F - Special Forms of Permits

Section 122.60 Permits by rule.

Notwithstanding any other provision of this Part or Part 124, the following shall be deemed to have a permit if the conditions listed are met:

(a) Ocean disposal barges or vessels. The owner or operator of a barge or other vessel accepts hazardous waste for ocean disposal, if the owner or operator:

(1) Has a permit for ocean dumping issued under 40 CFR Part 220 (Ocean Dumping, authorized by the Marine Protection, Research and Sanctuaries Act as amended 33 USC §1420, et.seq.):

(2) Complies with the conditions of that permit; and

(3) Complies with the following hazardous waste regulations.

(i) §264.11, Identification number;

(ii) §264.71, Use of manifest system;

(iii) §264.72, Manifest discrepancies;

(iv) §264.73(a) and (b)(1), Operating record;

(v) §264.75, Annual report; and

(vi) §264.76, Unmanifested waste report.

(b) [Reserved]

(c) Publicly owned treatment works. The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

(1) has an NPDES permit;

(2) Complies with the conditions of that permit; and

(3) Complies with the following regulations:

(i) §264.11, Identification number;

(ii) §264.71, Use of manifest system;

(iii) §264.72, Manifest discrepancies;

(iv) §264.73(a) and (b)(1), Operating record;

(v) §264.75, Annual report;

(vi) §264.76, Unmanifested waste report; and

(vii) for NPDES permits issued after November 8, 1984, §264.101 of these regulations.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(Amended May 8, 1986; August 29, 1988)

Section 122.61 Emergency Administrative Orders.

(a) Notwithstanding any other provision of this part or Part 124, in the event the Secretary finds an imminent and substantial endangerment to human health or the environment the Secretary may issue a temporary emergency administrative order: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of hazardous waste not covered by an effective permit.

(b) This emergency administrative order:

(1) May be oral or written. If oral, it shall be followed in five days by a written administrative order;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Secretary at any time without process if he or she determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under §124.10(c) including;

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted HWM facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the administrative order; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and Part 264.

Section 122.62 Hazardous waste incinerator permits.

(a) For the purposes of determining operational readiness following completion of physical construction, the Secretary must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to §122.42 of these regulations.

(1) Applicants must submit a statement, with Part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of §264.343 of these regulations during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in §264.345 of these regulations.

(2) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of §264.343 of these regulations based on his engineering judgment.

(b) For the purposes of determining feasibility of compliance with the performance standards of §264.343 of these regulations and of determining adequate operating conditions under §264.345 of these regulations, the Secretary must establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants must propose a trial burn plan, prepared under paragraph (b)(2) of this section with a Part B of the permit application.

(2) The trial burn plan must include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes: (A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity (if applicable), or description of the physical form of the waste.

(C) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified,

and the basis for the exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and §122.6, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and §122.6, or their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator (if available).

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system (type/feed).

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Secretary's decision under paragraph (b)(5) of this section.

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) Such other information as the Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(5) of this section.

(3) The Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in Part 261, Subpart D, of these regulations, the hazardous waste organic constituent or constituents identified in Appendix VII of that part as the basis for listing.

(5) The Secretary shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by §264.343 of these regulations can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Secretary to determine operating requirements to be specified under §264.345 of these regulations; and

(iv) The information sought in paragraphs (b)(5)(i) and (ii) of this section cannot reasonably be developed through other means.

(6) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in §264.343(a) of these regulations.

(v) If the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with §262.343(b) of these regulations.

(vi) A computation of particulate emissions, in accordance with §264.343(c) of these regulations.

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) Such other information as the Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in §264.343 of these regulations and to establish the operating conditions required by §264.345 of these regulations as necessary to meet that performance standard.

(7) The applicant must submit to the Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (b)(6). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Secretary.

(8) All data collected during any trial burn must be submitted to the Secretary following the completion of the trial burn.

(9) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §122.11.

(10) Based on the results of the trial burn, the Secretary shall set the operating requirements in the final permit according to §264.345 of these regulations. The permit may be modified to reflect the extension according to §122.42 of these regulations.

(c) For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Secretary may establish permit conditions, including but not limited to allowable waste feeds and operating conditions sufficient to meet the requirements of §264.345 of these regulations, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Secretary.

(1) Applicants must submit a statement, with Part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of §264.343 of these regulations, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters in §264.345 of these regulations.

(2) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify those requirements for this period most likely to meet the performance standards of §264.343 of these regulations based on his engineering judgement.

