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Applicants for examinations will be notified of the time and place of the examination not less than 6 weeks prior to the date of the examination.

(c) *Certificate.* Upon successful completion of certification requirements, an applicant will be awarded an official certificate prepared by the State Library, which will be valid without requiring renewal but, upon recommendation of the State Librarian, will be subject to annulment by the Department of Education under section 1211 of the Public School Code of 1949 (24 P. S. § 12-1211). Persons to whom certificates are issued by virtue of the position they held on June 14, 1961, as prescribed in section 201(13) of the Library Code (24 P. S. § 4201(13)), and in §§ 133.4(3), 133.5(3) and (4), and 133.6(4) and (5) (relating to professional librarian; provisional librarian; library assistant), will be certified only so long as they remain in the same category of position held at the time of certification.

[Pa. B. Doc. No. 85-1360. Filed October 4, 1985, 9:00 a.m.]

Title 25— ENVIRONMENTAL RESOURCES

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 75]

Insurance Coverage for Hazardous Waste Storage, Treatment, and Disposal Facilities

The Environmental Quality Board (EQB), by this order, amends 25 Pa. Code § 75.332 as set forth in Annex A hereto. The amendment requires owners or operators of hazardous waste surface impoundments, land treatment or disposal facilities to have in force liability insurance for both bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising out of the operation of the facility. The amendment corrects an error in the adoption of the financial responsibility regulations at 15 Pa. B. 895 (March 9, 1985).

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact David Hess, Deputy Director for

Regulatory Analysis, Secretary's Office of Policy, Second Floor, Fulton Building, P. O. Box 2063, Harrisburg, Pa. 17120; telephone (717) 783-1303; or Cathleen Curran Myers, Bureau of Regulatory Counsel, Office of Chief, 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 105 and 506 (35 P. S. §§ 6018.105 and 6018.506); The Clean Streams Law, act of June 22, 1937 (P. L. 1987, No. 394), sections 5 and 402 (35 P. S. §§ 691.5 and 691.402); and The Administrative Code, act of April 9, 1929 (P. L. 177), section 1920-A (71 P. S. § 510-20).

D. *Background*

The Federal Resource Conservation and Recovery Act (42 U.S.C.A. § 6901 *et seq.*), (RCRA) authorizes states to administer and enforce RCRA's hazardous waste management program by obtaining final authorization from the United States Environmental Protection Agency (EPA). 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.A. § 6926).

The EQB has already adopted several major elements necessary for the Commonwealth to obtain final authorization under RCRA. On August 2, 1980, the EQB adopted regulations identifying and listing hazardous wastes. On November 18, 1980, the EQB adopted regulations governing the manifest system, generators, transporters, notification and operation of new and existing hazardous waste facilities. On the basis of the EQB's action, the Commonwealth applied for and obtained Federal Phase I Interim Authorization to conduct a regulatory program coextensive with the adopted regulations.

On February 16, 1982, the EQB adopted regulations establishing design, construction and permit requirements for hazardous waste storage, treatment and disposal facilities. On the basis of those regulations, the Commonwealth began applying for

final authorization to conduct all aspects of a hazardous waste management program. The Federal regulations have undergone many changes since adoption of the February, 1982 regulations, including the requirement to adopt financial responsibility requirements for operators and owners of hazardous waste treatment, storage and disposal facilities. Such financial responsibility requirements were authorized by the EQB for publication as proposed rulemaking at 14 Pa. B. 1314 (April 14, 1984) and were adopted by the EQB and published as final rules at 15 Pa. B. 895 (March 9, 1985).

E. *Summary and Purpose of Amendment*

The amendment of 25 Pa. Code § 75.332(b) corrects a discrepancy in language between that subsection as published at 15 Pa. B. 895 (March 9, 1985) and subsections (a) and (c). Subsection (a) requires that owners or operators of hazardous waste treatment, storage, or disposal facilities have liability insurance to cover personal injury and property damage to third parties caused by sudden accidental occurrences at the facilities. Subsection (c) provides that subsections (a) and (b) are to be construed so as to provide comprehensive coverage for personal injury and property damage to third parties caused by hazardous waste facilities. However, subsection (b), as finally adopted, only required that owners and operators of facilities procure insurance coverage for bodily injury or property damage arising from nonsudden accidental occurrences at such facilities. This amendment to 25 Pa. Code § 75.332(b) is being adopted in order to make it consistent with subsections (a) and (c).

Notice of proposed rulemaking is being omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240), because it is, under the circumstances, impracticable, unnecessary, and contrary to the public interest for the reasons set forth below.

