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Pennsylvania Code Title 25, Chapter 260a
through 270a, dated 12/14/02

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subchap.		Sec.
A.	GENERAL	260a.1
B.	DEFINITIONS	260a.10
C.	RULEMAKING PETITIONS	260a.20

Authority

The provisions of this Chapter 260a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); amended under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.302); section 480(e) of the Pennsylvania Used Oil Recycling Act (58 P. S. § 480(e)); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20); amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 260a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 264a.141 (relating to definitions); and 25 Pa. Code § 298.10 (relating to applicability).

Subchapter A. GENERAL

Sec.

- 260a.1. Incorporation by reference, purpose, scope and applicability.
- 260a.2. Availability of information.
- 260a.3. Terminology and citations related to Federal Regulations.

§ 260a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 260 and its appendices (relating to hazardous waste management system: general) are incorporated by reference.

(b) Regarding the requirements incorporated by reference, nothing contained in this article relieves or limits a person or municipality who generates, transports, stores, treats or disposes of hazardous waste from complying with the Pennsylvania law, including: The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305);

the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 1406.1—1406.21); the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101—70-1405); and the act of July 9, 1976 (P. L. 931, No. 178) (52 P. S. §§ 27.7-1—27.7-9).

Cross References

This section cited in 25 Pa. Code § 298.1 (relating to definitions); 25 Pa. Code § 298.55 (relating to analysis plan); and 25 Pa. Code § 298.61 (relating to restrictions on burning).

§ 260a.2. Availability of information.

40 CFR 260.2 (relating to availability of information) is not incorporated by reference.

§ 260a.3. Terminology and citations related to Federal regulations.

(a) For purposes of interfacing with 40 CFR Parts 260—279, the following terms apply, unless otherwise noted:

(1) The terms “Administrator,” “Regional Administrator,” “Assistant Administrator,” “Assistant Administrator for Solid Waste and Emergency Response” and “State Director” are substituted with “Department.”

(2) When referring to an operating permit or to the Federal hazardous waste program, “Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6986),” “RCRA,” “Subtitle C of RCRA,” “RCRA Subtitle C” or “Subtitle C” is substituted with the act.

(3) “Environmental Protection Agency” or “EPA” and all names or associated acronyms are substituted with “Department” except when referring to the terms “EPA Form,” “EPA Identification Number,” “EPA Acknowledgment of Consent,” “EPA Hazardous Waste Number,” “EPA publication,” “EPA publication number,” “EPA Test Methods” and “EPA Guidance” including any mailing addresses associated with these terms.

(4) “Used oil” is substituted with “waste oil.”

(5) “State,” “authorized state,” “approved state” or “approved program” is substituted with “the Commonwealth.”

(6) Whenever the regulations require compliance with procedures found in 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program), compliance is accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

(7) The Commonwealth equivalent of 40 CFR Part 273 (relating to universal waste management) is found in Chapter 266b (relating to universal waste management).

(8) The Commonwealth equivalent of 40 CFR Part 279 (relating to standards for the management of used oil) is found in Chapter 298 (relating to management of waste oil).

(b) Federal regulations that are cited in this article or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

(c) References to 40 CFR Part 124 (relating to procedures for decision making) found in Federal regulations incorporated by reference are substituted with Pennsylvania procedures found in Chapter 270a.

(d) References to the "Department of Transportation" or "DOT" mean the United States Department of Transportation.

(e) The effective date for the *Code of Federal Regulations* incorporated by reference in this article is May 1, 1999. The incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.

Source

The provisions of this § 260a.3 amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873. Immediately preceding text appears at serial pages (254872) to (254873).

Cross References

This section cited in 25 Pa. Code § 260a.10 (relating to definitions); 25 Pa. Code § 261a.1 (relating to incorporation by reference, purpose and scope); 25 Pa. Code § 262a.12 (relating to EPA identification numbers); 25 Pa. Code § 262a.21 (relating to acquisition of manifests); 25 Pa. Code § 262a.23 (relating to use of the manifest); 25 Pa. Code § 262a.50 (relating to applicability); 25 Pa. Code § 262a.80 (relating to applicability); 25 Pa. Code § 263a.11 (relating to EPA identification number); 25 Pa. Code § 263a.20 (relating to manifest system); 25 Pa. Code § 264a.12 (relating to required notices); 25 Pa. Code § 264a.147 (relating to liability requirements); 25 Pa. Code § 265a.12 (relating to required notices); 25 Pa. Code § 265a.141 (relating to definitions); 25 Pa. Code § 265a.147 (relating to liability requirements); 25 Pa. Code § 266b.30 (relating to applicability); 25 Pa. Code § 266b.60 (relating to applicability); 25 Pa. Code § 268a.1 (relating to incorporation by reference, purpose, scope and applicability); 25 Pa. Code § 270a.2 (relating to definitions); 25 Pa. Code § 270a.5 (relating to noncomplying and program reporting by Director); 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); 25 Pa. Code § 270a.60 (relating to permits-by-rule); 25 Pa. Code § 270a.72 (relating to changes during interim status); and 25 Pa. Code § 298.12 (relating to prohibitions).

Subchapter B. DEFINITIONS

Sec.
260a.10. Definitions.

§ 260a.10. Definitions.

A term defined in this section replaces the definition of the term in 40 CFR 260.10, or, in situations for which no term exists in 40 CFR 260.10, the term shall

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be defined in accordance with this section. The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporated definition of “EPA region,” “State,” “United States,” “Administrator” and “Regional Administrator.”

Act—The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

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 constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth.

Existing tank system or existing component—The Federal definition for “existing tank system or existing component” in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

Facility—The land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed.

Fund—The Host Municipalities Fund.

Hazardous Sites Cleanup Act—The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

Hazardous Sites Cleanup Fund—The fund established by section 901 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.901).

Host municipality—A municipality, other than a county, where a qualifying facility is located, either in whole or in part, within its established corporate boundaries.

Management or hazardous waste management—The entire process, or a part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process. The term “hazardous waste management” refers to management of hazardous waste.

New hazardous waste management facility or new facility—The Federal definition for “new hazardous waste management facility or new facility” in 40 CFR 260.10 is incorporated by reference except that the date referenced is November 19, 1980, instead of October 21, 1976.

New tank system or new tank component—The Federal definition for “new tank system or new tank component” in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

Pennsylvania hazardous waste facilities plan—A plan required by sections 104(14) and 105(f) of the act (35 P. S. §§ 6018.104(14) and 6018.105(f)) and adopted by the EQB which identifies current and future hazardous waste treatment and disposal facilities necessary for the proper management of hazardous waste in this Commonwealth.

Person—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency,

State institution and agency (including, but not limited to, the Department of General Services and the State Public School Buildings Authority), or other legal entity which is recognized by law as the subject of rights and duties. In any provision of the act prescribing a fine, imprisonment or penalty, or a combination of the foregoing, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

RCRA—The Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

Registered professional engineer or professional engineer—An engineer registered to practice engineering in this Commonwealth.

Registered professional geologist or professional geologist—A geologist registered to practice geology in this Commonwealth.

Responsible official—For corporations, a corporate officer; for limited partnerships, a general partner; for all other partnerships, a partner; for a sole proprietorship, the proprietor; for a municipal, state or Federal authority or agency, an executive officer or ranking elected official responsible for compliance of the hazardous waste activities and facilities of the authority or agency with all applicable rules and regulations.

Source reduction—The reduction or elimination of the quantity or toxicity of hazardous waste generated. Source reduction may be achieved through changes within the production process, including process modifications, feedstock substitutions, improvements in feedstock purity, shipping and packing modifications, housekeeping and management practices, increases in the efficiency of machinery and recycling within a process. The term does not include dewatering, compaction, reclamation, treatment, or the use or reuse of waste.

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.

Storage—The containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

Transportation—The offsite removal of solid waste at any time after generation.

Treatment—

(i) A method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage, or reduced in volume.

(ii) The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or non-hazardous.

Source

The provisions of this § 260a.10 amended September 7, 2001, effective September 8, 2001, 31 Pa.B. 5075; amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (282462) to (282464).

Cross References

This section cited in 25 Pa. Code § 269a.1 (relating to definitions); 25 Pa. Code § 269a.101 (relating to definitions); and 25 Pa.Code § 298.1 (relating to definitions).

Subchapter C. RULEMAKING PETITIONS

Sec.

260a.20. Rulemaking petitions.

260a.30. Variances from classification as a solid waste.

§ 260a.20. Rulemaking petitions.

Each petition shall be submitted in accordance with Chapter 23 (relating to Environmental Quality Board—policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)—(e) (relating to general).

§ 260a.30. Variances from classification as a solid waste.

The coproduct transition scheme is as follows:

(1) Those materials previously regulated as coproducts prior to May 1, 1999, and that are not otherwise excluded as solid wastes, continue to be regulated as if excluded from classification as a solid waste until a variance from classification as a solid waste under 40 CFR 260.30 (relating to variances from classification as a solid waste) is acted upon by the Department. The request for a variance shall be filed by May 1, 2001.

(2) To qualify under paragraph (1), a person producing, selling, transferring, possessing or using a material as a coproduct not exempt from regulation under other provisions of this article shall submit by August 13, 1999, a written notification to the Department that the exemption in paragraph (1) applies to the person's activity.

Source

The provisions of this § 260a.30 corrected May 14, 1999, effective May 1, 1999, 29 Pa.B. 2576.

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**CHAPTER 261a. IDENTIFICATION AND LISTING
OF HAZARDOUS WASTE**

Subchap.	Sec.
A. GENERAL	261a.1

Authority

The provisions of this Chapter 261a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); amended under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning Recycling and Waste Reduction Act (58 P. S. § 4000.302); section 480(e) of the Pennsylvania Used Oil Recycling Act (58 P. S. § 480(e)); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20); amended under section 207(a) of the Small Business and Household Pollution Prevention Program Act (35 P. S. § 6029.207(a)); section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); section 4(a) of the Household Hazardous Waste Funding Act (35 P. S. § 6025.4(a)); sections 5(b), 304 and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b), 691.304 and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.302); and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20), unless otherwise noted.

Source

The provisions of this Chapter 261a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); 25 Pa. Code § 266b.2 (relating to applicability—mercury-containing devices); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 287.1 (relating to definitions); 25 Pa. Code § 287.54 (relating to chemical analysis of waste); 25 Pa. Code § 287.102 (relating to permit by rule); 25 Pa. Code § 287.132 (relating to chemical analysis of waste); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.54 (relating to waste oil management); and 25 Pa. Code § 298.55 (relating to analysis plan).

Subchapter A. GENERAL

- Sec.
- 261a.1. Incorporation by reference, purpose and scope.
- 261a.2. Definition of “solid waste.”
- 261a.3. Definition of “hazardous waste.”
- 261a.4. Exclusions.
- 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.
- 261a.6. Requirements for recyclable materials.
- 261a.7. Residues of hazardous waste in empty containers.

261a.8. Requirements for universal rule.

§ 261a.1. Incorporation by reference, purpose and scope.

Except as expressly provided in this chapter, 40 CFR Part 261 and its appendices (relating to identification and listing of hazardous waste) are incorporated by reference. The substitution of terms in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 261.4(f)(1), 261.10 and 261.11 (relating to notification of treatability studies; criteria for identifying the characteristics of hazardous waste; and criteria for listing hazardous waste). The substitution of terms in § 260a.3(a)(3) does not apply to Appendix IX (relating to wastes excluded under §§ 260.20 and 260.22) of the CFR.

Cross References

This section cited in 25 Pa. Code § 271.1 (relating to definitions); 25 Pa. Code § 272.501 (relating to scope); 25 Pa. Code § 287.1 (relating to definitions); 25 Pa. Code § 287.8 (relating to coproduct determinations); 25 Pa. Code § 287.54 (relating to chemical analysis of waste); 25 Pa. Code § 287.132 (relating to chemical analysis of waste); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.40 (relating to applicability); 25 Pa. Code § 298.44 (relating to rebuttable presumption for waste oil and flash point screening); 25 Pa. Code § 298.53 (relating to rebuttable presumption for waste oil and flash point screening); and 25 Pa. Code § 298.63 (relating to rebuttable presumption for waste oil).

§ 261a.2. Definition of “solid waste.”

Materials that are excluded from the definition of “solid waste” in 40 CFR 261.2(c)—(e) (relating to the definition of “solid waste”) shall be managed in accordance with Chapters 287—299 (relating to residual waste management).

Source

The provisions of this § 261a.2 adopted June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873.

§ 261a.3. Definition of “hazardous waste.”

(a) 40 CFR 261.3(c)(2)(ii)(C) (relating to certain non-wastewater residues such as slag resulting from HTMR processing of K061, K062 or F006 waste) is not incorporated by reference.

(b) In addition to the requirements incorporated by reference, except when the waste is contaminated media subject to remediation, when it is not promptly possible to determine if a material will be a hazardous waste, the material shall be managed as a hazardous waste until the determination is made that indicates it is not a hazardous waste.

Source

The provisions of this § 261a.3 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284428).

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§ 261a.4. Exclusions.

In addition to the requirements incorporated by reference:

(1) The exclusion in 40 CFR 261.4(b)(1) (relating to exclusions) does not apply to household hazardous waste as defined in § 271.1 (relating to definitions) if the waste is collected as part of a collection event or collected at an out-of-State household hazardous waste collection and brought into this Commonwealth for processing, treatment, storage or disposal.

(2) A copy of the written State agreement required by 40 CFR 261.4(b)(11)(ii) that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed for free phase hydrocarbon recovery operations shall be submitted to: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, Post Office Box 8471, Harrisburg, Pennsylvania 17105-8471.

Source

The provisions of this § 261a.4 amended October 5, 2001, effective October 6, 2001, 31 Pa.B. 5547. Immediately preceding text appears at serial page (280178).

§ 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) is replaced with Chapter 298 (relating to management of waste oil).

(b) In addition to the requirements incorporated by reference, a conditionally exempt small quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

(c) A conditionally exempt small quantity generator complying with this subchapter and 40 CFR 261.5 is deemed to have a license for the transportation of those conditionally exempt small quantity generator wastes generated by the generator's own operation.

Source

The provision of this § 261a.5 amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873; amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284429).

Cross References

This section cited in 25 Pa. Code § 264a.11 (relating to identification number and transporter license); and 25 Pa. Code § 265a.11 (relating to identification number and transporter license).

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§ 261a.6. Requirements for recyclable materials.

(a) The reference to “Part 279 of this chapter” in 40 CFR 261.6(a)(4) (relating to requirements for recyclable materials) is replaced with Chapter 298 (relating to management of waste oil).

(b) 40 CFR 261.6(c) is not incorporated by reference.

(c) Instead of 40 CFR 261.6(c), owners and operators of facilities that store or treat recyclable materials are regulated under all applicable and incorporated provisions of 40 CFR Parts 264 and 265, Subparts A—L, AA, BB, CC and DD; 40 CFR Part 264 Subpart X; 40 CFR Parts 266 and 270, except as provided in 40 CFR 261.6(a).

(1) In addition, owners and operators of facilities regulated under this section are subject to the applicable provisions of:

- (i) Chapter 264a and Chapter 265a, Subchapters A, B, D, E, G—J and P.
- (ii) Chapter 264a, Subchapters X and DD.
- (iii) Chapters 266a and 270a.

(2) Recycling processes that are not treatment are exempt from regulation except as provided in 40 CFR 261.6(d).

(3) The sizing, shaping or sorting of recyclable materials will not be considered treatment for purposes of this section.

(d) The requirements of §§ 270a.3, 264a.82, 264a.83, 265a.82 and 265a.83 do not apply to facilities or those portions of facilities that store or treat recyclable materials.

(e) References to § 279.11 in 40 CFR 261.6 are replaced with § 298.11 (relating to waste oil specifications).

Source

The provisions of this § 261a.6 amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873. Immediately preceding text appears at serial pages (272702) to (272703).

Cross References

This section cited in 25 Pa. Code § 266a.70 (relating to applicability and requirements); 25 Pa. Code § 266a.80 (relating to applicability and requirements); and 25 Pa. Code § 287.8 (relating to coproduct determinations).

§ 261a.7. Residues of hazardous waste in empty containers.

(a) Hazardous waste removed from either an empty container or an inner liner removed from an empty container, as defined in 40 CFR 261.7(b) (relating to residues of hazardous waste in empty containers), is subject to this chapter and Chapters 262a—265a, 268a and 270a.

(b) For purposes of this section, the term “containers” includes tanks.

Cross References

This section cited in 25 Pa. Code § 298.40 (relating to applicability).

§ 261a.8. Requirements for universal waste.

In addition to the requirements incorporated by reference, mercury-containing devices as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under Chapter 266b (relating to universal waste management).

Source

The provisions of this § 261a.8 adopted December 22, 2000, effective December 23, 2000, 30 Pa.B. 6587.

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CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchap.	Sec.
A. GENERAL	262a.10
B. MANIFEST	262a.20
C. PRETRANSPORT REQUIREMENTS	262a.34
D. RECORDKEEPING AND REPORTING	262a.41
E. EXPORTS OF HAZARDOUS WASTE	262a.55
H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD	262a.80
I. SOURCE REDUCTION STRATEGY	262a.100

Authority

The provisions of this Chapter 262a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 262a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 270a.60 (relating to permits by rule); 25 Pa. Code § 272.541 (relating to basic requirements); 25 Pa. Code § 272.551 (relating to household hazardous waste transportation, storage and disposal; and 25 Pa. Code § 298.10 (relating to applicability).

