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CHAPTER 63. HAZARDOUS WASTE MANAGEMENT

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Subchapter I. Hazardous Waste

§ 6301. Findings; purpose.

(a) The General Assembly finds that:

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

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner and where there are no commercial hazardous waste management facilities available;

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

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

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

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

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

(3) To assure the safe and adequate management of hazardous wastes within this State. (62 Del. Laws, c. 412, § 3; 66 Del. Laws, c. 364, § 1.)

Authority to impose or increase environmental permit fees. — Del. Const., art. VIII, § 11 requires an act of the General Assembly adopted with the concurrence of three-fifths of

all members of each House in order for the state to impose fees for environmental permits currently issued without charge by the Department of Natural Resources and Environmental

Control. In re Opinion of the Justices, Del. Supr., 575 A.2d 1186 (1990).

Del. Const., art. VIII, § 10(a) requires an act of the General Assembly adopted with the concurrence of three-fifths of all members of each House in order for the state to increase the

environmental permit fees now charged and administered by the Department of Natural Resources and Environmental Control. In re Opinion of the Justices, Del. Supr., 575 A.2d 1186 (1990).

§ 6302. Definitions.

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

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

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

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

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land, water or into the air so that such hazardous waste or any constituent thereof may enter the environment to be emitted into the air, or discharged into any water, including groundwaters, or any other management of hazardous wastes in which the handler voluntarily relinquishes control of the waste in a manner inconsistent with the requirements of this chapter and the regulations promulgated thereunder.

(5) "Division" means the Division of Air and Waste Management.

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

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

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

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

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

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

(12) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control

facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Chapter 60 of this title, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

(13) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes. This definition does not apply to wastes accumulated at transfer facilities in compliance with § 6306 of this title for periods of up to 10 days.

(14) "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.

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

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

(17) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility upon premises where hazardous waste has been generated. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 1; 65 Del. Laws, c. 430, § 1; 66 Del. Laws, c. 140, § 1; 66 Del. Laws, c. 364, § 2; 67 Del. Laws, c. 140, §§ 1, 2.)

Effect of amendments. — 67 Del. Laws, c. 140, effective July 1, 1989, inserted "or any other management of hazardous wastes in which the handler voluntarily relinquishes control of the waste in a manner inconsistent with the requirements of this chapter and the regulations promulgated thereunder" in (4); substituted "physical or chemical" for "physical, chemical or infectious" in (7); and made other minor changes.

Hazardous waste. — If waste had the potential of being a hazard when it was improperly disposed of, that waste at the time of its disposal was hazardous waste. T.V. Spano

Bldg. Corp. v. Wilson, Del. Super., 584 A.2d 523 (1990).

Where buried tree debris probably generated methane that seeped into houses, the buried material was hazardous waste when buried. T.V. Spano Bldg. Corp. v. Wilson, Del. Super., 584 A.2d 523 (1990).

Although the findings of the Environmental Appeals Board did not use the words "hazardous waste," the findings embodied the requisites set forth in the definition expressed in subdivision (7). T.V. Spano Bldg. Corp. v. Wilson, Del. Super., 584 A.2d 523 (1990).

§ 6303. Hazardous waste management plan.

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

- (1) A description of the sources of hazardous waste generation within the State, including the types and quantities of such wastes, and the location of hazardous waste generators, disposal facilities and storage sites;
- (2) A description of current hazardous waste management practices and costs, including treatment and disposal, within the State;
- (3) An informational reporting system of hazardous waste quantities generated and disposed of in the State;
- (4) Criteria for the siting of hazardous waste disposal facilities;
- (5) Information on methods of reuse, recycling and reduction of hazardous wastes, including the feasibility of establishing facilities, institutions or requirements for the purpose of encouraging the reuse, recycling, reduction and utilization of hazardous wastes for useful purposes.

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

§ 6304. Prohibitions; records.