Notice of proposed rulemaking is unnecessary because the amendment adopts language relating to personal injury and property damage that is identical to that in the proposed regulations and the final version of §§ 75.332(a) and (c). The language originally proposed for § 75.332(b) provided that:

The permit applicant, or permittee of hazardous waste surface impoundment, land treatment or disposal facilities shall submit proof that its facility is covered by an insurance

policy which covers personal injury and property damage from nonsudden polluttional occurrences...

As a result of public comments, the EQB amended § 75.332 to clarify that insurance requirements were applicable to each owner or operator, rather than each facility; to increase the amount of insurance coverage required; to permit deductibles in limited circumstances; and to permit the Department to require coverage for nonsudden accidental occurrences arising out of hazardous waste facilities beside surface impoundments, land treatment or disposal facilities (see 15 Pa. B. 897 (March 9, 1985)). Nowhere was there any evidence of any intent to modify the requirement in subsection (b) that insurance coverage be obtained for personal/bodily injury and property damage. Such a change would have been inconsistent with the requirement in subsection (a) for personal injury and property damage arising out of sudden accidental occurrences and would have rendered meaningless the language in subsection (c) that the insurance coverage required by subsections (a) and (b) "shall be construed together to provide comprehensive coverage for personal injury and property damage to third parties from the risks associated with operation of a hazardous waste storage, treatment or disposal facility."

Furthermore, such a change in language would be inconsistent with Federal authorization requirements. Section 3004(a) of the Resource Conservation and Recovery Act (42 U.S.C.A. § 6924), requires the Administrator of the EPA to adopt financial responsibility requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities. Section 3006(a) of the statute (42 U.S.C.A. § 6926(g)), requires authorized state programs to be equivalent to the Federal program. Liability insurance requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities are promulgated at 40 C.F.R. § 264.147. Subsection (a) provides that:

Coverage for sudden accidental occurrences — An owner or operator of a hazardous waste treatment, storage, or disposal facility, or group of such facilities, must demonstrate financial responsibility for *bodily injury and property damage* to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities... (emphasis added)

Similarly, subsection (a) requires that:

Coverage for nonsudden accidental occurrences — An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for *bodily injury and property damage* to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities... (emphasis added)

Since Pennsylvania must have financial responsibility requirements equivalent to 40 C.F.R. § 264.147, and since the purpose of the April 14, 1984 and March 9, 1985 rulemakings was to promulgate financial responsibility requirements necessary to obtain final authorization to administer the Resource Conservation and Recovery Act, it clearly was the intent of the EQB to adopt language in § 75.332(b) that was consistent with the Federal requirements and, inasmuch, as the Federal requirements apply to all owners and operators of hazardous waste treatment, storage and disposal facilities, liability insurance for personal injury and property damage arising from nonsudden accidental occurrences, adoption of this amendment without proposed rulemaking would impose no hardship on facility owners or operators.

Omission of notice of proposed rulemaking is not contrary to the public interest, since a legislative determination has already been made that it is in the Commonwealth's best interests to obtain authorization under the Resource Conservation and Recovery Act. Moreover, publication of proposed rulemaking is impracticable because the Federal statute requires that the Commonwealth must have obtained authorization by January 31, 1986, or the Federal government will assume regulation of hazardous waste management in the State. Since § 75.332(b) is necessary for authorization, publication of proposed rulemaking may severely hamper the Commonwealth's efforts to obtain final authorization.

F. Benefits and Costs

Executive Order 1982-2 requires a statement of the benefits of a proposed amendment as well as the costs which may be imposed. It also requires a statement of the need for, and a description of, any forms, reports, or other paperwork required as a result of the amendment. These

will be detailed separately for the Commonwealth and private sector.

Commonwealth

The amendment provides assurance that financial burdens imposed upon Commonwealth citizens for property damage and personal injury resulting from operation of hazardous waste facilities will be relieved by the requirement that operators obtain a minimum level of pollution liability insurance.

The amendment requires that hazardous waste facility operators file certificates of insurance as proof of financial responsibility. Some additional costs may be imposed on the Commonwealth for reviewing the certificates of insurance. Any additional costs should not be substantial since the Commonwealth already has in existence a program for permitting hazardous waste facilities.

Private Sector

The amendment imposes on private entities the costs of acquiring liability insurance. Many facilities already carry liability insurance for property damage or personal injury arising from operation of a hazardous waste facility.

G. Sunset Date

No sunset date has been established, since the regulation is mandated by Federal primacy requirements. The regulation will be evaluated during the Department's periodic review of its primacy program, and if necessary, changes will be made at that time.

H. Regulatory Review

Under section 5(e) of the Regulatory Review Act of 1982 (P. L. 633, No. 181), a copy of this amendment was submitted on August 19, 1985, to the Independent Regulatory Review Commission, the Senate Environmental Resources and Energy Committee and the House Conservation Committee. At the same time, the amendment was also submitted to the Attorney General for review and comment under the Commonwealth Attorneys Act.

The amendment was approved by the Attorney General on September 8, 1985. The Independent Regulatory Review Commission met on September 19, 1985, and approved the amendment. The House Conservation Committee met on September 4, 1985, and approved the amendment. Having taken no formal action to disapprove the amendment, the amendment was deemed approved by section 5(c) of the Regulatory Review

Act, on September 8, 1985, by the Senate Environmental Resources and Energy Committee.

I. Findings of the Environmental Quality Board

The Environmental Quality Board finds:

(1) That public notice of the intention to adopt this amendment was omitted under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204) and the regulations thereunder, 1 Pa. Code § 7.1, because it was unnecessary, impractical and contrary to the public interest.

(2) That the amendment is necessary and appropriate to the administration and enforcement of the authorizing acts identified in Section C.

J. 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 § 75.332 to read as set forth in Annex A.

(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 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: 7-125. No fiscal impact; (8) recommends adoption. This revision corrects an error which occurred during the adoption of financial responsibility regulations by clarifying that owners/operators of hazardous waste facilities must have liability insurance for both bodily injury and property damage to third parties arising from the operation of the facility.

INDEPENDENT REGULATORY REVIEW COMMISSION

Order

On August 20, 1985, the Independent Regulatory Review Commission received this amendment from the

Environmental Quality Board (EQB). This would amend 25 Pa. Code § 75.332(b) to correct an error introduced in the final adoption of the Hazardous Waste Financial Responsibility Requirements. The amendment is proposed under the authority of the Clean Stream Law (35 P. S. § 691.5 and 691.402), the Solid Waste Management Act (35 P. S. §§ 6018.105 and 6018.506) and the Commonwealth Documents Law (45 P. S. § 1204). The amendment will be published as final in the *Pennsylvania Bulletin* without a comment period.

The Financial Responsibility Requirements for Hazardous Waste Facilities, as proposed at 14 Pa. B. 1314, required that insurance coverage be obtained for both personal injury and property damage arising from sudden and nonsudden pollutional occurrences. In the final version, published at 15 Pa. B. 895, insurance requirements for nonsudden occurrences were inadvertently changed to coverage for "bodily injury or property damage". The amendment will correct the error.

On September 4, 1985, the House Conservation Committee approved the amendment.

We have reviewed the correction and find it to be in the public interest. Therefore, we approve the amendment as submitted to the Commission on August 20, 1985.

The Commission reserves the right to review this regulation if it is 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 E. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR HAZARDOUS WASTE STORAGE, TREATMENT, AND DISPOSAL FACILITIES

INSURANCE REQUIREMENTS FOR HAZARDOUS WASTE STORAGE, TREATMENT, AND DISPOSAL FACILITIES

§ 75.332. Insurance coverage.

(a) A permit applicant, or permittee of a hazardous waste storage, treatment or disposal facility shall submit proof that the owner or operator has in force a liability insurance policy for personal injury and property damage to third parties caused by sudden accidental occurrences arising out of operation of the facility. The minimum amount of coverage for sudden accidental occurrences is \$2 million per occurrence with an annual aggregate of at least \$4 million, exclusive of legal defense costs. The insurer shall be liable for and make payment of amounts within a deductible applicable to the policy, if the insurer has a right of reimbursement by the insured for payments made by the insurer.

(b) A permit applicant, or permittee of a hazardous waste surface impoundment, land treatment or disposal facility shall submit proof that the owner or operator has in force a liability insurance policy for personal injury and property damage to third parties caused by nonsudden accidental occurrences arising out of operation of the facility. The minimum amount of coverage for nonsudden accidental occurrences is \$4 million per occurrence with an annual aggregate of at least \$8 million, exclusive of legal defense costs. The insurer shall be liable for and make payment of amounts within a deductible applicable to the policy, if the insurer has a right of reimbursement by the insured for payments made by the insurer.

(c) The insurance requirements of this section shall be construed together to provide comprehensive coverage for personal injury and property damage to third parties from the risks associated with operation of a hazardous waste storage, treatment or disposal facility.

(d) If the Department determines that operation of a hazardous waste facility other than a hazardous waste surface impoundment, land treatment or disposal facility may present a significant risk to the public health, safety and welfare or the environment, the Department may require the permittee to comply with subsection (b).

(e) At least every 5 years after the deadline for submitting proof of insurance coverage under § 75.331 (relating to requirement for insurance

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coverage), or after permit issuance, the Department will determine on a case-by-case basis whether the levels of financial responsibility required by this section are consistent with the degree and duration of risk associated with operation of the facility. If the Department determines the required levels of financial responsibility are not consistent with the degree and duration of risk associated with operation of the facility, the Department will require additional amounts of insurance coverage under § 75.335 (relating to additional amounts of insurance coverage).