Subchapter A. GENERAL

- Sec.
 262a.10. Incorporation by reference, purpose, scope and applicability.
 262a.11. Hazardous waste determination.
 262a.12. EPA identification numbers.

§ 262a.10. Incorporation by reference, purpose, scope and applicability.

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR 262.10(g) (relating to purpose, scope and applicability) the term “section 3008 of the act” is replaced with “Article VI of the Solid Waste Management Act (35 P. S. §§ 6018.601—6018.617).”

Cross References

This section cited in 25 Pa. Code § 272.541 (relating to collection contractor).

§ 262a.11. Hazardous waste determination.

In addition to the requirements incorporated by reference, a determination that a waste is not hazardous under 40 CFR 262.11 (relating to hazardous waste determination) does not preclude the Department from determining the waste to be hazardous, using the characteristics and testing methods set forth in 40 CFR Part 261 (relating to identification and listing of hazardous waste).

Source

The provisions of this § 262a.11 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102.

§ 262a.12. EPA identification numbers.

(a) Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 262.12 (relating to EPA identification numbers).

(b) In addition to the requirements incorporated by reference:

(1) A generator shall submit a subsequent notification to the Department if:

(i) The generator activity moves to another location.

(ii) The generator facility's designated contact person changes.

(iii) The ownership of the generator facility changes.

(iv) The type of regulated activity that takes place at the generator facility changes.

(v) The generator's facility class changes, except when the facility class change is temporary.

(2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.

Source

The provisions of this § 262a.12 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284432).

Cross References

This section cited in 25 Pa. Code § 272.541 (relating to collection contractor).

Subchapter B. MANIFEST

Sec.

262a.20. General requirements.

262a.21. Acquisition of manifests.

262a.22. Number of copies.

262a.23. Use of the manifest.

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§ 262a.20. General requirements.

40 CFR 262.20 (b) and (c) (relating to general requirements) is not incorporated by reference. In addition to the requirements incorporated by reference, a generator shall:

- (1) Complete the manifest form in its entirety and distribute manifest copies in accordance with the instructions for the manifest, except that generators need not submit copies of manifests to the Department unless required by § 262a.23(a)(2) (relating to use of the manifest).
- (2) List no more than four waste streams on one manifest. If the generator is transporting or offering for transportation more than four different hazardous waste streams for offsite treatment, storage or disposal, the generator shall complete additional manifest forms for the remaining waste streams in the shipment, unless the waste stream is a lab pack.
- (3) Complete a continuation sheet, EPA Form 8700-22a, when there are more than two transporters, or for lab packs with more than four different waste streams in one shipment.
- (4) Ensure that the required information on all copies, including photocopies, of the manifest is legible to the Department, transporter and designated facility.
- (5) A generator shall designate only one permitted facility to handle the waste described on the manifest.

Source

The provisions of this § 262a.20 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (284432) to (284433).

Cross References

This section cited in 25 Pa. Code § 263a.21 (relating to compliance with the manifest); and 25 Pa. Code § 270a.60 (relating to permits-by-rule).

§ 262a.21. Acquisition of manifests.

- (a) The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.21 (relating to acquisition of manifests).
- (b) In addition to the requirements incorporated by reference, a generator shipping hazardous waste to a facility in a state that does not require use of its own state manifest shall use the Department's manifest.

Source

The provisions of this § 262a.21 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284433).

§ 262a.22. Number of copies.

(a) 40 CFR 262.22 (relating to number of copies) is not incorporated by reference.

(b) The manifest shall consist of at least the number of copies which will provide the generator, each transporter and the owner or operator of the designated facility with one copy each for their records and which will allow the designated facility to send copies to the generator, generator state and destination state.

§ 262a.23. Use of the manifest.

(a) In addition to the requirements incorporated by reference:

(1) The generator shall print or type the generator's name and enter the date of shipment in the designated space on the manifest.

(2) If the out-of-State manifest does not include a generator-state copy to be submitted to the Department by the out-of-State designated facility, the generator shall submit a complete, legible copy, such as a photocopy, of the manifest as signed by the generator, all transporters and the designated facility. This copy shall be sent within 10 days of the generator's receipt of its signed copy from the designated facility.

(3) The generator shall obtain the printed or typed name of the transporter on the manifest.

(4) A generator may not use a hazardous waste manifest which has either a preprinted Manifest Document Number or preprinted Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

(b) The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.23(e) (relating to notification of shipments of hazardous waste to a facility in an authorized state which has not yet received authorization to regulate a newly designated hazardous waste).

Source

The provisions of this § 262a.23 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284433).

Cross References

This section cited in 25 Pa. Code § 262a.20 (relating to general requirements).

Subchapter C. PRETRANSPORT REQUIREMENTS

Sec.
262a.34. Accumulation time.

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§ 262a.34. Accumulation time.

In addition to the requirements incorporated by reference, a generator who accumulates hazardous waste onsite as specified in 40 CFR 262.34(a)(1)(i) (relating to accumulation time) shall also comply with Chapter 265a, Subchapter I (relating to use and management of containers).

Source

The provisions of this § 262a.34 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102.

Subchapter D. RECORDKEEPING AND REPORTING

Sec.

262a.41. Biennial report.

262a.42. Exception reporting.

262a.43. Additional reporting.

Cross References

This subchapter cited in 25 Pa. Code § 272.541 (relating to basic requirements).

§ 262a.41. Biennial report.

Regarding the requirements incorporated by reference, the following replaces the introductory paragraph in 40 CFR 262.41 (relating to biennial report):

A generator who ships hazardous waste offsite to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year. The biennial report shall be submitted on EPA Form 8700—13A as modified by the Department, shall cover generator activities during the previous year and shall include the following information:

§ 262a.42. Exception reporting.

Regarding the requirements incorporated by reference, the phrase “for the region in which the generator is located” contained in 40 CFR 262.42 (relating to exception reporting) is not incorporated by reference.

§ 262a.43. Additional reporting.

In addition to the requirements incorporated by reference:

(1) Spills and discharges which are in amounts less than the reportable quantities, which do not result in discharges into waters of this Commonwealth, and which are managed according to an approved contingency plan, need not be reported.

(2) The reportable quantities are:

(i) Liquid hazardous waste or liquids that become hazardous waste when spilled or discharged shall be reported to the Department when the quantity spilled or discharged equals or exceeds the reportable quantity for the waste contained in 40 CFR 302.4 (relating to designation of hazardous substances) or 10 gallons, whichever is more stringent. Liquids are flowable substances which contain less than 20% solids by dry weight. Flowable refers to flow in the sense of pourable as a liquid.

(ii) Solid hazardous waste or solids that become hazardous wastes when spilled or discharged shall be reported to the Department when the quantity spilled or discharged equals or exceeds the reportable quantity for the waste contained in 40 CFR 302.4 or 500 pounds, whichever is more stringent.

(3) A discharge or spill into waters of this Commonwealth shall be reported regardless of quantity spilled or discharged.

(4) In the event of a discharge or spill equal to or greater than the reportable quantity of hazardous waste or material that becomes a hazardous waste when spilled or discharged, the generator shall take appropriate immediate action to protect the health and safety of the public and the environment and immediately notify the Department by telephone at (800) 541-2050 with the following information:

- (i) The name of the person reporting the spill.
- (ii) The name and identification number of the generator.
- (iii) The phone number where the person reporting the spill can be reached.
- (iv) The date, time and location of the spill.
- (v) A brief description of the incident.
- (vi) For each material involved in the spill:
 - (A) The shipping name, hazard class and U.N. Number.
 - (B) The estimated quantity of material spilled.
- (vii) The extent of contamination of land, water or air, if known.

(5) If a discharge or spill of hazardous waste, or hazardous material that becomes a hazardous waste when spilled or discharged, occurs during onsite unloading, loading, storage or plan operation, and a Departmental official acting within the scope of his official responsibilities determines that immediate removal of the material is necessary to protect the health and safety of the public and the environment, that official may authorize in writing the removal of the material by transporters who do not have identification numbers or license and without the preparation of a manifest.

(6) A generator shall clean up a spill or discharge of hazardous waste, or material that becomes a hazardous waste when spilled or discharged, that occurs during onsite unloading, loading, storage or plan operation, and take actions that may be required or approved by the Department so that the discharge or spill no longer presents a hazard to the health and safety of the public or environment.

(7) In addition, the generator shall file a written report on a spill or discharge of a reportable hazardous waste or material that becomes a hazardous waste when spilled or discharged, with the Department within 15 days after the incident, and supply the Department with other information it may require or request that pertains to the discharge. The report on the spill or discharge shall be entitled "Hazardous Waste Spill Report" and shall contain the following information:

- (i) The name, address and identification number of the generator and the date, time and location of the incident.
- (ii) A brief description of the circumstances causing the incident.
- (iii) A description of each of the hazardous wastes or materials that become hazardous wastes when spilled or discharged involved in the incident, including the estimated quantity spilled by weight or volume.
- (iv) A legible copy of the manifest document, if applicable.
- (v) A description of a contamination of land, water or air that has occurred due to the incident.
- (vi) A description of the actions the generator intends to take to prevent a similar occurrence in the future.

Source

The provisions of this § 262a.43 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102.

Subchapter E. EXPORTS OF HAZARDOUS WASTE

Sec.
262a.50. Applicability
262a.55—262a.57. [Reserved].

§ 262a.50. Applicability.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart E (relating to exports of hazardous waste).

Source

The provisions of this § 262a.50 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102.

§§ 262a.55—262a.57. [Reserved].

Source

The provisions of these §§ 262a.55—262a.57 reserved December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284434).

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**Subchapter H. TRANSFRONTIER SHIPMENTS OF
HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD**

Sec.
262a.80. Applicability.

§ 262a.80. Applicability.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart H (relating to transfrontier shipments of hazardous waste for recovery within the OECD).

Subchapter I. SOURCE REDUCTION STRATEGY

Sec.
262a.100. Source reduction strategy.

Cross References

This subchapter cited in 25 Pa. Code § 262a.34 (relating to accumulation time); and 25 Pa. Code § 272.541 (relating to collection contractor).

§ 262a.100. Source reduction strategy.

(a) By January 17, 1994, a person or municipality that generates hazardous waste shall prepare a source reduction strategy in accordance with this section. Except as otherwise provided in this article, the strategy shall be signed by the person or municipality that generated the waste, be maintained on the premises where the waste is generated, be available on the premises for inspection by any representative of the Department and be submitted to the Department upon request. The strategy may designate certain production processes as confidential. This confidential information may not be made public without the expressed written consent of the generator. Unauthorized disclosure is subject to appropriate penalties as provided by law.

(b) For each type of waste generated, the strategy shall include:

(1) A description of the source reduction activities conducted by the person or municipality in the 5 years prior to the date that the strategy is required to be prepared. The description shall quantify reductions in the weight or toxicity of waste generated on the premises.

(2) A statement of whether the person or municipality established a source reduction program. This program shall identify the methods and procedures that the person or municipality will implement to achieve a reduction in the weight or toxicity of waste generated on the premises, quantify the projected

reduction in weight or toxicity of waste to be achieved by each method or procedure and specify when each method or procedure will be implemented.

(3) If the person or municipality has not established a source reduction program as described in paragraph (2), it shall develop a strategy including the following:

- (i) A waste stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.
- (ii) A description of potential source reduction options.
- (iii) A description of how the options were evaluated.
- (iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when either of the following occurs:

(1) There is a significant change in a type of waste generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes, in writing, a different period for the person or municipality that generated the waste.

(d) If hazardous waste generated by a person or municipality will be treated, stored or disposed of at a solid waste management facility which has applied to the Department for approval to treat, store or dispose of the waste, the person or municipality that generated the hazardous waste shall submit the source reduction strategy required by this section to the facility upon the request of the facility.

(e) This section does not apply to persons or municipalities that generate a total of less than 1,000 kilograms of hazardous waste in each month of the year.

(f) A person or municipality that generates hazardous waste may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR 261.41(a)(5)—(7) (relating to biennial report).

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CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

Subchap.	Sec.
A. GENERAL	263a.10
B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING	263a.20
C. HAZARDOUS WASTE DISCHARGES	263a.30
D. BONDING	263a.32

Authority

The provisions of this Chapter 263a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 263a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 272.551 (relating to household hazardous waste transportation, storage and disposal); and 25 Pa. Code § 298.10 (relating to applicability).

Subchapter A. GENERAL

- Sec.
- 263a.10. Incorporation by reference and scope.
- 263a.11. EPA identification number.
- 263a.12. Transfer facility requirements.
- 263a.13. Licensing.

§ 263a.10. Incorporation by reference and scope.

- (a) Except as expressly provided in this chapter, 40 CFR Part 263 (relating to standards applicable to transporters of hazardous waste) is incorporated by reference.
- (b) Relative to the requirements incorporated by reference, when used in 40 CFR 263.10 (relating to scope), the phrase “Commonwealth of Pennsylvania” shall be substituted for the phrase “United States.”

Cross References

This section cited in 25 Pa. Code § 272.541 (relating to basic requirements); and 25 Pa. Code § 287.102 (relating to permit-by-rule).

§ 263a.11. EPA identification number.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations), does not apply in 40 CFR 263.11 (relating to EPA identification number).

§ 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter storing hazardous waste at a transfer facility for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan as required by § 263a.13(b)(4) (relating to licensing). This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the storage.

(2) 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 as required by § 263a.13(b)(4). This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

(3) A transporter delivering hazardous waste to another transporter at a transfer facility shall do the following:

(i) Obtain the printed or typed name and signature of the subsequent transporter and the date of the transfer in the designated location on the manifest.

(ii) If the subsequent transporter is not present at the transfer facility while the delivering transporter is at the transfer facility, obtain the location address of the transfer facility, the printed or typed name and signature of the transfer facility operator, and the date of delivery to the transfer facility, assuring the information is entered in Item 15 of the manifest.

(iii) If neither the subsequent transporter nor a representative of the transfer facility is present, enter the location address of the transfer facility, the subsequent transporter's printed or typed name and signature, and the date of delivery to the transfer facility in Item 15 of the manifest.

(iv) Assure all the information required by subparagraphs (i)—(iii) is legible on remaining copies of the manifest.

Source

The provisions of this § 263a.12 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284433).

Cross References

This section cited in 25 Pa. Code § 287.102 (relating to permit-by-rule).

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§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § 263a.30, § 261a.5(c), § 266a.70(1) or § 266b.50, a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

(b) A person or municipality desiring to obtain a license to transport hazardous waste within this Commonwealth shall:

(1) Comply with 40 CFR 263.11 (relating to EPA identification number).

(2) File a hazardous waste transporter license application with the Department. The application shall be on a form provided by the Department and completed as required by the instructions supplied with the form.

(3) Deposit with the Department a collateral bond conditional upon compliance by the licensee with the act, this article, the terms and conditions of the license and a Department order issued to the licensee. The amount, duration, form, conditions and terms of the bond shall conform to § 263a.32 (relating to bonding).

(4) In accordance with the Department's guidelines for contingency plans, submit a transporter contingency plan for effective action to minimize and abate discharges or spills of hazardous waste from an incident while transporting hazardous waste.

(5) Supply the Department with relevant additional information it may require.

(c) Upon receiving the application and the information required in subsection (b), the Department evaluates the application for a license and other relevant information and issues or denies the license. If a license is denied, the Department will advise the applicant in writing of the reasons for denial.

(d) A license granted or renewed under this chapter is valid for 2 years unless the Department determines that circumstances justify issuing a license for less than 2 years. The expiration date will be set forth on the license.

(e) A license to transport hazardous wastes is nontransferable and nonassignable and usable only by the licensee and employees of the licensee.

(f) The Department may revoke or suspend a license in whole or in part for one or more of the following reasons:

(1) Violation of an applicable requirement of the act or a regulation promulgated under the act.

(2) Aiding or abetting the violation of the act or a regulation promulgated under the act.

(3) Misrepresentation of a fact either in the application for the license or renewal or in information required or requested by the Department.

(4) Failure to comply with the terms or conditions placed upon the license or renewal.

(5) Failure to comply with an order issued by the Department.

- (6) Failure to maintain the required bond amount.
- (g) The application for a license shall be accompanied by a check for \$500 payable to the "Commonwealth of Pennsylvania." The application for license renewal shall be accompanied by a check for \$250 payable to the "Commonwealth of Pennsylvania."
- (h) In addition to the fees required by subsection (g), the transporter shall submit a fee of \$5 for each license card requested in excess of ten cards.
- (i) The licensee shall notify the Department within 30 days of any change in the information contained in the license application.
- (j) A copy of the transporter contingency plan approved at licensure or approved as amended shall be carried on the transport vehicle while transporting hazardous waste.

Source

The provisions of this § 263a.13 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (284438), (272709) and (284439).

Cross References

This section cited in 25 Pa. Code § 263a.12 (relating to transfer facility requirements); 25 Pa. Code § 263a.32 (relating to bond); and 25 Pa. Code § 272.541 (relating to collection contractor).

Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING

- Sec.
- 263a.20. Manifest system.
- 263a.21. Compliance with the manifest system.
- 263a.23. Hazardous waste transportation fee.
- 263a.24. Documentation of hazardous waste transporter fee submission.
- 263a.25. Civil penalties for failure to submit hazardous waste transporter fees.
- 263a.26. Assessment of penalties.

§ 263a.20. Manifest system.

- (a) Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply in 40 CFR 263.20 (relating to manifest system), as incorporated by reference into this chapter.
- (b) In addition to the requirements incorporated by reference:
- (1) A transporter shall print or type the transporter's name.
 - (2) The second and any subsequent highway transporter shall print or type their name, and sign and date the manifest or continuation sheet in the designated location.
 - (3) A transporter shall obtain the printed or typed name of the subsequent transporter or representative of the designated facility.