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

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

(c) Information obtained by the Department under paragraph (10) of subsection (a) of § 6305 of this title or pursuant to any other provisions of this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Department certifies such information to be proprietary. The Department may make such certification where any person shows to the satisfaction of the Department that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this subsection shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter or the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended from time to time [42 U.S.C. § 6901 et seq.]. Prior to disclosure of proprietary information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not

preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter or Pub. L. 94-580, as amended.

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

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

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

(g) No person shall transport or deliver hazardous waste to any facility operated by or on behalf of the Delaware Solid Waste Authority, except to the extent authorized by the Authority with respect to small quantity source separated designated materials which are delivered to recycling centers for disposal in an authorized manner. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 372, § 1; 67 Del. Laws, c. 432, § 6.)

Revisor's note. — Section 7 of 67 Del. Laws, c. 432, provides: "The provisions of this act shall be read in harmony with the existing provisions of Chapter 64 of Title 7 and nothing contained herein shall be construed to supersede such provisions. This legislation shall be known as the Delaware Recycling and Waste Reduction Act."

Section 8 of 67 Del. Laws, c. 432, provides: "The Authority shall submit to the Department of Natural Resources and Environmental Control for consideration and possible com-

ment its proposed statewide recycling and waste reduction plan and its proposed plans for the establishment of recycling centers. The Department of Natural Resources and Environmental Control shall provide advice, cooperation and assistance to the Authority with respect to the activities undertaken by the Authority pursuant to this act."

Effect of amendments. — 67 Del. Laws, c. 432, effective July 24, 1990, added the exception in (g).

§ 6305. Regulations.

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

(1)a. Criteria, consistent with those promulgated by the United States Environmental Protection Agency under § 3001 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6921], for identifying the characteristics of hazardous waste and for listing hazardous waste; and

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

(2) Regulations for the transport, storage, treatment and disposal of hazardous waste, including regulations regarding contingency plans for

effective action to minimize unanticipated damage from the transport, treatment, storage or disposal of such hazardous waste and regulations prescribing conditions and time periods upon which generators may accumulate hazardous wastes on site without a permit and such other regulations as are necessary to assure that substances identified or listed under paragraph (1) of this subsection which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment;

(3) Regulations setting forth requirements for approval or permit applications and specifying the terms and conditions, including duration and schedules of compliance, under which the Department shall issue, modify, review, suspend, revoke or deny such approvals or permits as may be required by this chapter and regulations providing that permits issued after November 8, 1984, or regulations which, in the case of interim status facilities under § 6307(g) of this title, require corrective action both on site and beyond the facility boundary, if necessary to protect human health and the environment, for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit under this chapter, regardless of when the waste was placed in the unit. Such permits shall contain schedules of compliance for corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing the corrective action, and, in addition, regulations relating to qualifying for and termination of interim status under § 6307(g) of this title;

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

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

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

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

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

other phases of hazardous waste management as the Secretary deems necessary;

(9) Regulations which may provide for a reasonable schedule of fees for payment to the Department by hazardous waste transporters and owners of treatment, storage or disposal facilities or sites to defray the cost of administering this chapter. Any fees collected under this paragraph shall be appropriated to the Department for purposes of administering this chapter. Such regulations shall not provide for any annual fee under this paragraph in excess of \$10,000 or in the case of small business concerns, any annual fee under this paragraph in excess of \$500;

(10) Regulations which prescribe:

- a. The establishment and maintenance of such records, including period of retention;
- b. The making of such reports;
- c. The taking of such samples and the performing of such tests or analyses;
- d. The installing, calibrating, using and maintaining of such monitoring equipment or methods; and
- e. The providing of such other information as may be necessary to achieve the purposes of this chapter;

(11) Regulations setting forth criteria regarding the level of financial responsibility required for hazardous waste management facilities and criteria pertaining to appropriate measures for preventing damage to public health, safety and the environment under paragraph (2) of subsection (h) of § 6307 of this title and regulations requiring evidence of financial responsibility to assure adequate resources for corrective action both on and off site;

