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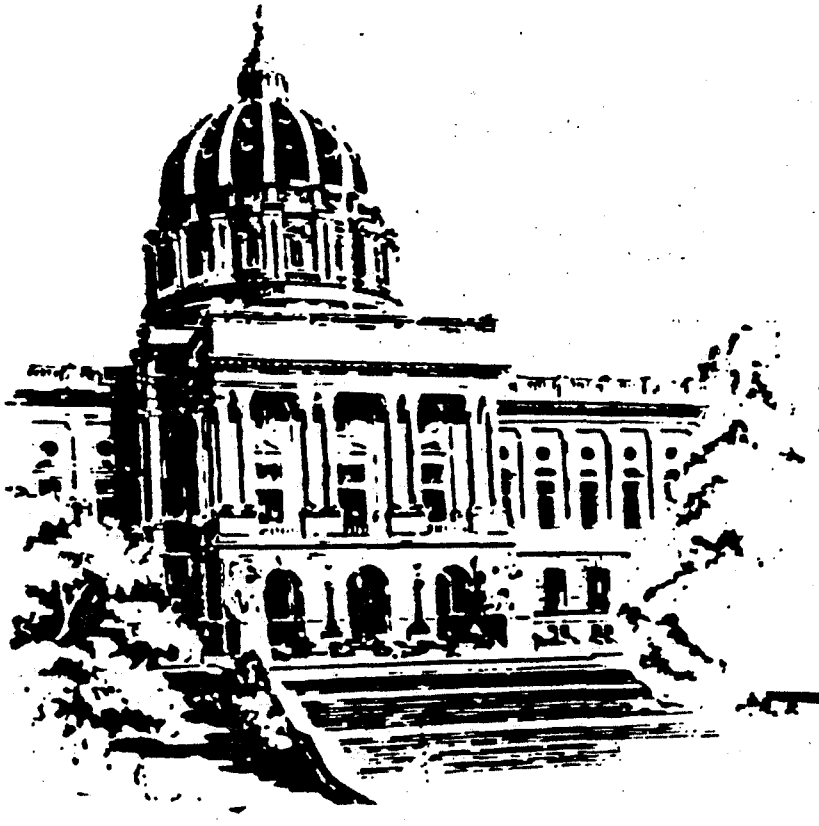
Part II

This part contains the Environmental Quality Board's hazardous waste management regulations



Rules and Regulations

Title 25— ENVIRONMENTAL RESOURCES

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

[25 PA. CODE CH. 75]

Hazardous Waste Management

The Environmental Quality Board (EQB) by this order amends 25 Pa. Code Chapter 75 (relating to solid waste management) as set forth in Annex A. The regulations implement the Solid Waste Management Act, the act of July 7, 1980 (P. L. 380, No. 97), and are necessary to obtain final authorization under the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*. This notice is given under Board order at its meeting of July 30, 1985.

A. *Statutory Authorization*

The amendments are authorized by sections 104 and 105 of the Solid Waste Management Act, the act of July 7, 1980 (P. L. 380, No. 97) (35 P. S. §§ 6018.104 and 6018.105) and 1920-A of The Administrative Code, the act of April 9, 1929 (P. L. 177, No. 22) (71 P. S. § 510-20).

B. *Contact Person*

For further information concerning these regulations, please contact Leon Kuchinski, Acting Chief, Division of Hazardous Waste Management, Bureau of Solid Waste Management, Department of Environmental Resources, 7th Floor, Fulton Building, P. O. Box 2063, Harrisburg, Pa. 17120 (telephone: (717) 787-6239) or Cathy Curran Myers, Assistant Counsel, Bureau of Regulatory Counsel, 505 Executive House, P. O. Box 2357, Harrisburg, Pa. 17120 (telephone: (717) 787-7060).

C. *Effective Date*

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

D. *Background*

The Federal Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq*. (RCRA) authorizes states to administer and enforce the RCRA hazardous waste program by obtaining final authorization from the United States Environmental Protection Agency (EPA). In order to obtain final authorization, Pennsylvania must demonstrate that it has a hazardous waste regulatory program equivalent to, consistent with, and no less stringent than the Federal program, which is set forth at 40 C.F.R., Subchapter I. In addition, the Commonwealth must adopt EPA's public notice and hearing requirements and assure EPA that Pennsylvania will provide adequate enforcement of the RCRA requirements (see 42 U.S.C. § 6926).

The EQB has already adopted several regulatory elements necessary for final authorization under RCRA. On August 2, 1980, the EQB adopted regulations identifying and listing hazardous wastes. On November 8, 1980, the Board adopted regulations governing the manifest system, notifications, generators, transporters, and operational requirements for new and existing facilities. On the basis of these regulations, the Commonwealth was able to apply for and obtain Phase I Interim Authorization giving Pennsylvania the authority to conduct those elements of the regulatory program covered by the regulations.

On February 16, 1982, the EQB adopted regulations establishing design, construction and permitting requirements for hazardous waste storage, treatment and disposal facilities. With the enactment of those regulations, the Commonwealth began the process of applying to EPA for final authorization to conduct all aspects of the hazardous waste management program. The Board has also adopted the hazardous waste bonding and financial responsibility regulations required for final authorization which were published as final rules on March 9, 1985 (15 Pa. B. 895.

Because the Federal regulations have undergone numerous revisions since the adoption of the February, 1982 regulations, amendments were necessary to keep pace with an evolving federal program. The Environmental Quality Board proposed a package of conforming revisions to the Department's regulations in October of 1983, which were adopted as final rules on January 22, 1985, 15 Pa. B. 2065 (June 1, 1985). After reviewing the October, 1983 rulemaking package, EPA identified a number of additional areas in which equivalent State regulations did not yet exist, as well as areas in which the State regulations should be modified to assure consistency with the Federal program. The present amendments are a second package of conforming amendments, responding to the EPA comments and assuring that Pennsylvania has adopted all regulations necessary to obtain final RCRA authorization.

E. *Summary and Purpose of Amendments*

These amendments make additional changes in order to conform Pennsylvania's hazardous waste management program to Federal requirements. The amendments will make Pennsylvania's regulatory program equivalent to and consistent with the Federal standards in effect as of December 31 1984, and will enable Pennsylvania to obtain final authorization from EPA for the Commonwealth's hazardous waste program. Many of the amendments are necessitated by recent changes in Federal requirements. Others were developed in response to comments by EPA which identified areas in which there are no Pennsylvania regulations equivalent to Federal requirements or areas in which the Pennsylvania regulations are not as stringent as or consistent with Federal requirements.

First, new §§ 75.270 — 75.282 were added which establish permit procedures in addition to those set forth in § 75.265(z). Second, all existing hazardous waste disposal facilities which accepted hazardous waste on or after July 26, 1982, are required by § 75.264(a) to obtain permits from the Department for closure if new permits for the continued operation of such facilities are not obtained. This amendment, in accordance with Federal regulations, will assure that every facility which accepted waste after July 26, 1982, obtains either a permit requiring closure in accordance with closure regulations or a permit regulating the continued operation and subsequent closure of the facility.

A new § 75.260(c) authorizes the Department to approve equivalent testing or analytical methods, if such methods are equal or superior to the methods prescribed in the regula-

tions. This provides the Department more flexibility to respond to advances in testing and analytical methodologies.

There are minor amendments to the definition section, adding definitions for closure, draft permit, household waste, and other terms. The definitions are based upon the corresponding EPA regulations. There are also minor wording changes to existing regulations for clarification.

The revisions to § 75.261 (relating to criteria, identification, and listing of hazardous waste) include all modifications made by EPA to the Federal regulations through December 31, 1984. One such modification of significance in Pennsylvania is the general exemption of pickle liquor sludge generated by lime stabilization of spent pickle liquor in the iron and steel industry from the definition of hazardous waste (§ 75.261(b)(3)(ii)).

In addition, the amendments incorporate all future Federal exclusions by reference, unless the State by regulation modifies or amends the Federal promulgation. The lists of hazardous wastes and related appendices from 40 C.F.R. Part 261 are also incorporated by reference to assure timely updating and avoid unnecessary duplication of the lists which are already available in published form. An amendment in § 75.261(h)(1) retains the one difference in State application of EPA's Appendix VII; total chromium rather than hexavalent chromium is used as the basis for listing a waste as hazardous. The use of total chromium is a more conservative measurement, which provides a more stringent and more reliable analysis of potentially hazardous chromium content.

Section 75.262 is revised to conform the generator manifest requirements to the new uniform requirements recently promulgated by EPA with United States Department of Transportation concurrence. Consequently, § 75.262(e) has been completely rewritten. Other minor revisions have been made for clarification. The transporter regulations at § 75.263 have likewise been revised to conform to the EPA uniform manifest regulations; § 75.263(d), relating to transporter manifest requirements, was completely rewritten.

A number of changes were made to § 75.264 (relating to new and existing hazardous waste management facilities applying for a permit).

The most significant revision is a new subsection requiring existing facilities that accepted hazardous waste on or after July 26, 1982, to obtain closure permits if those facilities do not obtain permits authorizing continued operation (§ 75.264(a)). This section will now require a person disposing of hazardous waste by ocean disposal or underground injection to follow the manifest and other requirements of Subchapter D. Persons disposing of hazardous waste by ocean disposal or underground injection will not, however, be required to obtain permits from the Department since Federal authority already provides for permits for these facilities.

Licensed transporters will now not be required to obtain a permit for in-transit storage, provided that they do not store for more than 5 days (§ 75.264(a)(3)(xi)) and comply with the requirements of § 75.264(g)(6) — (8).

The manifest requirements have been rewritten to conform the State system with the new EPA uniform manifest system (§ 75.264(i)). Owners and operators of captive facilities will now be required to submit annual reports on the types and quantities of waste handled (§ 75.264(m)(3)).

Owners and operators of surface impoundments used for storage or treatment will, under these regulations, be required to submit closure and post-closure contingency plans in the event they are unable to completely remove all waste and containment system components (§ 75.264(s)(3)(xxxi)).

New performance standards for the final cover and closure of landfills have been added (§ 75.264(v)(3)).

Finally, for incinerators, some additional trial burn plans will now be required as part of the permit application (§ 75.264(w)(25)). The trial burn plan details the type of data and format for trial burns.

A comprehensive revision of the groundwater monitoring regulations has been made in § 75.264(n); revisions to the liner regulations were made in § 75.264(t); and other revisions to the liner, reporting, and monitoring requirements were made in § 75.264(u)(21), (v)(3), and (z)(22).

Revised standards for the continued operation of interim status facilities have been incorporated into § 75.265. New manifest requirements in § 75.265(j) and revised reporting and public notice requirements in § 75.265(m)(1)(i) and (o) were added. Additional standards for hazardous waste piles and landfills were added in § 75.265(t) and (v). Finally, the permit requirements set forth in § 75.265(z) have been modified to conform to revised EPA regulations, and a cross-reference to §§ 75.270 — 75.282 has been included to alert permit applicants and permittees to the additional permit regulations set forth in §§ 75.270 — 75.282.

The permitting requirements in §§ 75.270 — 75.282 have been added to the regulations to conform to the Federal permit requirements. Section 75.270 sets forth a number of general permit conditions which apply to all permitted facilities. Section 75.271 provides for the exclusion of emergency clean-up activities from permit requirements. Section 75.272 establishes requirements for interim status facilities. Section 75.273 (general application requirements) and 75.274 (contents of Part A permit applications) describe permit application requirements. Section 75.275 (standard conditions for permits) describes the conditions that will be included in permits and duties of the permittee to comply with the permit conditions.

Section 75.277 (schedules of compliance) authorizes the Department to include a compliance schedule within a permit. Sections 75.278, 75.279, and 75.280 establish criteria and procedures for revocation, modification and reissuance of permits. Section 75.281 establishes public notice requirements and § 75.282 deals with public hearings.

Sections 75.270 — 75.282 are virtually identical to the corresponding EPA regulations set forth at 40 C.F.R. Part 270. These sections were also developed to begin the task of reorganizing Subchapter D (§§ 75.260 — 75.282) into more easily understood subsections.

F. *Public Comments*

Notice of proposed rulemaking was published at 15 Pa. B. 2189 (June 8, 1985) and included a 38 day public comment period. In addition, three public hearings were held to solicit public comments on the proposal. The hearings were held on July 1, 1985 in Allentown; July 2, 1985 in State College; and July 9, 1985 in Erie. A total of nine individuals and organizations submitted comments during the public comment period.

A comment and response document summarizing and responding to each comment received by the Board during the comment period was prepared by the Department and is available upon request from the contact persons identified in Section B. A summary of the major comments received and the Department's responses follows.

General

One comment was received saying

the public notice for the public hearings held on the proposal was not adequate. The Board, in addition to the notice in the *Pennsylvania Bulletin*, paid for advertisements announcing the hearings in seven newspapers across the state, issued press releases up to a month in advance of the hearings to alert the media and the public, directly mailed announcements of the hearings to several hundred persons known to be interested in hazardous waste issues and worked with the Department's Solid Waste Advisory Committee to provide advance notice of the hearings and opportunity for public comment. Opportunity for submission of written comments was extended beyond the hearing dates to July 16, 1985. The rulemaking was also reviewed by the legislative committees and the Independent Regulatory Review Commission as described in Section I.

It was suggested by one comment that the amendments include population density as a criteria for permitting hazardous waste facilities which store or deal with hazardous materials. The Board has developed proposed criteria for siting hazardous waste treatment and disposal facilities (13 Pa. B. 2493, August 13, 1983) in accordance with the Hazardous Waste Management Plan requirements established in the Solid Waste Management Act. The siting criteria are designed to implement the Hazardous Waste Management Plan, which does not cover storage facilities. Because the Solid Waste Management Act regulates hazardous wastes, but not all hazardous materials, it is not possible to broaden the regulations as suggested by the commentator.

Definitions

One comment suggested revising the definition of the term "solid waste" as was done by EPA on January 4, 1985 (50 Fed. Reg. 614) to exclude materials having an established commercial value. While the Department agrees this issue will have to be addressed, the purpose of this rulemaking was to bring State regulations into conformance with all applicable EPA requirements as of December 31, 1984. A similar comment was offered regarding requirements for landfills and underground storage tanks. There will be additional regulatory changes needed in the near future to keep the State's hazardous waste program up-to-date with changing Federal requirements. Under the 1984 RCRA amendments, states are given a year or more to bring their hazardous waste programs in line with federal requirements after EPA has adopted state program requirements.

In response to a concern raised about the definition of the term "disposal" in the current regulations, the Board added language to the final rule that includes intentional abandonment of hazardous waste as disposal. This clarification of the definition was needed, given the experience of the Department and the Office of Attorney General over the past several years with prosecuting hazardous waste transporters and generators disposing of hazardous waste by intentionally abandoning it in trucks or isolated areas of the State.

Comments were received by the Board suggesting the addition of definitions for several terms used in the proposal, specifically for the terms "EP toxicity," "post-closure," and "trial burn." These definitions have been added to the final § 75.260. Requests were made by one commentator to add definitions of "department" and "nonpoint source." The Department has not added definitions because these terms are clear in the context of the regulations.

In addition, comments felt the definition of "permit by rule" should contain cross-reference to the sections of the regulations where the concept of permit by rule is used. These references have been added to the definition found in § 75.260 along with the addition of a cross-reference in § 75.270.

Changes were also recommended to the definitions of "aquifer" and "freeboard", which were not adopted because the existing definitions are accurate.

A comment wanted the definition of "tanks" to state that tanks must be above ground. The Department intends to improve regulation of underground storage tanks in coordination with the Federal initiative regarding leaking underground storage tanks. Design and operation standards will be amended in future rulemaking, and it is not appropriate to insert such a requirement in the definition.

Incinerators

Several comments were received dealing with the hazardous waste incineration requirements in § 75.264. One comment noted the requirements to obtain an exemption from certain incinerator requirements in § 75.264(w)(26) appeared to make it impossible to obtain an exemption and did not conform to similar EPA regulations. As written, the proposed rulemaking required applicants for the exemption to meet all three requirements in § 75.264(w)(26)(i) — (iii). However, § 75.264(w)(26)(i) and (ii) allow only certain wastes to be incinerated to qualify for the exemption, but subparagraph (iii) allows none of those same wastes to be incinerated to qualify for the exemption. Therefore, an inconsistency exists. This section was changed to conform to the EPA language which allows the exemption as suggested by the comment.

In a second comment on § 75.264(w)(26), the observation was made that the Department has discretion in deciding whether to exempt incinerators from certain requirements while the EPA Regional Administrator must exempt facilities meeting the exemption requirements. The Board intentionally chose to be more stringent than EPA and require a case-by-case evaluation of each exemption request in order to assure there are no adverse effects on human health or the environment as a result of exempting an incinerator from certain requirements.

Permit Requirements/Exclusions

One comment felt the proposed rulemaking exceeded statutory authority by requiring all facilities that accepted hazardous waste on or after July 26, 1982 to obtain a post-closure permit if the facility intended to close (§ 75.264(a)(1)(ii)) and comply with § 75.264 regarding closure and post-closure care. The Department added this section to the rulemaking in direct response to Federal rule changes made in November 1984 and a comment by EPA that no similar provision existed in the State's regulations. Since this is a direct Federal requirement, the State has no choice under RCRA but to be at least as stringent as minimum Federal requirements to obtain primacy.

In § 75.261(c)(18) the Department proposed to adopt wastes listed in 40 C.F.R. § 261.4 as being excluded as hazardous wastes, with the exception of paragraph (16) relating to leather tanning industry wastes containing amounts of total chromium rather than hexavalent chromium. A comment was received questioning why this exclusion was handled differently from the way EPA was treating this type of waste. The Board retained this exception in the final rule to be more stringent than EPA based on technical grounds. There is no reliable analytical method to dif-

ferentiate between the valences of chromium in wastes and waste extracts, in the opinion of the Department. Because these methods are not reliable, the more conservative approach is to rely on total chromium as an indicator of the hazardous nature of a waste.

One comment felt § 75.261(e)(1), relating to special requirements for recyclable wastes, did not clearly indicate who was to supply the Department with information to support the request for considering these types of waste reuseable — the operator or the resource recovery facility. The intent of this section is for the generator of the waste to supply the supporting information. Language was added to the final rule to clarify this point.

The permit requirements for in-transit storage of hazardous waste by a waste transporter have been clarified in response to comments suggesting the language used in § 75.264(a)(3)(ix) was confusing. This section was rewritten to clearly say no permit was required for in-transit storage of waste for 5 days or less. A companion amendment was added in § 75.263(g)(7) and (8) to say an in-transit storage preparedness, prevention and contingency plan is required for in-transit storage of waste for greater than 3 days and less than 5 days and in all circumstances where waste was being transferred from one vehicle to another.

Several sections require the permittee to contact the Department in the event of leaks or other potentially hazardous situations that might require an emergency response. Comments were received saying the regulations did not specify whether the Department's central or regional office should be contacted. Sections 75.264(s)(3)(xxx)(F), (4)(ix)(F) and 75.265(j)(10) were changed to refer to the appropriate regional office of the Department.

Public Notification

Public notification requirements were improved in several ways in response to comments. Section 75.265(o)(6) and (18) were amended to include the host municipality on the list of persons receiving individual notice of opportunity to comment on closure and post-closure plans. A cross-reference was included in § 75.281(a)(4) to reference additional public comment opportunities existing in § 75.265 for the convenience of the reader.

EPA and Internal Comments

Several changes have been made to the regulations as proposed based upon extensive internal review and comments from EPA. The most significant modifications are the changes summarized below.

Sections of the proposal dealing with obtaining hazardous waste permits for ocean disposal or underground injection of wastes (§ 264(a)(2)(ii) and (iii)) were retained rather than deleted as originally proposed. The language must be retained in the regulation, since RCRA requires these activities must have a permit; however, a permit-by-rule provision was established in § 75.270(d) and (e) that meets this Federal RCRA requirements.

A separate section dealing with manifest requirements for rail shipments of hazardous waste was added to § 75.263(d)(6) to fulfill an EPA requirement.

References were added to clearly show that Appendices III and V from § 75.265 and Appendices I, II and IV from § 75.267 should be part of § 75.264. Due to the manner in which the *Pennsylvania Bulletin* printed the appendices, it was not clear that they should be part of § 75.264.

Additional minor changes in language were made to improve the clarity and format of several sections of the regulations, including § 75.260(a) and (c); § 75.261(c), (d) and (h); § 75.262(e); § 75.263(d); § 75.264(a), (d), (g), (j), (k) and (m) — (w); § 75.265(a), (d), (e), (j), (k), (m), (n), (o), (q), (r), (s), (u), (v), (y) and (z); § 75.270(a) and (c) — (g); § 75.271(a); § 75.272(a) — (d); § 75.273(a); § 75.275(a) and (b); § 75.278(a) — (c); § 75.280(b), (i) and (o); and § 75.281(a), (d) and (g).

G. *Executive Order 1982-2*

Benefits and Costs

Executive Order 1982-2 requires a statement of the benefits of a regulation and the costs that may be imposed. The direct benefits of the amendments include the increased protection of human health and the environment and the decreased costs of abating pollution as a result of the adoption of more comprehensive regulations concerning hazardous waste management activities. In addition, the amendments are necessary to obtain final authorization for the Commonwealth's hazardous waste management program.

Permit applicants and facility owners and operators who comply with legislative and regulatory requirements in Pennsylvania will benefit from final authorization. They will achieve compliance more expeditiously and economically because there will be only a single State regulatory program, rather than a dual program administered at both the State and Federal levels. As long as the Commonwealth is unable to obtain final authorization, private entities which manage hazardous waste in Pennsylvania will be forced to pay the costs of obtaining permits from both the State and Federal governments and are subject to regulatory programs at both levels of government.

Adoption of these amendments avoids potential conflict between Federal and State regulatory requirements and assures a more efficient and uniform hazardous waste management program in Pennsylvania. Finally, without final authorization, the Commonwealth may lose several million dollars per year in Federal funding to support hazardous waste management activities.

The amendments will impose costs upon those persons preparing and submitting applications for permits for hazardous waste storage, treatment, and disposal activities and, to a lesser extent, upon hazardous waste facility operators, due to the new permit and operational requirements. However, the Federal regulations upon which these regulations are based are currently in effect nationwide regardless of whether Pennsylvania has equivalent regulations. Thus, all hazardous waste permit applicants, permittees, and owners and operators must comply with similar regulations under the Federal program, whether or not these regulations are adopted by the EQB.

Paperwork Requirements

Executive Order 1982-2 also requires a statement of the need for, and a description of, any forms, reports, or other paperwork required as a result of this proposal. Because the amendments are based upon minimum Federal requirements which apply nationwide regardless of Pennsylvania's rulemaking, the regulations impose no paperwork not already required under the Federal program.

H. *Sunset Date*

Because the amendments are necessary in order for the Commonwealth to obtain RCRA authorization, a sunset date has not been proposed. The effectiveness of the Commonwealth's program will be evaluated on an ongoing basis by both the Department and EPA and, if any deficiencies are found, they will be addressed in program modifications or revised

regulations, as appropriate.

I. *Regulatory Review Act*

The Regulatory Review Act of 1982 (P. L. 633, No. 181) establishes a procedure for review of proposed amendments by the Independent Regulatory Review Commission and the relevant standing committees in each house of the General Assembly. Under section 5(a) of that act, a copy of these proposed amendments was submitted to the Independent Regulatory Review Commission and to the chairpersons of the Senate Committee on Environmental Resources and the House Conservation Committee for review and comment. In addition to the proposed amendments, the Commission and the committees were provided with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1982-2, "Improving Government Regulations."

On June 10, 1985 the House Conservation Committee disapproved the proposal. The Committee objected to the size and complexity of the proposal. The Committee disagreed with the approach taken by the Board to adopt the Federal list of hazardous wastes by reference so the State has a list of wastes consistent with the Federal government (§ 75.261). The Board continues to believe adoption by reference is the appropriate administrative approach to use to keep the list of hazardous wastes current.

The Committee suggested storage permits should be required for all in-transit storage of hazardous waste (§ 75.263(g)(6)) and emergency cleanups of hazardous waste sites (§ 75.271(a)). While the Board reviewed the suggestions made by the Committee and clarified the language in both sections, the Board did not change the basic requirements. The requirements for a storage permit for intransit storage are already more stringent than EPA minimum requirements. The Committee did not present justification for a further limitation. The exemption from the need to get a permit for emergency response actions is a practical necessity. Emergency response actions in potentially life-threatening situations should not be held up because of a paperwork requirement.

Since no action was taken by the Senate Committee by June 11, 1985, the proposal was deemed approved as provided by section 5(c) of the Regulatory Review Act. The Independent Regulatory Review Commission met on June 20, 1985 and approved the proposed rulemaking. The various oversight requirements of the Regulatory Review Act have been fulfilled by the review of the proposed rulemaking, and no additional review of the final order adopting the proposal, and changes made to the document, is required by the Regulatory Review Act.

J. *Findings of the Environmental Quality Board*

The Environmental Quality Board finds:

(1) That public notice of the intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) That a public comment period was provided as required by law, and that all comments received were considered.

(3) That modifications to the proposed text do not enlarge the original purposes or the scope of the proposed amendments.

(4) That these amendments are necessary and appropriate to the administration and enforcement of the authorizing acts identified in Section A.

K. *Order of the Board*

The Environmental Quality Board, acting under the authorizing statutes, orders:

(A) That the rules and regulations of the Department of Environmental Resources, 25 Pa. Code Chapter 75, are amended by amending §§ 75.260 — 75.265 and by adding §§ 75.270 — 75.282 to read as set forth in Annex A hereto. The ellipses refer to the existing text of the regulations.

(B) The Chairman of the Environmental Quality Board shall submit this order and Annex A hereto to the offices of General Counsel and the Attorney General for approval and review as to legality and form, as required by law.

(C) The Chairman of the Environmental Quality Board shall certify this order and Annex A hereto and deposit the same with the Legislative Reference Bureau, as required by law.

(D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

By the Environmental Quality Board

NICHOLAS DeBENEDICTIS,
Chairman

Fiscal Note: Fiscal Note 7-114 remains valid for the final adoption of the subject regulations.

INDEPENDENT REGULATORY REVIEW COMMISSION

Order

On May 22, 1985, the Independent Regulatory Review Commission received this proposal from the Environmental Quality Board (EQB). The proposal would amend 25 Pa. Code §§ 75.260 — 75.265 and 75.270 — 75.282 in order to conform to changes in the Federal Environmental Protection Agency (EPA) Hazardous Waste Program. This proposed under the authority of the Solid Waste Management Act (35 P. S. § 6018.104) and section 1920-A of The Administrative Code (71 P. S. § 510-20). The proposal was published in the *Pennsylvania Bulletin* of June 8, 1985 with a 30 day comment period.