(f) A permittee may request that the Department determine whether the levels of financial responsibility required by this section are consistent with the degree and duration of risk associated with operation of the facility. If the permittee demonstrates that the required levels of financial responsibility substantially exceed the degree and duration of risk associated with operation of the facility, the Department may adjust the level of financial responsibility as may be necessary to protect the public health, safety and welfare and the environment, but in no case may the level be adjusted below the minimum required by this section.

[Pa. B. Doc. No. 85-1373, Filed October 4, 1985, 9:00 a.m.]

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 111]

Storm Water Management

The Environmental Quality Board (EQB), by this order, amends 25 Pa. Code Chapter 111 relating to storm water management — grants and reimbursement. The Board has adopted the regulations as proposed at 15 Pa. B. 1546 (April 27, 1985) with two changes as shown in Annex A hereto.

This order was adopted at the EQB's August 27, 1985 meeting.

A. Effective Date

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

B. Contact Persons

For further information, contact Eugene Council, Bureau of Dams and Waterway Management, 106 Executive House, P. O. Box 2357, Harrisburg, Pa. 17120 (telephone (717) 787-6827), or Melinda J. Holland, 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 section 17 of the act of October 4, 1978 (P. L. 864, No. 167) (32 P. S. § 680.17), known as the Storm Water Management Act. Section 17 of the Storm Water Management Act was amended by the act of May 24, 1984 (P. L. 324, No. 63), expanding the authorization for grants to include municipalities and administrative, enforcement and implementation costs. The Commonwealth's share of these expenses was raised from 50% to 75%.

D. Purpose of Regulations

Section 5 of the Storm Water Management Act requires counties to prepare and adopt storm water management plans for each of the 353 designated watersheds in Pennsylvania within 2 years of approval of Department guidelines and model ordinances by the General Assembly. The guidelines and model ordinances were approved on May 14, 1985. The Department may extend the time limit for preparation of plans for good cause.

Section 11(b) of the Storm Water Management Act requires municipalities to adopt and implement ordinances to regulate development consistent with the storm water management plan and the Storm Water Management Act within 6 months of approval by the Department of the applicable plan.

Section 17 of the Storm Water Management Act authorizes the Department to administer grants to counties and municipalities for development and revision of these plans and for actual administrative, enforcement, and implementation costs. Grants are to be made out of funds appropriated by the General Assembly and are not to exceed 75% of the allowable costs. However, the Storm Water Management Act specifies that the grants are only to be made in accordance with regulations adopted by the Board.

The purpose of this chapter is to establish procedures for the administration of grants or reimbursements by the Department to counties and municipalities for costs of preparing or revising official storm water management plans and for administrative, enforcement, and implementation costs resulting from compliance with requirements of the Storm Water Management Act.

E. Summary of Major Features

This chapter will provide procedures for counties and municipalities to apply for grants and reimbursements for allowable costs. Application for a grant by a county is made by submission of a letter of intent and proposal for preparing a Watershed Storm Water Plan for each designated watershed selected by the Department's prioritization system. Upon acceptance of the proposal by the Department the county shall enter into an agreement with the Department to prepare the watershed Storm Water Management Plan in two phases.

Phase I will be submission of the Scope of Study to the Department for its review and approval. The Scope of Study consists generally of a detailed statement including actual and estimated costs of the items to be studied in each watershed storm water plan. The Scope of Study must describe tasks necessary to produce plans as mandated by the Storm Water Management Act, must provide time schedules for completion of plans and estimates of personnel needs and other costs, as well as detailing outside funding sources and proposed benefits of each storm water plan. The Scope of Study shall be used by the Department to determine the amount of allowable costs in the preparation of subsequent phases of the detailed Watershed Storm Water Plans (see 25 Pa. Code §§ 111.13 and 111.14).

This chapter will also authorize the Department to establish a system for prioritizing the 353 designated watersheds to determine the order in which to fund storm water plans. Priority will be based on, among other considerations, the counties' expressed need for and willingness to undertake planning and the extent of existing and potential storm water problems and complaints (see 25 Pa. Code § 111.11).

This chapter will also explain application procedures for municipalities for obtaining reimbursement of allowable costs incurred in preparation, administration, enforcement, implementation and revisions of official plans, related ordinances, and regulations (see 25 Pa. Code §§ 111.22 and 111.23).

F. Response to Public Comments

The notice of proposed rulemaking was published at 15 Pa. B. 1546 (April 27, 1985), and included a 30-day period for public comment. Only two comments were received by the Board during the comment period. One change is being made to the