(12) Regulations regarding the reuse, recycling and reduction of hazardous waste including regulations prohibiting the use of waste oil or other materials contaminated with hazardous waste as a dust suppressant and regulations pertaining to fuel containing hazardous waste and all persons who produce, burn, distribute and market fuel containing hazardous waste;

(13) Regulations, applicable to generators of hazardous waste, as may be necessary to protect human health and the environment, including regulations on recordkeeping practices to identify the types, quantities and constituents of hazardous waste generated and the disposition of those wastes; regulations on use of appropriate containers for hazardous waste; regulations regarding the furnishing of information of the chemical composition of hazardous waste to persons involved in the management of such hazardous waste; regulations on the use of a manifest system by generators; regulations on submission of reports to the Secretary regarding quantities and disposition of hazardous waste generated during a particular period;

(14) Regulations regarding pre-operation review and inspection of hazardous waste management facilities;

(15) Regulations regarding location, design, construction and remedial action standards for hazardous waste management facilities;

(16) Regulations regarding such public notice and hearing requirements and other related matters as may be deemed necessary to maintain equivalence of the State's program under the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6901 et seq.], including requirements for public notice of draft permits, for public comment periods and requests for hearings and for informal hearings.

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

(c) The Secretary, in consultation with the Commission and after notice and public hearings, shall issue regulations for the transportation, containerization and labeling of hazardous wastes. Such regulations shall be consistent with and no more stringent than applicable rules or regulations issued by the United States Environmental Protection Agency and Department of Transportation, and consistent with and no more stringent than any other regulations issued pursuant to this chapter and the Hazardous Materials Transportation Act of 1979, §§ 8223-8230 of Title 29. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 2; 64 Del. Laws, c. 164, §§ 1-4; 65 Del. Laws, c. 320, §§ 1-5; 65 Del. Laws, c. 483, § 1; 65 Del. Laws, c. 516, § 1; 66 Del. Laws, c. 364, § 3.)

§ 6306. Generation and transportation of hazardous waste.

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

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

(c) Any person generating or transporting hazardous waste shall, in accordance with duly promulgated regulations, use a manifest system to assure that all hazardous waste generated is designated for treatment, storage or disposal in facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued pursuant to this chapter or pursuant to the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended) [42 U.S.C. § 6901 et seq.].

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

(e) This chapter and regulations applicable to transporters of hazardous waste shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof, as well as to persons transporting hazardous waste into, through or out of the State.

(f) Any person transporting hazardous waste must report a hazardous waste discharge to appropriate officials and clean up any hazardous waste discharge that occurs during transportation or take such other action as may be required or approved by appropriate officials so that the discharge no longer presents a hazard to human health or the environment.

(g) No person transporting hazardous waste shall operate or utilize a hazardous waste transfer facility for the accumulation of in-transport hazardous waste except with written approval of the Secretary. No written approval shall be given to a transfer facility pursuant to this section unless the owner or operator submits with the application an application fee, as established by the Department, and demonstrates to the Secretary that the facility is in compliance with the following sections or subparts of the State Regulations Governing Hazardous Waste:

- | | |
|---------------|---|
| (1) § 264.16 | Personnel Training; |
| (2) Part 264, | Subpart C Preparedness and Prevention; |
| (3) Part 264, | Subpart D Contingency Plans and Emergency Procedures; |
| (4) Part 264, | Subpart I Use and Management of Containers; |
| (5) § 264.112 | Closure Plan; Amendment of Plan. |

In addition, the Secretary may adopt such other regulations affecting transfer stations as he deems necessary to achieve the policies and purposes of this chapter. This subsection shall not apply to transfer facilities located on the premises where such hazardous waste is generated.

(h) Any hazardous waste transfer facility that ceases to maintain approval status shall within 30 days implement the approved closure plan. For the purposes of this subsection approval status shall be administratively extended if timely application has been made and timely processing has not occurred through no fault of the applicant.