The proposed amendments will significantly alter the standards and rules for the management of hazardous waste. Federal lists of hazardous wastes to be regulated would be incorporated by reference, except when specifically modified by an EQB rulemaking. Generators, transporters, and management facility manifest rules would be extensively revised to conform to a new national uniform manifest system. Standards for waste piles, landfills, land treatment, and incineration of hazardous waste would be elaborated.

Also proposed are numerous modifications to the regulatory scope and to the procedure and conditions of the permit program. Ocean dumping and underground injection, when Federally permitted, would be excluded from regulation. Existing waste management facilities having interim status would be required to come under the permit program for closure and post-closure care, and would be obligated to provide public notice of these plans. Transporters would not be required to have a storage facility permit for up to 5 days of in-transit storage, subject to certain provisions. Permit program rules, currently found along with interim nonpermitted facility standards in § 75.265, will be supplemented by other provisions distributed among 12 new permit program sections, §§ 75.270 — 75.282.

On June 10, 1985 the House Conservation Committee voted to disapprove the proposal.

We have reviewed the proposal and

find that on balance, its adoption is in the public interest. In the first place, it is clearly in the best interests of the Commonwealth and its citizens to obtain EPA authorization to regulate the management of hazardous waste, both to assert control of a critical activity and to avoid Federal duplication of our statutorily mandated State program. Secondly, these amendments and the voluminous and complex collection of standards and rules it amends should, as instruments of law, provide a reliable foundation on which diligent enforcement and public participation can build protection from the dangers of hazardous waste. Furthermore, in response to concerns of this Commission, a number of desirable additions and clarifications have been submitted by the Department of Environmental Resources (DER) which will recommend them to the EQB for inclusion upon final adoption.

However, the Regulatory Review Act specifies the need for clarity in regulations, which is particularly important in rules governing activities of such fiscal significance for industry and mortal significance for our citizens. With the proposed rulemaking, the permit program provisions have outgrown their current format, which the EQB has apparently recognized by beginning 12 new program sections (75.270 — 75.282). Unfortunately, this reorganization has been left half done, and much of the permit program remains, largely unorganized, in paragraphs of § 75.265(z). This leads to unnecessary duplications and cross references, imposes costs of interpretation on business, and perhaps most important, makes it even harder for local governments and citizens groups to address crucial and inherently complex program issues.

While we believe that organizational clarity could have been achieved in this rulemaking, at this late date the pressing deadline for program approval must take precedence. DER has, however, in a letter to the Commission dated June 19, 1985, agreed to complete the reorganization as part of the next appropriate series of conforming amendments to be submitted for EQB approval. DER staff has further stated, in our public session, that they will report the progress of this reorganization to the Commission quarterly, and that they expect its submission to the EQB to occur within 12 months.

Therefore, with the understanding that the DER will accomplish this goal, and will recommend the 18 specific itemized revisions to the EQB, we approve the proposal as published in the *Pennsylvania Bulletin* of June 8, 1985 and modified by the letters of June 19, 1985 and June 20, 1985.

The Commission reserves the right to review these amendments if they are substantially amended prior to final publication.

IRVIN G. ZIMMERMAN,
Chairman

(*Editor's Note*: There are references in the Annex to 25 Pa. Code Subchapter F. Subchapter F will appear in the *Pennsylvania Bulletin* on September 21, 1985.)

Annex A

TITLE 25. ENVIRONMENTAL RESOURCES

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 75. SOLID WASTE MANAGEMENT

Subchapter D. HAZARDOUS WASTE

§ 75.260. Definitions and requests for determinations.

(a) *Definitions.* The following words and terms when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Approved program or approved state — A state or interstate program which has been approved or authorized by the EPA under 40 C.F.R. Part 271 (relating to requirements for authorization of State hazardous waste programs).

* * * * *

Closure — The act of securing a hazardous waste management facility under the requirements of §§ 75.264 and 75.265 (relating to new and existing hazardous waste management facilities applying for a permit and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).

* * * * *

Disposal — The incineration, deposition, injection, dumping, spilling, leaking, or placing of solid waste into or on the land or water in a manner that the solid waste or a constitutent of the solid waste enters the environment, is emitted into the air, or is discharged to the waters of this Commonwealth. The term also includes the abandonment of solid waste with the intent of not asserting or exercising any control over, or title or interest in the solid waste.

* * * * *

Draft permit — A document prepared under § 75.280 (relating to procedures for permit issuance, modification, revocation and reissuance, or revocation) indicating the Department's tentative decision to issue, deny, modify, revoke and reissue, or revoke a permit. A notice of intent to revoke, and a notice of intent to deny a permit are types of draft permits. Draft permits shall contain all conditions, compliance schedules and monitoring requirements.

* * * * *

EP toxicity — A characteristic of a solid waste as specified under § 75.261(g)(5) (relating to criteria, identification and listing of hazardous waste) which causes the solid waste to be a hazardous waste.

* * * * *

EPA manifest document number — The EPA 12 digit identification number assigned to the generator plus a unique five digit document number assigned to the manifest by the generator for recording and reporting purposes.

Equivalent method — A testing or analytical method determined by the Department under § 75.260(c) (relating to definitions and request for determinations) to be equivalent to methods specified in this chapter.

* * * * *

Fact sheet — A document that sets forth the principal facts, and the significant factual, legal, methodological and policy questions considered in preparing a draft permit that the Department finds is the subject of widespread public interest or raises major issues, or a draft permit that incorporates a variance or requires an explanation.

* * * * *

Food processing waste — Residual materials in liquid or solid form generated in the slaughtering of poultry and livestock, or in processing and converting fish, seafood, milk, meats, and eggs to food products. The term also includes residual materials generated in the processing, converting, or manufacturing of fruits, vegetables, crops and other commodities

into marketable food items.

* * * * *

Household waste — Waste material — including garbage, trash, and sanitary wastes in septic tanks — derived from households — including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

* * * * *

Identification number — The number assigned by the EPA or the number provided to the Department by the EPA for assignment to each generator, transporter, and treatment, storage, or disposal facility handling hazardous waste.

* * * * *

International shipment — The transportation of hazardous waste into or out of the jurisdiction of the United States.

* * * * *

Manifest — The shipping document EPA Form 8700-22, and if necessary, EPA Form 8700-22A, originated, signed, and distributed in accordance with the instructions supplied with the manifest form.

* * * * *

Manifest system — The manifest, instructions supplied with the manifest, and distribution system for copies of the manifest which together identify the origin, routing, and destination of hazardous waste from the point of generation to the point of treatment, storage, or disposal under §§ 75.262(e), 75.263(d), 75.264(j), and 75.265(j) (relating to generators of hazardous waste, transporters of hazardous waste, new and existing hazardous waste management facilities applying for a permit and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).

* * * * *

Movement — Hazardous waste transported to a facility in an individual vehicle.

* * * * *

100-year flood — The flood magnitude expected to be equalled or exceeded on the average of once in 100 years; it may also be expressed as the flood having a 1.0% chance of being equalled or exceeded in a given year.

100-year floodplain — The lands adjoining a river or stream that have been or may be expected to be inundated by flood waters in a 100-year frequency flood.

* * * * *

Permit — A written document issued by the Department under the Act which authorizes the recipient to undertake the treatment storage or disposal of hazardous waste under the act. The term does not include interim status or a permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit.

Permit-by-rule — A provision of this subchapter whereby a facility or activity is deemed to have a hazardous waste management permit if it meets the requirements of § 75.270 (relating to the hazadous waste permit program).

* * * * *

Post closure — The activities after closure of a HWM facility related to maintaining, inspecting, monitoring, bonding and securing the facility under this subchapter.

* * * * *

Schedule of compliance — A schedule of remedial measures that may be included in a permit, or other written document, including an enforceable sequence of interim requirements — for example: actions, operations, or milestone events — leading to compliance with the appropriate act and regulations.

* * * * *

State manifest document number — The State abbreviation, the letter, and the unique number assigned to the manifest, usually preprinted on the form, for recording and reporting purposes.

* * * * *

Transfer facility — A 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.

* * * * *

Trial burn — An incineration test conducted under steady-state conditions to determine the ability of incineration to treat a hazardous waste.

* * * * *

Washout — The uncontrolled movement of hazardous waste from the active portion of the facility by floodwaters as a result of flooding.

* * * * *

(b) *Written requests.* Written requests to determine if a waste generated at a particular facility does not exhibit nor contain the substances which were the bases for listing that waste as a hazardous waste in § 75.261 (relating to criteria, identification and listing of hazardous wastes) shall consist of the following:

* * * * *

(2) The procedures in this subsection may also be used to request the Department for a determination of nonapplicability of § 75.261(b)(1)(i) or (ii) or (3) to a waste listed in § 75.261(h), containing a waste listed in § 75.261(h), or derived from a waste listed in § 75.261(h). This determination shall only apply to a particular generating, storage, treatment, or disposal facility. The request shall be accompanied by demonstrated proof that the subject waste generated at the facility does not meet the criteria under § 75.261(g). If the waste is a mixture of solid waste and one or more hazardous wastes listed under § 75.261(h), or is derived from one or more hazardous wastes, the demonstration may be performed specific to each constituent listed waste, or to the waste mixture as a whole.

* * * * *

(c) *Requests for determination of equivalent testing or analytical methods.*

(1) No person or municipality may use a testing or analytical method not specified in §§ 75.261, 75.264, or 75.265 unless the method is approved in writing by the Department. The Department will not approve an equivalent method unless the person or municipality demonstrates to the satisfaction of the Department that:

(i) The proposed method is equal to or superior to the corresponding method prescribed in §§ 75.261, 75.264 or 75.265, in terms of its sensitivity, accuracy and precision, that is, reproductibility.

(ii) The method is equivalent to a method set forth in the EPA publication *Test Methods for the Evaluation of Solid Waste: Physical/Chemical Methods* (SW-846).

(2) A person or municipality who requests Department approval of an equivalent method shall submit the following information to the Department:

(i) The requestor's name and ad-

dress.

(ii) A statement of the requestor's interest in the proposed method.

(iii) A description of the proposed action requested by the person or municipality.

(iv) A statement of the need and justification for the proposed method, including supporting tests, studies, or other information.

(v) A full description of the proposed method, including procedural steps and equipment used in the method.

(vi) A description of the types of wastes or waste matrices for which the proposed method may be used.

(vii) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in §§ 75.261, 75.264, or 75.265.

(viii) An assessment of factors which may interfere with, or limit the use of the proposed method.

(ix) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(3) A person or municipality who requests approval of an equivalent method shall submit additional information to the Department on the proposed method which may be reasonably required by the Department to evaluate the method.

(4) Testing or analytical methods approved by the EPA administrator under 40 C.F.R. Part 260.21 (relating to petitions for equivalent testing or analytical methods) shall be deemed to be approved by the Department as an equivalent testing or analytical method.

§ 75.261. Criteria, identification, and listing of hazardous waste.

(a) *Scope.*

(1) This section defines the term, hazardous waste, and identifies solid waste which is excluded from regulation under some portions of this chapter.

(2) This section identifies those solid wastes which are subject to regulation as hazardous waste under this chapter.

* * * * *

(b) *Determination of hazardous waste.*

(1) A solid waste is a hazardous waste if it is not excluded as a hazardous waste under subsection (c) and meets any of the following criteria:

* * * * *

(3) Unless and until it meets the criteria of paragraph (4):

* * * * *

(ii) Solid waste generated from the treatment, storage or disposal of a hazardous waste, including sludge, spill residue, ash, emission control dust or leachate — but not including precipitation run-off — is a hazardous waste. Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332) is not a hazardous waste even though it is generated from the treatment of a hazardous waste, unless it exhibits one or more of the characteristics of a hazardous waste identified in subsection (g).

(4) Solid waste described in paragraph (3) is not a hazardous waste if it meets one of the following criteria:

(i) In the case of solid waste, it does not exhibit the characteristics of hazardous waste identified in subsection (g).

* * * * *

(5) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste treatment manufacturing unit, is not subject to § 75.262 (relating to generators of hazardous waste), § 75.263 (relating to transporters of hazardous waste), § 75.264 (relating to new and existing hazardous waste management facilities applying for a permit), § 75.265 (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities), § 75.267 (relating to notification of hazardous waste activities), §§ 75.270 — 75.282 (relating to the hazardous waste permit program), Subchapter E (relating to financial responsibility requirements), or Subchapter F (relating to siting hazardous waste treatment and disposal facilities) until it exits the unit in which it was generated. This paragraph does not apply if the unit is a surface impoundment or if the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(c) *Exclusions.* The following solid wastes are specifically excluded as hazardous wastes:

* * * * *

(6) Household waste, including household waste that has been collected, transported, stored, treated, diposed, recovered — such as refuse-derived fuel — or reused.

* * * * *

(16) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries, so long as the chromium in the waste is exclusively — or nearly exclusively — trivalent chromium, the waste is generated from an industrial process which uses trivalent chromium exclusively — or nearly exclusively — the process does not generate hexavalent chromium, and the waste is managed in nonoxidizing environments. If the waste meets any of the characteristics of hazardous wastes identified in subsection (g), except for the characteristic of E. P. toxicity for chromium, this paragraph does not apply and the waste shall be considered a hazardous waste subject to all applicable requirements of this chapter.

(17) Samples for the purpose of testing.

(i) Except as provided in subparagraph (ii)(B), a sample of solid waste or a sample of water, soil, or air which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to the requirements of Subchapters D and F when:

* * * * *

(18) Waste included as an exclusion under 40 C.F.R. § 261.4 (relating to exclusions) after December 31, 1984, is incorporated by reference and effective on the date established by the Federal regulations unless otherwise established in this title.

(d) *Special requirements for hazardous waste generated by small quantity generators.*

(1) A generator is a small quantity generator if he generates in a calendar month less than 1000 kilograms of hazardous waste in that month except those listed in subsection (d)(2)(i) and (ii).

* * * * *

(3) When a small quantity generator becomes a large quantity generator he shall notify the Department as

specified in § 75.267 and comply with applicable requirements of this chapter.

(4) If a small quantity generator accumulates hazardous waste on-site at any time more than the quantities specified in paragraph (1) or (2), he is subject to the requirements of this chapter for those accumulated waste for which the accumulation limit was exceeded. The 90-day accumulation period applied to generators as specified in § 75.262(g) will begin for small quantity generators when the accumulated waste exceed the applicable exclusion levels specified in paragraphs (1) or (2).

* * * * *

(7) In order for a small quantity generator of hazardous waste to be excluded from the requirements of §§ 75.262 — 75.265 and 75.270 — 75.282 he shall:

* * * * *

(9) A person or municipality whose status changes from a small quantity generator to a large quantity generator shall file a notification form with the Department under § 75.267 and shall comply with §§ 75.262 — 75.265, 75.270 — 75.282, and 75.301 — 75.335. A person or municipality who changes his status from a large quantity to a small quantity generator may notify the Department under § 75.267.

(10) If a small quantity generator mixes a solid waste with a hazardous waste so that the resultant mixture exceeds a quantity exclusion level of this section, the mixture is subject to regulation as a hazardous waste.

(e) *Special requirements for hazardous waste which is used, reused, recycled or reclaimed.*

(1) Except as provided in paragraph (2), a generator or transporter of hazardous waste identified in subsection (g) or an owner or operator of a facility which beneficially uses or reuses, or legitimately recycles or reclaims a hazardous waste that is being beneficially used or reused, legitimately recycled or reclaimed, transported, accumulated, stored or physically, chemically, or biologically treated prior to the beneficial use or reuse or legitimate recycling or reclamation shall be subject to the applicable notification, manifest, and quarterly report requirement of this chapter, except that a license for transportation is not required. This paragraph does not apply to materials produced by a generator which are destined to be recycled and which have a commercial value, have historically had a commercial value, have a history of routine commercial trade and have been so verified in writing by the Department.

(2) If the hazardous waste is a sludge, is listed in subsection (h) or contains one or more hazardous wastes listed in subsection (h), a generator, transporter, or owner or operator as indicated in paragraph (1) shall be subject to the following requirements with respect to such transportation or storage:

* * * * *

(iv) All applicable requirements of §§ 75.264, 75.265, 75.270 — 75.282, and Subchapter E.

* * * * *

(g) *Characteristics of hazardous waste.*

(1) *General.*

* * * * *

(ii) A hazardous waste, identified by a characteristic in this subsection but not listed as a hazardous waste in subsection (h), is assigned the hazardous waste number of the respective characteristic as set forth in this subsection. This number shall be used in complying with the notification requirements and certain recordkeeping and reporting requirements under §§ 75.262 — 75.282.

* * * * *

(2) *Characteristic of ignitability.*

(i) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(A) It is a liquid with a flash point less than 60°C. (140°F.), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, D-93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, or as determined by an equivalent test method approved by the Department under § 75.260(c). An aqueous solution containing less than 24% alcohol by volume is excluded from this definition.

* * * * *

(3) *Characteristic of corrosivity.*

(i) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(A) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* (also described in *Methods for Analysis of Water and Wastes* EPA 600/4-79-020, March 1979), or an equivalent test method approved by the Department under § 75.260(c).

* * * * *

(5) *Characteristic of EP toxicity.*

(i) A solid waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Department under § 75.260(c), the extract from a representative sample of the waste contains the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5% filterable solids as determined by the test procedure described in Appendix II, the waste itself, after filtering, is considered to be the extract for the purposes of this subsection.

* * * * *

(h) *Lists of hazardous wastes.*

(1) *General.*

(i) A solid waste is a hazardous waste if it is listed or referenced in this subsection unless it has been exempted under § 75.260.

(ii) This subsection incorporates by reference the Federal hazardous waste lists promulgated under RCRA at 40 C.F.R. Part 261, Subpart D (relating to list of hazardous waste) and 40 C.F.R. §§ 261.30(b) and 261.33(e) and (f) (relating to discarded commercial chemical products, off specification species, container residues and spill residues thereof) pertaining to the lists. In Appendix VII of Part 261, total chromium replaces hexavalent chromium as a basis for listing hazardous waste.

(iii) Each hazardous waste listed or referenced in this subsection is assigned a hazardous waste number which precedes the name of the waste. This number shall be used in complying with the notification requirements and certain recordkeeping and reporting requirements under §§ 75.262 — 75.282 and Subchapter E.

(2) *List of hazardous waste from nonspecific sources.* The list of hazardous wastes from non-specific sources promulgated under RCRA at 40 C.F.R. § 261.31 (relating to hazardous waste from nonspecific

sources) is incorporated by reference. Additions, revisions, or deletions to the list adopted by EPA are incorporated into this chapter and are effective on the date established by the Federal regulations, unless otherwise established by regulation of the Department.

(3) *List of hazardous waste from specific sources.* The list of hazardous waste from specific sources promulgated under RCRA at 40 C.F.R. § 261.32 (relating to hazardous waste from specific sources) is incorporated by reference. Additions, revisions or deletions to the list adopted by EPA are incorporated into this chapter and are effective on the date established by the Federal regulations, unless otherwise established by regulation of the Department.

(4) *Commercial chemical products.* The following containers and commercial chemical products, off specification species, and spill residues thereof are hazardous wastes if and when they are discarded or intended to be discarded:

* * * * *

(v) The list of discarded commercial chemical products, off-specification species, container residues, and spill residues promulgated under RCRA at 40 C.F.R. § 261.33(e) is incorporated by reference. Additions, revisions to, or deletions from the list adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this title.

(vi) The list of discarded commercial chemical products, off-specification species, container residues, and spill residues promulgated under RCRA at 40 C.F.R. § 261.33(f) is incorporated by reference. Additions, revisions to, or deletions from the list adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this title.

(5) *Appendices.*

(i) *Appendix I. Representative Sampling Methods.* The text of Appendix I promulgated under RCRA at 40 C.F.R. Part 261 (relating to identification and listing of hazardous wastes) entitled *Representative Sampling Methods* is incorporated by reference. Revisions to the appendix adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this chapter.

(ii) *Appendix II. EP Toxicity Test Procedure.* The text of Appendix II promulgated under RCRA at 40 C.F.R. Part 261 entitled *EP Toxicity Test Procedure* is incorporated by reference. Revisions to the appendix adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this chapter.

(iii) *Appendix III. Chemical Analysis Test Methods.* The text of Appendix III promulgated under RCRA at 40 C.F.R. Part 261, entitled *Chemical Analysis Test Methods* is incorporated by reference. Revisions to the appendix adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise establishlished in this chapter.

(D) *Appendix VII. Basis for Listing Hazardous Waste.* The text of Appendix VII promulgated under RCRA at 40 C.F.R. Part 261 entitled *Basis for Listing Hazardous Waste* is incorporated by reference, except that where hexavalent chromium is specified, it shall be replaced by total chromium as a basis for listing hazardous waste. Revisions to the appendix adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this chapter.

(E) *Appendix VIII. Hazardous Constituents.* The text of Appendix VIII promulgated under RCRA at 40 C.F.R. Part 261 entitled *Hazardous Constituents* is incorporated by reference. Revisions to the appendix adopted by EPA are incorporated into this chapter and are effective on the date established by Federal regulations, unless otherwise established in this chapter.

§ 75.262. Generators of hazardous waste.

(a) *Scope.*

(1) This section establishes standards for a generator of hazardous waste identified in § 75.261 (relating to criteria, identification, and listing of hazardous waste) who is located in this Commonwealth. A generator who is located outside this Commonwealth and whose hazardous waste is designated for treatment, storage, or disposal in this Commonwealth shall be subject to the requirements of this section except subsections (g), (l), (m), and (n). Small quantity generators identified in § 75.261(d) are subject only to the requirements of subsection (b).

* * * * *

(4) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this section.

(b) *Hazardous waste determination.*

(1) A person or municipality who generates a solid waste as defined in section 103 of the act (35 P. S. § 6018.103) shall determine if that waste is a hazardous waste using the following procedures:

* * * * *

(iii) If the waste is not listed, in 75.261(h), he shall determine whether the waste is identified in § 75.261(g) by either:

(A) Testing the waste according to the methods set forth in § 75.261 or according to an equivalent method approved by the Department under § 75.260(c) (relating to definitions and requests for determinations).

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

* * * * *

(c) *Identification numbers.*

* * * * *

(2) A generator who has not received an identification number may obtain one by applying to the Department using DER Form ER-SWM-53. Upon receiving the request, the Department will assign an identification number to the generator.

* * * * *

(e) *Manifest.*

(1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare a manifest according to the instructions supplied with the manifest.

(2) A generator who transports or offers for transportation hazardous waste for off-site treatment, storage, or disposal in this Commonwealth shall obtain the manifest from the Department.

(3) A generator who transports or offers for transportation hazardous waste for off-site treatment, storage, or disposal outside this Commonwealth shall obtain the manifest from the destination state.

(4) If the destination state does not supply the manifest, the generator shall obtain the manifest from the Department.

(5) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(6) If the transporter is unable to deliver the hazardous waste to the designated facility, the generator shall instruct the transporter to return the waste to the generator, or shall prepare a new manifest designating another facility which is permitted to handle the waste and deliver the new manifest to the transporter.

(7) The generator shall provide the following information on each manifest he prepares before the off-site transportation of the manifested waste occurs:

(i) The generator's EPA ID Number and the unique five digit number assigned to this manifest by the generator — EPA manifest document number.

(ii) Total number of pages used to complete the manifest.

(iii) The name, mailing address, and telephone number of the generator.

(iv) The State manifest document number assigned by the Department.

(v) Each transporter's company name, EPA ID Number, Pennsylvania Hazardous Waste Transporter License Number, and telephone number.

(vi) The designated facility's name, site address, EPA ID Number, and telephone number.

(vii) The United States Department of Transportation Proper Shipping Name, Hazard Class, and ID Number — UN or NA — for each waste as identified by 49 C.F.R. §§ 171 — 177 (relating to hazardous materials regulations).

(viii) The number of containers and container type, and the total quantity of the waste by either weight or volume.

(ix) The hazardous waste numbers for each waste.

(x) The physical state and hazard codes for each waste.

(xi) Special handling instructions and any necessary additional information for proper handling and treatment of the waste during transportation.

(xii) The generator's written certification stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations, and all applicable State laws/regulations."

"Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment."

(xiii) The printed or typed name and the signature of the generator's authorized representative and the date of the shipment.

(xiv) The printed or typed name and the signature of each transporter's authorized representative and each date of receipt.

(xv) The printed or typed name and the signature of the designated facility's authorized representative and the date of receipt.

(xvi) A continuation sheet, EPA Form 8700-22A, when there are more than two transporters, or for lab packs when there are more than four different waste streams in one shipment.

(8) If there are more than four different streams in one shipment, except for lab packs, the generator shall complete another manifest according to the instructions.

(9) The manifest shall consist of eight copies.

(10) The generator shall read and sign by hand the certification statement on the manifest.

(11) The generator shall obtain the printed or typed name, the handwritten signature of the initial transporter, and the date of acceptance on the Manifest before the shipment is transported off-site.

(12) The generator shall detach Copies 6, 7, and 8 of the manifest.

(13) A generator located in this Commonwealth and designating a facility in this Commonwealth shall retain Copies 6, 7, and 8 of the manifest for his records under subsection (h).

(14) A generator located outside this Commonwealth and designating a facility in this Commonwealth shall submit copy 6 of the manifest to the Department and copy 7 to the generator state within 7 days of the date of the shipment and retain copy 8 for his records under subsection (h).

(15) A generator located in this Commonwealth and designating a facility within a state that does not supply the manifest shall submit copy 7 of the manifest to the Department and copy 6 to the destination state within 7 days of the date of the shipment and retain copy 8 for his records under subsection (h).

(16) A generator located in this Commonwealth and designating a facility within a state that supplies the manifest shall provide the information and distribute the copies as required by the manifest in accordance with the instructions supplied with the manifest and retain one copy for his records under subsection (h).

(17) The generator shall ensure that the required information on all copies of the manifest is capable of being read.

(18) The generator shall give the transporter the remaining copies of the manifest.

(19) Hazardous waste designated for treatment, storage, or disposal in this Commonwealth and shipped solely by railroad or solely by water — bulk shipments only — the generator shall send the remaining copies of the manifest dated and signed under this subsection to the owner or operator of the designated facility within 7 days of the date of the shipment. Copies of the manifest are not required for each transporter.

(20) Copies of the manifest retained by the generator under this subsection shall be furnished to the Department upon request.

* * * * *

(i) *Quarterly report.*

(1) A generator who ships hazardous waste off-site shall submit quarterly reports:

(i) To the Department on a form designated by the Department. The form shall contain as a minimum the following information.