Source

The provisions of this § 263a.20 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (284439).

Cross References

This section cited in 25 Pa. Code § 263a.23 (relating to hazardous waste transportation fee).

§ 263a.21. Compliance with the manifest.

In addition to the requirements incorporated by reference:

- (1) A transporter may not accept or transport hazardous waste if the number or type of containers or quantity of waste to be transported does not correspond with the number, type or quantity stated on the manifest.
- (2) A transporter may not accept a manifest from a generator unless it is completed in accordance with 40 CFR 262.20 and § 262a.20 (relating to general requirements).
- (3) A transporter may not accept a hazardous waste manifest which has either a preprinted Manifest Document Number or preprinted Manifest Tracking Number that has been altered by anyone other than the printer of the manifest.

Source

The provisions of this § 263a.21 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (284439) to (284440).

§ 263a.23. Hazardous waste transportation fee.

(a) A fee is assessed on hazardous waste transportation to or from a location within this Commonwealth which requires a manifest under § 263a.20, 40 CFR 263.20 and 40 CFR 263.21 (relating to the manifest system; and compliance with the manifest). Each of the following are considered a separate transportation activity, subject to assessment of a fee:

- (1) Transport to a location within this Commonwealth from a location out-of-State.
- (2) Transport from a location within this Commonwealth to a location out-of-State.
- (3) Transport from one location to another within this Commonwealth.

(b) A hazardous waste transportation fee will not be assessed for:

- (1) Onsite shipments of hazardous waste.
- (2) Hazardous waste shipments through this Commonwealth not originating from, or destined for, a location within this Commonwealth.
- (3) Shipments of hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (P. L. 96-510, 94 Stat. 2767), known as the Federal Superfund Act (42

U.S.C.A. §§ 9601—9675), Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) A transporter delivering a shipment of hazardous waste to a designated facility or recycler in this Commonwealth shall pay the transportation fees. If a shipment is destined for a location outside this Commonwealth, the transportation fee will be paid by the transporter that accepts the hazardous waste from a Commonwealth generator or other hazardous waste management location within this Commonwealth.

(d) A transporter shall remit to the Department hazardous waste transportation fees due for each quarter, accompanied by the forms required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission).

(e) Payment of the fees, accompanied by the completed forms required by § 263a.24, shall be postmarked or received by the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission deadline falls on a weekend or State holiday, the report shall be postmarked or received on or before the next business day after the 20th.

(f) Payment shall be by check or money order, payable to “The Hazardous Sites Cleanup Fund,” and forwarded with the accompanying forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(g) Fees shall be calculated based on standard tons. For purposes of this section:

(1) A standard ton equals 2,000 pounds.

(2) A metric ton is converted to a standard ton by dividing the metric ton by a factor of 0.91.

(3) Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons are converted to tons using a factor of 8 pounds per gallon.

(ii) Liters are converted to tons using a factor of 2.1 pounds per liter.

(4) Cubic yards and cubic meters are converted to standard tons using a factor of 1 ton per each of these units, or part thereof.

(h) Fees are based on the quantities listed on the manifest by the treatment, storage or disposal facility (TSD) or, when not specified by the TSD, as provided by the generator.

Cross References

This section cited in 25 Pa. Code § 263a.24 (relating to documentation of hazardous waste transporter fee submission); 25 Pa. Code § 263a.25 (relating to civil penalties for failure to submit hazardous waste transporter fees); 25 Pa. Code § 263a.26 (relating to assessment of penalties); and 25 Pa. Code § 266a.70 (relating to applicability and requirements).

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§ 263a.24. Documentation of hazardous waste transporter fee submission.

(a) A transporter receiving or delivering hazardous waste to or from a site in this Commonwealth shall submit specific information to the Department to document that the amount of fees submitted under § 263a.23 (relating to hazardous waste transportation fee) is accurate. This information shall be provided on forms provided or approved by the Department.

(1) A transporter who has transported hazardous waste during a quarter shall submit completed forms ER-WM-55G and ER-WM-55H, or their successor documents, with the appropriate fees.

(2) A transporter who has not transported hazardous waste during a quarter shall submit only form ER-WM-55G.

(b) The required forms shall be completed by the transporter in conformance with instructions provided.

(c) A transporter shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste transportation activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

Source

The provisions of this § 263a.24 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (254903) to (254904).

Cross References

This section cited in 25 Pa. Code § 263a.23 (relating to hazardous waste transportation fee); 25 Pa. Code § 263a.25 (relating to civil penalties for failure to submit hazardous waste transporter fees); and 25 Pa. Code § 263a.26 (relating to assessment of penalties).

§ 263a.25. Civil penalties for failure to submit hazardous waste transporter fees.

(a) The Department may assess a civil penalty for:

(1) Failure to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), failure to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or failure to meet the time schedule for submission established by § 263a.23(e).

(2) Intentional submission of falsified information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

(3) Failure of a transporter to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, the Hazardous Sites Cleanup Act or this article.

§ 263a.26. Assessment of penalties.

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and the regulations thereunder, this section sets forth civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), fails to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or fails to meet the time schedule for submission established by § 263a.23(e), the Department may assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305), the Department may assess a minimum civil penalty of \$1,000.

(d) Failure to comply with the fee payment and documentation requirements of this chapter constitutes grounds for suspension or revocation of a hazardous waste transporter license, denial of issuance or renewal of a license, and for forfeiture of the hazardous waste transporter's collateral bond, in addition to civil penalties set forth in this section.

Source

The provisions of this § 263a.26 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (254904) to (254905).

Subchapter C. HAZARDOUS WASTE DISCHARGES

Sec.
263a.30. Immediate action.

§ 263a.30. Immediate action.

In addition to the requirements incorporated by reference, in the event of a discharge or spill of hazardous waste during transportation, the transporter shall immediately notify the Department by telephone at (717) 787-4343.

Subchapter D. BONDING

Sec.
263a.32. Bonding.

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§ 263a.32. Bonding.

(a) A collateral bond means an indemnity agreement in a certain sum payable to the Department executed by the licensee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Turnpike Commission, the General State Authority, the State Public School Building Authority or a Commonwealth municipality, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(b) A new, revised or renewed license to transport hazardous waste may not be issued by the Department before the applicant for a license has filed a collateral bond payable to the Department on a form provided or approved by the Department, and the bond is approved by the Department.

(c) The bond shall be in an amount sufficient to assure that the licensee faithfully performs the requirements of the act, the regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee, but a minimum of \$10,000.

(d) Liability under the bond shall continue at a minimum for the duration of the license, any renewal thereof and for a period of 1 year after expiration, termination, revocation or surrender of the license. The 1-year extended period of liability shall include, and shall be automatically extended for, additional time during which administrative or legal proceedings are pending involving a violation by the transporter of the act, regulations promulgated thereunder, the terms or conditions of a license or a Department order.

(e) The Department may require additional bond amounts at any time if the methods of transporting wastes change, the kinds of wastes transported change or the Department determines the additional bond amounts are necessary to guarantee compliance with the act, regulations, the terms and conditions of the license or a Department order.

(f) Collateral bonds are subject to the following conditions:

(1) The Department will obtain possession of and keep in custody all collateral deposited by the licensee until authorized for release as provided in this section.

(2) The Department will value collateral at its current market value.

(3) Collateral shall be in the name of the licensee, not in the name of third parties and shall be pledged and assigned to the Department free and clear of claims.

(g) Letters of credit are subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of credit are irrevocable. The Department may accept a letter of credit not revocable for a term of 3 years if:

- (i) The letter of credit is automatically renewable for additional terms, unless the bank gives at least 90 days prior written notice to the Department of its intent to terminate the credit at the end of the current term.
- (ii) The Department has the right to draw upon the credit before the end of its term and convert it into a cash collateral bond if the licensee fails to replace the letter of credit with other acceptable collateral within 30 days of the bank's notice to terminate the credit.
- (3) The letter of credit shall be payable to the Department in part or in full upon demand of the Department in the case of a forfeiture or the failure of the owner or operator to replace the letter of credit as provided in this section.
- (4) The Department will not accept letters of credit from a bank for a licensee in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.
- (5) Letters of credit are subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 290, including amendments and successor publications.
- (6) Letters of credit provide that the bank will give prompt notice to the licensee and the Department of a notice received or action filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business.
- (h) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the licensee is deemed to be without collateral bond coverage in violation of § 263a.13 (relating to licensing). The Department will issue a notice of violation against a licensee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days.
- (i) Bonds not declared forfeit in accordance with subsection (j) are released to the licensee 1 year after expiration, termination, revocation or surrender of the license.
- (j) The Department will declare forfeit all a licensee's bonds if the Department finds that the licensee violated any requirements of the act, this article, terms and conditions of a license or a Department order issued to the licensee when the Department finds that the licensee failed to remedy a violation promptly.
- (k) Remedies provided in law for violation of the act, this article or the conditions of the license, are expressly preserved. Nothing in this section may be construed as an exclusive penalty or remedy for the violations of law. An action taken under this chapter does not waive or impair another remedy or penalty provided in law.

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TRANSPORTERS

25 § 263a.32

Cross References

This section cited in 25 Pa. Code § 263a.13 (relating to licensing); and 25 Pa. Code § 287.102 (relating to permit-by-rule).

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(294508) No. 339 Feb. 03

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CHAPTER 264a. OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

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Authority

The provisions of this Chapter 264a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 264a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.12 (relating to prohibitions); 25 Pa. Code § 298.22 (relating to waste oil storage); 25 Pa. Code § 298.45 (relating to waste oil storage at transfer facility); 25 Pa. Code § 298.54 (relating to waste oil management); and 25 Pa. Code § 298.64 (relating to waste oil storage).

Subchapter A. GENERAL

Sec.

264a.1. Incorporation by reference, purpose, scope and reference.

Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.1. Incorporation by reference, purpose, scope and reference.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 and its appendices (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference:

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(1) 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs) and Appendix VI (relating to political jurisdictions in which compliance with 40 CFR 264.18(a) (relating to location standards) shall be demonstrated are not incorporated by reference.

(2) Instead of 40 CFR 264.1(b), this chapter applies to an owner or operator of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapters 261a and 266a and § 270a.60 (relating to identification and listing of hazardous waste; standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule).

(3) Instead of 40 CFR 264.1(g)(2), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent the requirements are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) 40 CFR 264.1(g)(6) (relating to elementary neutralization unit and wastewater treatment unit) is not incorporated by reference. The owner or operator of an elementary neutralization unit or wastewater treatment unit may satisfy permitting requirements by complying with § 270a.60(b)(1).

(5) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal wastes).

Cross References

This section cited in 25 Pa. Code § 298.12 (relating to prohibitions); 25 Pa. Code § 298.20 (relating to applicability); 25 Pa. Code § 298.52 (relating to general facility standards); 25 Pa. Code § 298.54 (relating to waste oil management); 25 Pa. Code § 298.61 (relating to restrictions on burning); and 25 Pa. Code § 298.62 (relating to notation).

Subchapter B. GENERAL FACILITY STANDARDS

Sec.

- 264a.11. Identification number and transporter license.
- 264a.12. Required notices.
- 264a.13. General and generic waste analysis.
- 264a.15. General inspection and construction inspection requirements.
- 264a.18. Location standards.

Cross References

This section cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an EPA identification number and a license from the Depart-

ment, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste provided that the conditionally exempt small quantity generator is in compliance with § 261.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements) or universal waste transporters in compliance with § 266b.50 (relating to applicability).

Cross References

This section cited in 25 Pa. Code § 270a.60 (relating to permits-by-rule); and 25 Pa. Code § 298.51 (relating to notification).

§ 264a.12. Required notices.

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.12 (relating to required notices).

§ 264a.13. General and generic waste analysis.

(a) In addition to the requirements incorporated by reference, before an owner or operator of a facility that treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department a notification that the facility intends to accept an additional waste stream generated by the specified generator. This notification shall include information that is specified in the facility's permit.

(b) If the notification information required in subsection (a) is not required by the facility's permit, the owner or operator shall submit the information required by § 265a.13 (relating to general and generic waste analysis) until the permit is amended to require the notification information.

§ 264a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

§ 264a.18. Location standards.

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

Cross References

This section cited in 25 Pa. Code § 270a.60 (relating to permits-by-rule).

Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Sec.
264a.56. Emergency procedures.

Cross References

This subchapter cited in 25 Pa. Code § 269a.47 (relating to safety services); and 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.56. Emergency procedures.

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department or the Department's Central Office by telephone at (717) 787-4343.

Cross References

This section cited in 25 Pa. Code § 298.52 (relating to general facility standards); and 25 Pa. Code § 298.54 (relating to waste oil management).

**Subchapter E. MANIFEST SYSTEM,
RECORDKEEPING AND REPORTING**

Sec.

- 264a.71. Use of the manifest system.
- 264a.75. Biennial report.
- 264a.78. Hazardous waste management fee.
- 264a.79. Documentation of hazardous waste management fee submission.
- 264a.80. Civil penalties for failure to submit hazardous waste management fees.
- 264a.81. Assessment of penalties; minimum penalties.
- 264a.82. Administration fees.
- 264a.83. Administration fees during closure.

Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.71. Use of the manifest system.

In addition to the requirements incorporated by reference:

- (1) An owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by the Department's manifest, unless a manifest is not required by 40 CFR 262.20(e) (relating to the manifest general requirements).
- (2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, as required.
- (3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.
- (4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

Source

The provisions of this § 264a.71 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (280188).

§ 264a.75. Biennial report.

Relative to the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

§ 264a.78. Hazardous waste management fee.

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazardous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

(b) A hazardous waste management fee will not be assessed for:

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 264a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

(d) Payment shall be by check or money order, payable to “The Hazardous Sites Cleanup Fund,” and shall be forwarded along with the required forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(e) For purposes of assessing fees incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons shall be converted to tons using a factor of 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds per liter.

- (3) Cubic yards and cubic meters shall be converted to standard tons using a factor of 1 ton per each of these units, or part thereof.
- (g) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.
- (h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.
- (i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator will be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

Cross References

This section cited in 25 Pa. Code § 264a.79 (relating to documentation of hazardous waste management fee submission); 25 Pa. Code § 264a.80 (relating to civil penalties for failure to submit hazardous waste management fees); and 25 Pa. Code § 264a.81 (relating to assessment of penalties; minimum penalties).

§ 264a.79. Documentation of hazardous waste management fee submission.

- (a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.
- (1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit Forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55D.
- (2) The owner or operator of an offsite captive disposal facility shall submit Forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.
- (3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit Forms ER-WM-55I, ER-WM-

55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

Cross References

This section cited in 25 Pa. Code § 264a.78 (relating to hazardous waste management fee); 25 Pa. Code § 264a.80 (relating to civil penalties for failure to submit hazardous waste management fees); and 25 Pa. Code § 264a.81 (relating to assessment of penalties; minimum penalties).

§ 264a.80. Civil penalties for failure to submit hazardous waste management fees.

(a) The Department may assess a civil penalty for:

(1) Failure to submit hazardous waste management fees as required by § 264a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 264a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste management fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, or the Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

§ 264a.81. Assessment of penalties; minimum penalties.

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and regulations thereunder, this section sets forth minimum civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty

for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit hazardous waste management fees as required by § 264a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 264a.78(c), the Department will assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of \$1,000.

§ 264a.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 266a.80 (relating to applicability and requirements).

§ 264a.83. Administration fees during closure.

(a) 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. The Department may approve a longer closure period if the owner or operator demonstrates that:

- (1) The closure activities will, of necessity, take longer than 180 days to complete or the following:
 - (i) The facility has the capacity to receive additional wastes.
 - (ii) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site.

(iii) Closure of the facility would be incompatible with continued operation of the site.

(2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility. Under 40 CFR 264.112(d) (relating to closure plan; amendment of plan) and paragraph (1)(i), if operation of the site is recommenced, the Department may defer completion of closure activities until the new operation is terminated. The deferral shall be in writing.

(3) The demonstrations referred to in 40 CFR 264.112(d) and this section shall be made as follows:

(i) The demonstrations in 40 CFR 264.112(d) shall be made at least 30 days prior to the expiration of the 60-day period.

(ii) The demonstrations in this section shall be made at least 30 days prior to the expiration of the 180-day period.

(b) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

(1) Land disposal facilities—\$100.

(2) Impoundments—\$100.

(3) All other facilities—\$50.

Source

The provisions of this § 264a.83 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (254928) to (254929).

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Sec.

264a.97. General groundwater monitoring requirements.

264a.101. Corrective action for solid waste management units.

§ 264a.97. General groundwater monitoring requirements.

In addition to the requirements incorporated by reference:

(1) The owner or operator shall keep records of analyses and evaluations of groundwater quality and surface elevations, which shall be conducted quarterly, and flow rate and direction determinations, which shall be conducted

annually. These evaluations and determinations shall be conducted as required under 40 CFR Part 264, Subpart F (relating to releases from solid waste management units).

(2) The owner or operator shall report the following information in writing to the Department:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in 40 CFR 264.98(a) (relating to detection monitoring program) for an upgradient groundwater monitoring well within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(ii) Quarterly after the first year: concentrations or values of the parameters in 40 CFR 264.98(a) and required under 40 CFR 264.97(g) (relating to detection monitoring program), for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR 264.97(h), within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(iii) Annually: concentrations or values of those parameters for each well which are specified by the facility's permit within 15 days of completing the annual analysis.