(i) Transfer of ownership of hazardous waste transfer facilities shall be consistent with the conditions of § 122.40 of the Delaware Regulations Governing Hazardous Waste.

(j) The owner or operator of a hazardous waste transfer facility shall submit on a quarterly basis copies of all hazardous waste manifests for all waste that was accumulated for any length of time at the facility. The owner shall be assessed an annual fee, as established by the Department, for all waste accumulated at the facility that is not subject to the assessment provisions of § 6319 of this title. The timing of assessment, payment and penalties shall be consistent with the requirements of § 6319 of this title. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, § 5; 66 Del. Laws, c. 140, § 2; 66 Del. Laws, c. 364, §§ 4, 5.)

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

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

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

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

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

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

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

(g) Any person who: (1) Owns or operates a facility required to have a permit under this section which facility is in existence on the effective date of regulations under subsection (a) of § 6305 of this title or which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this chapter; (2) has complied with the requirements of subsection (a) of this section; and (3) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Secretary or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

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

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

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

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

(j) The owner or operator of a permitted facility or site must conduct such maintenance, monitoring and surveillance during operation, upon closure, abandonment, cessation or interruption of the operation of the facility or site, as the Secretary deems necessary to protect the public health and to prevent or control air, land, water or groundwater pollution. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, §§ 6-9; 65 Del. Laws, c. 320, § 6.)

§ 6308. Imminent hazards.

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

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

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

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

(3) Enforcement action pursuant to § 6309 of this title;

(4) Directing Department personnel to undertake emergency cleanup and remedial measures. The Secretary may recover the costs of such measures from the responsible party;

(5)a. A Hazardous Waste/Groundwater Cleanup Revolving Fund is hereby established for the purpose of providing the funds to expeditiously undertake the investigation of and conduct necessary remedial measures to mitigate instances of groundwater contamination or accidents which may pose a significant threat to human health and/or the environment.

b. All revenues recovered under this section shall be retained by the Department of Natural Resources and Environmental Control and placed in the Hazardous Waste/Groundwater Cleanup Revolving Fund. Expenditures from this Fund shall be controlled by the Appropriated Special Funds portion of the annual Budget Act.

c. In the event that the revolving fund is expended and the Department requires additional funding to address hazardous waste/groundwater contamination incidents which may pose significant threats to human health and/or the environment, the Secretary may petition the Secretary of Public Safety for additional funds under § 8232 of Title 29 (hazardous substance spill cleanup).

d. The Secretary of the Department of Natural Resources and Environmental Control must report annually to the Governor and the General Assembly on or before July 1st all expenditures from this Fund, receipts collected, ongoing litigation and its current balance.

e. The General Fund start-up moneys shall be a continuing appropriation until June 30, 1990. The Department may request additional funding for this purpose during the normal budgetary process when they project that the initial balance cannot be maintained due to protracted litigations. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 123, § 1; 65 Del. Laws, c. 47, § 1.)

Potential hazard warranted immediate action. — Continuous seepage of methane from underground source, when considered with the possibility of power interruption, provided sufficient ground to support the finding that the condition posed a potential hazard which warranted immediate action under this section. *T.V. Spano Bldg. Corp. v. Wilson*, Del. Super., 584 A.2d 523 (1990).

Liability for cost of removing hazard. — Where a person causes or permits his property to become contaminated in such a way as to

create a hazard to persons or the environment, it is appropriate and permissible that the expense of returning the site to a condition which is no longer a hazard should be borne by the person or persons who caused or permitted the hazard to exist. *T.V. Spano Bldg. Corp. v. Wilson*, Del. Super., 584 A.2d 523 (1990).

A corporate officer may be liable for his actions in overseeing the operations at a development where hazardous wastes are dumped. *T.V. Spano Bldg. Corp. v. Wilson*, Del. Super., 584 A.2d 523 (1990).

§ 6309. Enforcement.

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

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

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

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

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

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

(d) In any action brought under subsection (c) of this section, in addition to any equitable relief granted by the Court of Chancery, the Court may, in the exercise of its ancillary jurisdiction, impose a civil penalty as provided for in subsection (b) of this section.

