



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-9000
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Secretary's Order No.: 2015-WH-0015

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1302:
*Delaware Regulations Governing Hazardous Waste***

Date of Issuance: April 14, 2015

Effective Date of the Amendment: May 21, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, and 7 *Del.C.* §§6301 *et seq.*, and any other relevant authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste* (DRGHW"). The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS"), has conducted this regulatory development process consistent with the requirements of 29 *Del.C.* Chapter 101, and has commenced said process with Start Action Notice 2014-10 dated December 11, 2014. The Department published its initial proposed regulation Amendments in the January 1, 2015 *Delaware*

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Register of Regulations. The Department then held a public hearing on February 26, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through March 13, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to the existing DRGHW to enable the Department to provide greater environmental protection and to reduce human health risks. Specifically, the proposed action will allow DNREC to provide clarification to existing regulatory language, as noted above, and to adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015. Members of the public attended the aforementioned hearing, but no comment was received by the Department at that time with regard to this proposed regulatory promulgation. It should be noted that, prior to the aforementioned hearing, the U.S. Environmental Protection Agency (“EPA”) formally advised DNREC that it had no concerns with this proposed regulatory promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Although the record remained open through March 13, 2015, no additional comment was ever received by the Department concerning this proposed action. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 2, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section, fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to provide clarification to existing regulatory language, as noted above, and to adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1302, pursuant to 7 *Del. C.*, Chapters 60 and 63;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

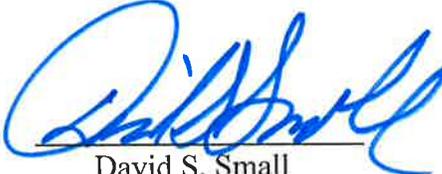
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste*, will enable the Department's SHWMS to (1) clarify the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training; (2) clarify of the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities; and (3) adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users;

6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory amendments, as published in the January 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



David S. Small
Secretary

MEMORANDUM

TO: The Honorable David S. Small
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 Regulation Amendments to 7 DE Admin. Code 1302:**
Delaware Regulations Governing Hazardous Waste

DATE: April 2, 2015

I. Background:

A public hearing was held on Thursday, February 26, 2015, at 6:30 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste* (hereinafter referred to as “DRGHW”). To provide greater environmental protection and to reduce human health risks, the Department’s Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section (“SHWMS”) is recommending the following Amendments in this proposed regulatory promulgation: (1) clarification of the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training; (2) clarification of the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities; and (3) the adoption of the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1302, pursuant to 7 *Del. C.*, Chapters 60 and 63. Members of the public attended the February 26, 2015 public hearing, however, no comment was received by the Department from the public regarding this proposed regulatory promulgation at that time. It should be noted that, prior to said public hearing, the U.S. Environmental Protection Agency (“EPA”) formally advised DNREC that it had no concerns with this proposed regulatory promulgation. It should also be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) three documents introduced by responsible Department staff at the public hearing held on February 26, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-3. The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Bethany Fiske, developed the record with the relevant documents in the Department’s files.

The purpose of this proposed regulatory promulgation is to adopt proposed Amendments to existing DRGHW to enable the Department to provide greater environmental protection and to reduce human health risks. Specifically, the proposed action will allow DNREC to provide clarification to existing regulatory language, as noted above, and to adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users.

The proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on February 26, 2015. As noted above, members of the public attended the aforementioned hearing, but no comment was received by the Department at that time with regard to this proposed regulatory promulgation. It should be noted that, prior to the aforementioned hearing, the EPA formally advised DNREC that it had no concerns with this proposed regulatory promulgation. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Although the record remained open through March 13, 2015, no additional comment was ever received by the Department concerning this proposed action. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1302, pursuant to 7 *Del. C.*, Chapters 60 and 63;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Chapter 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on February 26, 2015, and held the record open through close of business on March 13, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste*, will enable the Department's SHWMS to (1) clarify the requirement of Small Quantity Generators of hazardous waste to document employee hazardous waste training; (2) clarify of the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities; and (3) adopt the federal e-manifest rule, in order to facilitate the electronic transmission of the uniform manifest form, and to make the use of the uniform manifest much more cost-effective and convenient for users;

5. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, 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. The Department's proposed regulatory amendments, as published in the January 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed regulatory amendments as final regulatory amendments to 7 DE Admin. Code 1302: *Delaware Regulations Governing Hazardous Waste*, to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments

APPENDIX “A”

**Amendments to
Delaware's *Regulations Governing Hazardous Waste***

**2015 Proposed Amendment
For Publication in the State Register
Start Action Notice # **2014-10****

Delaware Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substance
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, DE 19901
Phone: 302-739-9403
Contact: Bethany Fiske

ID #	Description	Page
1	Small Quantity Generator employee training documentation	2
2	Weekly inspection documentation	2
3	E-manifest	3

Proposed Amendments to
Delaware's *Regulations Governing Hazardous Waste*
(DRGHW)

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

AMENDMENT 1:

Background:

Delaware proposes to modify DRGHW to clarify the requirement of Small Quantity Generators to document employee hazardous waste training.

Section 262.34 Accumulation time.

...

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

...