(d) For the purpose of determining feasibility of compliance with the performance standards of §264.343 of these regulations and of determining adequate operating conditions under §264.345 of these regulations, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with §122.19(b) and paragraphs

(b)(2) through (b)(9) of this section or, instead, submit other information as specified in §122.19(c). Applicants submitting information under §122.19(a) are exempt from compliance with §§264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(6), with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Secretary to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the Secretary will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

(Amended August 10, 1990; November 19, 1993, July 23, 1996)

Section 122.63 Permits for land treatment demonstrations using field test or laboratory analysis.

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of §264.272 of these regulations, the Secretary may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in §264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Secretary may issue a two-phase facility permit if he finds that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Secretary finds that not enough information exists upon which he can establish permit conditions to attempt to provide for compliance with all of the requirements of Subpart M, he must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Secretary finds that a phased permit may be issued, he will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the Secretary finds may be necessary under §264.272(c). The Secretary will include conditions in the second phase of the facility permit to attempt to meet all Subpart M requirements pertaining to unit design, construction, operation, and maintenance. The Secretary will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit will be effective as provided in §124.15(b) of these regulations.

(2) The second phase of the permit will effective as provided in paragraph (c) of this section.

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he must submit to the Secretary a certification, signed by a person authorized to sign a permit application or report under §122.11, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Secretary approves a later date.

(d) If the Secretary determines that the results of the field tests or laboratory analyses meet the requirements of §264.272 of these regulations, he will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Part 264, Subpart M, of these regulations, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under §122.42, or otherwise will proceed as a modification under §122.41(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the Secretary will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in §124.15(b).

(Amended August 10, 1990)

Section 122.64 [Reserved].

Section 122.65 Research, Development, and Demonstration Permits.

(a) The Administrator and the Secretary if the Administrator approves may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator and the Secretary if the Administrator approves deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and;

(3) Shall include such requirements as the Administrator and the Secretary if the Administrator approves deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Administrator and the Secretary if the Administrator approves deems necessary regarding testing and providing of information to the Secretary with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this section, the Administrator and the Secretary if the Administrator approves may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts 124 and 122 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The Administrator and the Secretary if the Administrator approves may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

(Amended May 8, 1986)

Section 122.66 Permits for boilers and industrial furnaces burning hazardous waste.

(a) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of § 266.103 of these regulations) are subject to paragraphs (b) through (f) of this section. Boilers and industrial furnaces operating under the interim status standards of §266.103 of these regulations are subject to paragraph (g) of this section.

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Secretary must establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to §122.42.

(i) Applicants must submit a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of §§ 266.104 through 266.107 of these regulations during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in §266.102(e) of these regulations.

(ii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of §§ 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(2) Trial burn period. For the duration of the trial burn, the Secretary must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of §§ 266.104 through 266.107 of these regulations and determining adequate operating conditions under §266.102(e) of these regulations. Applicants must propose a trial burn plan, prepared under paragraph (c) of this section, to be submitted with Part B of the permit application.

(3) Post-trial burn period. (i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Secretary to reflect the trial burn results, the Secretary will establish the operating requirements most likely to ensure compliance with the performance standards of §§ 266.104 through 266.107 of these regulations based on his engineering judgment.

(ii) Applicants must submit a statement, with Part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of §§ 266.104 through 266.107 of these regulations. This statement should include, at a minimum, restrictions on the operating requirements provided by §266.102(e) of these regulations.

(iii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of §§ 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(4) Final permit period. For the final period of operation, the Secretary will develop operating requirements in conformance with §266.102(e) of these regulations that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of §§ 266.104 through 266.107 of these regulations. Based on the trial burn results, the Secretary shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to §122.42.

(c) Requirements for trial burn plans. The trial burn plan must include the following information. The Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in Appendix VIII, Part 261, of these regulations that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and § 122.6, or their equivalent.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in §260.11 of these regulations and §122.6, or other equivalent.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(i) Manufacturer's name and model number of the boiler or industrial furnace;

(ii) Type of boiler or industrial furnace;

(iii) Maximum design capacity in appropriate units;

(iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) Capacity of hazardous waste feed system;

(vi) Description of automatic hazardous waste feed cutoff system(s);

(vii) Description of any air pollution control system; and

(viii) Description of stack gas monitoring and any pollution control monitoring systems.

(4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Secretary's decision under paragraph (b)(2) of this section.

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in §§ 266.104 through 266.107 of these regulations.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(2) of this section.

(d) Trial burn procedures. (1) A trial burn must be conducted to demonstrate conformance with the standards of §§ 266.104 through 266.107 of these regulations under an approved trial burn plan.