* * * * *

(D) The name, identification number, and address of each HWM facility. For exported shipments, the report shall give the name and address of the foreign facility.

* * * * *

(2) A generator who treats, stores, or disposes of only his own hazardous waste at an on-site facility may not submit quarterly reports to the Department. The generator shall, however, submit an annual report to the Department under §§ 75.264(m)(3) or 75.265(m)(3) (relating to new and existing hazardous waste management facilities applying for a permit and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) as applicable.

* * * * *

§ 75.263. Transporters of hazardous waste.

(a) *Scope.*

(1) This section applies to a person or municipality who transports hazardous wastes which are generated, stored, treated or disposed of in this Commonwealth, except that transporters transporting hazardous waste through this Commonwealth, neither picking up or delivering hazardous waste in this Commonwealth, need only comply with the EPA transporter requirements in 40 C.F.R. § 263 (relating to standards applicable to transporters of hazardous waste).

* * * * *

(b) *Identification number.*

* * * * *

(2) A transporter who has not received an identification number may obtain one by applying to the Department using Department form ER-SWM-53. Upon receiving the request, the Department will assign an identification number to the transporter.

* * * * *

(d) *Manifest.*

(1) A transporter may not accept hazardous waste from a generator or another transporter unless it is accompanied by a manifest which has been completed and signed by the generator under § 75.262.

(2) Before transporting the hazardous waste, the transporter shall print or type his name, sign, and date the manifest and, by his signature, acknowledge his acceptance of the hazardous waste from the generator. Before leaving the generator's property the transporter shall return to the generator the appropriate number of signed copies of the manifest according to the instructions supplied with the manifest.

(3) The transporter shall ensure that the manifest accompanies the hazardous waste.

(4) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(i) Obtain on the manifest the date of delivery, the printed or typed name, and the handwritten signature of the subsequent transporter or of the owner, operator or authorized representative of the designated facility.

(ii) Retain one copy of the manifest according to the instructions supplied with the manifest under subsection (f).

(iii) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(5) The requirements of paragraphs (3) and (4) do not apply to water — bulk shipment — transporters if:

(i) The hazardous waste is delivered by water — bulk shipment — to the designated facility.

(ii) A shipping paper containing all the information required on the manifest — excluding the EPA ID Numbers, generator certification, signatures, and optional state information — accompanies the hazardous waste.

(iii) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper.

(iv) The person delivering the hazardous waste to the initial water — bulk shipment — transporter obtains the date of delivery, the printed or typed name, and signature of the water — bulk shipment — transporter on the manifest and forwards it to the designated facility within 7 days of the date of delivery.

(v) A copy of the shipping paper or manifest is retained by each water — bulk shipment — transporter in accordance with the instructions supplied with the manifest and subsection (f).

(vi) The remaining copies of the manifest are forwarded to the designated facility.

(6) For shipments involving rail transportation, the requirements of paragraphs (3), (4), and (5) do not apply and the following requirements do apply:

(i) When accepting hazardous waste from a nonrail transporter, the initial rail transporter shall:

(A) Sign and date the manifest acknowledging acceptance of the hazardous waste.

(B) Return a signed copy of the manifest according to the instructions supplied with the manifest to the nonrail transporter.

(C) Forward the remaining copies of the manifest to one of the following:

(I) The next nonrail transporter, if any.

(II) The designated facility, if the shipment is delivered to that facility by rail.

(III) The last rail transporter designated to handle the waste in the United States.

(D) Retain one copy of the manifest and shipping paper in accordance with the instructions supplied with the manifest and subsection (f).

(ii) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest — excluding the EPA identification numbers, generator certification, and signatures — accompanies the hazardous waste at all times.

(iii) Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(iv) When delivering hazardous waste to the designated facility, a rail transporter shall:

(A) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper if the manifest has not been received by the facility.

(B) Retain one copy of the manifest according to the instructions supplied with the manifest or signed shipping paper in accordance with subsection (f).

(v) When delivering hazardous waste to a nonrail transporter, a rail transporter shall:

(A) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest.

(B) Retain one copy of the mani-

fest according to the instructions supplied with the manifest in accordance with subsection (f).

(vi) Before accepting hazardous waste from a rail transporter, a nonrail transporter shall sign and date the manifest and provide a copy to the rail transporter according to the instructions supplied with the manifest.

(7) Transporters who transport hazardous waste out of the United States shall:

(i) Indicate on the manifest the date the hazardous waste left the United States.

(ii) Sign the manifest and retain one copy in accordance with the instructions supplied with the manifest and subsection (f).

(iii) Return a signed copy of the manifest according to the instructions supplied with the manifest to the generator within 7 days of the date of delivery.

(8) The transporter shall deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to one of the following:

(i) The designated facility listed on the manifest.

(ii) The next designated transporter listed on the manifest.

(iii) The designated facility outside the United States listed on the manifest.

(9) If the hazardous waste cannot be delivered under paragraph (7), the transporter shall return the waste to the generator.

(10) A transporter of hazardous waste shall ensure that the shipment complies with all applicable United States Department of Transportation regulations and 67 Pa. Code Part I (relating to Department of Transportation).

(11) A transporter may not accept or transport a shipment of hazardous waste if one of the following occurs:

(i) The waste is in containers or packaging which are or appear to be leaking, damaged, or otherwise do not comply with § 75.262.

(ii) The waste is in containers or packaging not marked under § 75.262(f)(1)(iii).

(iii) The number and type of containers to be transported do not correspond with the number and type stated in the manifest.

* * * * *

(f) *Recordkeeping.*

* * * * *

(2) For shipments delivered to the designated hazardous waste management facility in bulk by rail or water, each rail or water transporter shall retain a copy of a shipping paper containing all the information required in subsection (d) for a period of 20 years.

* * * * *

(g) *Hazardous waste discharge or spills.*

* * * * *

(6) A transporter of hazardous waste shall develop and implement a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste. The transporter shall develop the plan in accordance with the Department's guidelines for contingency plans and shall submit such plan to the Department as the Department prescribes for its written approval.

(7) A transporter utilizing in-transit storage of hazardous waste for periods of not more than 5 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention, and contingency plan in addition to the transporter contingency plan and will be approved by the Department in writing.

(8) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention, and contingency plan in addition to the transporter contingency plan and will be approved by the Department in writing.

* * * * *

§ 75.264. New and existing hazardous waste management facilities applying for a permit.

(a) *Scope.*

(1) Except as provided in paragraph (4), this section establishes the following:

(i) The minimum standards for new hazardous waste management facilities as defined in § 75.260 (relating to definitions and request for determinations) and for existing hazardous waste management facilities subject to the requirements of § 75.265(z) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and §§ 75.270 — 75.282 (relating to hazardous waste management permit program).

(ii) The minimum standards for the closure and post-closure care of a hazardous waste surface impoundment, waste pile, land treatment or landfill facility that accepted hazardous waste on or after July 26, 1982 which does not have a hazardous waste permit and is required to have post-closure ground-water monitoring under subsection (n). These HWM facilities shall be subject to all applicable requirements of this section, and shall also apply for and obtain a permit for any post-closure care required under subsection (o) in accordance with the procedures set forth in § 75.265(z) and §§ 75.270 — 75.282. These HWM facilities will not be required to meet the liner requirements and groundwater isolation distance requirements as specified in subsections (s), (t), (u), or (v) for post-closure permitting, unless otherwise specified by the Department. These HWM facilities will be required to meet applicable cap requirements of subsections (s), (t), (u), or (v) for post-closure permitting.

(2) The standards of this section apply to:

(i) A person or municipality who treats, stores, or disposes of hazardous waste unless otherwise specified in this section or § 75.261(d) or (e) (relating to criteria, identification, and listing of hazardous waste).

(ii) A person or municipality disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C.A. §§ 1401 — 1445, only to the extent they are included in a permit-by-rule granted to the person under § 75.270 (relating to the hazardous waste permit program). This section does apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.

(iii) A person or municipality disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act, 42 U.S.C.A. §§ 300f — 300j-10, only to the extent they are required by 40 C.F.R. 144.14 (relating to requirements for wells injecting hazardous waste) and § 75.270. This section does apply to the above-ground treat-

ment or storage of hazardous waste before it is injected underground.

(3) The requirements of this section do not apply to the following:

* * * * *

(ix) A licensed transporter storing manifested shipments of hazardous waste in containers that meet the requirements of § 75.262(f) (relating to generators of hazardous waste) at a transfer facility for a period of 5 days or less.

* * * * *

(d) *Security.*

* * * * *

(3) Unless the owner or operator has successfully demonstrated under subsection (d)(1), a sign with the legend, "Danger — Unauthorized Personnel Keep Out" shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and any other language predominant in the area surrounding the facility. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background. Existing signs with other legends may be used provided that the legend in the sign indicates that only authorized personnel are allowed to enter the active portion and entry into the active portion can be dangerous.

* * * * *

(e) *General inspection and construction inspection requirements.*

* * * * *

(3) The frequency of the inspection may vary for the items on the schedule; however, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or an operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. The inspection schedule shall be submitted with Part B of the permit application under § 75.265(z). At a minimum, the inspection schedule shall include the terms and frequencies of inspections required under subsections (d) and (q) — (w), and § 75.265(x) and (y).

* * * * *

(g) *General requirements for ignitable, reactive, or incompatible wastes.*

* * * * *

(2) When specifically required by other subsections of this section, the owner or operator of a facility that treats, stores, or disposes of ignitable or reactive waste, or mixes incompatible wastes or incompatible waste and other materials, shall take precautions to prevent reactions which:

(i) Generate extreme heat or pressure, fire or explosion, or violent reactions.

* * * * *

(i) *Preparedness, Prevention, and Contingency (PPC) Plan and emergency procedures.*

* * * * *

(12) Whenever there is an imminent or actual emergency situation, the emergency coordinator shall immediately:

* * * * *

(ii) Notify State and local agencies with designated response roles if their help is needed.

* * * * *

(j) *Manifest system and discrepancy reporting.*

(1) The requirements in this subsection apply to owners and operators of off-site facilities and on-site facilities receiving hazardous waste from off-site sources except as otherwise provided in subsection (a). This subsection does not apply to owners and operators of on-site facilities that do not receive hazardous waste from off-site sources.

(2) Except as otherwise provided in paragraph (4), no owner or operator may accept hazardous waste shipments received from off-site sources unless the shipment is accompanied by the Department's manifest.

(3) The owner or operator of the facility, or his authorized representative, shall:

(i) Print or type his name, sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received.

(ii) Note significant discrepancies in the manifest, as defined in paragraphs (9) and (10), on each copy of the manifest.

(iii) Immediately give the transporter at least one copy of the signed manifest.

(iv) Detach copies 1, 2, 3, and 4 of the manifest.

(v) Within 7 days after the date of delivery, send copy 3 of the manifest to the generator.

(vi) If the generator is located in this Commonwealth, retain copies 1 and 2 at the facility for its records under paragraph (5).

(vii) If the generator is located outside this Commonwealth, within 7 days after the date of delivery, send copy 1 of the manifest to the Department and copy 2 to the generator state.

(viii) Retain at the facility copy 4 of the manifest for his records under paragraph (5).

(4) If a facility receives, from a rail or water — bulk shipment — transporter, hazardous waste which is accompanied by a shipping paper containing the information required on the manifest — excluding EPA ID Numbers, generator's certification, and signatures, and optional State information — the owner or operator, or his authorized representative, shall:

(i) Sign and date each copy of the manifest or shipping paper to certify that the hazardous waste covered by the manifest or shipping paper was received.

(ii) Note significant discrepancies in the manifest or shipping paper, as defined in paragraphs (9) and (10), on each copy of the manifest or shipping paper.

(iii) Immediately give the rail or water — bulk shipment — transporter at least one copy of the manifest or shipping paper.

(iv) Within 7 days after the date of delivery, send a copy of the manifest or shipping paper to the generator.

(v) Detach copies 1, 2, 3 and 4 of the manifest.

(vi) Within 7 days after the date of delivery, send copy 3 of the manifest to the generator.

(vii) If the generator is located in this Commonwealth, retain copies 1 and 2 for the owner or operator's records under paragraph (5).

(viii) If the generator is located outside this Commonwealth, within 7 days after the date of delivery, send copy 1 of the manifest to the Department and copy 2 to the generator state.

(ix) Retain a copy of each shipping paper and manifest for the owner or operator's records under paragraph (5).

(5) The owner or operator of the facility shall retain the required cop-

ies of the manifest and shipping paper, if signed in lieu of the Manifest at the time of delivery, for at least 20 years from the date of delivery.

(6) Copies of the manifest and shipping paper retained by the owner or operator under this subsection shall be furnished to the Department upon request.

(7) An owner or operator of a facility, or his authorized representative, who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal shall comply with § 75.262 and prepare a manifest in accordance with the instructions supplied with the manifest.

(8) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Department in writing at least 4 weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(9) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(i) For bulk waste, variations greater than 2.0% in weight.

(ii) For batch waste, a variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper, or differences in physical state, color, odor, and the like.

(10) If there is a significant manifest discrepancy, as defined in paragraph (9), the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, for example with telephone conversations, before the waste is treated, stored, or disposed at the facility. If the discrepancy is not resolved within 3 days after receiving the waste, the owner or operator shall immediately notify the appropriate Regional Office of the Department by telephone and send a letter to the Department describing the discrepancy and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.

(k) *Operating record.*

* * * * *

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

(i) A description and the quantity of each hazardous waste received, and the methods and dates of its treatment, storage, or disposal at the facility as required by Appendix I of this section. The quarterly report form may be used to record this information.

(ii) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram of each cell or disposal area. The maps or diagrams shall be drawn to scale and tied to permanently surveyed benchmarks. For all facilities, this information shall include cross-references to specific State manifest document numbers and EPA manifest document numbers, if the waste was accompanied by a manifest.

* * * * *

(vii) Closure cost estimates under § 75.319 (relating to cost estimate for closure and postclosure care) and for disposal facilities, all post-closure estimates under § 75.319.

* * * * *

(m) *Quarterly facility report and additional reports.*

(1) Except as otherwise provided by paragraph (3), the owner or operator of an on-site or off-site facility shall submit quarterly reports:

(i) To the Department on a form designated by the Department. The form shall contain as a minimum the following information:

* * * * *

(D) The name, identification number and address of each generator. For imported shipments the report shall give the name and address of the foreign generator.

(E) The description, Department of Transportation hazard class, and hazardous waste number, and date of treatment, storage, or disposal of the hazardous waste. For off-site facilities, this information must be listed by the identification number of each generator.

(F) The amount and units of measure of each hazardous waste in a shipment and the method of treatment, storage, or disposal for each hazardous waste.

* * * * *

(H) Signature and certification of the facility's owner or operator or an authorized representative.

* * * * *

(J) The most recent closure cost estimate under § 75.319 and for disposal facilities, the most recent post-closure cost estimate under § 75.319.

(K) The quarter and calendar year covered by the report.

* * * * *

(3) The owner or operator of a captive treatment or disposal facility or an on-site storage facility may not submit quarterly reports to the Department. The owner or operator of the facility shall, however, submit a single copy of an annual report to the Department, on a form specified by the Department, by March 1 of each year. The report shall describe facility activities during the previous calendar year and shall include, along with the date of the calendar year covered by the report, the information required in subsection (m)(1)(i)(A), (B), (E), (H), and (J), a description of each hazardous waste managed, the amount and units of measure of each hazardous waste managed, and the method of treatment, storage, or disposal for each hazardous waste for the calendar year covered by the report. This report shall be maintained for the life of the facility as a part of its operating record. These records shall be made available to the Department upon request.

(n) *Groundwater monitoring.*

* * * * *

(17) After the first year of background sampling, for a well in the monitoring system and for a parameter specified in paragraph (11), the owner or operator shall use the following statistical procedure in determining whether background values have been exceeded:

(i) If the level of constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00, then one of the following shall be used:

(A) The owner or operator shall take at least four portions from a

sample at a well at the compliance point and determine whether the difference between the mean of the constituent at a well — using the portions taken — and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Student's t-test as described in Appendix III of this section. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedure — with at least the same number of portions as used in the first test — with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred.

* * * * *

(o) *Closure and post-closure.*

(1) Except as otherwise provided in subsection (a), paragraphs (2) — (9) apply to owners and operators of all hazardous waste management facilities, and paragraphs (10) — (21) also apply to owners and operators of all hazardous waste disposal facilities except incinerators.

* * * * *

(3) The owner or operator of a hazardous waste management facility shall have a written closure plan. The plan shall be submitted with the permit application for approval in writing by the Department. The approved closure plan will become a condition of a HWM permit. The Department's decision shall assure that the approved closure plan is consistent with paragraphs (2) and (6) — (9), and the applicable closure requirements of subsections (q) — (w). A copy of the approved plan and all revisions to the plan shall be retained at the facility until closure is completed and certified in accordance with paragraph (9). The plan shall identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan shall include, at least:

(i) A description of how and when the facility will be partially closed, if applicable, and ultimately closed. The description shall identify the maximum extent of the operation which will not be closed during the life of the facility, and how the requirements of paragraphs (2) and (6) — (9), and the applicable closure requirements of subsection (q) — (w), and § 75.265(x) and (y) will be met.

* * * * *

(v) The latest closure cost estimate prepared in accordance with § 75.319, and when this estimate has been adjusted under § 75.319, the latest adjusted closure cost estimate.

* * * * *

(10) Post-closure care shall continue for 30 years after the date of completing closure and shall consist of at least the following:

(i) Monitoring and reporting as applicable.

* * * * *

(16) The owner or operator of a disposal facility shall have a written post-closure plan. The plan shall be submitted with the permit application and approved by the Department as part of the permit. The approved post-closure plan will become a condition of a HWM permit issued. A copy of the approved plan and all revisions to the plan shall be kept at the facility until the post-closure care begins. This plan shall identify the activities which will be conducted after closure and the frequency of those activities, and include at least:

(i) A description of the planned monitoring activities and frequencies at which they will be performed.

* * * * *

(iv) The latest post-closure cost estimate prepared under § 75.319 and, when the estimate has been adjusted under § 75.319, the latest adjusted post-closure cost estimate.

* * * * *

(18) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan shall be required at the same time if necessary to effectuate the purpose of this subsection, or if required in writing by the Department. The post-closure plan amendments shall be submitted to the Department prior to the actual change in plans or designs.

* * * * *

(21) If at any time the owner or operator or a subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation to the deed or instrument indicating the removal of the waste. Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless he can demonstrate under § 75.261 (relating to criteria, identification, and listing of hazardous waste) that solid waste removed is not a hazardous waste, becomes a generator of hazardous waste and shall manage it under applicable requirements of §§ 75.262 — 75.282.

(p) *Financial responsibility.* Applicants for permits, reissuance of permits, or modification of permits shall be subject to the financial responsibility requirements of Subchapter E (relating to financial responsibility requirements for hazardous waste storage, treatment, and disposed facilities).

(q) *Use and management of containers.*

* * * * *

(7) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of this section — shall not be placed in the same container, unless subsection (g)(2) is complied with.

(8) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material — See Appendix IV of this section.

* * * * *

(r) *Tanks.*

(1) This subsection shall apply to owners and operators of facilities that use tanks to treat or store hazardous waste except as otherwise provided in subsection (a). This section does not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection.

* * * * *

(4) Uncovered tanks shall be operated to ensure at least 60 centimeters — 2 feet — of freeboard to prevent overtopping by wave or wind action or by precipitation, unless the tank is equipped with an overflow alarm, an overflow device to a standby tank with a capacity equal to or exceeding the volume of the top 60 centimeters — 2 feet — of the uncovered tank, and a waste feed cutoff system.

* * * * *

(12) Incompatible waste, or incompatible wastes and materials, as set forth in Appendix IV of this section may not be placed in the same tank

except in compliance with subsection (g)(2).

* * * * *

(s) *Surface impoundments.*

* * * * *

(3) The following are the minimum general deseign standards required.

(i) A surface impoundment shall be designed, constructed, operated and maintained with sufficient freeboard to prevent overtopping of the dike by overfilling; wave action; normal or abnormal operations; wind action; rainfall; run-on; malfunctions of level controllers, alarms and other equipment; human error; or storms. There shall be at least 60 centimeters — 2 feet — of freeboard at all times, unless otherwise specified by the Department.

* * * * *

(xvii) Hazardous waste treated, stored or disposed of in a surface impoundment shall be underlain by a liner system. The surface impoundment liner system shall be designed with the following components, starting from the bottom of the system:

* * * * *

(B) A bottom liner — secondary liner — meeting the requirements specified in Appendix V, Table 3 of this section and capable of detecting and diverting any leachate that may bypass or leak through the primary liner. The secondary liner shall be constructed so as to divert all leachate or waste, to a collection sump or point where it can be collected for proper treatment, storage, or disposal with sufficient frequency to prevent backup into the flow zone. The slope requirements shall conform to the slope of the subbase.

* * * * *

(D) A top liner — primary — meeting the requirements specified in Appendix V, Table 3 of this section. A liner shall be constructed of materials that prevent wastes from migrating into the liner during the active life of the facility. If the surface impoundment is used for treatment or storage, then the liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or ground water or surface water, during the active life of the facility. For surface impoundments used for disposal, this liner shall be capable of diverting to a collection sump or point liquids or leachate passing through or generated within the hazardous wastes, where it can be collected for proper treatment, storage, or disposal with sufficient frequency to prevent backup into the surface impoundment.

* * * * *

(F) A cap which is capable of preventing the infiltration of liquid into closed portions of the surface impoundment. The cap shall have a permeability less than or equal to the permeability of the primary liner. The cap shall meet the minimum requirements specified in Appendix V, Table 3 of this section. It shall be placed on a stable 1 foot thick layer of intermediate cover material which has been compacted and graded to prevent damage to the cap. This requirement may be altered or waived if it is determined by the Department that capping is not necessary.

* * * * *

(xxi) During and after construction and installation, liner systems and cover systems shall be inspected for uniformity, damage, and imperfections, such as holes, cracks, thin spots, and foreign materials. Earth material liner systems shall be inspected for imperfections, including lenses, cracks, channels, root holes, or other structural nonuniformities, and shall be tested for compaction density, moisture content, and permeability after placement. Manufactured liner materials shall be inspected to ensure tight seams and joints and the absence of tears or blisters.

* * * * *

(xxx) For surface impoundments used for disposal, the closure and post-closure care shall conform to subsection (o) and the following specific requirements:

(A) After eliminating free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues, a final layer of cover material compacted to a minimum uniform depth of 2 feet shall be placed over the entire surface of the surface impoundment. The final cover shall be soils that fall within the United States Department of Agriculture (USDA) textural classes of sandy loam, loam, sandy clay loam, silty clay loam, and silt loam. Other final cover materials may be approved in writing by the Department. The soil shall compact well, not crack excessively when dry, and support a vegetative cover. The coarse fragment content — fragments not passing the No. 10 mesh sieve, 2 mm. — shall not exceed 50% by volume, and the combustible or coal content of both may not exceed 12% by volume. Boulders and stones as classified by USDA shall be excluded from soils used for cover material. The source and volume of final cover necessary and available shall be specified and supported by calculation.

* * * * *

(E) The owner and operator shall:

(I) Maintain the integrity and effectiveness of the final cover, including repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events.

(II) Maintain and monitor the leachate detection zone as required by permit or regulation.

(III) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of subsection (n).

(IV) Prevent run-off and runoff from eroding or otherwise damaging the final cover.

(F) During the post-closure care period, if liquids leak into the leachate detection zone the owner or operator shall notify the Department of the leak in writing within seven days after detecting the leak.

(xxxi) Closure of surface impoundments used for treatment or storage shall conform to the closure requirements of subsection (o), and, at closure, hazardous waste, hazardous waste residues and contaminated subsoils shall be removed from the impoundment. A component of the impoundment, a component of the liner system, or appurtenant structures or equipment — such as discharge platforms, pipes, baffles, skimmers, aerators, or other equipment — containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed. The wastes shall be subject to all applicable regulations. In the event the owner or operator is not able to close the surface impoundment under this subparagraph, the owner or operator shall comply with the closure and post-closure care requirements for surface impoundments used for disposal under subparagraph (xxx). At the time of permit application, the owner or operator shall include as part of his closure and post-closure plans:

(A) Contingent closure and post-closure plans for complying with applicable requirements of subparagraph (xxx).

(B) Cost estimates for complying with the contingent closure and post-closure plans need not include the cost of removing all hazardous waste, hazardous waste residues, contaminated subsoils, or a component of the liner system, or appurtenant structures or equipment.

* * * * *

(4) The following are the minimum general operating standards for surface impoundments:

* * * * *

(iii) The owner or operator shall inspect the following as specified below and after storms:

(A) The freeboard level at least once each operating day to detect any sudden drops in liquid level and also to insure the minimum freeboard level is being maintained.

* * * * *

(D) Systems to control overtopping, weekly for deterioration, malfunctions or improper operation.

* * * * *

(v) Incompatible wastes, or incompatible wastes and materials, see Appendix IV of this section, shall not be placed in the same surface impoundment, unless subsection (g)(2) is complied with and unless approved in writing by the Department.

* * * * *

(vii) Whenever there is an indication of a possible failure of the surface impoundment, such as leaks or sudden drops in the liquid level, and the drop is not known to be caused by a controlled change in the flow into or out of the impoundment, the impoundment shall be inspected under the Surface Impoundment Evaluation and Repair (SIER) Plan required by subparagraph (x).

* * * * *

(ix) If the surface impoundment is removed from service as required by subparagraph (viii) the owner or operator shall:

* * * * *

(C) Immediately take measures which will stop the leak.

(D) If the leak cannot be stopped by any other means, empty the impoundment.

(E) Take any other necessary steps to stop or prevent catastrophic failure.

(F) Notify the appropriate Regional Office of the Department of the problem immediately by telephone and file a written report within 7 days after detecting the problem describing the nature of the problem and the measures taken to remedy the problem.

* * * * *

(xii) A surface impoundment that has been removed from service due to failure and that is not being repaired shall be closed under paragraph (3)(xxx) for surface impoundments used for disposal or paragraph (3)(xxxi) for surface impoundments used for treatment or storage.

* * * * *

(5) The Department will specify or reference in the permit design and operating practices which the Department deems necesesary to ensure that the requirements of this subsection are satisfied. The Department may also require a permittee to take any measures, whether or not specified or referenced in the permit, reasonable or necessary to ensure compliance with the act and this subchapter or necessary to protect public health and environment.

(t) *Waste piles.*

* * * * *

(38) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of this section — may not be placed in the same pile, unless subsection (g)(2) is complied with. A pile of hazardous waste that is incompatible with waste or other material stored nearby in other containers, piles, open tanks, or a surface impoundment shall be separated or protected from the other materials by means of a dike, berm, wall, or other device.

