

Secretary's Order No.: 2011-WH-0045

RE: Approving Amendments to the
Delaware Regulations Governing Hazardous Waste,
7 DE Admin. Code 1302

Date of Issuance: November 15, 2011

Effective Date of the Amendment: December 21, 2011

I. Background:

A public hearing was held on Monday, October 24, 2011, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program. To accomplish this, the State is proposing to adopt mandated federal regulations and miscellaneous changes to correct errors and add consistency or clarification. Some of the changes DNREC is proposing to make are currently in effect at the federal level.

The Department is proposing amendments to the following sections of its existing *Regulations Governing Hazardous Waste*: (1) Adoption of federal technical corrections; (2) Adoption of federal withdrawal of the Emission-Comparable Fuel Exclusion; (3) Adoption of federal delisting of saccharin; (4) Modification of §262.20(f) to allow Universities to transport hazardous waste to an accumulation area; (5) Clarification of the necessity of 270 day accumulation for Small Quantity Generators (SQG); (6)

Clarification of SQG recordkeeping and reporting requirements in §262.44; (7) Clarification of records retention of Contingency Plan submission; (8) Clarification of Conditionally Exempt Small Quantity Generator container requirements in §261.5; (9) Correction of references to the regional contingency plan under 40 CFR 1510; and (10) Requirement of used oil facilities to close containers.

The Department published the proposed regulatory amendments in the October 1, 2010 *Delaware Register of Regulations*. Due to the fact that the proposed changes to RGHW are required by the EPA, are self explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter was sent to all interested persons (i.e., the regulated community throughout Delaware) on August 4, 2011, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing. No comments of any kind were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on October 24, 2011, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 10, 2011, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's *Regulations Governing Hazardous Waste*, as reflected in the

Hearing Officer's Memorandum of November 10, 2011, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The addition of clarifying language, as well as the correction of clerical errors currently found in Delaware's existing regulations, will strengthen and provide better clarity and a fuller understanding of the regulatory language

contained within this regulation to the general public and the regulated community;

8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the October 1, 2011 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;
10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 10, 2011 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste* be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's *Regulations Governing Hazardous Waste* will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to provide additional clarifying language, as well as to correct clerical errors currently found in Delaware's existing regulations, will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Chapters 60 and 63.

/s/ Collin P. O'Mara

Collin P. O'Mara

Secretary

MEMORANDUM

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Amendments to the *Delaware Regulations Governing Hazardous Waste (2011)*, 7 DE Admin. Code 1302

DATE: November 10, 2011

I. Background:

A public hearing was held on Monday, October 24, 2011, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program. To accomplish this, the State is proposing to adopt mandated federal regulations and miscellaneous changes to correct errors and add consistency or clarification. Some of the changes DNREC is proposing to make are currently in effect at the federal level.

The Department is proposing amendments to the following sections of its existing *Regulations Governing Hazardous Waste*: (1) Adoption of federal technical corrections; (2) Adoption of federal withdrawal of the Emission-Comparable Fuel Exclusion; (3)

Adoption of federal delisting of saccharin; (4) Modification of §262.20(f) to allow Universities to transport hazardous waste to an accumulation area; (5) Clarification of the necessity of 270 day accumulation for Small Quantity Generators (SQG); (6) Clarification of SQG recordkeeping and reporting requirements in §262.44; (7) Clarification of records retention of Contingency Plan submission; (8) Clarification of Conditionally Exempt Small Quantity Generator container requirements in §261.5; (9) Correction of references to the regional contingency plan under 40 CFR 1510; and (10) Requirement of used oil facilities to close containers.

Due to the fact that the proposed changes to RGHW are required by the EPA, are self-explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter was sent to all interested persons (i.e., the regulated community throughout Delaware) on August 4, 2011, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing. No comments of any kind were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on October 24, 2011, Bill Davis with the Solid and Hazardous Waste Management Branch of the Department's Waste and Hazardous Substances, offered the Department's five (5) exhibits pertaining to these proposed amendments, and the Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits were copies of the Legal Notices regarding the holding of this public hearing on October 24, 2011, a copy of

the notification sent to all interested persons (i.e., the regulated community) on August 4, 2011 concerning this proposed promulgation, copies of the actual proposed amendments to Delaware's Regulations Governing Hazardous Waste, and a brief synopsis of the same. For the Secretary's review, and in order for the Secretary to gain a thorough understanding of these proposed amendments, copies of the actual proposed amendments to Delaware's RGHW are attached hereto as Attachment "A", and the same are expressly incorporated into this Hearing Officer's memorandum.

It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the standard required public noticing obligations regarding these proposed amendments. It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

Again, the Department received no public comment regarding these proposed amendments to the *Regulations Governing Hazardous Waste* during any phase of this hearing matter, nor did any members of the public (nor of the regulated community) offer comment at the time of the public hearing on October 24, 2011.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware's *Regulations Governing Hazardous Waste*. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

11. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
12. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
13. The Department held a public hearing in a manner required by the law and regulations;
14. The Department considered all timely and relevant public comments in making its determination;
15. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
16. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
17. The addition of clarifying language, as well as the correction of clerical errors currently found in Delaware's existing Regulations Governing Hazardous Waste, will strengthen and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
18. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

19. The Department's proposed regulation, as published in the October 1, 2011 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;
20. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

/s/ Lisa A. Vest
LISA A. VEST
Public Hearing Officer