(2) The Secretary shall approve a trial burn plan if he/she finds that:

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of §§ 266.104 through 266.107 of these regulations;

(ii) The trial burn itself will not present an imminent hazard to human health and the environment;

(iii) The trial burn will help the Secretary to determine operating requirements to be specified under §266.102(e) of these regulations; and

(iv) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The applicant must submit to the Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (c) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Secretary.

(4) All data collected during any trial burn must be submitted to the Secretary following completion of the trial burn.

(5) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §122.11.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under §266.104(a) of these regulations, the Secretary will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Secretary based on information including his/her estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Part 261, Subpart D of these regulations, the hazardous waste organic constituent(s) identified in Appendix VII of that part as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) When a DRE trial burn is required under §266.104(a) of these regulations:

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in §266.104(a) of these regulations;

(3) When a trial burn for chlorinated dioxins and furans is required under §266.104(e) of these regulations, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, or HCl/Cl_2 is required under §§ 266.105, 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl_2), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or HCl/Cl_2 is required under §§ 266.104(a), 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in §§ 266.104 through 266.107 of these regulations and to establish the operating conditions required by §266.102(e) of these regulations as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of §§ 266.104 through 266.107 of these regulations and of determining adequate operating conditions under §266.103 of these regulations, applicants owning

or operating existing boilers or industrial furnaces operated under the interim status standards of §266.103 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in §122.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Secretary to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Secretary.
(Amended July 26, 1994, July 23, 1996)

Section 122.67 - 122.69 [Reserved]

Subpart G - Interim Status

Section 122.70 Qualifying for Interim Status.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under 7 Del. C., Chapter 63 that render the facility subject to the requirement to have a Hazardous Waste permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the requirements of 7 Del. C., §§6304, 6306, and 6307 pertaining to notification of hazardous waste activity.

[Comment: Some existing facilities may not be required to file a notification under 7 Del. C., §§6304, 6306, and 6307. These facilities may qualify for interim status by meeting paragraph (a)(2) of this section.]

(2) Complied with the requirements of §122.10 governing submission of Part A applications;

(b) When DNREC determines on examination or re-examination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to DNREC enforcement for operating without a permit.

(c) Paragraph (a) of this section shall not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under 7 Del. C., Chapter 63 has been previously terminated.
(Amended May 8, 1986)

Section 122.71 Operation during interim status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) Employ processes not specified in Part A of the permit application; or

(3) Exceed the design capacities specified in Part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at Part 265.

Section 122.72 Changes during interim status.

(a) Except as provided in paragraph (b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised Part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Secretary approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the Secretary approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Secretary that he is complying with the requirements of that subpart. The new owner or operator must demonstrate compliance with subpart H requirements within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Secretary by the new owner or operator of compliance with Subpart H, the Secretary shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued by EPA under RCRA §3008(h) or other Federal authority, by 7 Del. C., Chapter 63, or by a court in a judicial action by EPA or by the State of Delaware. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under this paragraph, changes listed under paragraph (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of §265.193 for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of §3004(o).

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued by EPA under RCRA §3008(h) or other Federal authority, by 7 Del. C., Chapter 63, or by a court in a judicial proceeding brought by EPA or by the State of Delaware, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Part 268 of these regulations or 7 Del. C., §6307, provided that such changes are made solely for the purposes of complying with Part 268 of these regulations or 7 Del. C., §6307.

(7) Addition of newly regulated units under paragraph (a)(6) of this section.

(Amended August 29, 1988; June 19, 1992; July 26, 1994, August 1, 1995, August 21, 1997)

Section 122.73 Termination of interim status.

Interim status terminates when:

(a) Final administrative disposition of a permit application is made; or

(b) Interim status is terminated as provided in §122.10(e)(3).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a Part B application for a DNREC permit for such facility prior to that date; and

(2) The owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under 7 Del C., Chapter 63 that render the facility subject to the requirement to have a DNREC permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a Part B application for a permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under §122.72(a)(1), (2), or (3), on the date 12 months after the effective date of such requirement, unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) For owners and operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a DNREC permit for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a DNREC permit for the facility by November 8, 1988.

(Amended August 29, 1988; June 19, 1992; July 26, 1994)

Section 122.74 - 122.79 [Reserved]

Part 124 - Procedures for Decision Making

Subpart A - General Program Requirements

Subpart A - General Program Requirements

Section 124.1 Purpose and scope.