(iv) Annually: those determinations for the groundwater flow rate and direction specified in 40 CFR 264.99(e) (relating to compliance monitoring).

(3) The owner or operator shall report the groundwater quality required by paragraph (2) and 40 CFR 264.97 at a monitoring point established under 40 CFR 264.95 (relating to point of compliance) in a form necessary for the determination of statistically significant increases under 40 CFR 264.98 (relating to detection monitoring program).

Source

The provisions of this § 264a.97 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (254929) to (254930).

§ 264a.101. Corrective action for solid waste management units.

In 40 CFR 264.101(b) (relating to corrective action for solid waste management units), the reference to Subpart S does not apply until 40 CFR Part 264, Subpart S is effective in this Commonwealth.

Subchapter G. CLOSURE AND POSTCLOSURE

Sec.	
264a.115.	Certification of closure.
264a.120.	Certification of completion of postclosure care.

264a-10

§ 264a.115. Certification of closure.

The owner or operator shall satisfy § 264a.166 (relating to closure and post-closure certification) instead of the reference to 40 CFR 264.143(i) (relating to financial assurance for closure).

Cross References

This section cited in 25 Pa. Code § 264a.83 (relating to administration fees during closure); and 25 Pa. Code § 265a.83 (relating to administration fees during closure).

§ 264a.120. Certification of completion of postclosure care.

The owner or operator shall satisfy § 264a.166 (relating to closure and post-closure certification) instead of the reference to 40 CFR 264.145(i) (relating to financial assurance for postclosure care).

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Subchapter H. FINANCIAL REQUIREMENTS

Sec.	
264a.141.	Definitions.
264a.143.	Financial assurance for closure.
264a.145.	Financial assurance for postclosure care.
264a.147.	Liability requirements.
264a.148.	Incapacity of owners or operators, guarantors or financial institutions.
264a.149.	Use of state-required mechanisms.
264a.150.	State assumption of responsibility.
264a.151.	Wording of instruments.
264a.153.	Requirement to file a bond.
264a.154.	Form, terms and conditions of bond.
264a.155.	Special terms and conditions for surety bonds.
264a.156.	Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.
264a.157.	Phased deposits of collateral.
264a.158.	Replacement of bond.
264a.159.	Reissuance of permits.
264a.160.	Bond amount determination.
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264a.163.	Failure to maintain adequate bond.
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264a.165.	Bond release.
264a.166.	Closure and postclosure certification.
264a.167.	Public notice and comment.
264a.168.	Bond forfeiture.
264a.169.	Preservation of remedies.

§ 264a.141. Definitions.

In addition to the terms defined in 40 CFR 264.141 (relating to definitions of terms as used in this subpart), which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to hazardous waste management system: general) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

Collateral bond—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator and is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

Final closure—Successful completion of requirements for closure and post-closure care as required by 40 CFR Part 264, Subpart G (relating to closure and postclosure).

Financial institutions—Banks and other similar establishments organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

Surety bond—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator, and is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

Surety company—A corporation licensed to do business as a surety in this Commonwealth.

§ 264a.143. Financial assurance for closure.

40 CFR 264.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 264.143(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

Cross References

This section cited in 25 Pa. Code § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

§ 264a.145. Financial assurance for postclosure care.

40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 264.145(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

§ 264a.147. Liability requirements.

The substitution of terms as specified in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.147(g)(2) and (i)(4) (relating to liability requirements).

§ 264a.148. Incapacity of owners or operators, guarantors or financial institutions.

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the Regional Administrator of the EPA.

§ 264a.149. Use of state-required mechanisms.

40 CFR 264.149 (relating to use of state-required mechanisms) is not incorporated by reference.

§ 264a.150. State assumption of responsibility.

40 CFR 264.150 (relating to state assumption of responsibility) is not incorporated by reference.

§ 264a.151. Wording of instruments.

40 CFR 264.151 (relating to wording of the instruments) is not incorporated by reference.

§ 264a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 264a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond is approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as having a permit, shall cease accepting hazardous waste unless the owner or operator submits a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

§ 264a.154. Form, terms and conditions of bond.

- (a) The Department accepts the following types of bond:
- (1) A surety bond.
 - (2) A collateral bond.
 - (3) A bond pledging a corporate guarantee.

- (4) A phased deposit collateral bond as provided in § 264a.157 (relating to phased deposits of collateral).
- (b) The Department prescribes and furnishes the forms for bond instruments.
- (c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.4c, 1396.4e and 1396.15c—1396.25), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.
- (d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.
- (e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 264a.155. Special terms and conditions for surety bonds.

- (a) The Department does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.
- (b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.
- (c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days of receipt of the notice of cancellation, the owner or operator shall provide the Department with a replacement bond under § 264a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 264a.168 (relating to bond forfeiture).
- (d) The Department does not accept surety bonds from a surety company for a owner or operator, on all facilities owned or operated by the owner or operator, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety has complied with

the provisions of The Insurance Company Act of 1921 (40 P. S. §§ 1—297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety, notwithstanding judicial or administrative appeal of the forfeiture, and that the amount is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint and severally liable for payment of the bond amount.

§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.

(a) The Department obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department uses the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit are subject to the following conditions:

(1) The Department requires that certificates of deposit are assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

(3) The Department requires the issuing institution to waive all rights of setoff or liens it has or might have against the certificates.

(4) The Department only accepts automatically-renewable certificates of deposit.

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

(6) The Department only accepts certificates of deposit from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.

(7) The Department does not accept certificates of deposit from banks that failed or delayed in making payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a bank letter of credit are subject to the following conditions:

- (1) The letter of credit is a standby letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a State or Federal agency and Federally insured or equivalently protected.
- (2) The letter of credit may not be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the owner's or operator's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.
- (3) The letter of credit may not be issued when the amount of the letter of credit, aggregated with other loans and credits extended to the owner or operator, exceeds the issuer legal lending limits for that owner or operator as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).
- (4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for at least a 1 year period if the following conditions are met and stated in the credit:
 - (i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail to the Department and the customer of its intent to terminate the credit at the end of the current time period.
 - (ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.
- (5) Letters of credit shall name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this subchapter.
- (6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.
- (7) The issuing bank waives the rights to setoff or liens it has or might have against the letter of credit.
- (8) The Department will not accept letters of credit from a bank that failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.
- (e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relat-

ing to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture.

Cross References

This section cited in 25 Pa. Code § 264a.143 (relating to financial assurance for closure); and 25 Pa. Code § 264a.145 (relating to financial assurance for postclosure).

§ 264a.157. Phased deposits of collateral.

(a) An owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

Cross References

This section cited in 25 Pa. Code § 264a.154 (relating to form, terms and conditions of bond); and 25 Pa. Code § 264a.163 (relating to failure to maintain adequate bond).

§ 264a.158. Replacement of bond.

(a) The Department may allow an owner or operator to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond is determined under this chapter, but in no case may it be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the owner or operator submits and the Department approves acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the owner or operator.

Cross References

This section cited in 25 Pa. Code § 264a.155 (relating to special terms and conditions for surety).

§ 264a.159. Reissuance of permits.

Before a permit is reissued to a new owner or operator, the new owner or operator shall post a new bond in an appropriate amount determined by the Department under this subchapter, but in no case less than the amount of bond on deposit with the Department, in the new owner's or operator's name and assume all accrued liability for the hazardous waste storage, treatment or disposal facility.

§ 264a.160. Bond amount determination.

(a) The Department determines bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. This is done in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount is based on the permit applicant's written estimate submitted under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

Cross References

This section cited in 25 Pa. Code § 264a.153 (relating to requirement to file a bond).

§ 264a.162. Bond amount adjustments.

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

- (1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that requires an additional amount of bond determined under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).
- (2) Inflationary cost factors exceed the estimate used for the original bond amount determination under 40 CFR 264.142 and 264.144.
- (3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, requiring an additional amount of bond determined under 40 CFR 264.142 and 264.144.
- (4) An additional amount of bond is required as determined by 40 CFR 264.142 and 264.144 to meet the requirements of applicable statutes, this subchapter and the terms and conditions of the permit or orders of the Department.

Cross References

This section cited in 25 Pa. Code § 264a.153 (relating to requirement to file a bond); 25 Pa. Code § 264a.163 (relating to failure to maintain adequate bond); 25 Pa. Code § 264a.164 (relating to separate bonding for a portion of a facility); and 25 Pa. Code § 264a.165 (relating to bond release).

§ 264a.163. Failure to maintain adequate bond.

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 264a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 264a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

§ 264a.164. Separate bonding for a portion of a facility.

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department determines that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 264a.162 (relating to bond amount adjustments).

Cross References

This section cited in 25 Pa. Code § 264a.166 (relating to closure and postclosure certification).

§ 264a.165. Bond release.

(a) The owner or operator may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. The bond release may be requested during the operation of the facility as part of a request for bond adjustment under § 264a.162 (relating to bond amount adjustments); upon completion of closure for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility as specified in 40 CFR Part 264, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain all of the following:

(1) The name of the owner or operator and identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) A revised cost estimate for closure and postclosure care in accordance with 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and postclosure care).

(5) Closure or postclosure certification for full bond release requests.

(6) Other information required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 264.142 and 264.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the

environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months of receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

§ 264a.166. Closure and postclosure certification.

(a) The owner or operator shall submit a request for closure or postclosure certification upon completion of closure or postclosure of the facility in accordance with 40 CFR 264.115 or 264.120 (relating to certification of closure; and certification of completion of postclosure care).

(b) Within 60 days after receipt of a written request for closure or postclosure certification, the Department will initiate an inspection of the facility to verify that closure or postclosure was effected in accordance with the approved facility closure or postclosure care plan and this article.

(c) If the Department determines that the facility closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the owner or operator that closure or postclosure was effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this article, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the owner or operator setting forth the schedule of measures the owner or operator shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause

adverse effects upon the environment or the public health, safety and welfare after expiration of the 1-year liability period, the Department will require the owner or operator to deposit a separate bond under § 264a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) on deposit with the Department.

Cross References

This section cited in 25 Pa. Code § 264a.115 (relating to certificate of closure); and 25 Pa. Code § 264a.120 (relating to certification of completion of postclosure care).

§ 264a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

§ 264a.168. Bond forfeiture.

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility if the Department determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with the requirements of this article, the act, section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or has action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to

continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

Cross References

This section cited in 25 Pa. Code § 264a.155 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure); and 25 Pa. Code § 264a.166 (relating to closure and postclosure certification).

§ 264a.169. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), this article and the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sec.	
264a.173.	Management of containers.
264a.180.	Weighing or measuring facilities.

Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.173. Management of containers.

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

Source

The provisions of this § 264a.173 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (254944).

§ 264a.180. Weighing or measuring facilities.

Weighing or measuring facilities, if necessary or when required by the Department, shall weigh hazardous wastes brought to the treatment, storage or disposal facility, except for captive facilities that handle liquids or flowable wastes—less than 20% solids—amenable to accurate flow measurements, or captive facilities that possess other waste inventory controls-volume controls. Weighing facilities shall be capable of weighing the maximum anticipated load plus the weight of the transport vehicle. The precision of weighing devices shall be certified by the Department of Agriculture. For offsite facilities or onsite facilities receiving waste from offsite sources, the hours of operation for the facility shall be prominently displayed on a sign at the entrance. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background.

Subchapter J. TANK SYSTEMS

Sec.	
264a.191.	Assessment of existing tank system's integrity.
264a.193.	Containment and detection of releases.
264a.194.	General operating requirements.
264a.195.	Inspections.

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Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.191. Assessment of existing tank system's integrity.

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity in accordance with 40 CFR 264.191 (relating to assessment of existing tank system's integrity).

§ 264a.193. Containment and detection of releases.

In addition to the requirements incorporated by reference, an owner or operator of existing tank systems shall comply with 40 CFR 264.193 (relating to containment and detection of release) by January 16, 1995, except that an owner operator of existing tank systems for which the age cannot be documented shall comply with 40 CFR 264.193 by January 16, 1996.

§ 264a.194. General operating requirements.

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify their contents.

§ 264a.195. Inspections.

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components.

Subchapter K. SURFACE IMPOUNDMENTS

Sec.
264a.221. Design and operating requirements.

Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.221. Design and operating requirements.

In addition to the requirements incorporated by reference:

- (1) For surface impoundments subject to 40 CFR 264.221(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet shall be maintained between the bottom of the liner and seasonal high water table without the use of artificial or manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the top of the subbase and the regional water table shall be a minimum of 8 feet.

(2) The Department may, upon written application from a person who is subject to this provision, grant a variance from this provision. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

Subchapter L. WASTE PILES

Sec.
264a.251. Design and operating requirements.

Cross References

This section cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

§ 264a.251. Design and operating requirements.

In addition to the requirements incorporated by reference:

(1) For a waste pile subject to the design and operating requirements of 40 CFR 264.251(a) or (c) (relating to design and operating requirements), a minimum distance of 20 inches between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and man-made groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table.

(2) 40 CFR 264.251(c)(5) (relating to leak detection systems not located completely above the seasonal high water table) is not incorporated by reference.

Subchapter M. LAND TREATMENT

Sec.
264a.273. Design and operating requirements.
264a.276. Food chain crops.

§ 264a.273. Design and operating requirements.

In addition to the requirements incorporated by reference, land treatment of hazardous waste shall be subject to the following restrictions:

(1) The hazardous waste shall be mixed into or turned under the soil surface within 24 hours of application, unless it is spray irrigated and the spray irrigated hazardous waste:

(i) Is used for top dressing.

- (ii) Has plant nutrient value.
 - (iii) Is applied with proper spray irrigation equipment and through proper spray irrigation methods.
 - (iv) Is not transported offsite by aerosol transport while being spray irrigated.
- (2) Hazardous waste shall be spread or sprayed in thin layers to prevent ponding and standing accumulations of liquids or sludges.
 - (3) Hazardous waste may not be applied when the ground is saturated, covered with snow, frozen or during periods of rain.
 - (4) Hazardous waste may not be applied in quantities which will result in vector or odor problems.
 - (5) Hazardous waste shall only be applied to those soils which fall within the United States Department of Agriculture (USDA) textural classes of sandy loam, loam, sandy clay loam, silty clay loam and silt loam.
 - (6) The soils shall have sola with a minimum depth of 20 inches and at least 40 inches of soil depth.

§ 264a.276. Food chain crops.

In addition to the requirements incorporated by reference tobacco and crops intended for direct human consumption may not be grown on hazardous waste land treatment facilities.

Subchapter N. LANDFILLS

Sec.
264a.301. Design and operating requirements.

§ 264a.301. Design and operating requirements.

In addition to the requirements incorporated by reference:

- (1) For a landfill subject to the design and operating provisions of 40 CFR 264.301(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the bottom of the liner and the regional groundwater table shall be a minimum of 8 feet.
- (2) The Department may, upon written application from a person who is subject to this section, grant a variance from this section. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance

shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

(3) 40 CFR 264.301(l) (relating to landfills located in the State of Alabama) is not incorporated by reference.

Subchapter W. DRIP PADS

Sec.
264a.570. Applicability.

§ 264a.570. Applicability.

Instead of 40 CFR 264.570(a), this subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-off to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

Subchapter DD. CONTAINMENT BUILDINGS

Sec.
264a.1100. Applicability.
264a.1101. Design and operating standards.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 270a.60 (relating to permits-by-rule).

§ 264a.1100. Applicability.

Instead of the effective date of February 18, 1993, found in 40 CFR 264.1100 (relating to applicability), the effective date is January 11, 1997.

§ 264a.1101. Design and operating standards.

In addition to the requirements incorporated by reference:

(1) An owner or operator of existing units described in 40 CFR 264.1101(b)(4) (relating to design and operating standards) seeking a delay in the secondary containment requirement for up to 2 years shall provide written notice to the Department by July 11, 1997. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment.

(2) For units placed into operation prior to January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) shall be placed in

the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit.

(3) For units placed into operation after January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) will be required prior to operation of the unit.

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CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

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A. GENERAL	265a.1
B. GENERAL FACILITY STANDARDS	265a.11
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I. USE AND MANAGEMENT OF CONTAINERS	265a.173
J. TANK SYSTEMS	265a.191
P. THERMAL TREATMENT	265a.382

Authority

The provisions of this Chapter 265a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 265a adopted April 20, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.12 (relating to prohibitions); 25 Pa. Code § 298.22 (relating to waste oil storage); 25 Pa. Code § 298.45 (relating to waste oil storage at transfer facility); 25 Pa. Code § 298.54 (relating to waste oil management); 25 Pa. Code § 298.62 (relating to notification); and 25 Pa. Code § 298.64 (relating to waste oil storage).

Subchapter A. GENERAL

Sec.
265a.1. Incorporation by reference, purpose, scope and applicability.

Cross References

This subchapter A cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 265 and its appendices (relating to interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference in this section:

(1) 40 CFR 265.1(c)(4) (relating to purpose, scope and applicability) regarding state program authorization under 40 CFR Part 271 (relating to

requirements for authorization of state hazardous waste programs), are not incorporated to this section.

(2) This chapter applies to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapter 261a, 266a or § 270a.60 (relating to identification and listing of hazardous waste; management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule) instead of 40 CFR 265.1(b).

(3) Instead of 40 CFR 265.1(c)(6), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent they are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal waste management).

Cross References

This section cited in 25 Pa. Code § 298.54 (relating to waste oil management); and 25 Pa. Code § 298.61 (relating to restrictions on burning).