* * * * *

(46) The Department will specify or reference in the permit design and operating practices which the Department deems necessary to ensure that the requirements of this subsection are satisfied.

* * * * *

(u) *Land treatment.*

* * * * *

(21) The applicant, in addition to requirements listed in subsection (n), shall submit for written Department approval an Unsaturated Zone Monitoring Plan. In this plan, the applicant shall provide for:

* * * * *

(vii) Notifying the Department in writing within 7 days after the owner or operator determines, under subparagraph (vi), that there is a statistically significant increase of waste constituents below the treatment zone. The notification shall include the chemical analyses used, and shall specify which constituents have shown statistically significant increases. Following the notification, and dependent on the results of the analyses, the Department may require cleanup, closure, or both. The owner or operator shall submit to the Department, within 90 days of determining a significant increase, an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

* * * * *

(29) The owner or operator may not place incompatible waste, or incompatible waste and materials — see Appendix IV of this section for examples — in or on the same treatment zone, unless subsection (g)(2) is complied with.

* * * * *

(v) *Landfills.*

* * * * *

(3) The following are the minimum general design standards required:

* * * * *

(xiv) All hazardous waste disposed of in a landfill during its active life shall be completely underlain by a liner system and completely enclosed by a liner and cap system at closure. The liner shall be installed to cover all surrounding earth likely to be in contact with the waste or leachate. The landfill liner and cap system shall be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation and the stress of daily operation. The landfill liner and cap system shall also be designed and constructed with the following components starting from the bottom of the system:

* * * * *

(B) A bottom liner — secondary liner — meeting the requirements specified in Appendix V, Table 3 of this section and capable of detecting and diverting leachate that may bypass or leak through the primary

liner. The secondary liner shall be constructed so as to divert all leachate or waste, to a collection sump or point where it can be collected for proper treatment, storage, or disposal with sufficient frequency to prevent backup into the flow zone. The slope requirements shall conform to the slope of the subbase.

* * * * *

(D) A top liner — primary — which meets the requirements specified in Appendix V, Table 3 of this section. Liners shall be constructed of materials that prevent wastes from migrating into the liner during the active life of the facility and shall be capable of diverting into a collection sump or point, all liquids or leachate passing through within the hazardous waste, where it can be collected for proper treatment, storage, or disposal with sufficient frequency to prevent backup into the landfill.

(E) A protective cover zone/leachate collection zone, a minimum of 1 foot thick capable of protecting the primary liner from the hazardous waste and capable of allowing free flow of all liquids and leachate passing through or generated within the hazardous waste. The protective cover shall be stable, uniform, smooth, free of debris, plant material, or other foreign material and shall be constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated. The permeability of this zone shall be greater than 1 x 10^{-4} cm/sec and the maximum particle size shall be 0.25 inches. A perforated piping system shall be installed within the protective cover which is capable of intercepting the liquids and leachate within the protective cover zone and transmitting them to a collection sump or point, and capable of withstanding all anticipated loads. The piping system design and the pipe spacing, grade, and size shall insure that all liquids and leachate drain through the protective cover at a rate twice the maximum expected rate of infiltration through the waste above. This shall be supported with calculations and drawings. A positive projecting installation design of the piping system shall be used unless otherwise approved in writing by the Department. Stones or aggregate surrounding the pipes shall be large enough to prevent clogging of the pipe and fine enough to prevent damage to the liner. Further measures to prevent clogging or damage to the pipe and additional measures to prevent damage to the liner shall be installed if required by the Department.

(F) A cap which is capable of preventing the infiltration of liquid into closed portions of the landfill. The cap shall have a permeability less than or equal to the permeability of the primary liner. The cap shall meet the minimum requirements specified in Appendix V, Table 3 of this section. It shall be placed on a stable 1 foot thick layer of intermediate cover material which has been compacted and graded to prevent damage to the cap. This requirement may be altered or waived if it is determined by the Department that capping is not necessary.

* * * * *

(xvi) The outer perimeter of all liners, caps, and liner and cover systems shall be well protected and well marked through all stages of construction, closure and final closure.

* * * * *

(xxvi) Closure of a landfill shall conform to subsection (o) and the following specific requirements:

* * * * *

(E) The cover system in conjunction with the cap shall also:

(I) Minimize the migration of liquids for the life of the facility through the closed landfill.

(II) Function with minimum maintenance.

(III) Promote drainage and minimize erosion or abrasion of the cover.

(IV) Accommodate settling and subsidence of the landfill so that the cover's integrity is maintained.

(F) After final closure, the owner or operator shall comply with all post-closure requirements contained in subsection (o), including maintenance and monitoring, throughout the post-closure care period. The owner or operator shall also:

(I) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events.

(II) Maintain and monitor the leachate detection zone as required by permit or regulation.

(III) Continue to operate the leachate collection and removal system until leachate is no longer detected.

(IV) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of subsection (n).

(V) Prevent run-on and runoff from eroding or otherwise damaging the final cover.

(VI) Protect and maintain all permanent surveyed benchmarks.

(G) During the post-closure care period, if liquid leaks into a leachate detection zone, the owner or operator shall notify the Department of the leak in writing within 7 days after detecting the leak.

* * * * *

(4) The following are the minimum general operating standards required:

* * * * *

(ii) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of this section — may not be placed in the same landfill unless paragraph (g)(2) is complied with and written approval from the Department is obtained. Incompatible wastes may not be mixed together in a landfill unless approved in writing by the Department.

* * * * *

(xix) While a landfill is in operation, the owner or operator shall inspect the following as specified and after storms:

(A) The run-on and runoff control systems at least weekly, for deterioration, malfunctions, or improper operation.

(B) The collection sump or point, at least daily, to detect leakage through the top liner. The owner or operator is not required to inspect the collection sump or point daily if:

(I) The collection sump or point is equipped with an alarm system capable of detecting any accumulation of liquids in the sump of 1 inch or greater.

(II) The alarm system is maintained in proper working order.

(III) The owner or operator has received prior written approval from the Department.

(C) Proper functioning of wind dispersal control systems, where present, at least weekly.

(D) The leachate collection and removal systems, at least weekly, for the presence of leachate and the proper functioning of the system.

(5) The Department will specify or reference in the permit design and operating practices which the Department deems necessary to ensure the

requirements of this subsection are satisfied.

(w) *Incinerators.*

* * * * *

(2) A permit shall be required for the construction and operation of an incinerator and related appurtenances. The permit shall include provisions for a trial burn as necessary to meet the requirements of paragraphs (27) — (30), except as otherwise provided for by paragraph (5) or (26).

(3) Before an owner or operator incinerates his own specific hazardous waste or a specific hazardous waste from a specific generator for the first time he shall submit to the Department an analysis of the waste including the following information either with the permit application or on a form specified by the Department. The following parameters of the waste feed shall be analyzed and quantified along with additional parameters as may be required by the Department in order to provide data as required by paragraph (9). Each analysis shall include sample data, sample methods, sample description and collection conditions, analysis data, and laboratory name, address, contact, and telephone number. All analyses submitted shall specify the analytical techniques utilized along with special preparation or deviation from accepted techniques:

(i) General properties.

* * * * *

(C) Heat value (BTU/lb.)

* * * * *

(G) Identification of hazardous organic constituents listed in 75.261, Appendix VIII which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in § 75.261, Appendix VIII which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for the exclusion stated. The waste analysis shall rely on analytical techniques specified in *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* (SW-846) or other equivalent method, under § 75.260(c).

* * * * *

(I) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods*, (SW-846) or other equivalent method under § 75.260(c).

* * * * *

(5) The owner or operator of a hazardous waste incinerator shall burn only wastes specified in his permit and only under operating conditions specified for those wastes. Other hazardous wastes shall be burned only after operating conditions have been specified in a new permit or a permit modification, or as otherwise approved by the Department in writing. Operating requirements for new wastes shall be based on the analyses required in paragraph (3) and trial burn results. In lieu of actual trial burn of the waste to be incinerated, alternative data from operational or other trial burns in which similar waste has been incinerated under similar conditions may be substituted to support the contention that a trial burn is not needed. The data shall demonstrate that the wastes and the incinerator units are sufficiently similar and shall include:

(i) A quantification of the Principal Organic Hazardous Constituents (POHC's) which the applicant has identified in the waste for which permit or approval is sought, and differences from the POHC's in the waste for which burn data are provided. The data shall demonstrate compliance with the performance standards in paragraph (6).

(ii) The engineering design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available including:

(A) Manufacturer's name and model number of incinerator.

(B) Type of incinerator.

(C) Linear dimension of incinerator unit, including cross sectional area of combustion chamber.

(D) Description of auxiliary fuel system (type/feed).

(E) Capacity of prime mover.

(F) Description of automatic waste feed cutoff systems.

(G) Stack gas monitoring and pollution control monitoring system.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating devices and control devices.

(iii) A description of the results submitted from previously conducted trial burns including:

* * * * *

(B) Methods and results of monitoring temperatures, waste feed rates, combustion gas velocity, and carbon monoxide.

* * * * *

(iv) 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 shall include those items listed in paragraph (3).

(v) The expected incinerator operation information to demonstrate compliance with paragraphs (6) and (7) including:

(A) Expected carbon monoxide (CO) level in the stack exhaust gas

(B) Waste feed rate.

(C) Combustion zone temperature

(D) Indication of combustion gas velocity.

(E) Expected stack gas volume flow rate, and temperature.

(F) Computed residence time for waste in the combustion zone.

(G) Expected hydrogen halide removal efficiency.

(H) Expected fugitive emissions and their control procedures.

(I) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(vi) Supplemental information the Department finds necessary to achieve the purposes of this subparagraph.

(6) An incinerator burning hazardous waste shall be designed, constructed, and maintained so that when operated under the operating requirements specified in paragraph (7), it will meet the following performance standards:

(i) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each Principal Organic Hazardous Constituent (POHC) designated in its permit or approval for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \left(1 - \frac{Wout}{Win}\right) \times 100\%.$$

Where:

Win = Mass feed rate of one POHC in the waste stream feeding the incinerator; and

Wout = Mass emission rate of the same POHC present in the exhaust emissions prior to release to the atmosphere.

(ii) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour — 4 pounds per hour — of hydrogen halide shall control hydrogen halide emissions so that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or 1.0% of the hydrogen halide in the stack gas prior to entering any pollution control equipment.

* * * * *

(8) Principal Organic Hazardous Constituents (POHC's) in the waste feed shall be treated to the extent required by the performance standards and shall be designed based on the following:

* * * * *

(ii) The POHC's shall be specified based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed. Organic constituents which represent the greatest degree of difficulty of incineration, or those present in large quantities or concentrations, are those most likely to be designated as POHC's.

(iii) The POHC's may also be determined based upon an acceptable ambient concentration (AAC) of the POHC's or by-products or both, and the physical characteristics of the incinerator and the surrounding environment. An AAC for a POHC is an ambient air quality standard as referenced in Chapter 131 (relating to ambient air quality standards) or the threshold limit value ($^{TLV}/100$) as contained in the Registry of Toxic Effects of Chemical Substances, or cited, or in the absence of either, the most stringent mammalian lethal dose — 50 percentile — as contained in the Registry of Toxic Effects of Chemical Substances and modified as follows:

(A) AAC (ug/m^3) = LC_{50} (mg/m^3)/50; or

(B) AAC (ug/m^3) = LD_{50} (mg/kg)/123.

(9) The owner or operator shall conduct, as a minimum, the following monitoring and inspection while incinerating hazardous waste, and record the data:

(i) Combustion temperature, waste feed rate, air feed rate, and combustion gas velocity on a continuous basis.

* * * * *

(25) The owner or operator of a new hazardous waste incinerator shall comply with all permit conditions for each of the applicable requirements of this subsection, including, but not limited to, allowable waste feeds and operating conditions necessary to meet the requirements of paragraph (7). The owner or operator shall also comply with the following standards:

(i) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in subparagraph (ii), not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall be those which will ensure compliance with the performance standards of paragraph (6), based on the Department's engineering judgment. The Department may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant.

(ii) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the performance standards of paragraph (6) and operating requirements of paragraph (7) and shall be in accordance with the approved trial burn plan.

(iii) 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 Department, the operating requirements shall be those most likely to ensure compliance with the performance standards of paragraph (6) based on the Department's engineering judgment.

(iv) For the remaining duration of the permit, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in paragraph (5), as sufficient to ensure compliance with the performance standards of paragraph (6).

(26) After consideration of the waste analysis included with Part B of the permit application, and documentation the applicant may include to demonstrate that the conditions in subparagraphs (i) and (ii), or the conditions of subparagraph (iii) are met, the Department, in establishing the permit conditions, may exempt the applicant from requirements of this subsection, except paragraphs (3), (4) and (10) if the applicant submits documentation that demonstrates that the following conditions are met:

(i) The Department finds that the waste to be burned is one of the following:

(A) Listed as a hazardous waste in § 75.261 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both.

(B) Listed as a hazardous waste in § 75.261 solely because it is reactive (Hazard Code R) for characteristics other than those in § 75.261(g)(4)(i)(D) and (E), and will not be burned when other hazardous wastes are present in the combustion zone.

(C) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under § 75.261.

(D) A hazardous waste solely because it possesses a reactivity characteristic described by § 75.261(g)(4)(i)(A) — (C), and (F) — (H), and will not be burned when other hazardous wastes are present in the combustion zone.

(ii) The waste analysis shows that the waste contains none of the hazardous constituents listed in § 75.261, Appendix VIII (relating to hazardous constituents), which would reasonably be expected to be in the waste.

(iii) The waste to be burned is one which is described by subparagraph (i)(A) — (D) and contains insignificant concentrations of the hazardous constituents listed in § 75.261, Appendix VIII. The Department may, in establishing permit conditions, exempt the applicant from requirements of this subsection, except paragraphs (3) and (4) — waste analysis — and paragraph (10) — closure — after consideration of the waste analysis included with Part B of the permit application, unless the Department finds that the waste will pose a threat to human health or the environment when burned in an in-

cinerator.

(27) Except as otherwise provided by paragraphs (5) or (26), a trial burn plan for conducting trial burns shall be submitted with the application for a permit. This plan shall include the following:

(i) An analysis of the waste as specified in paragraph (3).

(ii) A detailed engineering description of the incinerator for which the permit is sought including the following information:

(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 the combustion chamber.

(D) Description of the auxiliary fuel system — type/feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off systems.

(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 the waste for which the trial burn is planned including date, duration, quantity of waste to be burned, and other factors relevant to the Department's decision under paragraph (28)(ii).

(v) A detailed test protocol, including, for the 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, 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) For new incinerators, a statement identifying suggested conditions to comply with paragraphs (6) and (7) in accordance with paragraphs (25)(i) and (iii).

(ix) Additional or supplemental information as the Department 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 (28)(ii).

(28) After review of a trial burn plan, the Department will do the following:

(i) Based on the waste analysis data in the trial burn plan, specify as trial Principal Organic Hazardous Constituents (POHC's), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHC's will be specified by the Department in accordance with paragraph (8).

(ii) Approve a trial burn plan if it finds the following:

(A) The trial burn is likely to determine whether the incinerator performance standard required by paragraph (6) can be met.

(B) The trial burn itself will not present an imminent hazard to human health or the environment.

(C) The trial burn will help the Department to determine operating requirements to be specified under paragraph (7).

(D) The information sought in subparagraphs (ii)(A) and (B) cannot reasonably be developed through other means.

(29) After Department approval of the trial burn plan, the applicant shall do the following:

(i) During each approved trial burn, or as soon after the burn as is practicable, make the following determinations:

(A) A quantitative analysis of the trial POHC's in the waste feed to the incinerator.

(B) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC's, oxygen (O_2) and hydrogen halide.

(C) A quantitative analysis of the scrubber water — if any — ash residues and other residues, for the purpose of estimating the fate of the trial POHC's.

(D) A computation of destruction and removal efficiency (DRE), under the DRE formula specified in paragraph (6)(i).

(E) If the hydrogen halide emission rate exceeds 1.8 kilograms of hydrogen halide per hour — 4 pounds per hour — a computation of hydrogen halide removal efficiency under paragraph (6)(ii).

(F) A computation of particulate emissions, under paragraph (6)(iii).

(G) An identification of sources of fugitive emissions and their means of control.

(H) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(I) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(J) Other information as the Department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in paragraph (6) and to establish the operating conditions required by paragraph (7) as necessary to meet that performance standard.

(ii) Submit to the Department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all the determinations required in subparagraph (i). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Department.

(iii) After completion of the trial burn, submit to the Department data collected during any trial burn.

(iv) Certify data and reports under § 75.265(z)(13).

(30) Based on the results of the trial burn, the Department will set the operating requirements in the final permit in accordance with paragraph (7). The permit modification shall be treated as a minor modification under § 75.278(c)(1) (relating to causes for permit modification or revocation and reissuance).

(*Editor's Note:* Appendices I — V in their entirety will be moved upon codification from the end of § 75.265 to the end of § 75.264).

§ 75.265. Interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities.

(a) *Scope.*

* * * * *

(2) The standards of this section apply to a person or municipality who treats, stores, or disposes of hazardous waste who has fully complied with the requirements for interim status until either final administrative disposition of their permit application is made or until applicable closure and post-closure responsibilities under this section are fulfilled unless otherwise specified in this section or in § 75.261 (relating to criteria, identification and listing of hazardous waste). The standards of this section also apply to an owner or operator of a facility in existence on November 19, 1980, who have failed to provide timely notification as required by § 75.267 (relating to notification of hazardous waste activities) or failed to file a timely Part A of the permit application as required by this subchapter.

(3) The requirements of this section do not apply to the following:

* * * * *

(viii) A person or municipality disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research and Sanctuaries Act of 1972 33 U.S.C.A., §§ 1401 — 1445. The requirements of this section do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in paragraph (2).

(ix) A person or municipality disposing of hazardous waste underground by means of a Class I injection well which has received a permit under the Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act 42 U.S.C.A. §§ 300f — 300j-10. A Class I injection well is a well injecting hazardous waste beneath the lowest known underground source of drinking water. The requirements of this section do apply to the above ground treatment or storage of hazardous waste before it is injected underground and to all other wells used to inject hazardous waste underground.

(x) A licensed transporter storing manifested shipments of hazardous waste in containers that meet the requirements of § 75.262(f) (relating to generators of hazardous waste) at a transfer facility for a period of 5 days or less.

* * * * *

(d) *Security.*

* * * * *

(3) Unless exempt under paragraph (1), a sign with the legend, "Danger — Unauthorized Personnel Keep Out" shall be posted at each entrance to the active portion of a facility, and any other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and any other language predominant in the area surrounding the facility. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background. Existing signs with other legends may be used if the legend in the sign indicates that only authorized personnel are allowed to enter the active portion and entry into the active portion can be dangerous.

(e) *General inspection and construction inspection requirements.*

* * * * *

(3) The frequency of the inspection may vary for the items in the schedule. Frequency should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident of the deterioration or malfunction or an operator error goes undected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in subsections (d), and (q) — (y).

* * * * *

(i) *Preparedness, Prevention and Contingency (PPC) Plan and emergency procedures.*

* * * * *

(12) Whenever there is an imminent or actual emergency situation the emergency coordinator shall immediately:

* * * * *

(ii) Notify State and local agencies with designated response roles if their help is needed.

* * * * *

(j) *Manifest system and discrepancy reporting.*

(1) The requirements in this subsection apply to an owner or operator of an off-site facility or on-site facility receiving hazardous waste from an off-site source, except as specified in subsection 75.265(a). This subsection does not apply to an owner or operator of an on-site facility that does not receive hazardous waste from off-site sources.

(2) A hazardous waste shipment received from an off-site source shall be accompanied by the Department's manifest, except as under paragraph (4).

(3) The owner or operator of the facility, or his authorized representative, shall do the following:

(i) Print or type his name, sign and date each copy of the manifest at the time the shipment is received to certify that the hazardous waste covered by the manifest was received.

(ii) Note significant discrepancies in the manifest, as defined in paragraphs (9) and (10), on each copy of the manifest.

(iii) Immediately give the transporter at least one copy of the signed manifest.

(iv) Detach copies 1, 2, 3, and 4 of the manifest.

(v) Within 7 days after the date of delivery, send copy 3 of the manifest to the generator.

(vi) If the generator is located in this Commonwealth, retain copies 1 and 2 for the owner or operator's records under paragraph (5).

(vii) If the generator is located outside of this Commonwealth, within 7 days after the date of delivery, send copy 1 of the manifest to the Department and copy 2 to the generator state.

(viii) Retain at the facility copy 4 of the manifest for the owner or operator's records under paragraph (5).

(4) If a facility receives, from a rail or water — bulk shipment — transporter, hazardous waste which is accompanied by a shipping paper containing the information required on the manifest, excluding EPA ID Numbers, generator's certification, and signatures, and optional State information, the owner or operator, or his authorized representative, shall do the following:

(i) Sign and date each copy of the manifest or shipping paper at the time the shipment is received to certify that the hazardous waste covered by the manifest or shipping paper was received.

(ii) Note significant discrepancies in the manifest or shipping paper — defined in paragraphs (9) and (10) — on each copy of the manifest or shipping paper.

(iii) Immediately give the rail or

water — bulk shipment — transporter at least one copy of the manifest or shipping paper.

(iv) Within 7 days after the date of delivery, send a copy of the manifest or shipping paper to the generator.

(v) Detach copies 1, 2, 3 and 4 of the manifest.

(vi) Within 7 days after the date of delivery, send copy 3 of the manifest to the generator.

(vii) If the generator is located in this Commonwealth, retain copies 1 and 2 for the owner or operator's records under paragraph (5).

(viii) If the generator is located outside of this Commonwealth, within 7 days after the date of delivery, send copy 1 of the manifest to the Department and copy 2 to the generator state.

(ix) Retain a copy of each shipping paper and manifest for the owner or operator's records under paragraph (5).

(5) The owner or operator of the facility shall retain the required copies of the manifest and shipping paper — if signed in lieu of the manifest at the time of delivery — for at least 20 years from the date of delivery.

(6) Copies of the manifest and shipping paper retained by the owner or operator under this subsection shall be furnished to the Department upon request.

(7) The owner or operator of a facility, or an authorized representative, who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall comply with § 75.262 (relating to generators of hazardous waste) and prepare a manifest in accordance with the instructions supplied with the manifest.

(8) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Department in writing at least 4 weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(9) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually received. Significant discrepancies in quantity include the following:

(i) For bulk waste, variations greater than 2.0% in weight.

(ii) For batch waste, a variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper, or differences in physical state, color, odor, and the like.

(10) Upon discovering a significant manifest discrepancy as defined in paragraph (9), the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter — for example with telephone conversations — before the waste is treated, stored, or disposed at the facility. If the discrepancy is not resolved within 3 days after receiving the waste, the owner or operator shall immediately notify the appropriate Regional Office of the Department by telephone and send a letter to the Department describing the discrepancy and attempts to reconcile it, and include a copy of the manifest or shipping paper at issue.

(k) *Operating record.*

* * * * *

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

(i) A description and the quantity of each hazardous waste received, and the methods and dates of its treatment, storage, or disposal at the facility as required by Appendix I of § 75.264. The Quarterly Report form may be used to record this information.

* * * * *

(m) *Quarterly facility report and additional reports.*

(1) The owner or operator of an off-site facility or on-site facility receiving hazardous waste from off-site sources shall submit quarterly reports.

(i) To the Department on a form designated by the Department. The form shall contain as a minimum the following information:

* * * * *

(D) The name, identification number, and address of each generator. For imported shipments of hazardous waste, the report shall give the name and address of the foreign generator.

(E) The description, Department of Transportation hazard class, and hazardous waste number of the hazardous waste. For off-site facilities, this information shall be listed by the identification number of each generator.

(F) The amount and units of measure of each hazardous waste in a shipment and the date and method of treatment, storage, or disposal for each hazardous waste.

* * * * *

(H) Signature and certification of the facility's owner or operator or his authorized representative.

* * * * *

(J) The most recent closure cost estimate under subsection (p), and § 75.319 (relating to cost estimate for closure and post-closure care) and for disposal facilities, the most recent post-closure cost estimate under subsection (p) and § 75.319.

(K) Monitoring data as required under subsection (n)(15), (18), and (19).

(L) The quarter and calendar year covered by the report.

* * * * *

(3) The owner or operator of a captive treatment or disposal facility or an on-site storage facility may not submit quarterly reports to the Department. The owner or operator of a facility shall submit a single copy of an annual report to the Department, on a form specified by the Department, by March 1 of each year. The report shall describe facility activities during the previous calendar year and shall include, along with the dates of the calendar year covered by the report, the information required in paragraph (1)(i)(A), (B), (E), (H), and (J), a description of each hazardous waste managed, the amount and units of measure of each hazardous waste managed, and the method of treatment, storage, or disposal for each hazardous waste. This form shall be maintained for the life of the facility as a part of its operating record. These records shall be made available to the Department upon request.

(4) The owner or operator of a captive treatment or disposal facility or on on-site storage facility shall submit reports to the Department as required under paragraph (n)(15), (18), and (19).

(n) *Groundwater monitoring.*

* * * * *

(8) The owner or operator, at a minimum, shall determine the concentrations or values of the following parameters in ground-water samples under paragraphs (9) — (11):

(i) Parameters characterizing the suitability of the ground water as a drinking water supply, as specified in Appendix II of § 75.264.

* * * * *

(14) For each indicator parameter specified in paragraph (8)(iii), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample for each well monitored in accordance with paragraph (11)(ii) and compare these results with its initial background arithmetic mean — calculated from the upgradient well, during the first year. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Student's t-test at the 0.01 level of significance — see Appendix III of § 75.264 — to determine statistically significant increase or decrease of pH or increase of other parameters over initial background.

* * * * *

(18) Unless the ground water is monitored to satisfy the requirements of paragraph (15)(iii), the owner or operator shall:

(i) Keep records of the analyses required in paragraphs (9) — (11), the associated groundwater surface elevations required in paragraph (12), and the evaluations required in paragraph (14) throughout the active life of the facility, and, for disposal facilities throughout the post-closure period as well.

(ii) Report the following groundwater monitoring information to the Department.

(A) During the first year, when initial background concentrations are being established for the facility, measurements of the parameters listed in paragraph (8)(i), for each ground-water monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose measurements were found to exceed the maximum contaminant levels listed in Appendix II of § 75.264.

(B) Semiannually: Measurements of the parameters listed in paragraph (8)(ii), for each groundwater monitoring well. The owner or operator shall separately identify significant differences from initial background found in the wells. During the active life of the facility, this information shall be submitted as part of the quarterly report required under subsection (m).

