



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

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DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2013-WH-0045

**RE: Approving Final Regulations to 7 DE Admin. Code 1301
Regulations Governing Solid Waste ("DRGSW")
(pursuant to E.O. 36 DNREC Regulatory Review)**

Date of Issuance: October 14, 2013

Effective Date of the Amendment: November 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("DRGSW"), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily

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burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality ("DAQ") identified 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("DRGSW"), as an existing, older regulation which required revision at this time.

The purpose of the revisions being proposed at this time to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("DRGSW"), which includes infectious waste, is to provide amendments that afford regulated parties the opportunity to propose alternative packaging methods for infectious waste, provided that compliance is achieved with applicable federal Department of Transportation ("DOT") and Occupational Safety and Health Administration ("OSHA") standards. It is also proposed to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, it is proposed to amend the regulations with regard to industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, providing more flexibility for landfill operators.

The Department's Division of Waste and Hazardous Substances commenced the regulatory development process with Start Action Notice 2013-10 (E.O.36). The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 7, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 7, 2013. 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. With the exception of a brief clarifying question from a representative of Dover Air Force Base made at the time of the aforementioned public hearing, no other public comment was received by the Department during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation 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 October 2, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these Amendments. The adoption of this Order will enable Delaware to update its existing, older regulations by

affording regulated parties the opportunity to propose alternative packaging methods for infectious waste, provided that compliance is achieved with applicable federal Department of Transportation (“DOT”) and Occupational Safety and Health Administration (“OSHA”) standards. Moreover, these revisions will allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, with regard to Delaware’s existing regulations concerning industrial landfill capping and grading, these revisions will allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, thus providing more flexibility for landfill operators.

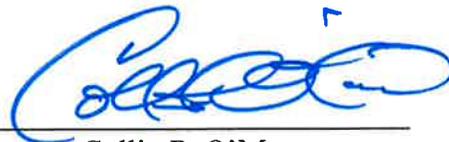
In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;
- 2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on the initial proposed amendments, including at the public hearing held on August 7, 2013;
- 3.) The Department held a public hearing on August 7, 2013 in order to consider public comment before making any final decision;
- 4.) The Department’s Hearing Officer’s Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will enable Delaware to update its existing, older regulations by providing for consistency in state and federal packaging and labeling methods for infectious waste. Additionally, these revisions will afford use of soil equivalent materials as the final grading layer within industrial landfills

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) update its existing, older regulations, and provide additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

7.) The Department shall submit this Order approving the final regulation 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.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department 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 1301**
Regulations Governing Solid Waste
(pursuant to E.O. 36 DNREC Regulatory Review)

DATE: October 2, 2013

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, August 7, 2013, at 6:00 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 1301, *Regulations Governing Solid Waste* (“DRGSW”). This public hearing was held as a result of the Department’s review of its existing regulations, pursuant to Governor Markell’s Executive Order No. 36 (hereinafter referred to as “E.O. 36”). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state’s commitment to improving public health and environmental performance.

Among the considerations of the Department’s aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the

Department's Division of Waste and Hazardous Substances ("DWH") identified 7 DE Admin. Code 1301 as an existing, older regulation which required revision at this time.

The purpose of the revisions being proposed at this time to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("DRGSW"), which includes infectious waste, is to provide amendments that afford regulated parties the opportunity to propose alternative packaging methods for infectious waste, provided that compliance is achieved with applicable federal Department of Transportation ("DOT") and Occupational Safety and Health Administration ("OSHA") standards. It is also proposed to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, it is proposed to amend the regulations with regard to industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternative materials if approved by the Department, providing more flexibility for landfill operators.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste* ("DRGSW"), pursuant to 7 *Del. C.*, Chapter 60. The Department's Division of Waste and Hazardous Substances commenced the regulatory development process with Start Action Notices 2013-10 (E.O.36). The Department published its initial proposed regulation amendments in the July 1, 2013 *Delaware Register of Regulations*, and held the public hearing on August 7, 2013. It should be noted that public comment was received by the Department at the time of the public hearing on August 7, 2013, and the same will be discussed below. 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 at the public hearing held on August 7, 2013, 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, William B. Davis, developed the record with the relevant documents in the Department's files.

Following the submission of the Department's exhibits into the record at the hearing held on August 7, 2013, Mr. Davis proceeded to offer a brief summary as to the Department's proposed actions for the benefit of the record developed in this matter (see Section I of this Report for said summary). Subsequently, comment was received from Valerie Swayze, a manager of solid waste and infectious waste from Dover Air Force Base, who had attended the hearing to learn of the changes that were being proposed to the existing DRGSW, and how such changes might affect their facility. Mr. Davis explained to Ms. Swayze that the proposed amendments will allow the Department latitude to interpret its regulations on a case-by-case basis. Thus, if the regulated community has suggestions or ideas that are unique to their situation, the Department will be enabled to review such proposals upon submission and, if appropriate, individually approve the same. Ms. Swayze was very appreciative of this explanation, and had no further questions or comment regarding the Department's proposed promulgation. No other comment was received by the Department with regard to this matter.

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, copies of the above-referenced proposed amendments are attached hereto as Appendix "A", and the same are expressly incorporated into

this Hearing Officer's Report. 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 required public notice obligations regarding these proposed amendments. It should also be noted that the Department has reviewed this proposed promulgation 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.

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 amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste*, as noted above. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

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

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of all proceedings in a manner required by the law and regulations;
4. The Department held its public hearing in a manner required by the law and regulations;

5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste*, will enable Delaware to update this existing, older regulation by providing for consistency in state and federal packaging and labeling methods for infectious waste. Additionally, these revisions will afford use of soil equivalent materials as the final grading layer within industrial landfills;
6. Additionally, promulgation of this proposed regulatory action by the Department will further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: to strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance;
7. The Department has reviewed these proposed regulatory amendments 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;
8. The Department's aforementioned proposed regulatory amendments to 7 DE Admin. Code 1301, *Regulations Governing Solid Waste*, as published in the July 1, 2013 *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 ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

9. The Department shall submit the proposed regulation amendments as final amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulations require, and as the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

APPENDIX “A”

Amendments To
Delaware's *Regulations Governing Solid Waste*

Executive Order 36
Proposed Amendments

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: Bill Davis

William.BDavis@state.de.us

ID #	Description	Page
1	Infectious Waste Packaging	2
2	Infectious Waste Labeling	3
3	Landfill Cover	4

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~~.

DRGSW AMENDMENT 1:

Infectious Waste - Packaging

Packaging Requirements - The amendment supports the use of alternative packaging for infectious waste provided the packaging is consistent with federal DOT and OSHA requirements and has received prior approval from the Department of Natural Resources and Environmental Control.

11.8.2 Packaging Requirements

All infectious waste shall be packaged as follows: set forth below, unless an alternative packaging protocol has been approved in writing by the Department.

11.8.2.1 All infectious wastes, other than sharps, shall be packaged as follows:

11.8.2.1.1 Waste shall be contained in two (one bag inside the other) RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.

11.8.2.1.2 All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

11.8.2.1.3 Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

11.8.2.1.4 In addition to the plastic bag containers described in this section, all infectious wastes must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation.

11.8.2.2 Sharps shall be contained in leakproof, rigid, puncture resistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the Biological Hazard Symbol.

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11.8.4 All infectious substances that are transported must be packaged as described in the most current edition of 49 CFR 173.196, even when that transport is wholly within the boundaries of the State.

DRGSW AMENDMENT 2:

Infectious Waste - Labeling

Labeling Requirements - The amendment provides for the use of alternative labeling for infectious waste, provided such labeling is consistent with federal DOT requirements and has received prior approval from the Department of Natural Resources and Environmental Control.

11.8.3 Labeling requirements. All infectious waste shall be labeled immediately after packaging. A label shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size. Labeling shall be performed as set forth below, unless an alternative labeling protocol has been approved in writing by the Department.

11.8.3.1 The following information shall be included on label one:

11.8.3.1.1 The name, address and business telephone number of the generator,

11.8.3.1.2 "Infectious" or "Regulated Medical Waste" in large print,

11.8.3.1.3 "Pathological Waste," if pathological waste is included in the contents, and

11.8.3.1.4 The name, address and business telephone number of the hauler or other persons to whose control the infectious waste will be transferred.

11.8.3.2 The following shall be included on label two: the Biological Hazard Symbol. The label ~~shall be not less than three by five inches.~~ size and color shall meet the requirements set forth in 49 CFR 172 Subpart E.

DRGSW AMENDMENT 3:

Landfill Cover

Landfill Cover – The amendment allows greater flexibility in the use of soil-equivalent and alternative material as the final grading layer cover, provided prior approval is obtained from the Department of Natural Resources and Environmental Control.

6.0 Industrial Landfills

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6.8 Capping System

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6.8.2 Composition of the capping system

The capping system shall consist of at least the following components:

6.8.2.1 A final grading layer on the waste, consisting of at least six (6) inches of soil or equivalent material, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose. Alternative materials may be used for the grading layer with prior written approval by the Department.

6.8.2.2 An impermeable layer, consisting of at least:

6.8.2.2.1 A 30 mil geomembrane underlain by a geotextile, or

6.8.2.2.2 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec or depth of equivalent material having a hydraulic conductivity less than 1×10^{-7} cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec. Alternative materials may be used for the impermeable layer with prior written approval of the Department.

6.8.2.3 A final cover consisting of:

6.8.2.3.1 Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

6.8.2.3.2 Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

6.8.2.3.3 A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation. The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.