

DELAWARE HAZARDOUS WASTE REGULATIONS

Part 260 - Hazardous Waste Management System: General

STATEMENT OF AUTHORITY

The Delaware Department of Natural Resources and Environmental Control (DNREC) is responsible for protecting, preserving and enhancing the environmental quality of the water, air, and land of the State. The General Assembly has found that the human health and environment are threatened when hazardous waste is not managed in an environmentally sound manner and that "[t]he problem of managing hazardous wastes has become a matter of statewide concern."

The intent and purpose of the Regulations Governing Hazardous Waste is "[t]o protect the public health and safety, the health of organisms and the environment from effects of the improper, inadequate or unsound management of hazardous wastes" and "[to] assure the safe and adequate management of hazardous wastes within this State."

These regulations are adopted and enforced pursuant to the authorities set forth in 7 Del.C., Chapters 60 and 63.

Subpart A - General

Section 260.1 Purpose, Scope, and Applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(b) In this part:

(1) Section 260.2 sets forth the rules that DNREC will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to DNREC under Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(3) Section 260.10 defines terms which are used in Parts 260 through 266, 268, 273, 122 and 124 of these regulations.

(4) Section 260.20 establishes procedures for petitioning DNREC to amend, modify, or revoke any provision of Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations and establishes procedures for DNREC's action on such petitions.

(5) **[Reserved]**

(6) Section 260.22 establishes procedures for petitioning DNREC to amend from Subpart D of Part 261 to exclude a waste from a particular facility.

(Amended August 10, 1990, August 23, 1999)

24 DE Reg. 711 (01/01/21)

Section 260.2 Availability of Information; Confidentiality of Information.

(a) Any information provided to DNREC under Parts 260 through 266, 268, 273, 279, 122 and 124 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.

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to DNREC in accordance with Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in 7 Del.C., §6304. Information covered by such a claim will be disclosed by DNREC only to the extent, and by means of the procedures, set forth in 7 Del.C., §6304. However, if no such claim accompanies the information when it is received by DNREC, it may be made available to the public without further notice to the person submitting it.

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(c) Any person submitting information to EPA in accordance with the above requirements must also submit a copy of that information to the Secretary.

(d)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with §262.20(a)(3) of these regulations.

(2) EPA will make any electronic manifest that is prepared and used in accordance with §262.20(a)(3), or any paper manifest that is submitted to the system under §§264.71(a)(6) or 265.71(a)(6) of these regulations available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(e)(1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used, and submitted under §§261.39(a)(5) and 261.41(a) of these regulations, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used, and submitted under §§262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71 of these regulations, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used, and submitted under §§261.39(a)(5) and 261.41(a) of these regulations, and any hazardous waste export, import, and transit documents prepared, used, and submitted under §§262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71 of these regulations available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports, and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

[Note: See also Hazardous Waste Disclosure Regulations as adopted August 29, 1988, as part of the Delaware Regulations Governing Hazardous Waste.]

(Amended August 10, 1990, January 1, 1999)

18 DE Reg. 896 (05/01/15)

24 DE Reg. 711 (01/01/21)

Section 260.3 Use of Number and Gender.

As used in Parts 260 through 266, 268, 273, 279, 122 and 124 of these regulations:

- (a) Words in the masculine gender also include the feminine and neuter genders;
- (b) Words in the singular include the plural; and
- (c) Words in the plural include the singular.

(Amended August 10, 1990)

24 DE Reg. 711 (01/01/21)

Section 260.4 Manifest Copy Submission Requirements for Certain Interstate Waste Shipments.

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

- (1) Complete the facility portion of the applicable manifest;
- (2) Sign and date the facility certification;
- (3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes;

and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR Part 264, Subpart FF.

24 DE Reg. 711 (01/01/21)

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Section 260.5 Applicability of Electronic Manifest System and User Fee Requirements to Facilities Receiving State-only Regulated Waste Shipments.

(a) For purposes of this section, "state-only regulated waste" means:

- (1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or
- (2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

- (1) Comply with the provisions of §§264.71 (use of the manifest) and 264.72 (manifest discrepancies) of these regulations; and
- (2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR Part 264, Subpart FF.

24 DE Reg. 711 (01/01/21)

Subpart B - Definitions

Section 260.10 Definitions.