* * * * *

(o) *Closure and post-closure.*

* * * * *

(3) By May 19, 1981, the owner or operator shall have a written closure plan. This plan shall be submitted to the Department for written approval at such time in the application process as the Department may prescribe or as specified in paragraph (5), whichever is sooner. He shall retain a copy of the closure plan and revisions to the plan at the facility until closure is completed and certified. This plan shall identify the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan shall include at least:

(i) A description of how and when the facility will be partially closed, if applicable, and ultimately closed. The description shall identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of paragraphs (2), (7), (9), and (10) and the applicable closure requirements of subsections (q) — (y) will be met.

* * * * *

(6) The Department will provide the owner or operator and the public, through a newspaper notice, and the host municipality by letter, the opportunity to submit written comments on the closure plan and request modifications of the plan within 30 days of the date of the notice. The Department will also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Department will in writing modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved by the Department, the owner or operator shall modify the plan or devise a new plan, either of which shall be submitted for written Department approval within 30 days of notice of disapproval. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, this modified plan shall become the approved closure plan. The Department's decision will assure that the approved closure plan is consistent with the closure requirements of this subsection and the applicable closure requirements of subsections (r) — (y). A copy of this modified plan shall be mailed to the owner or operator.

(7) Within 90 days after receiving the final volume of hazardous waste, or 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the site, or dispose of on-site all hazardous waste in accordance with the approved closure plan. The Department may approve in writing a longer period if the owner or operator demonstrates one of the following:

(i) The activities required to comply with this subsection will, of necessity, take longer than 90 days to complete, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(ii) The facility has additional capacity under its permit, someone other than the present owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(8) The owner or operator shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes or 180 days after approval of the closure plan, whichever is later. The Department may in writing approve a longer closure period if the owner or operator demonstrates the following:

(i) The closure activities will, of necessity, take longer than 180 days to complete, and the owner or operator will continue to take measures necessary to ensure safety to human health and the environment.

(ii) The facility has additional capacity under its permit, someone other than the owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site, and the owner or operator will continue to take all

measures necessary to ensure safety to human health and the environment.

* * * * *

(14) The owner or operator of a disposal facility shall provide post-closure care in accordance with the approved post-closure plan for at least 30 years after the date of completing closure. The owner or operator may request the Department to allow some or all of the requirements for post-closure care to be discontinued or altered prior to the end of the 30 year period. The request shall include evidence demonstrating the secure nature of the facility that makes continuing the specified post-closure requirements unnecessary. Alternately, the Department may require the owner or operator to continue one or more of the post-closure care and maintenance requirements contained in the facility's post-closure plan for a specified period of time. The Department may do this if it finds there has been noncompliance with any applicable standards or requirements, or that the continuation is necessary to protect human health or the environment. At the end of the specified period of time, the Department will determine whether to continue or terminate post-closure care and maintenance at the facility. A person or municipality may request the Department to extend or reduce the post-closure care period based on cause. Requests for extension in the post-closure care period or alteration of post-closure care requirements must provide evidence that the extension is necessary to prevent threats to human health and the environment. These requests shall be considered by the Department only when they present new and relevant information not previously considered by the Department in accordance with the public notice and public hearing procedures specified in paragraph (18). After considering the comments, the Department will issue a final determination, based upon the criteria set forth in this paragraph. If the Department denies a request for modification of post-closure care requirements, the Department will send the owner or operator or person or municipality a brief written response giving a reason for the denial.

* * * * *

(16) The owner or operator may amend his post-closure plan at any time during the life, which includes post-closure care, of the disposal facility. The owner or operator shall amend his plan when changes in operating plans or facility design, or in monitoring or maintenance plans, or events which occur during the life of the facility, affect his post-closure plan. The plan shall be amended and submitted for written Departmental approval within 60 days of the proposed changes to the plan.

(17) The owner or operator of a disposal facility shall submit his post-closure plan to the Department at least 180 days before he expects to receive the final volume of waste. The owner or operator shall submit his post-closure plan to the Department no later than 15 days after:

* * * * *

(ii) Issuance of a judicial decree or Department compliance order to cease receiving waste or to close.

(18) The Department will provide the owner or operator and the public, through a newspaper notice, and the host municipality by letter, the opportunity to submit written comments on the post-closure plan and request modifications of the plan, including modification of the 30 year post-closure period required in paragraph (11), within 30 days of the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department does not approve the plan, the owner or operator shall modify the plan or submit a new plan for approval within 30 days of the disapproval. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the plan, the Department will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as specified in this paragraph. After considering the comments the Department will issue a final determination in the form of a modified plan. The modified plan shall become the approved post-closure plan. The Department shall base its decision upon the criteria required of the request under paragraph (14). A copy of the modified plan shall be mailed to the owner or operator.

* * * * *

(p) *Financial requirements.*

(1) Paragraph (2) applies to owners and operators of all hazardous waste facilities except as otherwise provided in subsection (a). Paragraph (5) applies only to owners and operators of disposal facilities.

* * * * *

(q) *Use and management of containers.*

* * * * *

(7) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same container, unless subsection (g)(2) is complied with.

(8) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material — see Appendix IV of § 75.264 — unless subsection (g)(2) is complied with.

* * * * *

(r) *Tanks.*

* * * * *

(12) Incompatible waste, or incompatible waste and materials — see Appendix IV of § 75.264 — shall not be placed in the same tank, unless in compliance with subsection (g)(2).

(13) Hazardous waste shall not be placed in an unwashed tank which previously held an incompatible waste or material unless in compliance with subsection (g)(2).

(s) *Surface impoundments.*

* * * * *

(4) Whenever a surface impoundment is to be used to chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment, or chemically treat hazardous waste with a substantially different process than any previously used in that impoundment, the owner or operator shall, before treating the different waste or using the different process, conduct waste analyses and trial treatment tests, or obtain written, documented information on similar treatment of similar waste under similar operating conditions to show that this treatment will comply with subsection (g)(2).

* * * * *

(9) If the owner or operator does not remove all the impoundment materials listed in paragraph (7), or does not make the demonstration described in paragraph (8), he shall close the impoundment and provide post-closure care as for a landfill under subsections (o) and (v)(7). If necessary to support the final cover specified in the approved closure plan, the owner or operator shall treat remaining liquids, residues, and soils by removal of liquids, drying, or other means.

* * * * *

(11) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same surface impoundment, unless subsection (g)(2) is complied with.

(t) *Waste piles.*

* * * * *

(5) If leachate or runoff from a pile is a hazardous waste, then either:

(i) The facility owner or operator shall do the following:

(A) Place the pile on an impermeable base that is compatible with the waste under the conditions of treatment or storage.

(B) Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(C) Design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(D) Ensure that collection and holding facilities, such as tanks or basins, associated with run-on and runoff control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

* * * * *

(8) Incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same pile, unless subsection (g)(2) is complied with.

* * * * *

(11) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components — for example liners, contaminated subsoils, and structures and equipment containiminated with waste and leachate — and manage them as hazardous waste, unless § 75.261(b)(4) applies. If after removing or decontaminating residues and making reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills in subsection (v).

(u) *Land treatment.*

* * * * *

(3) The owner or operator shall do the following:

(i) Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 25-year storm.

(ii) Design, construct, operate, and maintain a runoff management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm.

(iii) Ensure that collection and holding facilities — for example tanks or basins — associated with run-on and runoff control system shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(iv) Manage the facility to control wind dispersal if particulate matter may be subject to wind dispersal.

* * * * *

(10) Food chain crops shall not be grown on a land treatment facility receiving waste that controls cadmium unless the requirements of subparagraphs (i) — (iii) or the requirements of subparagraphs (iv) — (ix) are met:

* * * * *

(20) In addition to the requirements of subsection (o), during the closure and post-closure care period the owner or operator of a land treatment facility shall do the following:

(i) Maintain an unsaturated zone monitoring system, and collect and analyze samples from this system in a manner and frequency specified in the closure and post-closure plans, except that soil pore liquid monitoring may be terminated, if approved in writing by the Department, 90 days after the last application of waste.

(ii) Restrict access to the facility as appropriate for its post-closure use.

(iii) Assure that growth of food chain crops complies with paragraphs (7) — (10).

(iv) Control wind dispersal of hazardous waste.

(21) Ignitable or reactive wastes shall not be land treated unless approved by the Department and the following conditions are met:

(i) The waste is immediately incorporated into the soil so that the following applies:

(A) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste.

(B) Subsection (g)(2) is complied with.

(ii) The waste is managed in a way that it is protected from any material or conditions which may cause it to ignite or react.

(22) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same land treatment area, unless subsection (g)(2) is complied with.

(v) *Landfills.*

* * * * *

(2) The owner or operator of a landfill shall do the following:

(i) Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the landfill during peak discharge from at least a 25-year storm.

(ii) The owner or operator shall design, construct, operate and maintain a runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(iii) Ensure that collection and holding facilities — for example tanks or basins — associated with run-on and runoff control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

* * * * *

(7) The owner or operator shall place a final cover over the landfill, and the closure plan under subsection (o)(3) — (5) shall specify the function and design of the cover. In the post-closure plan, under subsection

(o)(15) — (17), the owner or operator shall include the post-closure care requirements of paragraph (10).

* * * * *

(11) Ignitable or reactive waste shall not be placed in a landfill unless approved by the Department and the following conditions are met:

(i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 75.261(g).

(ii) Subsection (g)(2) is complied with.

(12) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same landfill cell unless paragraph (g)(2) is complied with.

* * * * *

(y) *Chemical, physical, and biological treatment.*

* * * * *

(9) Incompatible wastes, or incompatible wastes and materials — see Appendix IV of § 75.264 — shall not be placed in the same land treatment process or equipment unless subsection (g)(2) is complied with.

* * * * *

(z) *Hazardous waste management permit program.*

(1) This subsection sets forth specific requirements for the Hazardous Waste Management (HWM) Permit program. In addition to these requirements, the following sections have been added which each HWM facility owner or operator of a new or existing HWM facility is subject to:

(i) Section 75.270 (relating to hazardous management waste permit program).

(ii) Section 75.271 (relating to exclusions from permit requirements).

(iii) Section 75.272 (relating to interim status facilities).

(iv) Section 75.273 (relating to general application requirements).

(v) Section 75.274 (relating to contents of Part A permit applications).

(vi) Section 75.275 (relating to standard conditions for permits).

(vii) Section 75.276 (relating to requirements for recording and reporting of monitoring results).

(viii) Section 75.277 (relating to schedules of compliance).

(ix) Section 75.278 (relating to cause for permit modification or revocation and reissuance).

(x) Section 75.279 (relating to revocation of permits).

(xi) Section 75.280 (relating to procedures for permit issuance, modification, revocation and reissuance, or revocation).

(xii) Section 75.281 (relating to public notice requirements).

(xiii) Section 75.282 (relating to public hearings).

* * * * *

(4) For an existing facility, timely notification completed under section 3010 of the Resource Conservation and Recovery Act (42 U.S.C. § 6930) and timely submission of Part A of the Consolidated Permit Application forms to EPA under 40 C.F.R. Part 122 (relating to national pollutant discharge elimination system) shall be deemed to satisfy the requirements of paragraphs (2)(i) and (ii), and (3)(i) and (ii).

(5) HWM facility owners or operators having interim status shall be treated as having been issued a permit until such time as final Department action on Part B of the permit application is made. During the Department's revision or subsequent review of Part A of the permit application, if it is determined that the HWM facility fails to meet the standards under this section or if the application is deficient, the Department will notify the owner or operator of the determination and may notify the HWM facility that it is no longer entitled to interim status.

* * * * *

(8) An owner or operator of an existing hazardous waste management facility shall submit Part A of the permit application to the Department no later than 6 months after the date of publication of regulations which first require compliance with the standards under this section, or shall submit Part A 30 days after the date a facility's owner or operator first becomes subject to the standards under this section whichever first occurs. If an 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 no later than the effective date of regulatory provisions listing or designating wastes as hazardous if the facility is treating, storing, or disposing of any of those newly listed or designated wastes. The owner or operator of a HWM facility who fails to comply with this requirement may not receive interim status as to wastes not covered by a filed Part A permit application.

* * * * *

(11) An applicant for a HWM permit shall, at a minimum, provide the information required in the Part A application form (Hazardous Waste Permit Application — Part A) and Part B application forms. The Department may require additional information. The Department will return incomplete applications to the applicant. An incomplete application does not contain the information required in paragraphs (18) — (21); the Part A and Part B application forms; and the information required in § 75.274. The Part B application form is comprised of the following properly completed modules and forms:

(i) The TSD Application Checklist.

(ii) The Module 9 form provided by the Department — general environmental, social and economic information.

(iii) The contractual consent of landowner — landowner consent form provided by the Department.

(iv) Other modules and forms the Department deems necessary for submitting a complete application.

(v) An application fee in the amount specified in paragraph (26).

* * * * *

(13) It shall be the operator's duty to obtain a permit and the owner and operator shall sign the permit application.

(i) The owner and operator shall sign the permit application as follows:

(A) If the owner or operator is a corporation, a responsible corporate officer shall sign the application. For the purpose of this clause, a responsible corporate officer is one of the following:

(I) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or another person who performs similar policy- or decisionmaking functions for the corporation.

(II) The manager of a manufacturing, production or operating facility employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million — in second-quarter 1980 dollars — if authority to sign documents has been assigned or delegated to the manager in accordance with corporate proce-

dures.

(B) If the owner or operator is a partnership or sole proprietorship, the general partner or the proprietor shall sign the application.

(C) If the owner or operator is a business entity or government agency other than a corporation, partnership, or sole proprietorship, a principal executive officer or ranking elected official shall sign the application. For purposes of this clause, a principal executive officer of a Federal agency includes one of the following:

(I) The chief executive officer of the agency.

(II) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(ii) Reports required by permits and other information requested by the Department shall be signed by a permittee or municipality described in subparagraph (i), or by an authorized representative. The Department shall be notified in writing of change in authorization. A person is an authorized representative only if the following applies:

(A) The authorization is made in writing by a person described in subparagraph (i).

(B) 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. An authorized representative may thus be either a named individual or an individual occupying a named position.

(C) The written authorization is submitted to the Department.

(iii) For certification, a person signing a document under subparagraph (i) and (ii) shall certify as follows: "I certify under penalty of law that this document and *all* attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(iv) If an authorization under subparagraph (ii) is no longer accurate because a different individual or a person in a different position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (ii) shall be submitted to the Department prior to or together with a report, information, or an application to be signed by an authorized representative.

(14) A publicly-owned treatment works (POTW) which accepts hazardous waste for treatment shall be deemed to have a HWM permit if the following conditions are met:

* * * * *

(ii) Complies with the conditions of that permit.

(iii) Complies with the following provisions:

(A) Section 75.264(b) (relating to new and existing hazardous waste management facilities applying for a permit).

(B) Section 75.264(j).

(C) Section 75.264(k).

* * * * *

(18) The following general information, at a minimum, shall accompany the submission of Part B applications for new and existing HWM facilities. The application shall also contain the information required under paragraph (11).

* * * * *

(20) The following specific information is required to be submitted with Part B of the application for all waste piles, landfills, surface impoundments, and land treatment facilities. For these HWM facilities, the application shall be submitted in two phases — Phases I and II — for written Department approval. These phases may be submitted separately or together.

* * * * *

(21) The following specific information is required to be submitted with Part B of the application for incinerators, tanks, thermal treatment facilities, chemical, physical, and biological treatment facilities, and storage facilities.

* * * * *

(23) A change to the design or operation that the Department deems does not need a permit modification under § 75.278(c) shall be considered minor and shall be shown on "as-built" drawings and indicated in the report required by paragraph (21)(iii)(E) and shall be made available to the Department upon request. Minor modifications shall require approval of the Department in writing.

(24) Except under paragraph (23), modification to the design or operation of a facility shall require a permit amendment under § 75.278.

* * * * *

§ 75.270. The hazardous waste permit program.

(a) A person or municipality may not own or operate a hazardous waste storage, treatment, or disposal facility unless the person or municipality has first obtained a permit for the facility from the Department, or as otherwise provided by § 75.265(z)(5) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).

(b) A hazardous waste treatment, storage, or disposal facility which has an NPDES permit shall also obtain a HWM permit issued under the act. A publicly owned treatment works (POTWs) receiving hazardous waste will be deemed to have a HWM permit for that waste if the facility complies with the requirements of § 75.265(z)(14).

(c) The owner or operator of an elementary neutralization unit or a wastewater treatment unit shall be deemed to have a HWM permit if the facility complies with the requirements of § 75.265(z)(17).

(d) Ocean disposal barges or vessels which accept hazardous waste for ocean disposal shall be deemed to have a HWM permit if the owner or operator:

(1) Has a permit for ocean dumping issued under 40 C.F.R. Part 220 (relating to general) authorized by the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. §§ 1401 — 1445).

(2) Complies with the conditions of that permit.

(3) Complies with the following:

(i) Section 75.264(b) (relating to reward existing hazardous waste management facilities applying for a permit).

(ii) Section 75.264(j).

(iii) Section 75.264(k)(1) and (2)(i).

(iv) Section 75.264(m).

(e) Injection wells which accept hazardous waste for disposal shall be deemed to have a HWM permit if the owner or operator:

(1) Has a permit for underground injection issued under the Federal rules at 40 C.F.R. Part 144 or 145 (relating to underground injection control program.)

(2) Complies with the conditions of that permit.

(3) Complies with the following:

(i) Section 75.267 (relating to notification of hazardous waste activities).

(ii) Section 75.264(b).

(iii) Section 75.264(j).

(iv) Section 75.264(k)(1) and (2).

(v) Section 75.264(m).

(vi) Section 75.264(f).

(vii) When abandonment is completed, the owner or operator shall submit to the appropriate Regional Office of the Department a copy of the certification required by 40 C.F.R. § 144.52(a)(6) (relating to establishing permit conditions).

(f) The issuance of a permit does not convey property rights or an exclusive privilege.

(g) A permit is not transferable or assignable to another person or municipality.

§ 75.271. Exclusions from permit requirements.

(a) In addition to exclusions under §§ 75.264(a) (relating to new and existing hazardous waste management facilities applying for a permit) and 75.265(a) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities), the Department will waive the HWM permit requirement for treatment, cleanup, or containment activities if the Department finds they were taken during an immediate response to the following situations:

(1) A discharge of a hazardous waste.

(2) An imminent and substantial threat of a discharge of hazardous waste.

(3) A discharge of a material which, when discharged, is a hazardous waste.

(b) A person or municipality who initiates or continues hazardous waste treatment, cleanup, or containment activities after the immediate response is over is subject to applicable requirements of §§ 75.265(z), 75.270 — 75.282, and 75.301 —75.335.

§ 75.272. Interim status facilities.

(a) *Requirements for interim status.* The owner or operator of an existing HWM facility as defined in § 75.260 (relating to definitions and requests for determinations) shall have interim status and be treated as having been issued a permit so long as the owner or operator has complied with the following:

(1) The requirements of § 75.267 (relating to notification of hazardous waste activities).

(2) The requirements of § 75.273 (relating to general application requirements) governing submission of Part A applications and the applicable requirements of § 75.265(z) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).

(b) *Deficiency of application.* If the Department has reason to believe upon examination of a Part A application that it fails to meet an applicable provision of this subchapter, it will notify the owner or operator in writing of the apparent deficiency. The notice will specify the grounds for the Department's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to the notification and to explain or cure the alleged deficiency in the Part A application. If after the notification and opportunity for response the Department determines that the application is deficient, it may take appropriate enforcement action including termination of the facility's interim status.

(c) *Operation during interim status.*

(1) The facility may not do the following during interim status:

(i) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application.

(ii) Employ processes not specified in Part A of the permit application.

(iii) Exceed the design capacities specified in Part A of the permit application.

(2) During interim status, an owner or operator shall comply with the interim status standards set forth in § 75.265.

(d) *Termination of interim status.* Interim status shall terminate when one of the following occurs:

(1) The Department makes a final administrative disposition of the permit application.

(2) The owner or operator fails to furnish a requested Part B application by the date specified by the Department, or fails to furnish in full the information required by the Part B application.

(3) The owner or operator fails to comply with the applicable interim status standards of § 75.265.

(4) The facility poses a substantial present or potential hazard to human health or the environment.

(5) The owner or operator fails to submit a Part A application or fails to furnish in full the information required by the Part A application.

§ 75.273. General application requirements.

(a) A person or municipality required to have a permit — including a new applicant and permittee with an expiring permit — shall complete, sign, and submit an application to the Department as described in § 75.265(z) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) and in § 75.270 — 75.282. A person or municipality owning or operating a facility currently having interim status shall apply for permits when required by the Department. A person or municipality covered by HWM permits-by-rule need not apply for individual permits so long as they comply with applicable requirements for a permit-by-rule.

(b) The permit applicant shall comply with the signature and certification requirements of § 75.265(z)(13).

(c) When a facility or activity is owned by one person or municipality but is operated by another person or municipality, the operator shall obtain a permit. The owner shall also sign the permit application submitted by the operator.

(d) An applicant for HWM permits shall provide applicable information required in § 75.265(z) and § 75.274 (relating to contents of the Part A permit applications) and shall supply the information on application forms specified by the Department.

(e) The Department will not process a permit unless it has received a complete application for a

permit. An application for a permit is complete when the Department receives the information required by § 75.265(z)(11).

(f) The owner or operator of a HWM facility with an effective permit shall submit a new complete application to the Department at least 180 days before the expiration date of the effective permit, unless permission for a later date is obtained in writing by the Department. An application may not be submitted later than the expiration date of the existing permit.

§ 75.274. Contents of Part A permit applications.

(a) An applicant for a HWM permit shall submit Part A of the HWM application.

(b) Part A of the HWM application shall include but not be limited to the following:

(1) A description of the activities conducted by the applicant for which it is required to obtain a HWM permit.

(2) The name, mailing address, and location, including latitude and longitude, of the facility for which the application is submitted.

(3) Up to four Standard Industrial Codes (SIC) which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and whether the operator is a Federal, State, private, public, or other entity.

(5) The name, address, and phone number of the owner of the facility.

(6) Whether the facility is located on Indian lands.

(7) An indication of whether the facility is new or existing and whether it is a first or revised application.

(8) For existing facilities the following shall be included:

(i) A scale drawing of the facility showing the location of past, present, and future treatment, storage, and disposal areas.

(ii) Photographs of the facility clearly delineating existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(9) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(10) A specification of the hazardous wastes listed or designated under § 75.261 (relating to criteria, identification and listing of hazardous waste) to be treated, stored, or disposed of at the facility, an estimate of the quantity of the wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for the wastes.

(11) A listing of permits or construction approvals received or applied for under the following programs:

(i) The Hazardous Waste Management Program under the act.

(ii) The Underground Injection Control Program under 42 U.S.C.A 300h-4, 300j-1—300j-10 (relating to the Safe Drinking Water Act).

(iii) The NPDES program under Chapter 92 (relating to National Pollutant Discharge Elimination System).

(iv) The Prevention of Significant Deterioration (PSD) Program under Chapter 127 (relating to construction, modification, reactivation, and operation of sources).

(v) The nonattainment program under Chapter 121 (relating to general programs).

(vi) The National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under Chapter 124 (relating to national emission standards for hazardous air pollutants).

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C.A. §§ 1401 — 1445.

(viii) Dredge or fill permits under section 404 of the Federal Water Pollution Control Act, 33 U.S.C.A. § 1344.

(ix) Other relevant environmental Federal and State permits.

(12) A topographic map — or other map if a topographic map is unavailable — extending 1 mile beyond the property boundaries of the facility, depicting the facility and its intake and discharge structures; its hazardous waste treatment, storage, or disposal facilities; wells 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 otherwise known to the applicant with ¼ mile of the facility property boundary.

(13) A brief description of the nature of the business.

(14) Other information as the Department may require.

§ 75.275. Standard conditions for permits.

(a) A HWM permit shall include either expressly or through incorporation by reference, permit conditions necessary to achieve compliance with the act and this subchapter including the applicable requirements specified in §§ 75.264 — 75.282 and 75.301 — 75.335 (relating to financial responsibility). In satisfying this provision, the Department may incorporate applicable requirements of §§ 75.264 — 75.282 and 75.301 — 75.335 directly into the permit or establish other permit conditions that are based on these sections. In addition to conditions required in all permits, the Department will establish conditions, on a case-by-case basis, in permits under §§ 75.265(z)(15) (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities), 75.277 (relating to schedules of compliance), and 75.276 (relating to requirements for recording and reporting of monitoring results).

(b) The following conditions apply to all HWM permits, and shall be incorporated into permits either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.

(1) The permittee shall comply with conditions of the permit. Noncompliance with a condition of the permit constitutes a violation of the act and this subchapter and is grounds for enforcement action; for permit modification, revocation and reissuance, or revocation; or for denial of a permit renewal application.

(2) If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit under §§ 75.265(z), 75.270 — 75.282 and 75.301 — 75.335.

(3) It may 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 the permit.

(4) The permittee shall take necessary steps to prevent and abate the release of hazardous waste to the environment and shall carry out meas-

ures necessary to prevent significant adverse impacts on human health or the environment, upon noncompliance with the act, this subchapter or the permit.

(5) The permittee shall properly operate and maintain facilities and systems of storage, treatment and control — and related appurtenances — which are installed or used by the permittee required under the act, this subchapter, and the conditions of the 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. The permittee shall provide and operate back-up or auxiliary facilities or similar systems if required under the act, this subchapter and the conditions of the permit.

(6) The permit may be modified, revoked and reissued, or revoked by the Department for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance may not stay or supersede a permit condition.

(7) The permit does not convey a property right, or exclusive privilege. A permit may not be transferred or assigned to another person or municipality.

(8) The permittee shall furnish to the Department, within a reasonable time, relevant information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or revoking the permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the permittee under the act, this subchapter, or a permit condition.

(9) The permittee shall allow the Department, its agent and authorized representatives, upon the presentation of credentials and other documents as may be required by statute to do the following:

(i) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records concerning the regulated facility or activity are kept.

(ii) Have access to and copy, at reasonable times, records that are kept concerning the regulated facility or activity.

(iii) Inspect at reasonable times facilities, equipment — including monitoring and control equipment — practices, or operations regulated or required under the act, this subchapter, or the permit.

(iv) Sample or monitor substances or parameters at a location for the purposes of assuring permit compliance or as otherwise authorized by the act or this subchapter.