(e) In any civil action brought in the Court of Chancery pursuant to this section in which a temporary restraining order, a preliminary injunction or a

permanent injunction is sought, upon a showing by the Secretary that a person has engaged in the acts or practices to be enjoined or restrained, a permanent or preliminary injunction, restraining order or other order may be granted.

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

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

(h) Each day of violation as specified in any action pursuant to the above subsections shall constitute a separate violation.

(i) Whenever on the basis of any information the Secretary determines that there is or has been a release of hazardous waste into the environment from any facility, the Secretary may issue an order requiring corrective action or such other response measure (including corrective action beyond the facility boundary) as he deems necessary to protect human health or the environment or the Secretary may commence a civil action in the Superior Court or the Court of Chancery for appropriate relief, including a temporary or permanent injunction. Any order issued under this subsection may include a suspension or revocation of authorization to operate under this chapter, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Secretary may assess, and such person shall be liable to the Department for, civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order.

(j) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, § 10; 65 Del. Laws, c. 320, §§ 7, 8; 66 Del. Laws, c. 364, §§ 6-8.)

*Subchapter II. Miscellaneous Provisions***§ 6310. Inspections; right of entry.**

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

(1) Enter any place or conveyance where hazardous wastes are generated, stored, transported, treated or disposed of;

(2) Inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes, and prior to leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained, and if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator or agent in charge;

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

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

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

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

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

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

§ 6312. Public hearings.

Public hearings shall be held on any application for or draft of, any permit or transfer facility approval, or modification thereof, or any regulation, variance request, permit revocation or appeal to the Environmental Appeals Board in accordance with §§ 6004 and 6006 of this title, except where the Secretary has adopted additional notice and hearing requirements by regulation. (62 Del. Laws, c. 412, § 3; 64 Del. Laws, c. 162, § 11; 66 Del. Laws, c. 364, § 9.)

§ 6313. Appeals.

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

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

§ 6314. Variances.

Variances and temporary emergency variances may be granted by the Secretary from any regulation, transfer facility approval or permit condition adopted pursuant to this chapter in accordance with §§ 6011 and 6012 of this title, except that no temporary emergency variance or variance shall be granted which would be inconsistent with the requirements of subsection (b) or (c) of § 3006 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6926(b) or (c)] (or regulations promulgated thereunder) requiring equivalence or substantial equivalence of state programs for authorization or interim authorization whichever the case may be. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 164, § 3; 64 Del. Laws, c. 162, § 12; 66 Del. Laws, c. 364, § 10.)

§ 6315. Interference with Department personnel.

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

§ 6316. Funds; charges.

(a) The Department may cooperate with and receive moneys from the federal government, and any state or local government, or other appropriate source in carrying out its duties under this chapter.

(b) Any charges encountered by the Department as a direct result of the public notice and hearing requirements of this chapter and the regulations established thereunder are directly billable to the person conducting or applying to conduct a hazardous waste management activity. (62 Del. Laws, c. 412, § 3; 66 Del. Laws, c. 364, § 11.)

§ 6317. Interstate cooperation.

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

§ 6318. Direct action against guarantor.

(a) In any case where the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(b) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common-law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiat-

ing or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under § 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9607, 9611) or other applicable law.

(c) For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter. (65 Del. Laws, c. 320, § 9.)

§ 6319. Waste-end assessments for persons generating, storing, treating and disposing of hazardous wastes.

(a) The Secretary is hereby authorized to impose and collect waste-end assessments in accordance with this section but in no case shall any person pay an annual assessment amount of less than \$50 or more than \$40,000 regardless of the number of facilities where hazardous waste is generated, treated, stored or disposed.

(b) The provisions of this section relating to paying an assessment apply to every person who is engaged in the generation, storage, treatment or disposal of a hazardous waste within this State and who is regulated by the Department under this chapter or any regulations promulgated thereunder.

