



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No.: 2019-WH-0001

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

Date of Issuance: January 3, 2019

Effective Date: February 21, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 *Del.C.* §§6010(a) and 6305(a), and any other relevant statutory 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 Amendments ("Amendments") to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*. This action is being taken by the Department to provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program.

The Department is required to adopt these federal regulatory amendments to maintain its Resource Conservation and Recovery Act ("RCRA") program delegation through the Environmental Protection Agency ("EPA"), and to remain current with the federal hazardous waste program. The Department's proposed Amendments are equivalent to the current federal regulations, and include revisions to the following: (1) Hazardous Air Pollutant Standards for Combustors; (2) Methods Innovation Rule; (3) Burden Reduction Initiative; (4) Organization of

Economic Cooperation and Development Rule; (5) Technical Corrections; (6) Delisting of Saccharin; (7) Export Revisions for Cathode Ray Tubes; (8) Definition of Solid Waste; and (9) Comparable Fuels Vacatur.

In addition to the proposal of the above items, the Department also proposes to correct minor technical errors and to add clarification regarding container storage.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 *Del.C.* §§6010(a) and 6305(a). The Department published its proposed Amendments in the October 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 29, 2018.

No members of the public attended the aforementioned public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on November 13, 2018, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

It should 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.

Subsequent to the initial proposed publication in the Delaware *Register of Regulations* on October 1, 2018, and prior the public hearing of October 29, 2018, responsible Department staff identified two citation errors in the proposed regulations. Department staff corrected this in their *revised* proposed Amendments. Since these revisions are not substantive in nature, no re-notice and re-publication by the Department of these *revised* Amendments is necessary.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated December 11, 2018. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* 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 *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste* are well-supported. Therefore, the

recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these *revised* proposed Amendments.

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 *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 *Del.C.* §§6010(a) and 6305(a);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 29, 2018, and during the 15 days subsequent to the hearing (through November 13, 2018), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste* will provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program;
5. The Department has reviewed the *revised* proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption B5, as this regulation is required by federal law;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed Amendments, as published in the October 1, 2018 *Delaware Register of Regulations*, and then as *revised*, as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the *revised* Amendments are

approved as final, and shall go into effect 20 days after publication in the next available issue of the Delaware *Register of Regulations*; and

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



Shawn M. Garvin
Secretary

MEMORANDUM

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Bethany A. Fiske ^{BF}
Public Hearing Officer, Office of the Secretary ^{12/26/18}
Department of Natural Resources and Environmental Control

RE: **Proposed Regulatory Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste***

DATE: December 26, 2018

I. BACKGROUND:

A public hearing was held on Monday, October 29, 2018, 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 1302: *Regulations Governing Hazardous Waste*. This action is being taken by the Department at this time to provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware’s Hazardous Waste Management Program.

The Department is required to adopt these federal regulatory amendments to maintain its Resource Conservation and Recovery Act (“RCRA”) program delegation through the Environmental Protection Agency (“EPA”), and to remain current with the federal hazardous waste program. The Department’s proposed Amendments are equivalent to the current federal regulations. The Amendments include revisions to the following: (1) Hazardous Air Pollutant Standards for Combustors, which makes corrections to the previously adopted standards for hazardous waste combustors to include necessary notification, sampling, and recordkeeping requirements; (2) Methods Innovation Rule, which updates the analytical test methods available for use by hazardous waste generators to make accurate hazardous waste determinations; (3) Burden Reduction Initiative, which deletes provisions which are no longer necessary and allows for any qualified professional engineer to conduct inspections and make determinations; (4) Organization of Economic Cooperation and Development Rule, which corrects a regulatory citation for the location of the Organization of Economic Cooperation and Development member country list; (5) Technical Corrections, which provides clarification to hazardous waste

generators regarding what standards are applicable to the generator; (6) Delisting of Saccharin, which removes saccharin from being a listed hazardous waste; (7) Export Revisions for Cathode Ray Tubes, which ensures hazardous waste cathode ray tubes are exported only to countries that agree to receive waste cathode ray tubes to better ensure proper management; (8) Definition of Solid Waste, which ensures hazardous wastes are being recycled for legitimate uses (i.e., to prevent “sham” recycling); and (9) Comparable Fuels Vacatur, which deletes the hazardous waste fuel exemption to correspond to the federal rule being vacated due to a court ruling.