Subchapter B. GENERAL FACILITY STANDARDS

Sec.

- 265a.11. Identification number and transporter license.
- 265a.12. Required notices.
- 265a.13. General and generic waste analysis.
- 265a.15. General inspection and construction inspection requirements.
- 265a.18. Location standards.

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter without an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste if the conditionally exempt small quantity generator is in compliance with § 261a.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements) or universal waste transporters in compliance with § 266b.50 (relating to applicability).

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§ 265a.12. Required notices.

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.12 (relating to required notices).

§ 265a.13. General and generic waste analysis.

In addition to the requirements incorporated by reference:

(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a Module I report which the owner or operator shall retain for 3 years. The report shall include the following information:

- (i) A detailed chemical and physical analysis of the waste.
- (ii) A description of the waste and the process generating the waste.
- (iii) The name and address of the hazardous waste management facility.
- (iv) A description of the hazardous waste management facility's treatment, storage and disposal methods.
- (v) Results of liner compatibility testing.
- (vi) An assessment of the impact of the waste on the hazardous waste management facility.
- (vii) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:
 - (A) When necessary to ensure that it is accurate and up-to-date.
 - (B) When the owner or operator is notified, or has reason to believe, that the process or operation that generates the hazardous waste has changed.
 - (C) For offsite facilities or onsite facilities receiving waste from offsite sources, when the results of the inspection or analysis, or both, of each hazardous waste indicates that the waste received at the facility does not match the description of the waste on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan in compliance with 40 CFR 265.13 (relating to general waste analysis) which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility.

(3) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or landfill

unless the approval to accept the waste is granted in the facility's permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of the evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(4) The Department may waive prior approval of the report specified in paragraph (1) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the report only if:

(i) The Department determines that the waiver does not pose a potential threat to human health or the environment.

(ii) The management of the wastes is allowed in the permit for the facility and properly addressed in the approved waste analysis plan for the facility.

(iii) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(5) Prior Department approval of the report specified in paragraph (1) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation.

(6) In lieu of the waste and generator specific report required by paragraphs (1)—(3), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators.

(7) An application for a Generic Module I shall include:

(i) The information required by paragraph (1). Generator specific information shall be included for each generator identified in the application.

(ii) Criteria for determining whether the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(8) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department in writing, the generator specific information required by paragraph (1). The Department will not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(9) A permit modification and Generic Module I requested under this section shall be accompanied by a fee, as specified in § 270a.3 (relating to payment of fees).

Source

The provisions of this 265a.13 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (272719) to (272721).

Cross References

This section cited in 25 Pa. Code § 264a.13 (relating to general and generic waste analysis).

§ 265a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

§ 265a.18. Location standards.

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

**Subchapter D. CONTINGENCY PLAN AND
EMERGENCY PROCEDURES**

Sec.
265a.56. Emergency procedures.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.56. Emergency procedures.

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department, or the Department's Central Office by telephone at (717) 787-4343.

**Subchapter E. MANIFEST SYSTEM, RECORDKEEPING
AND REPORTING**

Sec.
265a.71. Use of the manifest system.
265a.75. Biennial report.
265a.78. Hazardous waste management fee.
265a.79. Documentation of hazardous waste management fee submission.
265a.80. Civil penalties for failure to submit hazardous waste management fees.
265a.81. Assessment of penalties; minimum penalties.
265a.82. Administration fees.
265a.83. Administration fees during closure.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.71. Use of the manifest system.

In addition to the requirements incorporated by reference:

- (1) An owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by the Department's manifest, unless a manifest is not required by 40 CFR 262.20(e) (relating to general requirements).
- (2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, as required.
- (3) The owner or operator or other agent of the designated facility shall state in the Discrepancy Indication Space on the respective manifest and continuation sheet the actual quantity received in bulk shipment.
- (4) The name of the designated facility representative signing the manifest shall be printed or typed on the manifest.

Source

The provisions of this 265a.71 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (272722).

§ 265a.75. Biennial report.

Relative to the requirements incorporated by reference, the owner or operator shall submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

§ 265a.78. Hazardous waste management fee.

- (a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazardous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.
- (b) A hazardous waste management fee will not be assessed for:
 - (1) Storage or treatment of hazardous waste at the site at which it was generated.
 - (2) Storage or treatment at a captive facility.
 - (3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.
 - (4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.
- (c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 265a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to the Department by the 20th day of the month following the quarter ending the last

day of March, June, September and December of each year. If the submission date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

(d) Payment shall be by check or money order, payable to "The Hazardous Sites Cleanup Fund," and shall be forwarded along with the required forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(e) For purposes of assessing fees, incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

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- (i) Standard measure gallons shall be converted to tons using a factor of 8.0 pounds per gallon.
- (ii) Liters shall be converted to tons using a factor of 2.1 pounds per liter.
- (3) Cubic yards and cubic meters shall be converted to standard tons using a factor of 1 ton per each of these units, or part thereof.
- (g) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.
- (h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.
- (i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

Cross References

This section cited in 25 Pa. Code § 265a.79 (relating to documentation of hazardous waste management fee submission); 25 Pa. Code § 265a.80 (relating to civil penalties for failure to submit hazardous waste management fees); and 25 Pa. Code § 265a.81 (relating to assessment of penalties; minimum penalties).

§ 265a.79. Documentation of hazardous waste management fee submission.

- (a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.
 - (1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55D only.
 - (2) The owner or operator of an offsite captive disposal facility shall submit forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to

the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit forms ER-WM-55I, ER-WM-55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

Cross References

This section cited in 25 Pa. Code § 265a.78 (relating to hazardous waste management fee); 25 Pa. Code § 265a.80 (relating to civil penalties for failure to submit hazardous waste management fees); and 25 Pa. Code § 265a.81 (relating to assessment of penalties; minimum penalties).

§ 265a.80. Civil penalties for failure to submit hazardous waste management fees.

(a) The Department may assess a civil penalty for:

(1) Failure to submit hazardous waste management fees as required by § 265a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 265a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste management fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, or the Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

§ 265a.81. Assessment of penalties; minimum penalties.

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and regulations thereunder, this section sets forth minimum civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit hazardous waste management fees as required by § 265a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 265a.78(c), the Department will assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of \$1,000.

§ 265a.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 266a.80 (relating to applicability and requirements).

§ 265a.83. Administration fees during closure.

(a) 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 onsite 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:

(1) 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.

(2) 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.

(b) 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:

(1) The closure activities will, of necessity, take him 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.

(2) 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.

(c) The demonstrations referred to in subsections (a) and (b) shall be made as follows:

(1) The demonstrations in subsection (a) shall be made at least 30 days prior to the expiration of the 90-day period in subsection (b).

(2) The demonstrations in subsection (b) shall be made at least 30 days prior to the expiration of the 180-day period in subsection (b).

(d) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

- (1) Land disposal facilities—\$100.
- (2) Impoundments—\$100.
- (3) Other facilities—\$50.

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

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Subchapter G. CLOSURE AND POSTCLOSURE

Sec.	
265a.115.	Certification of closure.
265a.120.	Certification of completion of postclosure care.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.115. Certification of closure.

The owner or operator shall satisfy § 265a.166 (relating to closure and post-closure certification) instead of the reference to 40 CFR 265.143(h) (relating to final assurance for closure).

§ 265a.120. Certification of completion of postclosure care.

The owner or operator shall satisfy § 265a.166 (relating to closure and post-closure certification) instead of the reference to § 265a.145(h) (relating to financial assurance for postclosure care).

Subchapter H. FINANCIAL REQUIREMENTS

Sec.	
265a.141.	Definitions.
265a.143.	Financial assurance for closure.
265a.145.	Financial assurance for postclosure care.
265a.147.	Liability requirements.
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265a.157.	Phased deposits of collateral.
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265a.168.	Bond forfeiture.
265a.169.	Preservation of remedies.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.141. Definitions.

In addition to the terms defined in 40 CFR 265.141 (relating to definitions of terms as used in this subpart) which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to definitions and requests for determination) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

Collateral bond—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

Final closure—Successful completion of requirements for closure and post-closure care as required by 40 CFR Part 265, Subpart G (relating to closure and postclosure).

Financial institutions—Banks and other similar establishments organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

Surety bond—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

Surety company—A corporation licensed to do business as a surety in this Commonwealth.

§ 265a.143. Financial assurance for closure.

40 CFR 265.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 265.143(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

§ 265a.145. Financial assurance for postclosure care.

40 CFR 265.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 265.145(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.)

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Cross References

This section cited in 25 Pa. Code § 265a.120 (relating to certification of completion of postclosure care).

§ 265a.147. Liability requirements.

The substitution of terms as specified in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.147(g)(2) and (i)(4) (relating to liability requirements).

§ 265a.148. Incapacity of owners or operators, guarantors or financial institutions.

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the regional administrator of the EPA.

§ 265a.149. Use of State-required mechanisms.

Relative to the requirements incorporated by reference, 40 CFR 265.149 (relating to use of state-required mechanisms) is not incorporated by reference.

§ 265a.150. State assumption of responsibility.

Relative to the requirements incorporated by reference, 40 CFR 265.150 (relating to State assumption of responsibility) is not incorporated by reference.

§ 265a.153. Requirement to file a bond.

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 265a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond has been approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as issued a permit, shall cease accepting hazardous waste unless the owner or operator has submitted a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the

submittal. If, on review, the Department determines the owner or operator has submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

§ 265a.154. Form, terms and conditions of bond.

- (a) The Department accepts the following types of bond:
 - (1) A surety bond.
 - (2) A collateral bond.
 - (3) A phased deposit collateral bond as provided in § 265a.157 (relating to phased deposits of collateral).
- (b) The Department prescribes and furnishes the forms for bond instruments.
- (c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.
- (d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.
- (e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

§ 265a.155. Special terms and conditions for surety bonds.

- (a) The Department does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.
- (b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.
- (c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of cancellation, the owner or operator shall provide the

Department with a replacement bond under § 265a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 265a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for an owner or operator, on all facilities owned or operated by the owner or operator, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety has complied with the provisions of The Insurance Company Act of 1921 (40 P. S. §§ 1—297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety notwithstanding judicial or administrative appeal of the forfeiture and that the amount is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint and severally liable for payment of the bond amount.

§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.

(a) The Department obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department uses the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit are subject to the following conditions:

(1) The Department requires that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

(3) The Department requires the issuing institution to waive all rights of setoff or liens which it has or might have against the certificates.

(4) The Department only accepts automatically-renewable certificates of deposit.

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

- (6) The Department only accepts certificates of deposit only from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.
- (7) The Department does not accept certificates of deposit from banks that failed or delayed to make payment on defaulted certificates of deposit.
- (d) Collateral bonds pledging a letter of credit are subject to the following conditions:
- (1) The letter of credit is a standby letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a state or Federal agency and Federally insured or equivalently protected.
 - (2) The letter of credit may not be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter of credit so issued is supported by the customer's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.
 - (3) The letter of credit may not be issued when the amount of the letter of credit, aggregated with other loans and credits extended to the owner or operator, exceeds the issuer legal lending limits for that owner or operator as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).
 - (4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for which at least a 1 year period is stated if the following conditions are met and are stated in the credit:
 - (i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail to the Department and the customer of its intent to terminate the credit at the end of the current time period.
 - (ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.
 - (5) Letters of credit shall name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this subchapter.
 - (6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.
 - (7) The issuing bank waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure) and 40 CFR 265.145(e) (relating to financial assurance for post-closure care) except for the provision of 40 CFR 265.143(e)(10)(i) (relating to financial assurance for closure) as specified in § 264a.143(a) (relating to financial assurance for closure). This is replaced by the procedures of § 265a.168 (relating to bond forfeiture).

Cross References

This section cited in 25 Pa. Code § 265a.143 (relating to financial assurance for closure); and 25 Pa. Code § 265a.145 (relating to financial assurance for postclosure care).

§ 265a.157. Phased deposits of collateral.

(a) A permit applicant, or an owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The permit applicant or owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the

succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

Cross References

This section cited in 25 Pa. Code § 265a.154 (relating to form, terms and conditions of bond); and 25 Pa. Code § 265a.163 (relating to failure to maintain adequate bond).

§ 265a.158. Replacement of bond.

(a) The Department may allow owners or operators to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond as determined under this chapter, may not be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the owner or operator submits and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the owner or operator.

Cross References

This section cited in 25 Pa. Code § 265a.155 (relating to special terms and conditions for surety bonds).

§ 265a.159. Reissuance of permits.

Before a permit is reissued to a new owner or operator, the new owner or operator shall post a new bond in an appropriate amount determined by the Department under this subchapter but in no case less than the amount of bond on deposit with the Department, in the new owner's or operator's name, assuming all accrued liability for the hazardous waste storage, treatment or disposal facility.

§ 265a.160. Bond amount determination.

(a) The Department determines bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. This is done in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and

to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount is based on the owner's or operator's written estimate submitted under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

Cross References

This section cited in 25 Pa. Code § 265a.153 (relating to requirement to file a bond).

§ 265a.162. Bond amount adjustments.

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that requires an additional amount of bond determined under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for postclosure care).

(2) Inflationary cost factors exceed the estimate used for the original bond amount determination under 40 CFR 265.142 and 265.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, requiring an additional amount of bond determined under 40 CFR 265.142 and 265.144.

(4) An additional amount of bond is required as determined by 40 CFR 265.142 and 265.144 to meet the requirements of applicable statutes, this subchapter and the terms and conditions of the permit or orders of the Department.

Cross References

This section cited in 25 Pa. Code § 265a.153 (relating to requirement to file a bond); 25 Pa. Code § 265a.163 (relating to failure to maintain adequate bond); 25 Pa. Code § 265a.164 (relating to separate bond for a portion of a facility); and 25 Pa. Code § 265a.165 (relating to bond release).

§ 265a.163. Failure to maintain adequate bond.

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 265a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

§ 265a.164. Separate bonding for a portion of a facility.

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department determines that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 265a.162 (relating to bond amount adjustments).

Cross References

This section cited in 25 Pa. Code § 265a.166 (relating to closure and postclosure certification).

§ 265a.165. Bond release.

(a) The owner or operator may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. The bond release may be requested during the operation of the facility as part of a request for bond adjustment under § 265a.162 (relating to bond amount adjustments); upon completion of closure for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility as specified in 40 CFR Part 265, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain the following:

(1) The name of the owner or operator and shall identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested, including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and post-closure care).

(5) Closure or postclosure certification for full bond release requests.

(6) Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 265.142 and 265.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the por-

tion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility which is causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this chapter, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505).

§ 265a.166. Closure and postclosure certification.

(a) The owner or operator shall submit a request for closure certification upon completion of closure of the facility in accordance with the provisions of 40 CFR 265.115 and 265.120 (relating to certification of closure; and certification of completion of postclosure care).

(b) Within 60 days after receipt of a written request for closure or postclosure certification, the Department will initiate an inspection of the facility to verify that closure was effected in accordance with the approved facility closure or postclosure care plan and this article.

(c) If the Department determines that the facility closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the owner or operator that closure or postclosure effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this article, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the owner or operator setting forth the schedule of measures which the owner or operator shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1 year liability period, the Department will require the owner or operator to deposit a separate bond under § 265a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) on deposit with the Department.

§ 265a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

Cross References

This section cited in 25 Pa. Code § 265a.115 (relating to certification of closure); and 25 Pa. Code § 265a.120 (relating to certification of completion of postclosure care).

§ 265a.168. Bond forfeiture.

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—

221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

Cross References

This section cited in 25 Pa. Code § 265a.155 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure); and 25 Pa. Code § 265a.166 (relating to closure and postclosure certification).

§ 265a.169. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19c), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), this article, the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sec.	
265a.173.	Management of containers.
265a.175.	[Reserved].
265a.179.	Containment.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 262a.34 (relating to accumulation time).

§ 265a.173. Management of containers.

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

Source

The provisions of this 265a.173 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (272730).

§ 265a.175. [Reserved].**Source**

The provisions of this 265a.175 reserved December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (272730) to (272731).

§ 265a.179. Containment.

40 CFR 264.175 (relating to containment) is incorporated by reference.

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Ch. 265a INTERIM STATUS STANDARDS 25 § 265a.191

Subchapter J. TANK SYSTEMS

Sec.
265a.191. Assessment of existing tank system's integrity.
265a.193. Containment and detection of releases.
265a.194. General operating requirements.
265a.195. Inspections.

Cross References

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials).

§ 265a.191. Assessment of existing tank system's integrity.

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity in accordance with the provisions of 40 CFR 265.191 (relating to assessment of existing tank system's integrity).

§ 265a.193. Containment and detection of releases.

In addition to the requirements incorporated by reference, owners or operators of existing tank systems shall comply with 40 CFR 265.193 (relating to containment and detection of releases) by January 16, 1995, except that owners and operators of existing tank systems for which the age cannot be documented, shall comply with 40 CFR 265.193 by January 16, 1996.

§ 265a.194. General operating requirements.

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify their contents.

§ 265a.195. Inspections.

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components.

Subchapter P. THERMAL TREATMENT

Sec.
265a.382. Open burning; waste explosives.

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§ 265a.382. Open burning; waste explosives.

In addition to the requirements incorporated by reference, the open burning of waste explosives as specified in 40 CFR 265.382 (relating to open burning; waste explosives) is not permitted in air basins as defined in § 121.1 (relating to definitions).

[Next page is 266-1.]