(5) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(5)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

...

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies, and documentation demonstrating such training must be maintained on-site until closure of the site for current employees and for at least three years from the date the employee last worked at the site for former employees;

AMENDMENT 2:

Background:

Delaware proposes to modify DRGHW to clarify the requirement of documentation of weekly inspections for owners or operators of treatment, storage, and disposal facilities.

264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. A written record of the inspections must be maintained on-site for a minimum of 3 years.

AMENDMENT 3:

Background:

Delaware proposes to modify DRGHW to adopt the federal e-manifest rule.

Section 260.2 Availability of Information; Confidentiality of Information.

(a) Any information provided to DNREC under Parts 260 through 265 and 268 of these regulations will be made available to the public to the extent and in the manner authorized by 29 Del.C., Chapter 100 and 7 Del.C., §6304 and DNREC regulations implementing 29 Del.C., Chapter 100 and 7 Del.C., §6304.

Section 260.10 Definitions.

“Electronic manifest” (or “e-Manifest”) means the electronic format of the hazardous waste manifest that is obtained from EPA’s national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

“Electronic Manifest System” (or “e-Manifest System”) means EPA’s national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

“Manifest” means: means the shipping document EPA form 8700-22, and if necessary, EPA form 8700-22A, or the electronic manifest, originated and signed by the generator or offeror in accordance with the instructions included in Part 262 of these regulations and the applicable requirements of DRGHW parts 262 through 265.

“User of the electronic manifest system” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

- (1) Is required to use a manifest to comply with:
 - i. Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
 - ii. Any federal or state requirement to track the shipment, transportation, and receipt of rejected waste or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and
- (2) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or
- (3) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with § 264.71(a)(2)(v) or § 265.71(a)(2)(v) of these regulations. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

Section 262.20 General requirements.

(a)(1) A generator who transports, or offers for transportation, hazardous waste for off

site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050-0039) on EPA Form 8700-22 and, if necessary EPA Form 8700-22A, according to the instructions included in the appendix to this part.

(2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, 262.21 of 40 CFR, 262.27, 262.32, 262.34, 262.54, 262.60, and the appendix to part 262 of these regulations shall not apply until September 5, 2006. The manifest form and procedures in §§260.10, 261.7, 262.20, 262.21 of 40 CFR, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in ~~the~~ parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

(3) Electronic manifest. In lieu of using the manifest form specified in paragraph (a)(1) of this section, a person required to prepare a manifest under paragraph (a)(1) of this section may prepare and use an electronic manifest, provided that the person:
(i) Complies with the requirements in § 262.24 for use of electronic manifests, and
(ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

Section 262.24 Use of the electronic manifest.

(a) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3), and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.

(d) Requirement for one printed copy. To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.

(e) Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions in the appendix to this part, and use these paper forms from this point forward in accordance with the requirements of § 262.23.

(f) Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeree certification on the printed copy of the manifest provided under paragraph (d) of this section.

(g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR 262.

Section 262.25 Electronic manifest signatures.

(a) Electronic signature methods for the e-Manifest system shall:

(1) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(2) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

Section 263.20 The Manifest System.

(a) (1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of §262.23.

(2) Exports. In the case of exports other than those subject to Ssubpart H of 40 DRGHW part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA

Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of ~~40~~ DRGHW part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by ~~40~~ DRGHW 262.84.

(3) *Compliance Date for Form Revisions.* The revised Manifest form and procedures in §260.10, 261.7, 263.20, and 263.21, ~~shall not apply until~~ had an effective date of September 5, 2006. The Manifest form and procedures in 40 CFR §§ 260.10, 261.7, 263.20, and 263.21, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006.

(4) Use of electronic manifest—legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3) of these regulations, and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) *Special procedures when electronic manifest is not available.* If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii) of this section, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) *Special procedures for electronic signature methods undergoing tests.* If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii) of this section. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) *Imposition of user fee for electronic manifest use.* A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or

processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.

Section 263.25 Electronic manifest signatures.

(a) Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

(b) [Reserved]

Section 264.71 Use of manifest system.

(a)(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;

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

(iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator and a copy of the signed “Designated Facility to Generator State” page to the DNREC Secretary;

(v) Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA’s electronic reporting requirements and by the electronic manifest system.

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

...

(f) *Legal equivalence to paper manifests.* Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3) of these regulations, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) *Special procedures applicable to replacement manifests.* If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest.

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest.

(3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) *Special procedures applicable to electronic signature methods undergoing tests.* If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the

date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 264.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

Section 265.71 Use of Manifest System.

(a)(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

- (i) Sign and date, by hand, each copy of the manifest;
- (ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;
- (iii) Immediately give the transporter at least one copy of the manifest;
- (iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator and a copy of the signed “Designated Facility to Generator State” page to the DNREC Secretary; and
- (v) Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.
- (vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

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(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with § 262.20(a)(3) of these regulations, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR § 262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) *Special procedures applicable to replacement manifests.* If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the replacement manifest,

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) *Special procedures applicable to electronic signature methods undergoing tests.* If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's

certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) *Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under § 265.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.

(k) *Electronic manifest signatures.* Electronic manifest signatures shall meet the criteria described in 40 CFR § 262.25.

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