In addition to the proposal of the above items, the Department also proposes to correct minor technical errors and to add clarification to existing provisions. These revisions include the following: (1) updating Department telephone numbers; (2) providing clarification that conditionally exempt small quantity generators of hazardous waste can only accumulate hazardous waste in containers; (3) deleting provisions that are no longer applicable due to the EPA revising their federal requirements; (4) correcting internal citations; and (5) correcting formatting errors.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 *Del.C.* §§6010(a) and 6305(a). The Department published its proposed Amendments in the October 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 29, 2018.

No members of the public attended the aforementioned public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on November 13, 2018, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

Subsequent to the initial proposed publication in the Delaware *Register of Regulations* on October 1, 2018, and prior to the public hearing of October 29, 2018, responsible Department staff identified two citation errors in the proposed regulations. Department staff corrected this in their *revised* proposed Amendments. Since these revisions are not substantive in nature, no re-notice and re-publication by the Department of these *revised* Amendments is necessary.

It should 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) four documents introduced by Department staff at the public hearing held on October 29, 2018, and marked by the presiding Hearing Officer as Department Exhibits 1-4. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Melissa Ferree, Engineer with the Division of Waste and Hazardous Substances, developed the record with the relevant documents in the Department's files.

As stated previously, no members of the public attended the October 29, 2018 public hearing, and no comment was received by the Department at any time during the course of this regulatory promulgation. Accordingly, the Department's *revised* proposed Amendments are expressly incorporated into the hearing record, and are attached as Appendix A for the Secretary's review.

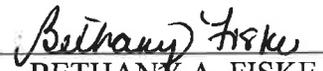
III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*. Accordingly, I recommend promulgation of the same, 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 *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 Del.C. §§6010(a) and 6305(a);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 29, 2018, and during the 15 days subsequent to the hearing (through November 13, 2018), before making any final decision;

4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. Code 1302: *Regulations Governing Hazardous Waste* will provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program;
5. The Department has reviewed the *revised* proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption B5, as this regulation is required by federal law;
6. The Department's initial proposed Amendments, as initially published in the October 1, 2018 Delaware *Register of Regulations*, and then as subsequently revised and set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with applicable laws and regulations. Consequently, the *revised* Amendments should be approved as final, and shall go into effect 20 days after publication in the next available issue of the Delaware *Register of Regulations*; and
7. The Department shall submit the *revised* proposed Amendments as final regulatory Amendments to 7 DE Admin. Code 1302: *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 requires and the Department determines appropriate.


BETHANY A. FISKE
Public Hearing Officer

APPENDIX A

AMENDMENT 13:

Section 262.20 General requirements.

(a)...

- (2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, 262.27, 262.32, 262.34, 262.54, 262.60, the appendix to Part 262 of these regulations, and 40 CFR § 262.21 are applicable to all manifested shipments of hazardous waste.

AMENDMENT 14:

Section 265.276 Food chain crops.

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must notify the Secretary within 60 days after the effective date of this part.

[Comment: The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under [~~§270.72(a)(3)~~ §122.72(a)(3)] of these regulations. Owners or operators of such land treatment facilities who propose to grow food chain crops after the effective date of this part must comply with [~~§270.72(a)(3)~~ §122.72(a)(3)] of these regulations.]

AMENDMENT 15:

Part 268 – Land Disposal Restrictions

The text of Part 268 will be deleted in its entirety and replaced with the following text:

Subpart A—General

Section 268.1 Purpose, scope, and applicability.

- (a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.
- (b) Except as specifically provided otherwise in this part or Part 261 of these regulations the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.
- (c) Restricted wastes may continue to be land disposed as follows:
 - (1) Where persons have been granted an extension to the effective date of a prohibition under Subpart C of this part or pursuant to §268.5, with respect to those wastes covered by the extension;
 - (2) Where persons have been granted an exemption from a prohibition pursuant to a petition under §268.6, with respect to those wastes and units covered by the petition;
 - (3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, or 40 CFR Part 148, are not prohibited if the wastes:
 - (i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 144.6 and 146.5; and
 - (ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Part 261, Subpart C at the point of injection.
 - (4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in §268.40, or are D003 reactive cyanide:

