



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No.: **2014-WH-0004**

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

Date of Issuance: March 14, 2014

Effective Date of the Amendment: April 21, 2014

I. Background:

A public hearing was held on Monday, January 27, 2014, 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.

In order to improve flexibility and service to the regulated community, the Department's Solid and Hazardous Waste Management Section ("SHWMS") proposes to add compliance self-certification provisions to Delaware's RGHW. Specifically, Delaware proposes to modify Section 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return

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the checklist to the Department. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

To fully vet the Department's proposed amendments to the aforementioned RGHW to the regulated community throughout Delaware, the aforementioned proposed amendments were published in the State of Delaware Register of Regulations on January 1, 2014. Additionally, notices of the Department's proposed amendments and upcoming public hearing were published in both the Delaware State News and the News Journal on December 18, 2013, which encouraged the public to review the proposed amendments on the Department's web page, and to attend DNREC's upcoming public hearing. Accordingly, the Department then held a public hearing on Monday, January 27, 2014, at which time there were no members of the public in attendance, nor were any comments received from the public or the regulated community regarding these proposed amendments. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on February 11, 2014, no public comments had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on January 27, 2014, 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 March 4, 2014, 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 March 4, 2014, 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 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;
5. Promulgation of these proposed amendments would improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and

verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs;

6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed regulation, as published in the January 1, 2014 *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*;
8. 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 March 4, 2014 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 improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

It should be noted that the estimated cost to fill out the Checklist is minimal. If a business generates hazardous waste, then there must already be an employee who is responsible for managing that hazardous waste. This same individual would ideally be the person responsible for filling out the Self-Certification Checklist. Because the Department will provide any assistance necessary in filling out the form, there is no need for a business to hire an outside consultant to comply with this new regulation. It should also be noted that businesses would not be required to take any other measures or investments to comply with this new regulation.

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.



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 (2012)*, 7 DE Admin. Code 1302

DATE: March 4, 2014

I. Background:

A public hearing was held on Monday, January 27, 2014, 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.

In order to improve flexibility and service to the regulated community, the Department's Solid and Hazardous Waste Management Section ("SHWMS") proposes to add compliance self-certification provisions to Delaware's RGHW. Specifically, Delaware proposes to modify Section 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the SHWMS to offer

customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

To fully vet the Department's proposed amendments to the aforementioned RGHW to the regulated community throughout Delaware, the aforementioned proposed amendments were published in the State of Delaware Register of Regulations on January 1, 2014. Additionally, notices of the Department's proposed amendments and upcoming public hearing were published in both the Delaware State News and the News Journal on December 18, 2013, which encouraged the public to review the proposed amendments on the Department's web page, and to attend DNREC's upcoming public hearing. Accordingly, the Department then held a public hearing on Monday, January 27, 2014, at which time there were no members of the public in attendance, nor were any comments received from the public or the regulated community regarding these proposed amendments. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on February 11, 2014, no public comments had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on January 27, 2014, Bethany Fiske, Environmental Scientist with the Solid and Hazardous Waste Management Section of the Department's Division of Waste and Hazardous Substances, offered the Department's three (3) exhibits

pertaining to these proposed amendments, and this 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 January 27, 2014, and copies of the actual proposed amendments to Delaware's Regulations Governing Hazardous Waste. Again, no public comment was received by the Department at any time regarding this proposed promulgation.

With regard to the actual proposed amendments to Delaware's RGHW, the following is a brief summary of the same:

Delaware is proposing to modify Section 262.43 ("Additional Reporting") of its existing RGHW to require any generator of hazardous waste who receives a Self-Certification Checklist from DNREC to complete and return the checklist to the Department. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

Under the proposed amendments, DNREC's Secretary, as he deems necessary under 7 Del.C. §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261. Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department. The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist

is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return a checklist upon request.

If a business generating hazardous waste receives a Self-Certification Checklist from the Department, the business will be required to complete and return the Checklist to the Department. The Checklist will consist of a series of questions for the hazardous waste generator to answer and provide explanations, if needed. These questions will pertain to the status of the generator (i.e. the amount of hazardous waste the generator generates) and will directly relate to the regulatory requirements for the management of that hazardous waste. The generator will also be provided resources to help facilitate easy and accurate reporting.

The estimated cost to fill out the Checklist is minimal. If a business generates hazardous waste, then there must already be an employee who is responsible for managing that hazardous waste. This same individual would ideally be the person responsible for filling out the Self-Certification Checklist. Because the Department will provide any assistance necessary in filling out the form, there is no need for a business to hire an outside consultant to comply with this new regulation. It should be noted that businesses would not be required to take any other measures or investments to comply with this new regulation.

The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

"I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge,

true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.”

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* either at the time of (or subsequent to) the public hearing held on January 27, 2014, nor did any members of the public attend said public hearing.

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:

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 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;
5. Promulgation of these proposed amendments would improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

7. The Department's proposed regulation, as published in the January 1, 2014 *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*;
8. 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.



LISA A. VEST
Public Hearing Officer

APPENDIX “A”

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

**2014 Proposed Amendment
For Publication in the State Register
Start Action Notice # 2013-35**

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

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1	Self-Certification provisions	2

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:
Self-Certification Provisions

To improve flexibility and service to the regulated community, the Solid and Hazardous Waste Management Section (SHWMS) proposes to add compliance self-certification provisions to DRGHW.

Background:

Delaware is proposing to modify 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

Section 262.43 Additional Reporting.

- (a) The Secretary, as he deems necessary under 7 Del.C. §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261.

- (b) Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.
 - (1) The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return a checklist upon request.

 - (2) The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

“I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.”

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