

Secretary's Order No.: **2008-A-0056**

RE: Proposed Amendments to the
Delaware Regulations Governing Hazardous Waste (2008)

Date of Issuance: November 17, 2008

Effective Date of the Amendment: December 21, 2008

I. Background:

A public hearing was held on Thursday, October 23, 2008, 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 "DRGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own 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.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. Additionally, the Department is proposing to adopt optional federal regulations and make miscellaneous changes to correct errors and to add consistency or clarification to the existing regulations.

The proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 11, 2008. Comments were received from the regulated community as a

result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. No comments were received from the public or the regulated community regarding these proposed amendments at either the time of the public hearing or during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment received prior to the time of the public hearing, as reflected in the Hearing Officer's Memorandum of November 13, 2008, which is attached hereto and expressly incorporated into this Order. 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 correction of 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;
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, 2008 *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 13, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware 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 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 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/ John A. Hughes

John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to the *Delaware Regulations Governing Hazardous Waste (2008)*

DATE: November 13, 2008

I. Background:

A public hearing was held on Thursday, October 23, 2008, 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 “DRGHW”). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as “EPA”) to administer its own 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.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. Additionally, the Department is proposing to adopt optional federal regulations and make miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations.

Of note is the fact that these proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 11, 2008. Comments were received from the regulated community as a result of this workshop, and those comments were addressed by the Department and included as part of the Department's exhibits entered into the record in this matter at the time of the public hearing. No comments were received from the public or the regulated community regarding these proposed amendments at either the time of the public hearing or during the post-hearing 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 23, 2008, Bill Davis of the Solid and Hazardous Waste Management Branch of DNREC, offered the Department's five 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 actual proposed amendments to Delaware's Regulations Governing Hazardous Waste, as well as 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, the aforementioned documents are attached hereto as Attachment "A" and Attachment "B", respectively, 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. The Department also sent letters to the regulated community to provide them with the scheduled dates for the planned public workshop and public hearing. Additionally, a copy of the proposed amendments to these regulations was provided to each public workshop attendee, as well as the Department having posted same on their website for public review.

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 as a result of the public hearing on October 23, 2008, as no members of the public (nor of the regulated community) attended the same. Although the hearing record remained open (for noticing requirements) through October 30, 2008, no public comments were received by the Department during the post-hearing phase of this matter.

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 the DRGHW. 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 correction of clerical errors currently found in Delaware's existing Regulations Governing Hazardous Waste will 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, 2008 *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
Hearing Officer

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