(10) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(11) The permittee shall retain records of monitoring information, including calibration and maintenance records and original strip chart recordings for continuous monitoring instrumentation, copies of reports required by the act, this subchapter or the permit, and records of 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 or application. The permittee shall retain the records for a longer period of time if requested by the Department. The permittee shall maintain records of ground-water quality and groundwater surface elevations for the active life of the facility and during the post-closure care period as well.

(12) The permittee shall keep monitoring records which include the following information:

(i) The date, exact place, and time of sampling or measurements.

(ii) The individual who performed the sampling or measurements.

(iii) The date analyses were performed.

(iv) The individual who performed the analyses.

(v) The analytical techniques or methods used.

(vi) The results of the analyses.

(vii) Other information the Department may require.

(13) Applications, reports, or information submitted to the Department shall be signed and certified by the applicant under this subchapter.

(14) The permittee shall notify the Department as soon as possible of planned physical alterations or additions to the permitted facility. The permittee may not modify the facility without first obtaining a permit or modified permit from the Department.

(15) The permittee shall report monitoring results to the Department at the intervals specified in paragraph (17) and as required in the permit or by this subchapter.

(16) The permittee shall submit written reports of compliance or noncompliance with interim and final requirements contained in a compliance schedule of the permit to the Department no later than 14 days following the schedule date.

(17) The permittee shall report the following:

(i) Noncompliance with the act, this subchapter or a condition of the permit or an occurrence or event at the HWM facility which may endanger health or the environment orally to the Department as soon as reasonably possible but in no case shall the time exceed 24 hours from the time the permittee becomes aware of the circumstances, including the following:

(A) Information concerning release or potential release of any hazardous waste from the HWM facility that may cause an endangerment to public drinking water supplies under Chapter 109 (relating to safe drinking water).

(B) Information of a release, potential release or discharge of hazardous waste from the HWM facility or information of a potential or actual fire or explosion at the HWM facility, which may threaten the environment or human health.

(ii) The description of the occurrence and its cause shall include the following:

(A) The name, address, and telephone number of the owner or operator.

(B) The name, address, and telephone number of the facility.

(C) The date, time, and type of incident.

(D) The name and quantity of material involved.

(E) The extent of injuries.

(F) An assessment of actual or potential hazards to the environment and human health at or near the facility.

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

(iii) The permittee shall also submit to the Department within 5 days of the time the permittee becomes aware of the circumstances a written

port containing a description of the ncompliance and its cause; the pe- d of noncompliance, including ex- t dates and times, and if the non- mpliance has not been corrected, e anticipated time it is expected to ntinue; and steps taken or planned reduce, eliminate, and prevent re- currence of the noncompliance. The partment may extend the 5 day quirement to 15 days upon good use shown in writing to the De- rtment.

(18) The permittee shall report to e Department instances of noncom- iance not reported under para- aphs (15) — (17) at the time moni- ring reports are submitted. A onitoring report shall contain the formation listed in paragraph (17).

(19) Where the permittee becomes vare that it failed to submit rele- nt facts in a permit application, or bmitted incorrect information in a rmit application or in a report to e Department, it shall promptly bmit the facts or information to e Department.

(20) The permittee shall give ad- nce notice to the Department of nned changes in the permitted cility or activity which may result noncompliance with permit re- irements. For a new facility, the rmittee may not treat, store, or spose of hazardous waste. For a cility being modified, the permittee ay not treat, store, or dispose of zardous waste in the modified por- n of the facility, until the permit- e has submitted to the Department certified mail or hand delivery a tter signed by the permittee and a gistered professional engineer stat- g that the facility has been con- ucted or modified in compliance th the permit.

75.276. Requirements for recording and reporting of monitoring results.

(a) The permittee shall comply th all recordkeeping, reporting, and onitoring requirements specified in is subchapter or in the permit.

(b) The recordkeeping, reporting d monitoring requirements shall clude but not be limited to the llowing:

(1) Requirements concerning the oper use, maintenance, and installa- n of monitoring equipment or ethods including biological monitor- g methods when appropriate.

(2) Monitoring requirements, in- uding type, intervals, and fre- ency of monitoring sufficient to eld data which are representative of the monitored activity including, when appropriate, continuous monitoring.

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in §§ 75.264 — 75.267. Reporting shall be as frequent as specified in this subchapter.

(4) Requirements for establishing background values of the groundwater monitoring parameters or procedures to be used to determine these values.

§ 75.277. Schedules of compliance.

(a) The permit may, when necessary, specify a schedule of compliance leading to compliance with the act and this subchapter.

(1) Schedules of compliance under this section shall require compliance as soon as possible.

(2) Except as provided in subsection (b)(1)(ii), 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 may not exceed 1 year.

(ii) If the time necessary for completion of an 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) The permit shall be written to require that no later than 14 days following an interim date and the final date of compliance, the permittee shall notify the Department, in writing, of its compliance or noncompliance with the interim or final requirements.

(b) A permit applicant or permittee may cease conducting regulated activities — by receiving the final volume of hazardous waste and, for treatment and storage HWM facilities, closing under applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care under 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 one of the following shall apply:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities.

(ii) The permittee shall cease conducting permitted activities before noncompliance with an 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 Department 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 requirements.

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.

(iv) A permit containing two schedules shall include a requirement that after the permittee has made a final decision under subparagraph (i), 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.

(v) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as resolution of the board of directors of a corporation.

§ 75.278. Causes for permit modification or revocation and reissuance.

(a) The Department may modify, or alternatively revoke and reissue a permit for cause which includes, but is not limited to the following:

(1) If a circumstance set forth in § 75.279 (relating to revocation of permits) exists and the Department determines that modification, or revo-

report containing 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 Department may extend the 5 day requirement to 15 days upon good cause shown in writing to the Department.

(18) The permittee shall report to the Department instances of noncompliance not reported under paragraphs (15) — (17) at the time monitoring reports are submitted. A monitoring report shall contain the information listed in paragraph (17).

(19) Where the permittee becomes aware that it failed to submit relevant facts in a permit application, or submitted incorrect information in a permit application or in a report to the Department, it shall promptly submit the facts or information to the Department.

(20) The permittee shall give advance notice to the Department of 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. For a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until the permittee has submitted to the Department 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.

§ 75.276. Requirements for recording and reporting of monitoring results.

(a) The permittee shall comply with all recordkeeping, reporting, and monitoring requirements specified in this subchapter or in the permit.

(b) The recordkeeping, reporting and monitoring requirements shall include but not be limited to the following:

(1) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods including biological monitoring methods when appropriate.

(2) Monitoring requirements, including type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in §§ 75.264 — 75.267. Reporting shall be as frequent as specified in this subchapter.

(4) Requirements for establishing background values of the groundwater monitoring parameters or procedures to be used to determine these values.

§ 75.277. Schedules of compliance.

(a) The permit may, when necessary, specify a schedule of compliance leading to compliance with the act and this subchapter.

(1) Schedules of compliance under this section shall require compliance as soon as possible.

(2) Except as provided in subsection (b)(1)(ii), 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 may not exceed 1 year.

(ii) If the time necessary for completion of an 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) The permit shall be written to require that no later than 14 days following an interim date and the final date of compliance, the permittee shall notify the Department, in writing, of its compliance or noncompliance with the interim or final requirements.

(b) A permit applicant or permittee may cease conducting regulated activities — by receiving the final volume of hazardous waste and, for treatment and storage HWM facilities, closing under applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care under 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 one of the following shall apply:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities.

(ii) The permittee shall cease conducting permitted activities before noncompliance with an 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 Department 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 requirements.

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.

(iv) A permit containing two schedules shall include a requirement that after the permittee has made a final decision under subparagraph (i), 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.

(v) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as resolution of the board of directors of a corporation.

§ 75.278. Causes for permit modification or revocation and reissuance.

(a) The Department may modify, or alternatively revoke and reissue a permit for cause which includes, but is not limited to the following:

(1) If a circumstance set forth in § 75.279 (relating to revocation of permits) exists and the Department determines that modification, or revo-

cation and reissuance is appropriate.

(2) If the Department has received information which was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance.

(3) If the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations.

(4) If the Department determines good cause exists for changing 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) If the permittee fails to comply with Subchapter E (relating to financial responsibility for hazardous waste, storage, treatment and disposal facilities).

(b) The Department may also modify a permit in the following instances:

(1) When modification of a closure plan is authorized under § 75.264(o)(4) or (17) (relating to new and existing hazardous waste management facilities applying for a permit).

(2) When necessary to include conditions applicable to a facility that were not previously included in the facility's permit.

(3) When the Department: receives the notification of the expected closure date under § 75.264(o)(5); determines that extension of the 90 to 180 day period under § 75.264(o)(6) and (7), modification of the 30-year post-closure period under § 75.264(o)(10), continuation of security requirements under § 75.264(o)(13), or permission to disturb the integrity of the containment system under § 75.264(o)(14), is unwarranted.

(4) When the permittee has filed a request under § 75.332(f) (relating to insurance coverage) for a variance to the level of financial responsibility or when the Department demonstrates under § 75.332(b) that an upward adjustment to the level of financial responsibility is required.

(5) When necessary to include conditions applicable to the groundwater detection, assessment, and abatement programs required by § 75.264(n).

(6) When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

(c) The Department may also modify a permit without following the procedures under § 75.280 (relating to procedures for permit issuance, modification, revocation and reissuance, or revocation) where:

(1) The modification is considered a minor modification. Minor modifications are changes to the design or operation of a facility for which the Department determines that no actual change to the permit is needed. The changes shall only include the following:

(i) Typographical errors.

(ii) Monitoring or reporting changes on a more frequent basis.

(iii) Interim compliance date changes in compliance schedules that are not more than 120 days after the date specified in the existing permit and do not interfere with attainment of the final compliance date requirement.

(iv) Emergency coordinator or equipment list changes in the permit's contingency plan.

(v) Maximum inventory estimate changes.

(vi) Changes that the Department determines are minor, are consistent with and no less stringent than modifications listed in 40 C.F.R. § 270.42(g) — (n) (relating to minor modifications of permits) and will enhance or improve the treatment, storage, or disposal operation at the facility.

(2) The modification is approved in writing by the Department.

§ 75.279. Revocation of permits.

(a) The Department may revoke a permit at any time or deny a permit renewal application for cause, including, but not limited to, the following causes:

(1) Noncompliance by the permittee with a provision of the act, this subchapter or a condition of the permit.

(2) The permittee's misrepresentation or failure in the application or during the permit issuance process to disclose fully a relevant fact or the permittee's misrepresentation or nondisclosure of a relevant fact.

(3) A determination by the Department that the permitted activity or facility endangers human health or the environment.

(4) Another reason authorized under the act or this subchapter.

(b) The Department will follow the applicable procedures in § 75.280 (relating to procedures for permit issuance, modification, revocation and reissuance, and revocation) in revoking a permit.

§ 75.280. Procedures for permit issuance, modification, revocation and reissuance, or revocation.

(a) A person who requires a permit under the hazardous waste program shall complete, sign, and submit to the Department an application for a hazardous waste permit.

(b) The Department will not begin the processing of a permit until the applicant has complied with the application requirements for that permit and complied with the signature and certification requirements of § 75.265(z)(13) (relating to interim status standards for hazardous waste management facilities and permit program for reward existing hazardous waste management facilities).

(c) The Department will review for completeness every hazardous waste permit application for a new or existing HWM facility — both Parts A and B of the application. Upon completing the review, the Department will notify the applicant in writing whether the application is complete. If the application is incomplete, the Department will list the information necessary to make the application complete. When the application is for an existing HWM facility, the Department will specify in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department will notify the applicant that the application is complete. After the application is completed, the Department may request additional information from an applicant if necessary to clarify, modify, or supplement previously submitted material. Requests for 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 applicable statutory provisions.

(e) If the Department decides that a site visit is necessary in conjunction with the processing of an application, it will notify the applicant. The applicant shall provide the Department access for a site visit at a reasonable time.

(f) The effective date of an application is the date on which the Depart-

ment notifies the applicant that the application is complete as provided in subsection (c).

(g) Once an application is complete, the Department will tentatively decide whether to prepare a draft permit or to deny the application.

(h) If the Department tentatively decides to deny the permit application, it will issue a notice of intent to deny the application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as a draft permit prepared under this section. If, after issuing a notice of intent to deny, the Department's final decision is to issue the permit, the notice of intent to deny will be withdrawn and the Department will proceed to prepare a draft permit under subsection (i).

(i) A draft permit prepared by the Department will contain the following information:

(1) Conditions under § 75.275 (relating to standard conditions for permits).

(2) Proposed compliance schedules under § 75.277 (relating to schedules of compliance).

(3) Monitoring requirements under §§ 75.264 (relating to new and existing hazardous waste management facilities applying for a permit), 75.265(z) and 75.276 (relating to requirements for recording and reporting of monitoring results).

(4) Hazardous waste permit standards for treatment, storage, and disposal and other permit conditions under § 75.275.

(j) A draft permit prepared under this section shall be accompanied by a statement of basis, under subsection (k) or a fact sheet under subsection (l), publicly noticed under § 75.281 (relating to public notice and comment requirements) and made available for public comment under § 75.282 (relating to public hearings). The Department will give notice of the opportunity for a public hearing under § 75.282 and respond to comments under subsection (m).

(k) The Department will prepare a statement of basis for every draft permit for which a fact sheet under subsection (l) is not prepared. The statement of basis will 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 revoke, reasons supporting the tentative decision. The statement of basis will be sent to the applicant and, on request, to other persons.

(l) Preparation of fact sheets shall comply with the following:

(1) A fact sheet will be prepared by the Department for every draft permit for a major HWM facility or activity, and for every draft permit which the Department determines is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Department will send this fact sheet to the applicant and, on request, to other persons.

(2) The fact sheet shall include the following when applicable:

(i) A brief description of the type of facility or activity which is the subject of the draft permit.

(ii) The type and quantity of wastes which are proposed to be or are being treated, stored, or disposed of.

(iii) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

(iv) Reasons why requested variances or alternatives to required standards do or do not appear justified.

(v) A description of the procedures for reaching a final decision on the draft permit including the following:

(A) The beginning and ending dates of the comment period under § 75.281 and the address where comments will be received.

(B) Procedures for requesting a hearing and the nature of that hearing.

(C) Other procedures by which the public may participate in the final decision.

(vi) The name and telephone number of a person to contact for additional information.

(m) At the time that a final permit is issued, the Department will also issue a response to comments. The response will state the following:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decisions, and the reasons for the change.

(2) Briefly describe the response to significant comments on the draft permit raised during the public comment period or during a hearing.

(n) The Department will make available to the public its response to public comments.

(o) The Department will follow the following procedures if it modifies, revokes and reissues, or revokes a permit:

(1) The Department may modify, revoke and reissue, or revoke a permit either at the request of an interested person — including the permittee — or upon the Department's initiative for reasons specified under § 75.278 (relating to causes for permit modification or revocation and reissuance) or § 75.279 (relating to revocation of permits) and for a reason authorized under the act, this subchapter or the terms and conditions of the permit. A request shall be in writing and contain facts or reasons supporting the request.

(2) If the Department decides the request is not justified, the Department will send a brief written response giving a reason for the decision to the requestor. The Department's refusal to modify, revoke and reissue, or revoke a permit pursuant to a request is not subject to public notice, comment, or hearings.

(3) If the Department tentatively decides to modify or revoke and reissue a permit, under § 75.278 (a) and (b), it will prepare a draft permit under subsections (g) — (i) incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits the Department will require the submission of a new application. The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

(4) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. Other aspects of the existing permit shall remain in effect for the duration of the permit. When the permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During a revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(5) If the Department tentatively decides to revoke a permit under § 75.279 it will issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit which follows the same procedures as a draft permit prepared under subsections (g) — (i).

(6) Minor modifications § 75.278 are not subject to the requirements of this section.

§ 75.281. Public notice and comment requirements.

(a) The Department will give public notice that the following actions have occurred:

(1) A permit application has been tentatively denied under § 75.280(h) (relating to procedures for permit issuance, modification, revocation and reissuance or revocation).

(2) A draft permit has been prepared under § 75.280(i).

(3) A hearing has been scheduled under § 75.282(b) (relating to public hearings).

(4) A closure/post-closure plan has been received under §§ 75.265(o)(6) or (18) (relating to interim status standards for hazardous waste management facilities and permit program for reward existing hazardous waste management facilities).

(b) A public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) will provide for at least 45 days for public comment.

(c) The Department will give public notice of a public hearing 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.

(d) The Department will give public notice of activities described in subsection (a) by the following methods:

(1) By mailing a copy of a notice to the following persons otherwise entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits:

(i) The applicant.

(ii) An agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, or 404 permit for the same facility or activity, including EPA.

(iii) An appropriate Federal or State agency with jurisdiction over fish, shellfish, and wildlife resources or coastal zone management plans, State Historic Preservation Officers, Advisory Council on Historic Preservation, and other appropriate government authorities, including affected states.

(iv) A person on a mailing list developed by the Department, which will include a person who submits to the Department a request in writing to be on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State funded newsletters, environmental bulletins, or State law journals. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

(v) A unit of local government having jurisdiction over the area where the facility is proposed to be located.

(vi) A State agency having authority under State statute with respect to the construction or operation of the facility.

(2) 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 statute.

(4) By other methods reasonably calculated to give actual notice of the action in question to a person potentially affected by it, including press releases or another form or medium to elicit public participation.

(e) The content of a public notice issued under this section shall contain the following minimum information:

(1) The name and address of the office processing the permit action for which notice is being given.

(2) The name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit.

(4) The name, address and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, the statement of basis or fact sheet, and the application.

(5) A brief description of the comment procedures required by § 75.282 and the time and place of a 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.

(6) Additional information which the Department considers necessary or proper.

(f) In addition to the general public notice described in subsection (e), the public notice of a hearing under § 75.282 shall contain the following information:

(1) A reference to the date of previous public notices relating to the permit.

(2) The date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable procedures.

(g) In addition to the general public notice described in subsection (e), a person identified in subsection (d)(1)(i) — (iii) will be mailed a copy of the fact sheet or statement of basis, the draft permit and, if applicable, the permit application.

§ 75.282. Public hearings.

(a) During the public comment period provided under § 75.281 (relating to public notice and comment requirements), an interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled. A request for a public hearing must be in writing and state the nature of the issues proposed to be raised in the hearing. The Department will consider comments in making its final decision and will answer these comments as provided in § 75.280(m) (relating to procedures for permit issuance, modification, revocation and reissuance, or revocation).

(b) The Department will follow the following procedures in a public hearing held under this subchapter:

(1) The Department will hold a public hearing whenever, on the basis of requests received under subsection (a), it determines that a significant degree of public interest in a draft permit exists.

2) The Department may, in its cretion, hold a public hearing enever a hearing might clarify is- s involved in the permit decision.

3) The Department will hold a olic hearing whenever it receives itten notice of opposition to a ift permit and a request for a uring within 45 days of public ice, under § 75.281.

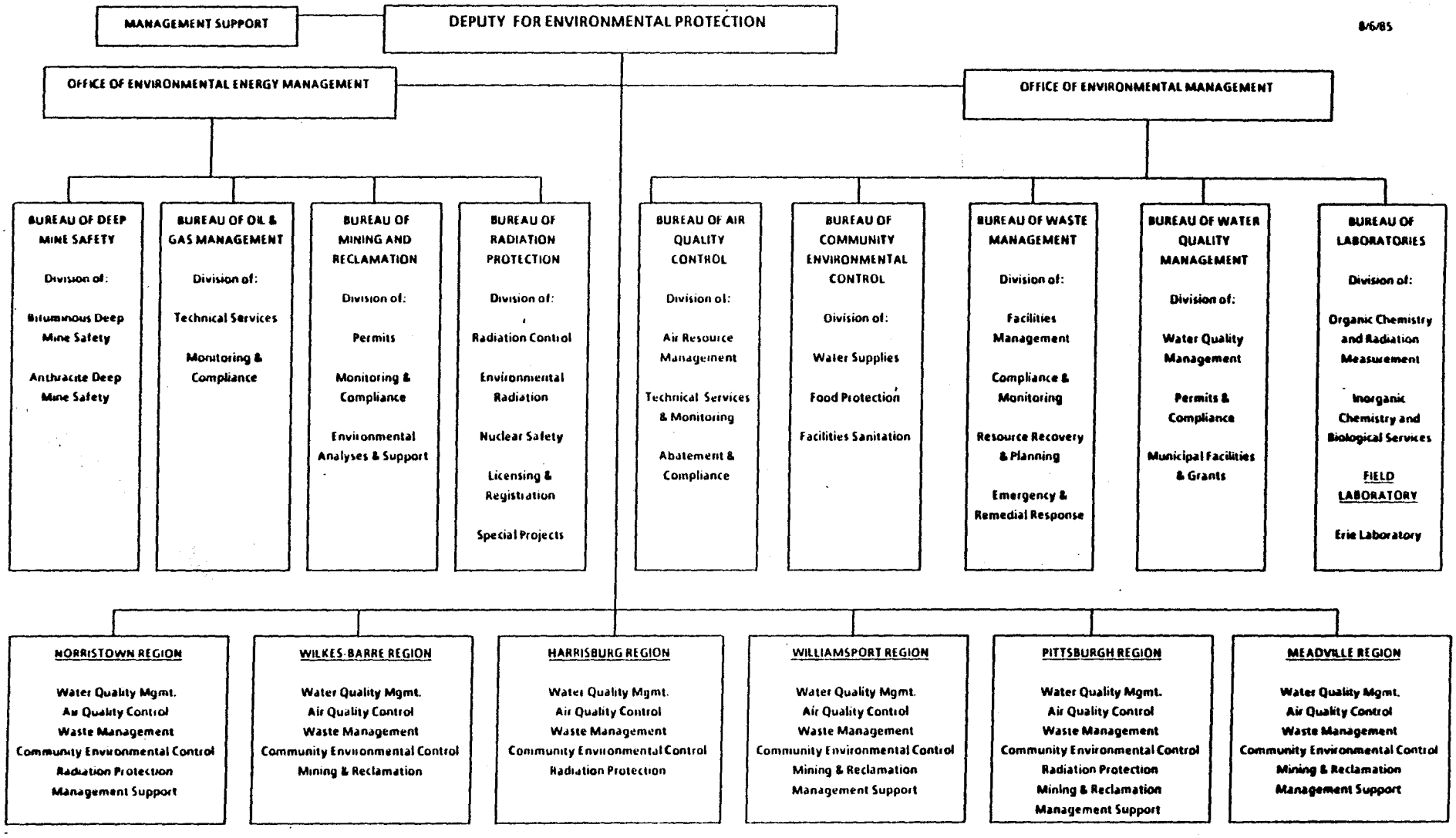
4) The Department will, when pos- le, schedule a hearing under this tion at a location convenient to the nearest population center to the proposed facility.

(5) The Department will give public notice of the hearing under § 75.281.

(6) A person may submit oral or written statements and data concerning the draft permit before, during, or after the public hearing. The Department may set reasonable limits upon the time allowed for oral statements and may require the submission of statements in writing. The public comment period under § 75.281 will automatically be extended to the close of a public hearing under this section. The Department's hearing officer may also extend the comment period by so stating at the hearing.

(7) The Department will make a tape recording or written transcript of the hearing available to the public.

[Pa. B. Doc. No. 85-1284. Filed September 13, 1985, 9:00 a.m.]



Rules and Regulations

Title 25— ENVIRONMENTAL RESOURCES

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 75]

Criteria for Siting Hazardous Waste Treatment and Disposal Facilities

The Environmental Quality Board (EQB), by this order, amends 25 Pa. Code Chapter 75 by adding Subchapter F. These regulations implement sections 104, 105 and 507 of the Solid Waste Management Act, act of July 7, 1980 (P. L. 380, No. 97) (35 P. S. §§ 6018.104, 6018.105 and 6018.507) by establishing criteria for the siting of hazardous waste treatment and disposal facilities as proposed at 13 Pa. B. 2493 (August 13, 1983) and amended by Annex A hereto.

This notice is given under Board order at its meeting of July 30, 1985.

A. *Effective Date*

These regulations will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Leon Kuchinski, Acting Chief, Division of Hazardous Waste Management, Bureau of Solid Waste Management, 7th Floor, Fulton Building, P. O. Box 2063, Harrisburg, Pa. 17120 (telephone: (717) 787-6239) or Cathy Curran Myers, Assistant Counsel, Bureau of Regulatory Counsel, 505 Executive House, P. O. Box 2357, Harrisburg, Pa.17120 (telephone: (717) 787-7060).

C. *Statutory Authority*

These regulations are adopted under the authority of the following acts: The Solid Waste Management Act, act of July 7, 1980 (P. L. 380, No. 97), sections 104, 105 and 507 (35 P. S. §§ 6018.104, 6018.105 and 6018.507) and section 1920-A of The Administrative Code, act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. § 510-20).

D. *Background*

The act provides for comprehensive regulation of generation, storage, treatment and disposal of hazardous waste. Regulations establishing design, construction and operation standards, monitoring and reporting requirements, and permit and licensing requirements are already in place. Pennsylvania's hazardous waste management program includes or will include all of the provisions required under the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 36901 *et seq.* to obtain final authorization of the hazardous waste management program. A final set of conforming amendments to the hazardous waste regulations was adopted by the Board July 30, 1985 and published at 15 Pa. B. 3285 (September 14, 1985). In addition to a comprehensive program for the management of hazardous waste, the act mandates the development and implementation of criteria for the siting of treatment and disposal facilities. These criteria were developed in a series of careful steps starting in 1981 with preliminary siting criteria then proposed rulemaking in 1983. In each step, the EQB and the Department sought the help and advice of the public through a formal advisory committee and extensive public hearings.

1981 Preliminary Siting Criteria

Six months after the effective date of the act, the Department was required to develop, prepare and publish in the *Pennsylvania Bulletin* preliminary environmental, social and economic criteria and standards for siting hazardous waste treatment and disposal facilities. The act did not authorize development of criteria for siting storage facilities.

In response to this requirement, preliminary siting criteria, which included environmental, social and economic considerations of concern to citizens and local and state government, were published by the Department, with the advice of the Hazardous Waste Facility Planning Advisory Committee established by section 507 of the act, on April 25, 1981 (11 Pa. B. 1417). The criteria were structured in three phases, which reflect a progressively more detailed degree of investigation. They imposed limitations and exclusions, defined factors to be assessed, and related the assessments to the type of facility and waste managed.

In the preliminary criteria, environmentally sensitive areas such as wetlands, flood hazard areas, coal mining areas, oil and gas fields, seismic risk

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years, in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where "no fiscal impact" is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

zones, limestone areas and public water supply areas were identified as unsuitable for certain hazardous waste facilities. The preliminary criteria also identified socially significant areas including natural areas and dedicated lands in the public trust, as areas incompatible with hazardous waste treatment and disposal facilities. The criteria established secondary and tertiary levels of analysis for further consideration of the potential impacts of geology, hydrology, soils, air quality, land use, transportation, population and other factors upon the suitability of a proposed site.

Public meetings were held on the preliminary criteria on June 24, 1981 in Pittsburgh; July 9, 1981 in Norristown; and July 22, 1981 in Harrisburg. Forty persons representing industry, interest groups, elected public officials, local government representatives and private citizens presented a total of 170 comments.

Proposed Rulemaking

As a result of public meetings and comments, the preliminary criteria were revised by the Department and the Hazardous Waste Facility Planning Advisory Committee and a proposed rule was published on August 13, 1983 (13 Pa. B. 2493). The proposal organized the criteria into a two rather than three-stage, process. Phase I, the exclusionary criteria, identified areas which could be precisely delineated and from which hazardous waste treatment and disposal facilities were to be prohibited, as a general rule. Included in the proposed exclusionary criteria were flood hazard areas, wetlands, coal bearing areas, oil and gas areas, limestone areas, national natural landmarks, dedicated lands in the public trust and agricultural lands. Phase I also contained limited, specifically defined exemptions for certain existing and proposed incineration and treatment facilities, as explained below.

Phase II, the cautionary criteria, contained presumptive standards for the location of facilities and required assessments for locations not in conformity with the Phase II criteria. Factors from the preliminary criteria not addressed as Phase I were generally included in Phase II of the proposed regulation. A more detailed discussion of changes from the preliminary to the proposed criteria can be found at 13 Pa. B. 2493 (August 13, 1983).

E. *Summary and Purpose of Regulations*

The purpose of the siting criteria is to provide an additional margin of safety beyond the protection already afforded by the design, operational and monitoring requirements for hazardous waste treatment and disposal facilities under Chapter 75. The criteria limit the location of these facilities in certain environmentally sensitive areas and require a thorough assessment of other environmental, social and economic impacts of a proposed site. The siting criteria apply to all hazardous waste treatment or disposal facilities as mandated by section 507 of the act. The Phase I criteria do not apply to existing facilities or modifications within the existing facility site. An existing facility for purposes of the siting criteria is a facility that was sited and substantially constructed in good faith prior to the effective date of the regulations (§ 75.412). Phase II siting criteria apply to all hazardous waste treatment or disposal facilities and modifications (§ 75.413).

The siting criteria will be applied early in the permitting process. The criteria provide concrete guidance to assist industrial planners and other waste managers in selecting sites for facilities. The siting criteria will be an integral part of the Hazardous Waste Management Plan and will be used by the Environmental Quality Board in considering whether to issue a certificate of public necessity under section 105 of the act. Sections 75.411 — 75.414(a) (relating to scope and applicability) explain how the criteria will be applied in the permit process.

The siting criteria establish a two-step process for review of the proposed site. The first step is to determine whether the proposed facility falls within an area described by the Phase I exclusionary criteria.

The Phase I criteria restrict the siting of new treatment and disposal facilities near public or private water supplies, in flood hazard areas, wetlands, oil and gas areas, carbonate bedrock areas, national natural landmarks and historic places, dedicated lands in the public trust, agricultural areas, and exceptional value watersheds. These areas can be readily identified and have known boundaries which have been mapped or are capable of being mapped for each facility site. The approach is to eliminate at the outset those locations which the criteria identify as environmentally unacceptable under any conditions and which can be readily defined geographically. If a proposed site falls within any of the exclusions in Phase I, the Department will automatically reject the permit application without further review.

The only exceptions to this rule are in the water supply and flood plain criteria where the applicant must identify that alternate water supplies are available and the facility was in existence prior to the effective date of the Flood Plain Management Act or if a site is located within an area excluded by a criterion, but the site is unlike the rest of the area with respect to the characteristics described in the criterion, the Department may consider the site. For example, if a proposed site is located in an area mapped as the type of carbonate bedrock described in the Phase I criteria (§ 75.425), but the particular site does not have the excluded type of carbonate bedrock underlying it, the site will not be excluded without further review. However, the burden will be upon the applicant to prove that a particular site does not have the characteristics of the excluded area in which it is located.

Application of the Phase II criteria is the second step of the siting process created by these regulations. If a proposed treatment or disposal facility site is not eliminated in Phase I, or if the Phase I criteria do not apply to the facility, a site-specific analysis of environmental, social and economic impacts is required in Phase II. The Phase II criteria identify acceptable locations with respect to water supplies, geology, soils, mineral bearing areas, land use, transportation, safety services, proximity of facilities and structures, economic impacts and environmental concerns.

If a proposed site does not meet all of the Phase II criteria, the applicant must submit additional information and analyses so that the Department may assess what effect, if any, failure to meet a criterion has upon the acceptability of the facility site. The Department may undertake additional investigations and will solicit further confirmation from municipalities and other interested persons regarding potential effects of the failure to meet a Phase II criterion. The applicant has the burden to affirmatively demonstrate that the proposed design, construction and operation of the facility will successfully mitigate adverse effects that would otherwise be associated with not meeting the Phase II criteria; with the final determination of acceptability being made by the Department.

The Phase II criteria establish standards that broadly cover most environmental concerns. Because these concerns can only be evaluated on a case-by-case basis, the regulations provide an opportunity for the applicant to demonstrate that, given the

particular conditions at the proposed site and the nature of the facility, the criteria are either not applicable or do not present a significant risk to public health and safety, or to natural, scenic historical, aesthetic or economic values identified in the criteria, or that the effects of the site can be mitigated.

F. *Public Comments*

Notice of proposed rulemaking was published at 13 Pa. B. 2493 (August 13, 1983), and included a 45 day period for public comment. Notice of public hearing was published at 13 Pa. B. 3405 (November 5, 1983) and 14 Pa. B. 666 (February 25, 1984). Public hearings on the proposed rulemaking were held by the Environmental Quality Board on December 20, 1983 in Harrisburg; March 15, 1984 in Johnstown; and March 16, 1984 in Allentown. The EQB received comments from 56 individuals and organizations.

The Department worked with the Solid Waste Advisory Committee, which was formed in 1984 and is acting as the Hazardous Waste Facility Planning Advisory Committee, to incorporate comments and further revise the proposed regulations. Because of the public interest in hazardous waste management and the siting criteria in particular, the Advisory Committee recommended, and the EQB agreed, to extend the public comment period by providing three additional public hearings. Prior to the public hearings the Department held six public meetings across the State to inform the public about the siting criteria. Formal public hearings were held on April 11, 1985 at State College; April 17, 1985 in Erie; and April 22, 1985 in Allentown. (15 Pa. B. 910 (March 8, 1985)). As a result of this additional public participation, the Board received comments from 69 individuals and organizations.

A comment and response document summarizing and responding to each comment received by the Board during the comment period was prepared by the Department and is available upon request from the contact persons identified in Section B. A summary of the major comments received and the Department's responses follows.

Water Supply

The most frequently received comment on the proposed rulemaking was that adequate protection was not provided for public and private water supplies. The preliminary criteria contained a complicated system with varying degrees of protection for public and private supplies, depending upon distance, use, and yields of the source. In the proposed rulemaking, the preamble noted that public water supply protection had been moved from Phase I to Phase II because the risk to water supplies varies with the geology and should be assessed on a site specific basis. Based upon extensive discussions in the Advisory Committee and among the Department staff, and in response to numerous comments received, these approaches have been combined to now include water supply protection in both Phase I (§ 75.421) and Phase II (§ 75.441).

Phase I criteria provide an isolation distance of ½ mile between a public water supply and hazardous waste surface impoundments, landfills or land treatment facilities. In the case of private water supplies, the applicant may satisfy the criterion by providing an acceptable permanent alternative supply prior to operation of the facility. The final rule describes the requirement for water supply replacement and the criteria for an acceptable permanent alternative supply.

In Phase II, the applicant is required to determine if any public or private water supplies exist downgradient of the proposed site beyond the ½ mile distance protected by the Phase I criterion. The applicant must provide appropriate hydrogeologic studies that describe groundwater flow patterns beneath the site so that the Department may evaluate potential impacts upon downgradient water supplies. If, based on these studies and other information, the Department decides a water supply is potentially at risk, special conditions, including provision of alternate water supplies, may be placed in the permit, or if there is a risk of potential pollution the permit may be denied.

Applicability to Facilities

Many commentators were concerned with the applicability of the siting criteria to existing and new facilities. Some commentators felt that none of the criteria should apply to existing facilities, while other commentators recommended that the criteria should apply to all facilities. Those who wanted to see the criteria applied solely to new facilities felt that existing facilities had already been sited and it would be unfair and economically disruptive to shut down facilities solely because of siting decisions made years ago that conformed to all legal requirements at that time. The final regulation includes a special scope and applicability section that clearly specifies how the criteria are to be applied.

Facilities that are sited and substantially constructed in good faith are exempt from review under Phase I criteria (§ 75.412). The requirement that the construction must have been done in good faith was added to make it clear that while pre-existing facilities have already been sited and are not subject to the exclusions in the criteria, a person could not avoid the exclusionary criteria by proceeding with unlawful construction during the development of the regulations. No person can satisfy the good faith requirement who has initiated construction without Department approval in order to avoid application of these criteria.

Phase II criteria apply to all hazardous waste treatment and disposal facilities (§ 75.413) and require evaluation of the impacts of existing and new facilities.

A related issue regarding applicability is whether the criteria should apply to modifications of existing facilities. Opinions ranged from the extremes of all modifications should be exempted, to some commentators arguing for inclusion of all modifications. The final regulations allow modifications to be made without applying the Phase I criteria, if the modification is within the existing facility site on land identified in the permit application. The facility site is the entire area covered by a permit or, where no permit has yet been issued, the area which is included in a permit application that has been accepted by the Department for review. Phase II will apply to all modifications, which will assure that the suitability of the site for the modification will be comprehensively analyzed.

Applicability to Captive Facilities

Comments were received about the applicability of the criteria to captive facilities, that is, facilities on the site of a waste generator which treat or dispose of the waste from that generator. Many commentators felt captive facilities should be exempt from the siting criteria, or at least treated differently from other facilities which receive numerous off-site wastes. Commentators argued that many risks to environment and people are eliminated when hazardous waste is treated or disposed of on-site rather than being transported some distance to a different facility for treatment or disposal. While the Department agrees that it is often desirable to have captive facilities and wishes to encourage on-site treatment and disposal, these criteria are intended to evaluate potential

hazards from activities on the facility site. The origin of the waste treated or disposed of at the facility has no bearing on the on-site risks.

Geographic Coverage of Criteria

Several commentators expressed a concern that the Phase I exclusionary criteria exclude so much of the land in the state that it will not be possible to site a hazardous waste facility in compliance with the Phase I criteria. The Board disagrees. The EQB's intention is to encourage the selection of good sites, not to prohibit siting of any hazardous waste treatment and disposal facilities, but to assure these facilities are located, designed and operated in an environmentally safe manner. The Department analyzed a sample of pending permit applications to determine if the proposed sites met the Phase I criteria. Many of the proposed sites appear to be able to meet the Phase I criteria.

Prime Agricultural Lands

A number of individuals and organizations were concerned with the protection of farmland and noted that Executive Order 1982-3 establishes a policy for protection of prime farmland. The proposal excluded facilities sites made up of 50% or more of farmland classified as Class I, Class II, prime, unique, and Lands of Statewide Significance. There was no criterion in Phase II of the proposed rule dealing with agricultural land. Other commentators argued for a narrower exclusion for farmland because thick soils which are the basis for categorizing lands as prime are precisely the kinds of soils that provide additional protection at a facility site. The Department and the Advisory Committee felt that too much potentially desirable land for waste facilities would be eliminated if a broad exclusion in the proposal was retained.

Some commentators suggested that the regulation should protect farmland under active agricultural use, rather than protecting soil categories which can be, but are frequently not, used for agriculture. The recommendation was to exclude lands protected under the Agricultural Area Security Law of 1981 rather than prime farmlands. Agricultural areas are created by petition of farmers to local government to form an agricultural area, thereby protecting the lands from non-agricultural use. The final rule reflects the commentators' desire to protect active farms and the best soils in Phase I (§ 75.425) and provides a new criterion in Phase II requiring analysis of the impact a facility will have on prime farmland anywhere within the facility site (§ 75.450(15)). The Phase I criterion excludes the agricultural areas formed under the Agricultural Security Act and prohibits hazardous waste treatment or disposal sites on the highest classification of prime farmlands (Class I) when under use as farmlands. Impacts upon other classifications of agricultural lands are to be assessed in Phase II of the final regulations.

Population Density

Many comments were received regarding the population density standards in the Phase II criteria of the proposal which stated that the population density within ½ mile of a facility should be no greater than five persons per acre. Rural persons complained that this criterion required sites to be located in rural areas. Industrial interests argued that this criterion conflicted with the land use criterion that requires locations to be zoned industrial or compatible with existing use and discourages the location of treatment and disposal facilities close to waste generators. The criterion was generally confusing and potentially difficult to apply.

The Department and Advisory Committee agreed that other criteria, such as the standard for proximity of facilities and structures, and transportation standards, adequately addressed concerns about locating facilities too close to populated areas. The population density criterion was deleted in the final rule.

Consistent Isolation Distances

Comments were also received regarding the proposed isolation distances from facilities and structures of ½ mile as proposed in Phase II. Many citizens noted that the Phase II criteria required a full 1 mile buffer from scenic rivers, parks, trails and gamelands, but only ½ mile from schools, nursing homes and churches. The EQB agrees with the observation that the difference between protection of environmental resources and human resources was inappropriate and has changed the distance in the final rule to 1 mile in the Phase II criterion on proximity of facilities and structures (§ 75.448).

Local Government Role

Several local government representatives asked for an explicit role in making determinations under the siting criteria, particularly the Phase II assessments if standards are not met. Specific public participation procedures are not part of this rulemaking. However, as an assurance to municipalities that the Department will involve them in the siting criteria assessments, language was added to the scope and applicability section (§ 75.413) requiring the Department to provide notice to municipalities and other interested persons in order to solicit comments concerning whether Phase II standards are met.

Measuring Points

Numerous comments were received requesting clarification of how to apply and measure the distances which create buffer zones. Measurement of all distances is from the facility, which by definition includes all the land set aside for use in connection with the facility. However, to clarify this point, the Department added a definition for the term "facility site" to denote the land associated with a facility (§ 75.401). The facility site has been defined, consistent with the definition of facility, as all contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application. Language has also been added in the scope and applicability section (§ 75.414) to clarify that distances will be measured from the perimeter of the facility site.

Appropriate Phase I and Phase II Criteria

Several comments were received recommending that there be no exclusionary criteria and that each facility site should be judged on the merits. An opposing group of comments was received recommending that some or all of the Phase II criteria be made exclusionary.

The Department has placed in Phase I those criteria which are easily identifiable without extensive analysis and which have serious inherent risks for which no acceptable engineering solutions are available in light of sensitivity of the area. The Department has placed in Phase II those areas which present a variable risk or risks that can be mitigated. These Phase II factors must be analyzed relative to the peculiar characteristics of the facility site before the potential impacts can be assessed.

In Phase II, engineered solutions are appropriate. For example, one cannot design a solution which mitigates the impact on wetlands; because wetlands, by their nature, involve an intimate association with the groundwater. Thus the wetlands exclusion is in Phase I. On the other hand, the transportation and distance restrictions in Phase II (§ 75.446) require assessment and are amenable to engineering

solutions. A captive facility, for example, may easily demonstrate no impact despite the existence of numerous intersections along the transportation corridor from the facility site, because all waste is generated and treated on-site. Similarly, a lack of limited access highways may be overcome by a plan by the facility owner or operator to build a limited access road for its exclusive use.

Several changes were made with respect to placement of particular criteria in Phase I or Phase II. Exceptional value watersheds have been moved from consideration within the generic Phase II heading of special protection watersheds to a separate Phase I exclusion (§ 75.429). This change was made to be consistent with the antidegradation requirements adopted at 25 Pa. Code § 75.1. High quality watersheds remain in Phase II because certain discharges are permissible under § 95.1 (§ 75.450(14)).

The coal bearing areas criterion was included in the exclusionary sections of the proposal, but was not written as an absolute prohibition as are the other Phase I criteria. Since this criterion required only proof of ownership of mineral and support rights to overcome the prohibition, it was moved to Phase II, rewritten to improve clarity and retitled "mineral bearing areas" (§ 75.449) to reflect the basic organizational principles of the final regulations.

In addition to the changes discussed above, a number of changes were made based upon discussions in the Advisory Committee and internal review.

Comments were received regarding applying the criteria to storage facilities. The scope and applicability section (§ 75.411) clearly states that the regulations apply to hazardous waste treatment and disposal facilities. Throughout the document the word "facility" was changed to "treatment and disposal facilities" where all facilities regulated under the criteria are affected. This is consistent with the act which authorizes the development of siting criteria for treatment and disposal facilities only.

Comments were received suggesting that the permit applicant should not be allowed to make an assessment of Phase II impacts. It appears that some commentators were confused by the language used and interpreted the assessment as merely a filing process with no check on the accuracy or adequacy of the information provided. Language has been added to the scope and applicability section (§ 75.413) and throughout Phase II to clarify the roles of applicant and Department. Failure to meet a Phase II standard shifts the burden to the applicant to demonstrate that no significant risks results from failure to meet the criterion. The Department requires additional information and analyses from the applicant so that the Department may assess the impacts of not meeting the standard.

Concerns were raised by several commentators that the Phase II criteria do not provide precise direction on the manner in which the Department will perform an assessment and evaluate whether a site which fails to meet one or more Phase II criteria is acceptable. The Phase II criteria leave considerable discretion to the Department in determining whether a site is acceptable.

Phase II criteria provide standards to guide the Department's discretion, but recognize that sites must be evaluated on a case-by-case basis if siting decisions are to be reasoned, rather than arbitrary. The criteria as a whole provide both rigid and flexible standards to guide the Department's decisions, but allow the facts of each case to be weighed in the implementation of the criteria. The scope and applicability section (§§ 75.412 and 75.413) by clearly describing the process, provides a framework to assist the Department's decision-making and distinguishes between the two approaches found in Phase I and Phase II.

The exclusion for carbonate bedrock in the proposed rulemaking was overly broad, confusing and covered vast portions of the state. After discussions with geologists, inside and outside the Department, the final rule was revised so the criterion now excludes only those types of formations with a high potential for forming solution channels and sinkholes (§ 75.425). Other carbonate formations are included in a new Phase II criterion for assessment on a case-by-case basis with other geologic factors (§ 75.442(f)).

The proposed Phase II land use criterion only required an assessment of compatibility with existing zoning and comprehensive plans. Recognizing that much of the State is not zoned, the final rule adds that where no zoning exists, an assessment will be made of the compatability of the facility with existing land use (§ 75.445(a)).

A number of comments were received suggesting the Phase II economic criterion be strengthened to require owners of proposed facilities to purchase homes within a certain radius of a facility to compensate for property value loss or require absolute compensation for the increased costs to a host local government. The Board does not feel there is sufficient authority in the act to require operators to purchase homes or provide compensation to local governments. The economic criterion in the final rule (§ 75.449) sets up a framework for discussions between the owners of a facility and the host local governments and encourages agreements on compensation for increased costs to provide services, lost revenue and site access and monitoring. This framework is provided by requiring the applicant do a detailed assessment of these factors to determine if a proposed facility will have a positive or negative impact on the host community.

In Phase II, the wastewater discharge standard was deleted because it served no purpose but to state that discharges must meet The Clean Stream Law requirements.

Under the transportation criterion, § 75.446(b) was rewritten to improve clarity. Community parks were added as facilities to which the standards applied, along with schools and hospitals because local concentrations of people as well as the potential for traffic problems are frequently found there.

A separate section was added to the geology criterion in Phase II (§ 75.442(d)) to require a specific evaluation for the impact of a landslide on the facility site if the site were located in a landslide prone area. It was felt this evaluation was needed in light of the potential that exists for landslides in many areas of the State.

The final geology criterion in Phase II also includes a ban on surface impoundments, landfills and land treatment facilities in areas underlain by coarse unconsolidated deposits (§ 75.442(g)). This standard was strengthened in response to comments by geologists inside and outside the Department who felt it was inappropriate to locate facilities of this types in areas where groundwater contamination was likely because of high permeability rates.

In addition to moving the mineral bearing areas criterion to Phase II as noted above, the criterion was revised to include a requirement that an operator must not only show ownership of all mineral rights, but must also provide assurances that any minerals providing surface support to the site

will not be mined as long as hazardous waste remains on the site (§ 75.444(b)).

The safety services criterion in Phase II (§ 75.447) as elevated in importance to a major heading in Phase II because of the concern expressed that providing fire and emergency services to a facility is an important factor in evaluating a site. The criterion also includes more positive language to require the applicant to demonstrate that services are available and that they will be provided to the facility.

The elements of the environmental assessment criterion dealing with evaluating impacts on scenic rivers in Phase II were strengthened. The criterion dealing with officially designated scenic river corridors was strengthened to require an evaluation if a proposed facility is within one mile of a corridor not simply in the corridor as the proposed rule provided (§ 75.450(1)). Both scenic river elements were revised to include the pastorial classification of scenic river to provide protection for all categories of rivers (§§ 75.450(1) and (2)).

References to two State statutes were added to make the criteria consistent with recent legislative and regulatory developments. A reference to the Oil and Gas Act of 1984 was included in §§ 75.424 and 75.442(d) to provide a clear definition of abandoned oil and gas wells and gas storage areas. A reference to the Wild Resource Conservation Act of 1982 was added to § 75.450(11) to include recent efforts to develop a list of wild and endangered plants in Pennsylvania and to encourage facility owners to mitigate any impacts a facility may have on these plants.

The element of the environmental assessment criterion in Phase II dealing with stormwater was rewritten to more clearly specify that a facility owner must demonstrate a proposed facility will conform to any official storm water management plans required by the Storm Water Management Act (§ 75.450(12)) and will manage storm runoff in a way that will protect public health and safety.

Several sections have been combined because no meaningful differences were found to justify two separate criteria. Coastal flood hazard areas and riverine flood hazard areas have been combined into a single exclusion called flood hazard areas (§ 75.422). Similarly, coastal wetlands and riverine wetlands have been simplified and combined into a single exclusion entitled "wetlands" (§ 75.423).

To clarify the intention of the criteria three definitions were added in the final rule (§ 75.401). The term "facility site" has already been discussed above. Active water supply has been defined to clearly indicate that a water supply protected under the siting criteria must have been in use both prior to the receipt of a permit application and the establishment of a public participation program for the hazardous waste treatment or disposal facility in question. Wetlands has been defined by amending the definition in 25 Pa. Code § 105.1, with the addition of the United States Fish and Wildlife National Wetland Inventory to those inventories already listed in that definition in response to commentators.

A number of other minor changes were made for consistency and clarity, and the criteria were placed in a separate subchapter and renumbered.

G. *Benefits and Costs*

Private Sector — General Public

Costs imposed on private entities could include increased expenditures for hydrogeologic, soils, engineering and other assessments which would be required to demonstrate no adverse environmental, social or economic impacts from the location of a facility, or a plan to mitigate such impacts in an area where Phase II of the criteria indicate a likelihood of adverse impacts. Since the selection of a proposed facility location is a voluntary action, however, no such increased costs are estimatable since it is known how many potential applicants will voluntarily choose to locate facilities in questionable areas. Conversely, considerable expense associated with a defense of permit applications on environmental, social or economic grounds could be avoided through the selection of locations deemed suitable by the regulations.

Paperwork requirements include: Plans, reports specifications and drawings as a result of assessments required by the regulations for those who voluntarily choose to locate a facility in an area of probable adverse environmental, social or economic impacts.

The siting regulations should greatly reduce confusion and uncertainty associated with siting of hazardous waste facilities and will address important concerns to be considered in the siting process. The identification of exclusionary areas will inform all interested citizens what areas are excluded from consideration for hazardous waste facility development. Identification of those characteristics of a site which make it acceptable will be of particular value to industries which need to develop such facilities but do not now have a means of evaluating which sites would cause even the smallest adverse environmental, social or economic impact.

For those sites which fall in questionable but not exclusionary areas, the regulations require studies and assessments, which will provide the information necessary to create an informed, rather than an emotional debate between opponents and proponents of controversial facilities. The benefits of increased information and predictability will accrue to everyone — local, county and State government, the general public, citizens groups and private industry.

Potential benefits include increased protection of natural resources and resources held in the public trust; increased recognition and mitigation of environmental, social and economic considerations of concern in the location of hazardous waste facilities; increased information about the projected environmental, social and economic impacts of proposed facilities; increased benefits to local government and citizens through early involvement in facility location decisions; and should increase public acceptance of facilities as well as decrease expenditures for litigation against the siting of facilities.

H. *Sunset Date*

Since these regulations will be evaluated on an ongoing basis as they are implemented by the Department, the EQB has proposed no sunset date. In addition, EPA will be formally reviewing the Pennsylvania hazardous waste management program and its adequacy and effectiveness in implementing the Federal Resource Conservation and Recovery Act. These regular review processes will disclose any problems which may arise and identify areas where revisions to these regulations might be needed.

I. *Regulatory Review Act*

The Regulatory Review Act of 1982 (71 P. S. § 745.5) establishes a procedure for review of proposed regulations by the Independent Regulatory Review Commission and the relevant standing committees in each house of the General Assembly. Under section 5(a) of that act, a copy of proposed regulations was submitted to the Independent Regulatory Review Commission, the Chairman of the Senate Environmental Resources Committee, and the House Conservation Commit-

tee for review and comment. In addition to the proposed regulations, the Commission and the committees were provided with a copy of a detailed Regulatory Analysis form prepared by the Department in compliance with Executive Order 1982-2.

The House Conservation Committee disapproved the proposal on August 16, 1983 with a recommendation to hold further hearings on the proposal. The Senate Environmental Resources and Energy Committee took no action by August 23, 1983, and is, therefore, deemed to have approved the proposal as provided by section 5(c) of the Regulatory Review Act. The Independent Regulatory Review Commission met on August 23, 1983, and approved the regulations as published in the proposed rulemaking. The various oversight requirements of the Regulatory Review Act have been fulfilled by the review of proposed rulemaking, and no additional review of the final order adopting the regulations, and changes made to the document, is required by the Regulatory Review Act.

J. *Findings of the Environmental Quality Board*

The Environmental Quality Board finds:

(1) That public notice of the intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) That a public comment period was provided as required by law, and that all comments received were considered.

(3) That modifications to the proposed text do not enlarge the original purposes or the scope of the proposed regulations.