(c) The information reporting requirements imposed under this section, as set forth in the form prescribed by the Department, shall be reported to the Department on a quarterly basis beginning from October 1, 1986. The information that is to be reported to the Department shall be so reported within 20 days after the last quarter.

(d) The annual assessment payments shall be paid to the Department October 1 of each year, the first of said assessment payments to be due October 1, 1987, in accordance with the Department fee regulations. The assessments paid to the Department under this section are hereby appropriated to the Division of Air and Waste Management and shall be used to carry out the purposes of this chapter.

(e) If any person fails or refuses to pay the Department any assessment or fails or refuses to file the written information with the Department pursuant to the requirements of this section, the Department may estimate the amount of said person's assessment on the basis of any information known by the Department. The Department may then add to the said person's estimated unpaid annual assessment a penalty in an amount equal to 15 percent of the estimated unpaid annual assessment. This penalty shall be in addition to, and not in lieu of, any other applicable penalties.

(f) For persons engaged in the generation of a hazardous waste, the annual assessment to be paid to the Department for hazardous waste generated after October 1, 1986, shall be calculated as follows:

- (1) \$21 per ton of hazardous waste generated that was disposed of into or on any land;
- (2) \$16 per ton of hazardous waste generated that was treated or disposed of, exclusive of land disposal and incineration, at a facility located off the site from where the hazardous waste was generated;

(3) \$4 per ton of hazardous waste generated that was incinerated;

(4) For purposes of this subsection, the meaning of the phrase "generation of a hazardous waste" does not include the retrieval or creation of hazardous waste, which must be disposed of due to remediation of an inactive hazardous waste disposal site;

(5) Notwithstanding any provision of this subsection to the contrary, no assessment shall be imposed under this section for activities which the Department determines are for the resource recovery of any hazardous waste.

(g) For owners or operators of hazardous waste storage, treatment or disposal facilities regulated under this chapter, the annual assessment that is to be paid to the Department for hazardous waste that is stored, treated or disposed of after October 1, 1986, shall be calculated as follows:

(1) No assessment shall be imposed under this subsection for the disposal of hazardous waste where said hazardous waste was generated by a person subject to an assessment under subsection (f) of this section;

(2) \$21 per ton of hazardous waste that was disposed of into or on any land;

(3) \$16 per ton of hazardous waste that was stored, treated or disposed of, exclusive of land disposal, at any facility located off-site from where the hazardous waste was generated;

(4) Notwithstanding any provision of this subsection to the contrary, no assessment shall be imposed under this section for activities which the Department determines are for the resource recovery of any hazardous waste.

(h) When calculating the amount of hazardous waste that is to be subject to any assessment under this section, if the person responsible for the assessment is involved with more than 1 type of hazardous waste being generated, treated, stored or disposed of, then the total amount of all the hazardous wastes being generated, treated, stored or disposed of by said person at any 1 site, shall be used to calculate the amount of the assessment.

(i) All of the requirements under this section that apply to persons who generate, treat, store or dispose of hazardous waste are in addition to and not in lieu of any other fees or requirements that must be complied with by said persons under any other statute, regulation, ordinance or permit condition.

(j) The Superior Court of the State shall have jurisdiction over actions to collect assessments and penalties under this section. (65 Del. Laws, c. 516, § 2; 68 Del. Laws, c. 86, §§ 5-7.)

Revisor's note. — Section 15 of 68 Del. Laws, c. 86, provides: "Any fee approved pursuant to 67 Del. Laws, c. 259 and not specifically listed in this act shall remain in effect."

Effect of amendments. — 68 Del. Laws, c. 86, effective July 1, 1991, substituted "amount

of less than \$50 or more than \$40,000" for "required by this section in an amount that exceeds \$20,000" in (a); substituted "\$21" for "\$12" in (f)(1), "\$16" for "\$9" in (f)(2), and "\$4" for "\$2" in (f)(3); and substituted "\$21" for "\$12" in (g)(2) and "\$16" for "\$9" in (g)(3).