

Secretary's Order No.: **2007-A-0051**

RE: Proposed Amendments to the
Delaware Regulations Governing Hazardous Waste

Date of Issuance: November 15, 2007

Effective Date of the Amendment: December 21, 2007

I. Background:

A public hearing was held on Monday, October 22, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the *Delaware Regulations Governing Hazardous Waste* (hereinafter referred to as "DRGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. These changes incorporate certain RCRA amendments promulgated by the EPA into

Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program.

Additionally, the State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 22, 2007. Comments were received from the regulated community as a result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. Alan Muller of Green Delaware offered his comments for the record at the time of the public hearing on October 22, 2007. No comments were received from the public during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment, as reflected in the Hearing Officer's Report of November 12, 2007, which

is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The proposed amendments to DRGHW incorporate certain RCRA amendments promulgated by the EPA into Delaware's

hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program;

8. The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
10. The Department's proposed regulation, as published in the October 1, 2007 *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*;
11. 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 Report dated November 12, 2007 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Hazardous Waste be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware Regulations Governing Hazardous Waste will incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and

public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Chapters 60 and 63.

_____/s/ John A. Hughes

John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

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

DATE: November 12, 2007

I. **Background:**

A public hearing was held on Monday, October 22, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the *Delaware Regulations Governing Hazardous Waste* (hereinafter referred to as "DRGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. These changes incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous

waste program authorization and remain current with the Federal RCRA hazardous waste program.

Additionally, the State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

Of note is the fact that these proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 22, 2007. Comments were received from the regulated community as a result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. Alan Muller of Green Delaware offered his comments for the record at the time of the public hearing on October 22, 2007, and the same will be addressed below in this report. No comments were received from the public during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

A. Department's Exhibits:

At the time of the hearing on October 22, 2007, Bill Davis of the Solid and Hazardous Waste Management Branch of DNREC, offered the

Department's five exhibits pertaining to these proposed amendments, as well as a brief explanation with regard to the salient points of the proposed amendments to these regulations. Mr. Davis explained that the amendments being proposed by the Department at this time are three-fold, as follows:

- **Non-Waste Waters from Dyes & Pigments:** On August 1, 2006, Delaware adopted new rules regarding non-waste waters generated from the production of certain dyes, pigments and FD&C colorants. This amendment corrects typographical errors in the regulatory text;
- **Uniform Waste Manifest Summary:** On August 1, 2006, Delaware adopted new rules regarding the Uniform Waste Manifest. This amendment is correcting errors, and does not create any new regulatory requirements; and
- **Miscellaneous Delaware Changes Summary:** These amendments are state-specific to Delaware, and these are used oil container closure (addition of requirement to be closed when not in use), the uniform manifest retractions of the federal portion, financial assurance (addition of federal language plus typographical corrections), and clarification of flowcharts in Part 266, Appendix IX.

It should also be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in

this matter, and that the Department has met the standard required public noticing obligations regarding these proposed amendments. The Department also sent letters to the regulated community, specifically, to hazardous waste generators, to provide them with the scheduled dates for the planned public workshop and public hearing. Additionally, a copy of the proposed amendments to these regulations was provided to each public workshop attendee, as well as the Department having posted same on their website for public review.

For the Secretary's review, Delaware's proposed amendments to these regulations, as contained within the Department's five exhibits entered into the record at the public hearing of this matter, are expressly incorporated into this report and attached hereto as Attachment "A" for that purpose.

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.

B. Public Questions/Comment:

As noted previously, Alan Muller of Green Delaware was present at the public hearing of October 22, 2007, and offered his comment regarding these proposed amendments to the DRGHW. Mr. Muller wanted to know why the Department was choosing to amend these

regulations at this time. Mr. Davis replied that, as the federal program issues new standards, Delaware needs to adopt the same in order to remain as stringent as the federal requirements. Mr. Muller offered his comments for the record regarding this amendment promulgation, which were essentially that Delaware's regulations governing hazardous waste are not effectively governing that waste, and that "very substantial changes are needed", beyond that which is currently being proposed. In response to Mr. Muller's claim that the Department had not done any "substantial public outreach" regarding these proposed amendments, Mr. Davis noted that the Department (1) held a public workshop on August 22, 2007; (2) issued a Press Release regarding the intention to promulgate these amendments, and sent a letter regarding the upcoming hearing to the regulated community, specifically, to hazardous waste generators.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to the DRGHW. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;

7. The proposed amendments to DRGHW incorporate certain RCRA amendments promulgated by the EPA into Delaware's hazardous waste management program. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program;
8. The correction of clerical errors currently found in Delaware's existing Regulations Governing Hazardous Waste will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
10. The Department's proposed regulation, as published in the October 1, 2007 *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*;

11. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

/s/ Lisa A. Vest .
LISA A. VEST
Hearing Officer