(a) This part contains procedures for issuing, modifying, revoking and reissuing, or terminating DNREC hazardous waste permits other than Emergency Administrative Orders (see §122.61) and "permits by rule" (see §122.60). The procedures of this part also apply to denial of a permit for the active life of a DNREC hazardous waste management facility or unit under §122.29.
(Amended August 21, 1997)

Section 124.2 [Reserved]

Section 124.3 Application for a Permit.

(a)(1) Any person who requires a permit under the hazardous waste program shall complete, sign, and submit to the Secretary an application for hazardous waste permit.

(2) The Secretary shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(3) Permit applications must comply with the signature and certification requirements of Part 122.

(b) [Reserved]

(c) The Secretary shall review for completeness every application. Each application for a hazardous waste permit submitted by a new HWM facility should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application for a hazardous waste permit submitted by an existing HWM facility (both Parts A and B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is completed, upon receiving

this information. After the application is complete, the Secretary may request additional information from an applicant but only when necessary to clarify, modify or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision.

(e) If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

(1) Prepare a draft permit;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing; and

(4) Issue a final permit.

Section 124.4 [Reserved]

Section 124.5 Modification, Revocation and Reissuance, or Termination of Permits.

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §122.41 or §122.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c)(1) If the Secretary tentatively decides to modify or revoke and reissue a permit, he shall prepare a draft permit under §124.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Secretary shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Minor modifications" are not subject to the requirements of this section.

(d) If the Secretary tentatively decides to terminate a permit under §122.43 he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under §124.6.

Section 124.6 Draft Permits.

(a) Once an application is complete, the Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Secretary tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. (See §124.6(d).) If the Secretary's

final decision is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) If the Secretary decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

(1) All conditions under §122.30 and §122.32;

(2) All compliance schedules under §122.33;

(3) All monitoring requirements under §122.31; and

(4) Hazardous waste permits, standards for treatment, storage, and/or disposal and other permit conditions under §122.30.

(d) All draft permits prepared under this section shall be accompanied by a statement of basis (§124.7) or fact sheet (§124.8), publicly noticed (§124.10) and made available for public comment (§124.11). The Secretary shall give notice of opportunity for a public hearing (§124.12) and respond to comments (§124.17).

Section 124.7 Statement of basis.

DNREC shall prepare a statement of basis for every draft permit for which a fact sheet under §124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

Section 124.8 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility or activity, and for every draft permit which the Secretary finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Secretary shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(3) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(4) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under §124.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(5) Name and telephone number of a person to contact for additional information.

Section 124.9 [Reserved]

Section 124.10 Public notice of permit actions and public comment period.

(a) Scope.

(1) The Secretary shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under §124.6(b);

(ii) A draft permit has been prepared under §124.6(c);

(iii) A hearing has been scheduled under §124.12.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under §124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) Timing

(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) Methods. Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits:

(i) The applicant;

(ii) Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, 404, or sludge management permit for the facility or activity (including EPA when the draft permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States (Indian Tribes). (For the purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in the area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Secretary may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Secretary may delete from the list the name of any person who fails to respond to such a request.)

(v)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) To each State agency having any authority under State law with respect to the construction or operation of such facility.

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

(3) In a manner constituting legal notice to the public under State law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) Contents

(1) All public notices. All public notices issued under this part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(iii) A brief description of the business conducted at the facility or activity described in the RCRA and/or DNREC permit application or RCRA and/or DNREC draft permit;

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §124.11 and §124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(vi) Any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under §124.12, shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(e) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1)(i), (ii), and (iii), of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

(Amended August 21, 1997)

Section 124.11 Public comments and requests for public hearings.

During the public comment period provided under §124.10, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in §124.17.

Section 124.12 Public hearings.

(a)(1) The Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s);

(2) The Secretary may also hold a public hearing at his discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision;

(3)(i) the Secretary shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for hearing within 45 days of public notice under §124.10(b)(1);

(ii) whenever possible the Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility;

(4) Public notice of the hearing shall be given as specified in §124.10.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under §124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the hearing shall be made available to the public.

Section 124.13 - 124.14 [Reserved]

Section 124.15 Issuance and Effective Date of Permit.

(a) After the close of the public comment period under §124.10 on a draft permit, the Secretary shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under §122.29). The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under §122.29) shall become effective 30 days after the service of notice of the decision unless:

(1) A later effective date is specified in the decision; or

(2) An appeal of the decision is received in accordance with 7 Del. C., §6313.

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(Amended June 19, 1992, August 21, 1997)

Section 124.16 [Reserved]

Section 124.17 Response to comments.

(a) At the time that any final permit is issued, the Secretary shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.