(4) That these regulations are necessary and appropriate to the administration and enforcement of the authorizing acts identified in Section C.

K. *Order of the Board*

The Environmental Quality Board, acting under the authorizing statutes, orders:

(A) That the rules and regulations of the Department of Environmental Resources, 25 Pa. Code Chapter 75, are amended by adding §§ 75.401, 75.411 — 75.414, 75.421 — 75.429 and 75.441 — 75.450 to read as set forth in Annex A.

(B) The Chairman of the Environmental Quality Board shall submit this order and Annex A to the offices of General Counsel and the Attorney General for approval and review as to legality and form as required by law.

(C) The Chairman of the Environmental Quality Board shall certify this order and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

By the Environmental Quality Board

NICHOLAS DeBENEDICTIS,
Chairman

(*Editor's Note:* The Department proposed to amend § 75.265(z) at 13 Pa. B. 2493 (August 13, 1983) but renumbered the amendments to form a new Subchapter F as appears in Annex A.)

Fiscal Note: 7-64. No fiscal impact; (8) recommends adoption. These proposed regulations would establish environmental, social and economic factors in addition to the existing technological standards which must be considered in the siting of hazardous waste treatment and disposal facilities. These regulations would further define areas that are totally unacceptable for hazardous waste disposal and those which would require further studies and assessments to determine their acceptability.

Private entities could experience some increased costs in demonstrating that an area is acceptable for disposal purposes.

INDEPENDENT REGULATORY REVIEW COMMISSION

Order

On August 3, 1983, the Independent Regulatory Review Commission received these proposed regulations from the Environmental Quality Board (EQB). These would amend 25 Pa. Code Chapter 75 by adding sections related to siting of hazardous waste facilities. These regulations are being proposed under the EQB's authority granted by the Pennsylvania Solid Waste Management Act, act of July 7, 1980 (P. L. 380, No. 97) (35 P. S. 6018.101 *et seq.*) and The Administrative Code, act of April 9, 1929 (P. L. 177) (71 P. S. §§ 510 thru 520). These proposed regulations were published in the *Pennsylvania Bulletin* of August 6, 1983, with a 45-day comment period. At least one public hearing on these proposed regulations will be held at a time and place to be announced in a later issue of the *Pennsylvania Bulletin* by the EQB.

Under the provisions of the Pennsylvania Solid Waste Management Act of 1980 (Act 97), the Department of Environmental Resources (DER) was required to develop and publish preliminary environmental, social and economic criteria and standards for siting hazardous waste treatment and disposal facilities within 6 months. These preliminary criteria were proposed by DER on April 25, 1981. As a result of public comments received after publication and at three public meetings held in June and July of 1981, DER, in conjunction with the Hazardous Waste Facilities Planning Advisory Committee, revised the preliminary criteria. These revisions are reflected in the proposed regulations.

Section 75.265(z)(29) contains exclusionary criteria which would prohibit the siting of a hazardous waste treatment or disposal facility in certain areas due to topographical, geologic and geographic conditions. Section 75.265(z)(30) describes areas which would be unsuitable for a hazardous waste treatment or disposal facility if certain risks are not evaluated and mitigated. These proposed criteria should save facility developers time and the expense of investigating sites which are unlikely to be approved by DER. Similarly, these criteria should benefit DER by reducing or eliminating permit applications filed by developers for unsuitable sites. Finally, potential conflicts between developers, local governments, citizens and environmental groups should be minimized by the criteria steering developers away from environmentally unsuited sites.

On August 16, 1983, the House Conservation Committee voted unanimously to disapprove these proposed regulations.

We have reviewed the proposed regulations and find them to be in the public interest. We agree that these proposed regulations will be of benefit to facility developers by saving them the expense of evaluating sites which are unlikely to be unapprovable. By steering developers away from unsuitable sites, savings will also accrue to DER, local governments and concerned citizens groups who frequently become involved in the application process. We also feel that the proposed regulations represent a fair balancing of competing interests providing protection for the environment without placing unnecessary restrictions and burdens upon industries that use or produce hazardous wastes. There should be no net adverse impact upon the Commonwealth, local govern-

ments, or the general public. Therefore, we approve the proposed regulations as published at 13 Pa. B. 2493.

The Commission reserves the right to review these regulations if they are substantially amended prior to final publication.

IRVIN G. ZIMMERMAN,
Chairman

Annex A

TITLE 25. ENVIRONMENTAL RESOURCES

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 75. SOLID WASTE MANAGEMENT

Subchapter F. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

GENERAL PROVISIONS

§ 75.401. Definitions.

(a) The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Active water supply — A water supply in use prior to both the receipt of a permit application and the establishment of a public participation program for a hazardous waste management facility.

Facility site — All contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application.

Wetland — An area inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas. The term includes but is not limited to wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan, the United States Fish and Wildlife National Wetland Inventory and wetland areas designated by a river basin commission.

(b) All other words and terms not defined in this subchapter have the meanings ascribed to them in § 75.260 (relating to definitions and requests for determinations).

SCOPE AND APPLICABILITY

§ 75.411. Scope and applicability.

The requirements of this subchapter apply to siting of hazardous waste treatment and disposal facilities. The hazardous waste treatment or disposal facility shall satisfy all other applicable requirements of this chapter. The criteria for siting hazardous waste treatment and disposal facilities are divided into two phases as described in §§ 75.412 (relating to Phase I) and 75.413 (relating to Phase II).

§ 75.412. Phase I.

Phase I exclusionary criteria are established in §§ 75.421 — 75.429 (relating to Phase I exclusionary criteria) and prohibit the siting of a hazardous waste treatment or disposal facility in an excluded area delineated under these criteria. The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area. Phase I criteria apply to hazardous waste treatment or disposal facilities, except for the following:

(1) A facility sited and substantially constructed in good faith prior to the effective date of this subchapter.

(2) Modifications to a facility within the existing facility site.

§ 75.413. Phase II.

(a) Phase II criteria are established in §§ 75.441 — 75.450 (relating to Phase II criteria) and identify further environmental, social and economic factors which may affect the suitability of a location for a proposed facility. Phase II criteria apply to hazardous waste treatment or disposal facilities and modifications. If a facility site does not satisfy a Phase II criteria, the applicant shall submit additional information and analyses to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.

(b) The Department will provide notice to municipal officials and other interested persons in order to solicit further information regarding potential effects of a failure to meet Phase II criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, will determine whether the proposed design, construction and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criterion.

(c) After evaluating Phase II criterion individually, the Department will evaluate the facility's overall compliance with the Phase II criteria, and will identify risks that have not been eliminated through mitigation measures. If risks to the public health or safety, or to significant natural, scenic, historic or aesthetic values remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste treatment or disposal facility, the Department may include conditions in the permit which eliminate or reduce the identified risks or may deny the permit application.

§ 75.414. Distances.

The distances from a facility to a feature or structure described in these criteria shall be measured from the perimeter of the facility site.

PHASE I EXCLUSIONARY CRITERIA

§ 75.421. Water supply.

(a) Landfill, land treatment and surface impoundment facilities shall not be sited in the following locations:

(1) Within ½ mile of a well or spring used for a community water supply.

(2) Within ½ mile of either side of a stream or impoundment for a distance of 5 stream miles upstream of a surface water intake for a community water supply.

(3) Within ½ mile of an off-site private or noncommunity public well or spring used as an active water supply, unless prior to operation of the facility the applicant demonstrates the availability of an acceptable permanent alternative supply of like quantity, yield and quality to the existing supply, and provides financial assurance that the alternate supply will be made available at no additional cost to the water supply owner for a period of time that shall be no less than the bond liability period established in § 75.323 (relating to period of liability). If a permit is granted it shall include a permit condition which requires installation of the alternative water supply prior to operation of the facility.

(b) A permanent alternative supply may be provided through the development of a new well with a distribution system, interconnection with a public water supply, extension of a private water supply, or similar proposals, but does not include provision of bottled water or a water tank supplied by a bulk water hauling system.

(1) The applicant shall demonstrate good faith efforts to reach agreement

with the water supply owner regarding the provision of an acceptable permanent alternative water supply.

(2) If the applicant is unable, despite good faith efforts, to reach agreement with the water supply owner, the applicant shall demonstrate to the Department that an acceptable permanent alternative water supply is available, has been offered and will be provided to the water supply owner.

(3) The Department will determine that an alternative permanent water supply is acceptable if the quality and quantity satisfy requirements for public water supplies under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1 — 721.17) Chapter 109 (relating to safe drinking water). The Department may require the alternative water supply to provide higher quality, quantity or yield of water than that required to be delivered by public water systems if the water supply owner demonstrates that the higher quality, quantity or yield is necessary to continue a preexisting use of substantial economic value.

§ 75.422. Flood hazard areas.

(a) Surface impoundment, landfill and land treatment facilities shall not be sited in the 100-year floodplain or a larger area that the flood of record has inundated.

(b) Treatment and incineration facilities shall not be sites in the 100-year floodplain or a larger area that the flood of record has inundated unless the industrial use on the proposed site was in existence as of October 4, 1978 which is the effective date of the Flood Plain Management Act (32 P. S. §§ 679.101 — 679.601).

§ 75.423. Wetlands.

Treatment and disposal facilities shall not be sited in wetland areas.

§ 75.424. Oil and gas areas.

Surface impoundment, landfill and land treatment facilities shall not be sited over active or inactive oil and gas wells or gas storage areas located within or beneath the facility site. "Active or inactive oil and gas wells or gas storage areas" have the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101 — 601.605).

§ 75.425. Carbonate bedrock areas.

Surface impoundments, landfill and land treatment facilities shall not be sited over limestone or carbonate formations, where the formations are greater than 5 feet in thickness and present at the topmost geologic unit. Areas mapped by the Pennsylvania Geologic Survey as underlain by formations shall be excluded unless competent geologic studies demonstrate the absence of formations under the facility site.

§ 75.426. National natural landmarks and historic places.

Treatment and disposal facilities shall not be sited within National Natural Landmarks designated by the National Park Service or historic sites listed on the National Register of Historic Places, unless the statute under which the designation or listing has been made authorizes the operation of the facilities in such areas.

§ 75.427. Dedicated lands in public trust.

Treatment and disposal facilities shall not be sited on lands in public trust including State, county or municipal parks, units of the National Parks System, State forests, the Allegheny National Forest, State game lands, property owned by the Pennsylvania Historical and Museum Commission, a national wildlife refuge, national fish hatchery or national environmental center unless the agency administering the lands has been given authority by statute or ordinance to allow the operation of the facilities on such lands.

§ 75.428. Agricultural areas.

Treatment and disposal facilities shall not be sited in agricultural areas established under the Agricultural Area Security Act (3 P. S. §§ 901 — 915) or in farmlands identified as Class I agricultural land by the Soil Conservation Service.

§ 75.429. Exceptional value waters.

Treatment and disposal facilities shall not be sited in watersheds of Exceptional Value Waters.

PHASE II CRITERIA

§ 75.441. Water supply.

(a) The applicant shall determine whether a proposed surface impoundment, landfill or land treatment facility is within the ground-water recharge area for public or private water supplies. The applicant shall delineate the position of the proposed facility site within relevant ground-water flow systems. The applicant shall identify all public and private water supplies and water treatment plants which may potentially be adversely affected by groundwater flow associated with the proposed hazardous waste facility, such as the water supplies located down-gradient in the flow path from the facility.

(b) For water supplies or water treatment plants which may be affected by the proposed facility, the applicant shall submit a detailed hydrogeologic study including information addressing the following:

(1) Hydraulic conductivity of the aquifer for the water supplies.

(2) Hydraulic conductivity of the geologic deposits underlying the proposed facility.

(3) Assessment of the influence of faults, fractures, or other structural geologic features upon hydraulic conductivity and groundwater flow directions.

(4) Pumping rates of water supply wells and the areal extent and configuration of the cone of pumping depression associated with these wells in relation to the groundwater table of the surrounding areas.

(c) For water supplies or water treatment plants which the hydrogeologic study required in paragraph (b) indicates may be adversely affected by the proposed facility, the applicant shall demonstrate:

(1) The hydrogeologic characteristics of the proposed facility site and adjacent areas assure that implementation of a groundwater monitoring well program will provide protection of water supplies or water treatment plants from potential contamination.

(2) The feasibility of providing a permanent alternative water supply acceptable to the water supply owner of like quantity and quality to the existing supply at no additional cost to the owner.

§ 75.442. Geology.

(a) *Faults.* Landfill, land treatment and surface impoundment facilities are deemed to be acceptable if located 1 mile or more from a major structural feature. A major structural feature is a fault mapped by the Pennsylvania Geologic Survey or the United States Geological Survey at a scale of 4 miles to the inch. If the proposed facility is within 1 mile of a major structural feature, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the proposed facility design with the faults in the area.

(b) *Bedrock depth.* For surface impoundment, landfill and land treatment facilities, a depth to bedrock of 15 feet or more shall be considered acceptable. Where the construction of the proposed facility requires excavation, the final depth to bedrock shall be considered. The applicant shall address lesser bedrock depths by providing information and analysis to allow

the Department to assess the compatibility of the design and construction of the proposed facility with the bedrock depth.

(c) *Slopes.* Slopes less than 15% for surface impoundment, landfill and land treatment facilities shall be considered acceptable. The applicant shall address greater slopes by submitting information and analysis to allow the Department to assess the compatibility of the design and construction measures for the proposed facility that would minimize adverse effects.

(d) *Landslide prone areas.* If a facility site is in a landslide prone area or is adjacent to a landslide prone area, the applicant shall submit information and analysis to allow the Department to assess whether the design measures provide adequate protection from potential landslides.

(e) *Oil and gas wells.* Surface impoundment, landfill and land treatment facilities shall be considered acceptable if the applicant can establish that abandoned oil and gas wells and gas storage areas do not exist within the proposed facility site. "Abandoned oil and gas wells and gas storage areas" have the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101 — 601.605). If abandoned facilities exist, the applicant shall provide information and analysis to allow the Department to assess the probability and degree of subsurface discharges to be expected from the existence of abandoned oil and gas wells and gas storage areas within the facility site after wells are plugged.

(f) *Carbonate areas.* Where surface impoundment, landfill, or land treatment and disposal facilities are proposed over areas underlain by carbonate bedrock, the applicant shall provide information and analysis to allow the Department to assess the prevalence of solution channels and the potential for sinkholes at the facility site.

(g) *Hydrogeology.* A surface impoundment, landfill or land treatment facility shall not be located in an area underlain by coarse unconsolidated deposits, such as well sorted valley fill deposits and heavily fractured bedrock. If any other facility is to be located in an area underlain by coarse unconsolidated deposits the applicant shall provide information and analysis to allow the Department to further assess the facility site to determine the environmental impact of these subsurface conditions.

(h) *Seismic risk zones.* If a proposed treatment or disposal facility is within a 5 mile radius of earthquake epicenters as mapped by the Pennsylvania Geologic Survey or the United States Geological Survey, the applicant shall specify design measures necessary to withstand potential seismic events, and the Department will determine whether the proposed design measures provide adequate protection from potential earthquake damage.

§ 75.443. Soils.

(a) *pH.* Land farming facilities located so the soil pH within the proposed facility is 6.0 or greater shall be deemed to be acceptable. If the proposed facility cannot meet the soil pH requirements of this subsection, the applicant shall provide information and analysis to allow the Department to assess the ability of the proposed facility to mitigate adverse environmental effects resulting from incompatible soil pH.

(b) *Cation exchange capacity.* Surface impoundment, landfill and land treatment facilities located so that the capacity of the soil to exchange cations expressed as a sum for all exchangeable cations is 15 milliequivalents per 100 grams of soil or greater shall be deemed to be acceptable. If the cation exchange capacity is less than 15, the applicant shall provide information and analysis to allow the Department to assess the soil cation exchange capacity in relation to the potential for migration of contaminants from the proposed facility.

§ 75.444. Mineral bearing areas.

(a) *Ownership of mineral rights.*

(1) Surface impoundment, landfill and land treatment facilities shall be deemed to be acceptable if the applicant owns the mineral rights within the proposed facility and the area has not been previously mined.

(2) If the applicant does not own all the mineral rights within the proposed facility, the applicant shall determine the ownership of mineral rights conveyed with the property deed to the proposed facility. The applicant shall provide a certification based on a property title search, that ownership of all mineral rights including coal, oil and gas is or will be held by the applicant and that these rights will not be severed from the property as long as hazardous waste remains on the property.

(b) *Surface subsidence risk.* If any part of a proposed facility site has been previously mined by deep or surface mining methods, the applicant shall provide the results of an engineering study of the proposed site by a competent geotechnical engineer. The study shall allow the Department to assess the probability and degree of surface subsidence and the methods which have been used or are proposed to stabilize the surface. Additionally, the applicant shall provide assurance that minerals providing support will not be mined as long as hazardous waste remains on the site.

§ 75.445. Land use.

(a) *New facilities.* Treatment and disposal facilities located on lands either designated for industrial use by existing municipal zoning or indicated as industrial in officially adopted county or municipal comprehensive plans or land use maps are deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the design of the proposed facility with zoning or land use controls. Where no zoning exists, the applicant shall provide information and analysis to allow the Department to assess compatibility with existing land use.

(b) *Existing facilities.* Treatment and disposal facilities located on sites where solid waste or hazardous waste operations — treatment, storage, recovery and disposal — or both, are currently being conducted under authority of the act are deemed to comply with the land use criterion.

§ 75.446. Transportation standards.

(a) *Access.* Treatment and disposal facilities within 5 miles travel distance of interstate or limited access highways and served by roads capable of handling anticipated truck traffic or served by a dedicated limit access highway shall be deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the proximity of the proposed facility to interstate highways, the effect upon the operation of the proposed facility and the effect of the proposed facility upon the community in the transportation corridor to and from the facility. The applicant shall provide a plan for highway improvements, if necessary.

(b) *Structures along transportation corridor.* Treatment and disposal facility sites where the transportation corridor between the entrance to a facility and the nearest interstate or limited access highway is the primary access for less than five residential dwellings per road mile with no schools, community parks or hospitals, are deemed to be acceptable. If these criteria are not met, the applicant shall provide information and analysis to al-

low the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

(c) *Transportation restrictions.* Treatment and disposal facility sites are deemed to be acceptable if there are less than four intersections per mile between the entrance to the facility and the nearest interstate or limited access highway. If there are four or more intersections per mile, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

§ 75.447. Safety services.

Treatment and disposal facilities are deemed to be acceptable if located within an area with adequate safety services. The applicant shall provide information and analysis to allow the Department to assess the adequacy of fire protection, police, ambulance and other necessary safety services available and willing to provide services to the proposed facility. In all cases, the applicant shall also comply with the requirements of §§ 75.264(h) and (i) (relating to new and existing hazardous waste management facilities applying for a permit).

§ 75.448. Proximity of facilities and structures.

Treatment and disposal facility sites are deemed to be acceptable if the distance from the facility to an airport, school, community park, hospital, church, retail center or nursing home, is greater than 1 mile. If this criterion cannot be met, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have on the use of these facilities.

§ 75.449. Economic criteria.

(a) A treatment or disposal facility which does not adversely effect the economy of the host and contiguous municipalities and municipalities contiguous to the transportation corridor to the nearest interstate or limited access highway is deemed to be acceptable without further assessment. If the facility will result in a net loss of revenues to local jurisdictions, the applicant shall provide information and analysis to allow the Department to assess compensation needed to offset actual net loss of revenues to local jurisdictions caused by the proposed facility.

(b) If a treatment or disposal facility will result in a net increase in the cost of services provided by local government, the applicant shall provide information and analysis to allow the Department to assess compensation needed to offset net increases in cost of services.

(c) If a treatment or disposal facility will adversely affect the local economy, the applicant shall provide information and analysis to allow the Department to assess employment and future economic development generated as a result of the location of the facility which may offset a decrease in the local economy.

(d) If a treatment or disposal facility will result in a net increase in cost for monitoring the facility by local government, the applicant shall provide information and analysis to allow the Department to assess the need for compensation for technical assistance which may offset these costs. The applicant shall assess provisions for site access by local government.

(e) The applicant shall provide information and analysis to allow the Department to assess a change in market value of property within the local government caused by operation of the treatment or disposal facility and means by which operation of the proposed facility may offset the change.

§ 75.450. Environmental assessment considerations.

(a) The purpose of the criteria in this section is to assist the Department in evaluating the potential impact of a proposed treatment or disposal facility on natural, scenic, historic and aesthetic values of the environment under Const. Art. I, § 27. The Department will determine whether significant environmental harm will occur after reviewing the applicant's environmental assessment report submitted in compliance with this chapter and after consulting with the applicant and relevant governmental agencies.

(b) If the Department determines that there is a significant impact on natural, scenic, historic, or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the environmental incursion to a minimum. If, after consideration of mitigation measures, the Department finds that significant environmental harm will occur, the Department will evaluate the social and economic benefits of the proposed facility to determine whether the harm outweighs the benefits. The evaluation of environmental harm shall include, at a minimum, a consideration of the impact of the proposed facility on the 15 types of environmental resources described in paragraphs (1) — (15). There may be additional potentially affected natural, scenic, historic or aesthetic values which the Department is constitutionally obligated to protect that will be considered for proposed facilities in some locations. In those instances, the Department will identify additional potential impacts for the applicant. The following criteria may not be construed as an attempt to limit or restrict the responsibilities of a Commonwealth agency under Const. Art. I, § 27.

(1) If the proposed facility is located within 1 mile of the corridor of a stream or river designated as a national or State wild, scenic, recreational, pastoral or modified recreation river under the National Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271 — 1287), or the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21 — 820.29) the applicant shall provide information and analysis to allow the Department to determine whether the proposed facility conforms to the designating statutes, land management guidelines and studies or plans for the corridor.

(2) If the proposed facility is located within 1 mile of the nearest bank of a stream or river listed as a 1-A priority for study by the Department as a State wild, scenic, recreational, pastoral or modified recreational river; or mandated by the United States Congress for study or determined by the United States Park Service to meet the criteria for study for potential inclusion into the National Wild and Scenic Rivers System, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the river or stream.

(3) If the proposed facility is located within 1 mile of a unit of the National Parks System; a State, county, or municipal park; a recreational facility operated by the United States Army Corps of Engineers; a State forest picnic area; or the Allegheny River Reservoir in the Allegheny National Forest; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the park or other recreation areas listed in this subsection.

(4) If the facility is located within 1 mile of the footpath of the Appalachian Trail or other State designated trail, the applicant shall provide information and analyses to allow the Department to assess the extent to which

the proposed facility may create adverse environmental, visual or traffic impacts on the Appalachian Trail or other State designated trail.

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service; or a natural area or wild area designated by the Environmental Quality Board, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

(6) If the facility is located within 1 mile of or within an identified potential impact area of a national wildlife refuge, national fish hatchery, or national environment center operated by the United States Fish and Wildlife Service, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the wildlife reserve, fish hatchery, or environmental center.

(7) If the facility is located within 1 mile of a historic property owned by the Pennsylvania Historical and Museum Commission, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the historic property.

(8) If the facility is located within 1 mile of a historic site listed in the National Register of Historic Places, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on historic sites.

(9) If the facility is located within ¼ mile of a historic site listed in the Pennsylvania Inventory of Historic Places or an archaeological site listed in the Pennsylvania Archaeological Site Survey, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the historical or archaeological site.

(10) If the facility is located within 1 mile of the boundary of a State forest or State game land or the proclamation boundary of the Allegheny National Forest, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the forest, game land or resources.

(11) If the facility is located within an area which is a habitat of a rare, threatened, or endangered species of plant or animal protected by the Federal Endangered Species Act of 1973 17 U.S.C. § 136 and (16 U.S.C.A. §§ 460K-1, 4601-9, 668 dd, 715i, 715s, 1362, 1371, 1372, 1402, 1531 — 1543), the Wild Resource Conservation Act 32 P. S. §§ 5301 — 5314, or recognized by the Fish Commission or Game Commission; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse effects on the species or habitate and mitigation measures the applicant has proposed to deal with adverse impacts.

(12) If the facility will result in an increase in the peak discharge rate of stormwater drainage from the project site, the applicant shall demonstrate that the proposed facility is in conformance with the official stormwater management plan required by the Storm Water Management Act (32 P. S. §§ 680.1 — 680.17), and the proposed facility will manage the runoff in a manner that otherwise adequately protects health and property from injury.

(13) If a facility is proposed to be located in a watershed for which a formal written request for designation as Exceptional Value Waters has been received by the Department or the Environmental Quality Board, the applicant shall provide information and analyses to allow the Department to assess the impact of the proposed facility on the pending designation.

(14) If the facility generates a wastewater discharge which could degrade waters designated as high quality waters under Chapter 93 (relating to water quality standards) or waters for which a formal written request for designation as high quality waters has been received by the Department or the Environmental Quality Board, the applicant shall demonstrate:

(i) The discharges are justified as a result of necessary economic or social development which is of significant public value.

(ii) The discharges, alone or in combination with other anticipated discharges of pollutants to the waters, will not preclude a use presently possible in the waters and downstream from the waters, and will not result in a violation of the numerical water quality criteria specified in § 93.9 (relating to designated water uses and water quality criteria) which are applicable to the receiving waters.

(15) If a proposed facility is to be located on prime or unique agricultural land as defined by the Soil Conservation Service, lands currently in agricultural use, or lands of Statewide importance as designated by the Soil Conservation Service, the applicant shall provide information and analyses to allow the Department to assess the proposed facility's consistency with Commonwealth policy, such as Executive Order 1982-3 regarding agricultural lands at 4 Pa. Code §§ 7.301 — 7.306 (relating to prime agricultural land policy).

[Pa. B. Doc. No. 85-1290. Filed September 20, 1985, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

STATE BOARD OF NURSE EXAMINERS

[49 PA. CODE CH. 21]

Increase in Examination Fees

By this order the State Board of Nurse Examiners amends 49 Pa. Code §§ 21.126 and 21.159 (relating to examination fees).

These amended regulations will require a registered nurse candidate and a practical nurse candidate for the examination to pay a fee of $25 directly to the National Council of State Boards of Nursing. The $24 fee paid by the candidate to the Commonwealth will remain the same. The current fee of $18.50 is being increased by the National Council of State Boards of Nursing to $25. All applicants for the registered nurse examination and the practical nurse examination will be affected by these amendments. Section 21.159, which establishes examination fees for practical nurses, has also been amended to more clearly show that portion of the examination fee which is paid directly to the National Council of State Boards of Nursing.

Fiscal Impact and Paperwork Requirements

These amendments will have a beneficial impact on the Commonwealth, as it will enable the candidate to meet the increased costs of examinations as imposed by the third-party testing requirements contained in The Administrative Code of 1929, the