265a-26

**CHAPTER 266a. MANAGEMENT OF SPECIFIC HAZARDOUS
WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE
MANAGEMENT FACILITIES**

Subchap.	Sec.
C.	RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL 266a.20
E.	[Reserved] 266a.40
F.	RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY 266a.70
G.	SPENT LEAD-ACID BATTERIES BEING RECLAIMED 266a.80
H.	HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES 266a.100

Authority

The provisions of this Chapter 266a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); amended under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.302); section 480(e) of the Pennsylvania Used Oil Recycling Act (58 P. S. § 480(e)); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20), unless otherwise noted.

Source

The provisions of this Chapter 265a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); and 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability).

**Subchapter C. RECYCLABLE MATERIALS USED IN A MANNER
CONSTITUTING DISPOSAL**

Sec.
266a.20. Incorporation by reference and applicability.

Cross References

This section cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and applicability); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); and 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices).

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§ 266a.20. Incorporation by reference and applicability.

Except as expressly provided in this chapter, 40 CFR Part 266 and its appendices (relating to standards for the management of specific hazardous wastes; and specific types of hazardous waste management facilities) are incorporated by reference.

Subchapter E. [Reserved]**Source**

The provisions of this Subchapter E reserved June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873. Immediately preceding text appears at serial pages (272734) to (272740).

Cross References

This subchapter cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); and 25 Pa. Code § 298.10 (relating to applicability).

§ 266a.40—266a.44. [Reserved].**Subchapter F. RECYCLABLE MATERIALS UTILIZED
FOR PRECIOUS METAL RECOVERY**

Sec.
266a.70. Applicability and requirements.

Cross References

This subchapter cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); and 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices).

§ 266a.70. Applicability and requirements.

In addition to the requirements incorporated by reference:

- (1) A transporter transporting recyclable materials utilized for precious metal recovery in accordance with 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a license for the transportation of those materials if the transporter complies with:
 - (i) The EPA identification number requirements of 40 CFR 263.11 (relating to EPA identification number).
 - (ii) The hazardous waste transporter fee requirements of § 263a.23 (relating to hazardous waste transportation fee).

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(2) An owner or operator of facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F is subject to § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment under § 270a.60(b)(6) (relating to permits by rule).

Cross References

This section cited in 25 Pa. Code § 263a.13 (relating to licensing); 25 Pa. Code § 264a.11 (relating to identification number and transporter license); and 25 Pa. Code § 265a.11 (relating to identification number and transporter license).

Subchapter G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

Sec.
266a.80. Applicability and requirements.

Cross References

This section cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); and 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices).

§ 266a.80. Applicability and requirements.

(a) In addition to the requirements incorporated by reference, the owner or operator of a facility treating spent, lead-acid batteries prior to the reclamation of spent lead-acid batteries is subject to the requirements of § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment of the batteries under § 270a.60(b)(3) (relating to permits by rule).

(b) Sections 264a.82, 265a.82 and 270a.3 (relating to administration fees; and payment of fees) § 270a.3, do not apply to a facility that stores spent batteries before reclaiming them.

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

Sec.
266a.100. Applicability.

Cross References

This section cited in 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices).

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§ 266a.100. Applicability.

The reference to “Part 279 of this chapter” in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with Chapter 298 (relating to management of waste oil).

[Next page is 266b-1.]

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CHAPTER 268a. LAND DISPOSAL RESTRICTIONS

Subchap.	Sec.
A. GENERAL	268a.1

Authority

The provisions of this Chapter 268a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. § 510-20); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 268a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers).

Subchapter A. GENERAL

Sec.
268a.1. Incorporation by reference, purpose, scope and applicability.

§ 268a.1. Incorporation by reference, purpose, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 268 (relating to land disposal restrictions), except for 40 CFR 268.5, 268.6, 268.13, 268.42(b) and 268.44, and its appendices are incorporated by reference.

(b) Relative to the requirements incorporated by reference, the substitution of the term “EPA” in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.1(e)(3) (relating to purpose, scope and applicability), and the term “Administrator” in § 260a.3(a)(1) does not apply to 40 CFR 268.40(b) (relating to applicability of treatment standards).

(c) In addition to the requirements incorporated by reference in 40 CFR 268.1 (relating to purpose, scope and applicability), universal waste mercury-containing devices as described in § 266b.2 (relating to applicability—mercury-containing devices) shall also be managed in accordance with 40 CFR 268.1(f).

Source

The provisions of this § 268a.1 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6587. Immediately preceding text appears at serial page (255003).

[Next page is 269-1.]

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CHAPTER 269a. SITING

Subchap.	Sec.
A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES	269a.1
B. CERTIFICATES OF PUBLIC NECESSITY	269a.101
C. HOST MUNICIPALITY FUND ALLOCATION	269a.201

Authority

The provisions of this Chapter 269a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. § 510-20); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); sections 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 269a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 264a.18 (relating to location standards); 25 Pa. Code § 265a.18 (relating to location standards) and 25 Pa. Code § 270a.13 (relating to contents of Part A of the permit application).

Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES

GENERAL PROVISIONS

Sec.
269a.1. Definitions.

SCOPE AND APPLICABILITY

269a.11. Scope and applicability.
269a.12. Phase I.
269a.13. Phase II.
269a.14. Distances.

PHASE I EXCLUSIONARY CRITERIA

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- 269a.23. Wetlands.
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- 269a.25. Carbonate bedrock areas.
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- 269a.41. Water supply.
- 269a.42. Geology.
- 269a.43. Soils.
- 269a.44. Mineral bearing areas.
- 269a.45. Land use.
- 269a.46. Transportation standards.
- 269a.47. Safety services.
- 269a.48. Proximity of facilities and structures.
- 269a.49. Economic criteria.
- 269a.50. Environmental assessment considerations.

GENERAL PROVISIONS**§ 269a.1. Definitions.**

(a) The following words and terms, when used in this chapter, 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.

Qualifying facility—Is one of the following:

- (i) A new commercial hazardous waste treatment or disposal facility, which did not exist as a solid waste or recycling facility prior to December 18, 1988, that:
 - (A) Has been issued a written permit after December 18, 1988.
 - (B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the Pennsylvania hazardous waste facilities plan.
 - (C) Accepts hazardous waste under the conditions of the permit.

(D) Did not operate under 40 CFR Part 270 Subpart G (relating to interim status), as incorporated by reference in § 270a.1 (relating to incorporation by reference, scope and applicability), prior to the issuance of the written permit.

(ii) An existing permitted commercial hazardous waste treatment or disposal facility which was permitted before December 18, 1988, that:

(A) Has been issued a written permit modification to expand the facility after December 18, 1988.

(B) Fulfills the hazardous waste treatment or disposal capacity needs identified in the hazardous waste facilities plan.

(C) Accepts a larger volume of hazardous waste than was authorized in the permit prior to modification to expand the facility.

Wetland—An area inundated or saturated by surface water or groundwater 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 § 260a.10 (relating to definitions).

Source

The provisions of this § 269a.1 amended September 7, 2001, effective September 8, 2001, 31 Pa.B. 5075. Immediately preceding text appears at serial pages (255010) to (255011).

Cross References

This section cited in 25 Pa. Code § 269a.101 (relating to definitions).

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SCOPE AND APPLICABILITY**§ 269a.11. Scope and applicability.**

The requirements of this chapter 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 article. The criteria for siting hazardous waste treatment and disposal facilities are divided into two phases as described in §§ 269a.12 and 269a.13 (relating to Phase I; and Phase II).

§ 269a.12. Phase I.

Phase I exclusionary criteria are established in §§ 269a.21—269a.29 (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 chapter.
- (2) Modifications to a facility within the existing facility site.

Cross References

This section cited in 25 Pa. Code § 269a.11 (relating to scope and applicability).

§ 269a.13. Phase II.

(a) Phase II criteria are established in §§ 269a.41—269a.50 (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.

Cross References

This section cited in 25 Pa. Code § 269a.11 (relating to scope and applicability).

§ 269a.14. 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

§ 269a.21. Water supply.

(a) Landfill, land treatment and surface impoundment facilities may not be sited in the following locations:

(1) Within 1/2 mile of a well or spring used for a community water supply.

(2) Within 1/2 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 1/2 mile of an offsite 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 section 505(a) of the SWMA (35 P. S. § 6018.505(a)). 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 it may 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) and 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.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.22. Flood hazard areas.

(a) Surface impoundment, landfill and land treatment facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated.

(b) Treatment and incineration facilities may not be sited 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).

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.23. Wetlands.

Treatment and disposal facilities may not be sited in wetland areas.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.24. Oil and gas areas.

Surface impoundments, landfill and land treatment facilities may not be sited over active or inactive oil and gas wells or gas storage areas located within or beneath the facility site. The term “active or inactive oil and gas wells or gas storage areas” has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.25. Carbonate bedrock areas.

Surface impoundments, landfill and land treatment facilities may 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.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.26. National natural landmarks and historic places.

Treatment and disposal facilities may 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 these areas.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.27. Dedicated lands in public trust.

Treatment and disposal facilities may 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 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 these lands.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.28. Agricultural areas.

Treatment and disposal facilities may not be sited in agricultural areas established under the Agricultural Area Security Law (3 P. S. §§ 901—915) or in farmlands identified as Class I agricultural land by the Soil Conservation Service.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

§ 269a.29. Exceptional value waters.

Treatment and disposal facilities may not be sited in watersheds of exceptional value waters.

Cross References

This section cited in 25 Pa. Code § 269a.12 (relating to phase I).

PHASE II CRITERIA**§ 269a.41. Water supply.**

(a) The applicant shall determine whether a proposed surface impoundment, landfill or land treatment facility is within the groundwater recharge area for public or private water supplies. The applicant shall delineate the position of the proposed facility site within relevant groundwater 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 subsection (b) indicate, 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.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to phase II).

§ 269a.42. 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 required 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 analyses 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. The term “abandoned oil and gas wells and gas storage areas” has 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 may 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 analyses 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.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

§ 269a.43. 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 analyses to allow the Department to assess the soil cation exchange capacity in relation to the potential for migration of contaminants from the proposed facility.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

§ 269a.44. 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 pro-

posed to stabilize the surface. Additionally, the applicant shall provide assurance that minerals providing support will not be mined as long as hazardous waste remains onsite.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

§ 269a.45. 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.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

§ 269a.46. 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 allow 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.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.153 (relating to impact on adjacent populated areas).

§ 269a.47. 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 analyses 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 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; contingency plan and emergency procedures) and Chapter 264a, Subchapter D (relating to contingency plan and emergency procedures).

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

§ 269a.48. 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 analyses to allow the Department to assess the effect the proposed facility will have on the use of these facilities.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.153 (relating to impact on adjacent populated areas).

§ 269a.49. Economic criteria.

(a) A treatment or disposal facility which does not adversely affect 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 informa-

tion 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 analyses 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 analyses 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 analyses 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 analyses 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.

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II); and 25 Pa. Code § 269a.154 (relating to local health, safety, economic impact and planning).

§ 269a.50. 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 PA. 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 this subsection. 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 PA. 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 analyses 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 EQB, 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 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 1/4 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 and 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 Endangered Species Act of 1973 (7 U.S.C.A. § 136 and 16 U.S.C.A. §§ 460r-1, 460l-9, 668 dd, 715i, 715s, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), or recognized by the Fish and Boat 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 EQB, 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 EQB, 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 Chapter 7, Subchapter W (relating to agricultural land preservation policy).

Cross References

This section cited in 25 Pa. Code § 269a.13 (relating to Phase II).

Subchapter B. CERTIFICATES OF PUBLIC NECESSITY

GENERAL PROVISIONS

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269a.102. Scope and applicability.
269a.103. CPN.

CONFLICT OF INTEREST

269a.111. Conflict of interest.

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CRITERIA FOR ISSUING CPNs

- 269a.151. General criterion.
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EQB DECISION

- 269a.161. Deadline for decision.
- 269a.162. Record of decision.
- 269a.163. Public notice of decision.

GENERAL PROVISIONS**§ 269a.101. Definitions.**

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

CPN—Certificate of public necessity.

Chairperson—Chairperson of the EQB.

Impact assessment—A report, analysis or module previously prepared by or on behalf of the applicant to comply with existing Federal or State permitting

or regulatory requirements. The term includes solid waste management permit modules and analyses submitted to meet the requirements of Subchapter A (relating to siting hazardous waste treatment and disposal facilities) and established State and Federal permitting requirements.

(b) Words and terms not otherwise defined in this section have the meanings in §§ 260a.10 and 269a.1 (relating to definitions; and definitions).

§ 269a.102. Scope and applicability.

This subchapter establishes application requirements and procedures governing the review and consideration of an application for a CPN from the EQB under section 105 of the act (35 P. S. § 6018.105). A permittee of a hazardous waste treatment or disposal facility may apply for a CPN under this subchapter.

§ 269a.103. CPN.

(a) The EQB has the power and its duty is to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of CPNs for the establishment of hazardous waste treatment and disposal facilities.

(b) Issuance of a CPN by the EQB shall suspend and supersede local laws, including zoning ordinances, which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility.

(c) The suspension and supersession granted by the CPN is explicitly extended to a person to whom the CPNs are issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of the person.

CONFLICT OF INTEREST

§ 269a.111. Conflict of interest.

A member or alternate of the EQB or staff designated to review any aspect of an application for a CPN who may have a potential conflict of interest as described in the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), the State Adverse Interest Act (71 P. S. §§ 776.1—776.7a) and 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employes) or other applicable codes of conduct shall immediately notify the Chairperson of the potential conflict. The Chairperson will advise the EQB of the potential conflict. The EQB may recommend that the member, alternate or staff abstain from participation in the proceedings or may seek a ruling regarding the conflict under the applicable ethics law or code of conduct.

APPLICATION REQUIREMENTS

§ 269a.121. Eligible applicants.

An applicant for a CPN shall have:

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(1) Permits necessary for construction and operation of a new or modified facility from the Department or the Federal agency authorized to issue permits in this Commonwealth.

(2) Implemented impact assessments and public participation programs related to obtaining those permits.

§ 269a.122. Application.

The applicant shall submit eight copies of the following items in an application for a CPN to the Chairperson by certified mail:

(1) The hazardous waste permit issued for the treatment or disposal facility by the Department or the Federal agency, or both, authorized to issue permits in this Commonwealth.

(2) Documentation of the applicant's receipt of other State and Federal permits necessary for construction and operation of the facility.

(3) Impact assessments related to the facility.

(4) Local laws and ordinances, if any, which the applicant believes may preclude or prohibit the establishment of a hazardous waste treatment or disposal facility on the proposed site.

(5) A narrative description, including supporting documentation and appropriate references, demonstrating the extent to which the applicant has complied with §§ 269a.151—269a.155 (relating to criteria for issuing CPNs).

(6) Other information the applicant feels will help the EQB determine if a CPN is warranted based upon the criteria in §§ 269a.151—269a.155.

(7) A summary of the application which describes the type of facility for which this CPN is requested and includes a summary of paragraphs (1)—(6). The summary shall be five pages or less in length.

§ 269a.123. Application fee.

(a) An application shall be accompanied by a one-time minimum nonrefundable application fee of \$1,500.

(b) The applicant shall reimburse the Board for actual expenses incurred for reviewing and acting on the application beyond the expenses covered by the minimum fee.

(c) An applicant resubmitting a CPN application for the same facility is exempt from the minimum fee but is responsible for the expenses incurred by the Board for reviewing and acting upon the application.

Cross References

This section cited in 25 Pa. Code § 269a.132 (relating to local government representatives); and 25 Pa. Code § 269a.142 (relating to local docket and mailing list).

§ 269a.124. Public notice of application submitted to the EQB.

(a) The applicant shall provide written notice by certified mail of its submission of an application for a CPN to the EQB within 10 days of the submittal to:

- (1) The host municipality and host county.
- (2) Other counties within 10 miles and other municipalities within 1 mile of the proposed facility.
- (3) The landowners adjacent to the proposed site.

(b) The applicant shall publish a notice of the submission of the CPN application in a display advertisement in two newspapers of general circulation in the county of the proposed site once a week for 2 successive weeks and send proof of publication of this notice to the EQB.

(c) The notices required by this section shall also include the name, address and telephone number of the applicant, including the name and location—municipality and county—of the facility, a brief description of the business conducted or activity described in the application, and a contact person in the applicant's office from whom interested citizens may obtain further information.

(d) Acceptable proof of notice required by this section will include certified mail receipts and proof of publication from newspaper publishers.

EQB PROCEDURE**§ 269a.131. Complete application.**

(a) Upon receipt of an application for a CPN by the Board, the application shall be reviewed for completeness.

(b) The Chairperson will notify the EQB that an application has been received at the first EQB meeting following its receipt. The EQB will determine whether an application for a CPN is complete within 60 days of the Chairperson's notification to the EQB.

(c) Upon a determination by the EQB that the application is complete, the Chairperson will initiate the public review and comment procedures outlined in §§ 269a.132 and 269a.141 (relating to local government representatives; and initial public notice) and notify the applicant. The Chairperson will provide a copy of the complete application to the host county and host municipality.

(d) An application determined to be incomplete shall be returned to the applicant with an explanation of why the application is incomplete.

(e) After the application is determined to be complete, the EQB reserves the right to request additional information relevant to its decision under section 105(f) and (g) of the act (35 P. S. § 6018.105(f) and (g)).

§ 269a.132. Local government representatives.

(a) When the EQB has accepted a complete CPN application for consideration, the EQB will ask the governing body of the host county and the governing

body of the host municipality—township, borough, town, home rule municipality or city—to each name one representative who will be invited to be present during EQB deliberations and hearings on the application and receive copies of materials given EQB members during the consideration of an application accepted for review.

(b) The role of the local government representative shall be to participate in the deliberations of the EQB as it considers the application. The representatives will not have voting rights on the EQB.

(c) A local government representative will be reimbursed for expenses incurred in participating with the EQB as outlined in Management Directive 230.10 (Travel and Subsistence Allowances), issued by the Governor's Office through the Directives Management System. See 4 Pa. Code Chapter 1, Subchapter A (relating to directives management system). This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

Cross References

This section cited in 25 Pa. Code § 269a.131 (relating to complete application).

PUBLIC REVIEW AND COMMENT

§ 269a.141. Initial public notice.

The EQB will issue a press release and publish a notice in the *Pennsylvania Bulletin* and two newspapers of general circulation in the county of the proposed facility once a week for 2 successive weeks. The notices and press release shall state that the EQB is considering a complete application for a CPN, and shall include the following items:

- (1) The name, address and telephone number of the applicant.
- (2) The location and description of the proposed facility.
- (3) A description of the process followed by the EQB to consider an application for a CPN.
- (4) The location of a local docket where application materials can be reviewed by interested persons in the host municipality or county.
- (5) An invitation to interested persons to include their name on a mailing list established by the EQB to receive future notices concerning the CPN application.

Cross References

This section cited in 25 Pa. Code § 269a.131 (relating to complete application); 25 Pa. Code § 269a.143 (relating to public hearing); and 25 Pa. Code § 269a.163 (relating to public notice of decision).

§ 269a.142. Local docket and mailing list.

(a) The EQB will establish a docket in a publicly accessible location in the host municipality or county as near as practical to the proposed facility where materials related to the EQB's consideration of the CPN application can be made available to the public for review.

(b) The EQB will establish and maintain a mailing list of persons interested in receiving notices concerning the CPN application.

(c) If the docket is located in a publicly-owned or operated building, the EQB will compensate the building owner or operator for the cost of maintaining the docket for public review. This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

Cross References

This section cited in 25 Pa. Code § 269a.143 (relating to public hearing); and 25 Pa. Code § 269a.163 (relating to public notice of decision).

§ 269a.143. Public hearing.

(a) The EQB will schedule at least one public hearing on the application in the host municipality or county within 90 days of the acceptance of a complete application for consideration.

(b) Notice of the hearing will be given 30 days before the hearing by the EQB as outlined in § 269a.141 (relating to initial public notice) and to those on the mailing list in § 269a.142 (relating to local docket and mailing list).

(c) A minimum of three members of the EQB will be present at a hearing scheduled on the application. The hearing shall be transcribed and the transcript shall be available to the EQB for review.

(d) The public comment period will remain open for comments for at least 30 days after the last public hearing on the application.

(e) The public comment period may be extended up to 60 days by the EQB if significant new information is forthcoming that warrants the extension.

Cross References

This section cited in 25 Pa. Code § 269a.161 (relating to deadline for decision).

CRITERIA FOR ISSUING CPNs**§ 269a.151. General criterion.**

The EQB will evaluate the information received from the applicant, the comments received on the application during the comment period and other relevant information in reaching its decision on the application.

Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

§ 269a.152. Conformance with the Hazardous Waste Facilities Plan.

(a) The EQB will determine the extent to which the facility is in conformance with the Hazardous Waste Facilities Plan (Plan) as adopted and amended by the EQB.

(b) The EQB will determine whether the facility is needed as defined by the Plan and whether the facility is consistent with the waste management hierarchy outlined in the Plan.

Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

§ 269a.153. Impact on adjacent populated areas.

(a) The EQB will determine the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to the facility.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria under §§ 269a.46 and 269a.48 (relating to transportation standards; and proximity of facilities and structures).

Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

§ 269a.154. Local health, safety, economic impact and planning.

(a) The EQB will determine the impact of the facility on the borough, township, town, home rule municipality or city in which the facility is located in terms of health, safety, cost and consistency with local planning.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria in §§ 269a.45, 269a.47 and 269a.49 (relating to land use; safety services; and economic criteria).

Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

§ 269a.155. Public participation.

(a) The EQB will consider the extent to which the applicant has implemented guidelines developed by the EQB at Chapter 24 (relating to model procedure for meaningful public participation—statement of policy) relating to public participation in the location of a hazardous waste treatment and disposal facility as sig-

nificant evidence of the applicant's willingness to provide the public with a meaningful opportunity to participate in the evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

(b) The EQB will also consider cooperative agreements developed between the applicant and host county and host municipality as further evidence of meaningful public participation.

(c) The EQB will determine the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in the evaluation of alternative sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

Cross References

This section cited in 25 Pa. Code § 269a.122 (relating to application); and 25 Pa. Code § 269a.162 (relating to record of decision).

EQB DECISION

§ 269a.161. Deadline for decision.

(a) The EQB will issue its decision on the application within 180 calendar days of its determination that the application is complete.

(b) The EQB may consider extending the deadline for decision if one of the following occurs:

(1) The applicant and host county and host municipality make a written recommendation to the Board for an extension because they are close to agreement on cooperative agreements that would resolve key issues.

(2) The EQB extends the public comment period under § 269a.143 (relating to public hearing).

(c) The extension will be for 60 days or less.

(d) The EQB will have 60 days after an extension to issue its decision.

§ 269a.162. Record of decision.

(a) A written record of decision outlining the findings of the EQB under each of the criteria established in §§ 269a.151—269a.155 (relating to criteria for issuing CPNs) will be issued by the EQB.

(b) The record of decision will include a summary of comments received by the EQB on the CPN application and a response indicating how the comments were considered by the EQB.

§ 269a.163. Public notice of decision.

(a) The Chairperson will notify the applicant in writing of the EQB decision on the application for a CPN within 10 days.

(b) The Chairperson will also notify in writing the host municipality, the host county and persons identified on the mailing list established under § 269a.142 (relating to local docket and mailing list) of the EQB decision within 10 days.

(c) The Department will provide additional notice of the decision of the EQB as described in § 269a.141 (relating to initial public notice).

Subchapter C. HOST MUNICIPALITY FUND ALLOCATION

ELIGIBILITY

Sec.
269a.201. Eligibility.

COMPLIANCE

269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.

ALLOCATION

269a.221. Allocation of the Fund.

DISTRIBUTION

269a.231. Distribution of payments.

ELIGIBILITY

§ 269a.201. Eligibility.

A host municipality is eligible for a one time distribution from the Fund, under section 305 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305), for each qualifying facility, located in whole or in part, within its corporate boundary.

Cross References

This section cited in 25 Pa. Code § 269a.211 (relating to compliance with the Pennsylvania Hazardous Waste Facilities Plan).

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COMPLIANCE**§ 269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.**

A host municipality will only receive a one time payment under § 269a.201 (relating to eligibility) for a commercial hazardous waste treatment or disposal facility, or portion thereof, that is identified as being needed by the Pennsylvania Hazardous Waste Facilities Plan.

Cross References

This section cited in 25 Pa. Code § 269a.211 (relating to compliance with the Pennsylvania Hazardous Waste Facilities Plan).

ALLOCATION**§ 269a.221. Allocation of the Fund.**

(a) The Department will identify qualifying facilities at the end of each calendar year. A municipality will become eligible for payment in the first calendar year that a qualifying facility is permitted and operating. Host municipalities are not required to submit an application or request to be eligible.

(b) A host municipality shall be eligible for a one time payment from the Fund if a qualifying facility is identified by the Department in whole, or in part, within the host municipality's corporate boundaries, and moneys remain in the Fund after requests for reimbursement under section 305(d)(1) of the act (35 P. S. § 6020.305(d)(1)) have been satisfied for the calendar year.

(c) When only one qualifying facility is identified, the host municipality shall receive the balance of the fund for that year, subject to subsection (b).

(d) When more than one qualifying facility is identified, the Department will allocate the available moneys using the following criteria:

- (1) The toxicity, mobility and other characteristics of the hazardous waste.
- (2) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.
- (3) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, treated or disposed of annually at the facility shall be calculated as a percentage of the total amount of hazardous waste treated or disposed of annually within this Commonwealth.
- (4) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, generated in this Commonwealth, shall be calculated as a percentage of the hazardous waste treated or disposed of annually at the facility.

(5) The Department may require executed contracts or the facility's first year of manifest data from the owner or operator to determine the information required by this section.

(6) If the total facility is not designated as needed by the Pennsylvania Hazardous Waste Facilities Plan, the percentage of the facility meeting the needs of the Pennsylvania Hazardous Waste Facilities Plan will be estimated by the Department.

(7) Numerical values shall be derived based on the factors in paragraphs (1)—(4). Those values shall be added together to obtain a score for each qualifying facility.

(8) The scores will then be compared and a pro rata share of the available Fund moneys will be allocated to each host municipality based on these scores.

(9) If a qualifying facility is located in more than one host municipality, the allocation for that facility shall be distributed among the municipalities based on the percentage of the permitted facility within each municipality.

Source

The provisions of this § 269a.221 amended September 7, 2001, effective September 8, 2001, 31 Pa.B. 5075. Immediately preceding text appears at serial pages (255033) to (255034).

Cross References

This section cited in 25 Pa. Code § 269a.231 (relating to distribution of payments).

DISTRIBUTION

§ 269a.231. Distribution of payments.

The Department may require up to 1 year's operating data from a qualifying facility to determine the allocation for that facility. Allocation payments from the Fund will not be disbursed until the eligible reimbursements under section 305(d)(1) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305(d)(1)) have been made or funds encumbered for payment, and the Department has sufficient data to make the determinations required by § 269a.221 (relating to allocation of the Fund). The Department will make the determinations and either disburse or encumber the remaining moneys in accordance with current fiscal policy to assure payment within 1 year of determination of eligibility of the host municipality.

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CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

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Authority

The provisions of this Chapter 270a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); amended under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.302); section 480(e) of the Pennsylvania Used Oil Recycling Act (58 P. S. § 480(e)); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20), unless otherwise noted.

Source

The provisions of this Chapter 270a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 260a.3 (relating to terminology and citations related to Federal regulations); 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); and 25 Pa. Code § 298.10 (relating to applicability).

Subchapter A. GENERAL INFORMATION

- Sec.
- 270a.1. Incorporation by reference, scope and applicability.
- 270a.2. Definitions.
- 270a.3. Payment of fees.
- 270a.4. Effect of permit.
- 270a.5. Noncomplying and program reporting by Director.
- 270a.6. References.

§ 270a.1. Incorporation by reference, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its appendices (relating to hazardous waste permit program) are incorporated by reference.

(b) Regarding the requirements incorporated by reference, the requirements of this chapter do not apply to an owner or operator of a facility specifically exempted under 40 CFR 270.1(c)(2) (relating to purpose and scope of these regulations) unless the facility is regulated under § 270a.60(b) (relating to permits by rule).

(c) The owner or operator of a facility eligible to operate under § 270a.60(b) is deemed to have a hazardous waste management permit if the applicable requirements of § 270a.60(b) are satisfied.

(d) In addition to the requirements incorporated by reference in 40 CFR 270.1 (relating to purpose and scope of these regulations), waste mercury-containing devices as described in § 266b.1 (relating to incorporation by reference and scope) shall be managed in accordance with 40 CFR 270.1(c)(2)(viii).

Source

The provision of this § 270a.1 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6587. Immediately preceding text appears at serial pages (255039) to (255040).

Cross References

This section cited in 25 Pa. Code § 269a.1 (relating to definitions).

§ 270a.2. Definitions.

(a) The definitions for “disposal,” “person” and “storage” are not incorporated by reference.

(b) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply for the terms “Administrator,” “Director,” “Environmental Protection Agency” and “Regional Administrator” found in 40 CFR 270.2 (relating to definitions).

§ 270a.3. Payment of fees.

40 CFR 270.3 is not incorporated by reference, and the following fees are established:

- (1) Applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the “Commonwealth of Pennsylvania” according to the following schedule:
 - (i) Land disposal facilities—commercial—\$125,000.
 - (ii) Land disposal facility—captive—\$71,400.
 - (iii) Surface impoundments:
 - (A) Commercial—\$36,000.
 - (B) Captive—\$14,000.
 - (iv) Postclosure permits—\$25,000.
 - (v) Treatment facilities:
 - (A) Commercial—\$36,000.

- (B) Captive—\$14,000.
 - (vi) Storage facilities:
 - (A) Commercial—\$36,000.
 - (B) Captive—\$14,000.
 - (vii) Incinerators:
 - (A) Commercial—\$93,000.
 - (B) Captive—\$54,000.
- (2) If more than one permitted activity is located at a site, or more than one activity occurs, the fees are cumulative.
- (3) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the “Commonwealth of Pennsylvania” according to the following schedule:
- (i) Module I and Generic Module I applications:
 - (A) Module I—\$300.
 - (B) Generic Module I—\$1,500.
 - (ii) Class 3 permit modifications—50% of fees listed in paragraph (1).
 - (iii) Class 1 and Class 2 permit modifications—\$700.

Source

The provisions of this § 270a.3 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (282472) to (282473) and (255041).

Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); 25 Pa. Code § 265a.13 (relating to general and generic waste analysis); 25 Pa. Code § 266a.80 (relating to applicability and requirements); and 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures).

§ 270a.4. Effect of permit.

Regarding the requirements incorporated by reference, nothing in 40 CFR 270.4 (relating to effect of a permit) prohibits the Department from taking an enforcement action under section 602 of act (35 P. S. § 6018.602).

§ 270a.5. Noncomplying and program reporting by Director.

The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) do not apply to 40 CFR 270.5 (relating to noncompliance and program reporting by the Director).

§ 270a.6. References.

Regarding the requirements incorporated by reference, the term “*Federal Register*” retains its meaning and is not replaced by the term “*Pennsylvania Bulletin*” when used in 40 CFR 270a.6 (relating to references).

Subchapter B. PERMIT APPLICATION

Sec.

- 270a.10. General application requirements and permit issuance procedures.
- 270a.12. Confidentiality of information.
- 270a.13. Contents of Part A of the permit application.
- 270a.14. Additional applicant requirements.
- 270a.29. Permit denial.

§ 270a.10. General application requirements and permit issuance procedures.

- (a) Regarding the requirements incorporated by reference:
 - (1) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the terms “Administrator,” “*Federal Register*” and “EPA” does not apply to 40 CFR 270.10(e)(2) (relating to general application requirements).
 - (2) In 40 CFR 270.10(e)(3), the term “Department” is substituted for “administrator” and “sections 602 and 610 of the act” are substituted for “section 3008 of RCRA.”
 - (3) The substitution of terms in § 260a.3 for the term “Administrator” does not apply to 40 CFR 270.10(f)(3).
 - (4) An application submitted under 40 CFR 270.10(f)(2) and (g)(1)(i) shall be submitted to the Department and not to the EPA.
- (b) In addition to the requirements incorporated by reference, an application shall include the application fees required by § 270a.3 (relating to payment of fees).
- (c) The following procedures are used in issuing a permit:
 - (1) 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.
 - (2) The Department will not begin the processing of a permit until the applicant complies with the application requirements for that permit and the signature and certification requirements of 40 CFR 270.11 (relating to signatories to permit applications and reports).
 - (3) The Department reviews for completeness every hazardous waste permit application for a new or existing hazardous waste management facility. Upon completing the review, the Department notifies the applicant in writing whether the application is complete. If the application is incomplete, the Department lists the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Department specifies in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department notifies 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 do not render an application incomplete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions taken under applicable statutory provisions.

(5) 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.

(6) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in paragraph (3).

(7) Once an application is complete, the Department tentatively decides whether to prepare a draft permit or to deny the application.

(8) 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 is withdrawn and the Department will proceed to prepare a draft permit under paragraph (9).

(9) A draft permit prepared by the Department contains the following information:

(i) Conditions under this chapter and 40 CFR 270.30 and 270.32 (relating to conditions applicable to all permits; and establishing permit conditions).

(ii) Proposed compliance schedules under 40 CFR 270.33 (relating to schedules of compliance).

(iii) Monitoring requirements under Chapters 264a and 265a; 40 CFR Parts 264 and 265 and 40 CFR 270.31.

(10) A draft permit prepared under this section shall be accompanied by a statement of basis, under paragraph (11) or a fact sheet under paragraph (12), publicly noticed under § 270a.80 (relating to public notice and comment requirements) and made available for a public comment under § 270a.81(2) (relating to public hearings). The Department gives notice of the opportunity for public hearing under § 270a.81(2) and responds to comments under paragraph (13).

(11) The Department prepares a statement of basis for every draft permit for which a fact sheet under paragraph (12) is not prepared. The statement of basis describes 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 is sent to the applicant and, on request, to other persons.

(12) Preparation of fact sheets complies with the following:

(i) A fact sheet is prepared by the Department for every draft permit for a major hazardous waste management 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 briefly sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department sends this fact sheet to the applicant and, on request, to other persons.

(ii) The fact sheet includes the following, when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit.

(B) The type and quantity of wastes proposed to be or being treated, stored or disposed.

(C) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

(D) Reasons why requested variances or alternatives to required standards do or do not appear justified.

(E) A description of the procedures for reaching a final decision on the draft permit including the following:

(I) The beginning and ending dates of the comment period under § 270a.80 and the address where comments will be received.

(II) Procedures for requesting a hearing and the nature of that hearing.

(III) Other procedures by which the public may participate in the final decision.

(IV) The name and telephone number of a person to contact for additional information.

(13) At the time that a final permit is issued, the Department also issues a response to comments. The response does the following:

(i) Specifies which provisions, if any, of the draft permit changed in the final permit decisions, and the reasons for the change.

(ii) Briefly describes responses to significant comments on the draft permit raised during the public comment period or during a hearing.

(14) The Department makes its response to public comments available to the public.

Cross References

This section cited in 25 Pa. Code § 270a.29 (relating to permit denial); 25 Pa. Code § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits); 25 Pa. Code § 270a.80 (relating to public notice and comment requirements); and 25 Pa. Code § 270a.81 (relating to public hearings).

§ 270a.12. Confidentiality of information.

40 CFR 270.12 (relating to confidentiality of information) is not incorporated by reference. The confidentiality of information is as follows:

(1) Information submitted to the Department under this subsection may be claimed as confidential by the applicant. Any claim shall be asserted at the time of submission in the manner prescribed in paragraph (2) and the application form or instructions by stamping the words “confidential business information” on each page containing the information. If a claim is not made at the time of submission, the Department will make the information available to the public without further notice.

(2) Claims of confidentiality for permit application information shall be substantiated at the time the application is submitted and shall address the following:

- (i) The portions of the information claimed to be confidential.
- (ii) The length of time the information is to be treated as confidential.
- (iii) The measures taken to guard against undesired disclosure of the information to others.
- (iv) The extent the information has been disclosed to others and the precautions taken in connection with that disclosure.
- (v) A copy of any pertinent confidentiality determinations by EPA or another Federal agency.
- (vi) The nature of the substantial harm to the competitive position by disclosure of the information, the reasons it should be viewed as substantial and the relationship between the disclosure and the harm.

(3) The Department keeps confidential information in a secure repository and does not make the information available for inspection by the general public.

(4) The Department makes confidential information available to any State or Federal agency for the purpose of administration of any State or Federal law.

Cross References

This section cited in 25 Pa. Code § 270a.82 (relating to public availability of information).

§ 270a.13. Contents of Part A of the permit application.

In addition to the requirements incorporated by reference, Part A of the permit application includes information to demonstrate compliance with the siting criteria in Chapter 269a (relating to siting).

§ 270a.14. Additional applicant requirements.

(a) In addition to the requirements incorporated by reference, permit applicants shall also comply with § 270a.83 (relating to preapplication public meeting and notice).

(b) 40 CFR 270.14(b)(20) (relating to contents of Part B: general requirements) is not incorporated by reference.

§ 270a.29. Permit denial.

(a) 40 CFR 270.29 (relating to permit denial), is not incorporated by reference.

(b) 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 § 270a.10(c) (relating to general application requirements and permit issuance procedures). 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 is withdrawn and the Department proceeds to prepare a draft permit under § 270a.10(c).

Cross References

This section cited in 25 Pa. Code § 270a.80 (relating to public notice and comment requirements).

Subchapter C. PERMIT CONDITIONS

Sec.
270a.32. Establishing permit conditions.

§ 270a.32. Establishing permit conditions.

40 CFR 270.32(a) and (c) (relating to establishing permit conditions) is not incorporated by reference. In 40 CFR 270.32(b)(2), the term "section 3005" is replaced with "sections 501—503 of the act" (35 P. S. §§ 6018.501—6018.503) and the term "state director" is deleted.

Subchapter D. CHANGES TO PERMITS

Sec.
270a.41. Procedures for modification, termination or revocation and reissuance of permits.
270a.42. Permit modification at the request of the permittee.
270a.43. Permit termination.

§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.

Instead of the procedures required in 40 CFR Part 124 (relating to procedures for decisionmaking), permits are modified, terminated or revoked and reissued in accordance with the following:

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(1) The Department may modify, revoke and reissue, or terminate a permit either at the request of an interested person, including the permittee, or upon the Department's initiative for reasons specified in 40 CFR 270.41—270.43 (relating to modification or revocation and reissuance of permits; permit modification at the request of the permittee; and modification or revocation and reissuance of permits, and termination of permits) or for a reason authorized under the act, this article 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 sends a brief written response giving a reason for the decision to the requester. The Department's refusal to modify, or revoke and reissue a permit under a request is not subject to public notice, comment or hearings.

(3) If the Department tentatively decides to modify, terminate or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, 270.42(c) or 270.43 the Department prepares a draft permit under § 270a.10(c) (7)—(10) (relating to general application requirements) 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 requires 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 are reopened when a new draft permit is prepared. Other aspects of the existing permit 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 expired and is 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 terminate a permit in accordance with the incorporated provisions of 40 CFR 270.43, it issues a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as a draft permit prepared under § 270a.10(c)(7)—(10).

(6) Class 1 modifications, as listed in the Appendix I to 40 CFR 270.42, are not subject to the requirements of this section.

Cross References

This section cited in 25 Pa. Code § 270a.80 (relating to public notice and comment requirements).

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§ 270a.42. Permit modification at the request of the permittee.

(a) Instead of complying with 40 CFR Part 124.10(c)(ix) (relating to public notice of permit actions and public comment period) the permittee shall send a notice to those persons in § 270a.80(d)(iv) (relating to public notice and comment requirements).

(b) Instead of the appeal procedure in 40 CFR 124.19 (relating to appeal of RCRA, UIC, NPDES, PSD permits), the Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) Applicants seeking a Class 3 permit modification shall comply with § 270a.83 (relating to preapplication public meeting and notice).

Source

The provisions of this § 270a.42 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (280197).

Cross References

This section cited in 25 Pa. Code § 270a.83 (relating to preapplication public meeting and notice).

§ 270a.43. Permit termination.

The procedures for permit termination are found in § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits).

Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS

Sec.
270a.51. Continuation of existing permits.

§ 270a.51. Continuation of existing permits.

(a) 40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

(b) The conditions of an expired permit continue in force until the effective date of a new permit if the following conditions are met:

(1) The permittee has submitted a timely application which is a complete application for a new permit.

(2) The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(c) Permits continued under this section remain fully effective and enforceable.

(d) When the permittee is not in compliance with the conditions of the expiring or expired permit, the Department may choose to do one or more of the following:

- (1) Initiate enforcement action based upon the permit which has been continued.
- (2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit.
- (3) Issue a new permit with appropriate conditions.
- (4) Take other actions authorized by these regulations.

Source

The provisions of this § 270a.51 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (280198).

Subchapter F. SPECIAL FORMS OF PERMITS

Sec.

270a.60. Permits-by-rule.

270a.62. Hazardous waste incinerator permits.

270a.64. Interim permits for UIC wells.

270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

§ 270a.60. Permits-by-rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule):

(1) In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the owner or operator gives prior notification to the Department on a form provided by the Department and the conditions listed are met. Existing permit-by-rule facilities shall comply with the notification requirements by December 8, 2003.

(2) The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain, an individual permit when the facility is not in compliance with the applicable requirements or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(b) In addition to the requirements incorporated by reference, the following requirements apply:

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(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

- (i) The facility treats hazardous waste generated onsite.
- (ii) The facility has an NPDES permit, if required, and complies with the conditions of that permit.
- (iii) Section 264a.11 (relating to identification number and transporter license) and 40 CFR 264.11 (relating to identification number).
- (iv) Chapter 264a, Subchapter D and 40 CFR Part 264 Subparts C and D (relating to preparedness and prevention; and contingency plan and emergency procedures).
- (v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).
- (vi) For the purposes of this subsection, the owner or operator of an elementary neutralization unit or wastewater treatment unit permit-by-rule facility may treat wastes generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 and 40 CFR 262.20 (relating to general requirements; and general requirements).

(vii) The Department may, under special circumstances, approve on a case-by-case basis the receipt and treatment of wastes generated offsite by a different generator for treatment at a facility regulated under this subsection without the treatment of the wastes resulting in the loss of permit-by-rule status under this subsection.

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

- (i) The facility is a captive facility and the only waste treated is generated onsite.
- (ii) The notification requirements of 40 CFR 264.11 (relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD, except for § 264a.18 (relating to location standards).
- (iii) The applicable requirements of 40 CFR 262.34 (relating to accumulation).
- (iv) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous by means of dilution.

(v) A generator may mix waste oil with a waste which is hazardous solely because it exhibits the toxicity characteristic for benzene, arsenic, cadmium, chromium, lead or ignitability, provided that the resultant mixture does not exhibit any characteristic of hazardous waste under 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) incorporated

by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and that the mixture is managed in accordance with Chapter 298, Subchapter C (relating to waste oil generators).

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit-by-rule for treatment prior to the reclamation of the spent, lead-acid batteries, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, I—L and DD and Chapter 264a, Subchapters A, B, D, E, I—L and DD, except for § 264a.18.

(4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a permit-by-rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Parts 262 and 264, Subparts A—E and I, J and DD.

(iii) For the purposes of this subsection, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 (relating to general requirements) and 40 CFR Part 262.20 (relating to general requirements).

(iv) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subsection without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subsection.

(5) The owner or operator of a facility that treats recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit-by-rule if the owner or operator complies with the following:

(i) The notification requirements of 40 CFR 264.11 (relating to identification number).

(ii) The applicable requirements of Chapter 264a, Subchapters A, B, D, E, I, J and DD, except for § 264a.18, and 40 CFR Part 264, Subparts A—D, I, J and DD.

(c) In addition to the requirements incorporated by reference:

(1) With respect to any permit-by-rule facility under subsection (b)(3)—

(6), the Department may, upon written application from a person subject to

these paragraphs, grant a variance from one or more specific provision of those paragraphs in accordance with this subsection.

(2) In granting a variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity results in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions. Any variance granted under this section will be at least as stringent as the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

Source

The provisions of this § 270a.60 amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873; amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (280198) to (280200).

Cross References

This section cited in 25 Pa. Code § 264a.1 (relating to incorporation by reference, purpose, scope and reference); 25 Pa. Code § 265a.1 (relating to incorporation by reference, purpose, scope and applicability); 25 Pa. Code § 266a.70 (relating to applicability and requirements); 25 Pa. Code § 266a.80 (relating to applicability and requirements); and 25 Pa. Code § 270a.1 (relating to incorporation by reference, scope and applicability).

§ 270a.62. Hazardous waste incinerator permits.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80 (d)(1) (relating to public notice and comment requirements).

Source

The provisions of this § 270a.62 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (280200).

§ 270a.64. Interim permits for UIC wells.

40 CFR 270.64 (relating to interim permits for UIC wells) is not incorporated by reference.

§ 270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80(d)(1) (relating to public notice and comment requirements).

Source

The provisions of this § 270a.66 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (255051).

Subchapter G. INTERIM STATUS

Sec.

270a.72. Changes during interim status.

§ 270a.72. Changes during interim status.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term “EPA” does not apply to 40 CFR 270.72(a)(5) and (b)(5) (relating to changes during interim status).

Subchapter H. PUBLIC NOTICE AND HEARINGS

Sec.

270a.80. Public notice and comment requirements.

270a.81. Public hearings.

270a.82. Public availability of information.

270a.83. Preapplication public meeting and notice.

270a.84. Information repository.

§ 270a.80. Public notice and comment requirements.

(a) The Department gives public notice of the following actions:

(1) An application for a permit or a Class 2 or Class 3 permit modification is tentatively denied under §§ 270a.29 and 270a.41 and 40 CFR 270.29 and 270.41.

(2) A draft permit is prepared under § 270a.10(c) (relating to general application requirements).

(3) A hearing is scheduled under § 270a.81(b) (relating to public hearings).

(4) A closure/postclosure plan is received in accordance with the incorporated requirements of 40 CFR 264.112, 265.112, 264.118 or 265.118.

(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) provides for at least 45 days for public comment.

(c) The Department gives 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 gives public notice of activities described in subsection (a) by the following methods:

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- (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 classes and categories of permits:
- (i) The applicant.
 - (ii) An agency which the Department knows has issued or is required to issue a RCRA, underground injection control, prevention of significant deterioration (or other permit under the Clean Air Act), NPDES, 404, sludge management permit or ocean dumping permit under the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. No. 92-532, 86 Stat. 052) for the same facility or activity, including the 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, that includes 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) Units of local government having jurisdiction over the area where the facility is located.
 - (vi) State agencies having authority under State statute with respect to the construction or operation of the facility.
- (2) Publication of a notice in the *Pennsylvania Bulletin* and 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 forum or medium to elicit public participation.
- (e) 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 § 270a.81, 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 § 270a.81(b) 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) and (ii) will be mailed a copy of the fact sheet or statement of basis, the draft permit and, if applicable, the permit application.

Cross References

This section cited in 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); 25 Pa. Code § 270a.42 (relating to permit modification at the request of the permittee); 25 Pa. Code § 270a.62 (relating to hazardous waste incinerator permits); 25 Pa. Code § 270a.66 (relating to permits for boilers and industrial furnaces burning hazardous waste); and 25 Pa. Code § 270a.81 (relating to public hearings).

§ 270a.81. Public hearings.

(a) During the public comment period provided under § 270a.80 (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 is not already scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Department considers comments in making its final decision and answers these comments as provided in § 270a.10(c) (relating to general application requirements and permit issuance procedures).

(b) The Department follows the following procedures in a public hearing held under this subchapter:

(1) The Department holds 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 hold a public hearing whenever a hearing might clarify issues involved in the permit decision.

(3) The Department holds a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice, under § 270a.80.

(4) The Department schedules, when possible, a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(5) The Department gives public notice of the hearing under § 270a.80.

(6) A person may submit oral or written statements and data concerning the draft permit before, during or after the public hearing, as long as the Department receives the statements and data during the public comment period. 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 § 270a.80 is automatically 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 makes a tape recording or written transcript of the hearing available to the public.

Source

The provisions of this § 270a.81 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (255053) to (255054).

Cross References

This section cited in 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); and 25 Pa. Code § 270a.80 (relating to public notice and comment requirements).

§ 270a.82. Public availability of information.

(a) Information provided to the Department under this article is made available to the public in accordance with the current Departmental policy on public information. The Department makes every effort to respond to written requests in a timely manner by providing the materials requested or a written response explaining why the request cannot be honored.

(b) The Department releases material obtained regarding facilities and sites for the treatment, storage and disposal of hazardous waste, unless the material is subject to a claim of confidentiality under § 270a.12 (relating to confidentiality of information) or other law or regulation. These records include:

- (1) Permit applications and modifications.
- (2) Annual reports.
- (3) Closure plans.
- (4) Notification of facility closure.
- (5) Contingency plan incidence reports.

- (6) Delisting petitions and other petitions for variances or waivers.
- (7) Financial responsibility instruments.
- (8) Environmental monitoring data, such as groundwater monitoring data.
- (9) Transporter spill reports.
- (10) International shipment reports.
- (11) Manifest exception, discrepancy and unmanifested waste reports.
- (12) EPA facility identification numbers.
- (13) General correspondence with the facility.
- (14) Enforcement orders.
- (15) Inspection reports.
- (16) Results of corrective action investigations.

§ 270a.83. Preapplication public meeting and notice.

(a) *Applicability.*

(1) This section applies to RCRA Part B applications seeking initial permits for hazardous waste management units over which the Department has permit issuance authority.

(2) This section also applies to RCRA Part B applications seeking renewal of permits for the units, if the renewal application is proposing a significant change in facility operations.

(3) For the purposes of this section, a “significant change” is a change that would qualify as a Class 2 or Class 3 permit modification under 40 CFR 270.42 (relating to permit modification at the request of the permittee) and § 270a.42 (relating to permit modification at the request of the permittee).

(4) This section does not apply to Class 1 or Class 2 permit modifications under 40 CFR 270.42 and § 270a.42 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

(b) Prior to the submission of a Part B RCRA permit application for a facility, the applicant shall hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection (b), and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, under 40 CFR 270.14(b) (relating to contents of Part B: general requirements).

(d) The applicant shall provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Department upon request, documentation of the notice.

- (1) The applicant shall provide public notice in the following forms:

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(i) *Newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, if the Department determines that the publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) *Visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (2). If the applicant places the sign on the facility property, the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *Broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(iv) *Notice to the Department.* The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State and local government.

(2) The notices required under paragraph (1) shall include the following:

(i) The date, time and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including the address or a map—for example, a sketched or copied street map—of the facility location.

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.

(v) The name, address and telephone number of a contact person for the applicant.

Source

The provisions of this § 270a.83 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (255055) to (255056).

Cross References

This section cited in 25 Pa. Code § 270a.42 (relating to permit modification at the request of the permittee).

§ 270a.84. Information repository.

(a) This section applies to applications seeking hazardous waste management permits for hazardous waste management units over which the Department has permit issuance authority.

(b) The Department assesses the need, on a case-by-case basis, for an information repository.

(1) When assessing the need for an information repository, the Department considers a variety of factors, including:

- (i) The level of public interest.
- (ii) The type of facility.
- (iii) The presence of an existing repository.
- (iv) The proximity to the nearest copy of the administrative record.

(2) If the Department determines, at any time after submittal of a permit application, that there is a need for a repository, the Department notifies the facility that it shall establish and maintain an information repository. See 40 CFR 270.30(m) (relating to conditions applicable to all permits) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain the documents, reports, data and information deemed necessary by the Department to fulfill the purposes for which the repository is established. The Department has the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. The Department specifies a more appropriate site if, due to problems with the location, hours of availability, access or other relevant considerations, the Department finds the site unsuitable for the purposes and persons for which it was established.

(e) The Department specifies requirements for informing the public about the information repository. At a minimum, the facility shall provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner or operator is responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Department may close the repository based on the factors in subsection (b).

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