When used in Parts 260 through 273 of these regulations, the following terms have the meanings given below:

"Aboveground tank" means a device meeting the definition of **"tank"** in §260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Act" or **"RCRA"** means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901 et seq.

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Secretary receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of Part 261 of these regulations and which is not a closed portion. (See also **"closed portion"** and **"inactive portion"**.)

"Activity" means construction, operation, or use of any facility, site, property or device.

"Acute hazardous waste" means hazardous wastes that meet the listing criteria in §261.11(a)(2) and therefore are either listed in §261.31 of these regulations with the assigned hazard code of (H) or are listed in §261.33(e) of these regulations.

"Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

"Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

"AES filing compliance date" means the date that EPA announced in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform. The AES filing compliance date is December 31, 2017.

"Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

"Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under §261.4(j) of these regulations, and accumulates the waste for more than ten days.

"Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under these regulations.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

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"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(1) (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber, and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feed water pumps); or

(2) The unit is one which the Secretary has determined, on a case-by-case basis to be a boiler, after considering standards in §260.32.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Cathode ray tube" or **"CRT"** means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either §262.16 (for small quantity generators) or §262.17 (for large quantity generators) of these regulations.

"Certification" means a statement of professional opinion based on knowledge and belief.

"CFR" means Code of Federal Regulations.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also **"active portion"** and **"inactive portion"**.)

"College/University" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the U.S. Department of Education.

15 DE Reg. 862 (12/01/11)

"Commingling" means the transfer of hazardous wastes between DOT approved containers performed by a hazardous waste transporter where the containers holding such wastes may be opened and mixed with other hazardous waste.

"Commission" means the Commission on the Transportation of Hazardous Materials.

"Component" means either the tank or ancillary equipment of a tank system.

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"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

"Consolidation" means the transfer of containers of hazardous wastes between transport conveyances by a hazardous waste transporter where the containers holding such wastes are not opened or the wastes repackaged.

"Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; and

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of Parts 264 or 265 are presumptively contained.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subpart DD of Parts 264 or 265 of these regulations.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation. [Note: CRT collectors must also comply with the requirements of Delaware's Regulations Governing Solid Waste.]

"CRT exporter" means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

"CRT generator" means a person by site other than a household who offers CRT's for collection or recycling.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass. [Note: CRT glass manufacturers must also comply with the requirements of Delaware's *Regulations Governing Solid Waste*.]

"CRT processing" means conducting any of the following activities:

- (1) Receiving broken or intact CRTs; or
- (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; or
- (3) Sorting or otherwise managing glass removed from CRT monitors.

[Note: CRT processing and processors must also comply with the requirements of Delaware's *Regulations Governing Solid Waste*.]

"Department" means the Department of Natural Resources and Environmental Control of the State of Delaware.

"Designated facility" means

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- (1) A hazardous waste treatment, storage, or disposal facility which:
- (i) Has received a permit (or interim status) in accordance with the requirements of Parts 122 and 124 of these regulations,
 - (ii) Has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or
 - (iii) Is regulated under §261.6(c)(2) or Subpart F of Part 266 of these regulations; and
 - (iv) That has been designated on the manifest by the generator pursuant to §262.20.

(2) **"Designated facility"** also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with § 264.72(f) or § 265.72(f) of these regulations.

(3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33 of these regulations. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Discharge" or **"hazardous waste discharge"** means the accidental or intentional spilling, leaking, pumping, purging, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Division" means the Division of Air and Waste Management.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Electronic import-export reporting compliance date" means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

"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.

"Elementary neutralization unit" means a device which:

(1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in §261.22 of these regulations, or are listed in Subpart D of Part 261 of these regulations only for this reason; and,

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in §260.10 of these regulations.

"EPA" means the United States Environmental Protection Agency.

"EPA hazardous waste number" means the number assigned by DNREC to each hazardous waste listed in Part 261, Subpart D, of these regulations and to each characteristic identified in Part 261, Subpart C, of these regulations.

"EPA Identification Number" means the number assigned by DNREC to each generator, transporter, and treatment, storage, or disposal facility.

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"EPA region" means the states and territories found in any one of the following ten regions:

Region I - Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II - New York, New Jersey, Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

Region III - Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV - Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V - Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Region VI - New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII - Nebraska, Kansas, Missouri, and Iowa.

Region VIII - Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX - California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

Region X - Washington, Oregon, Idaho, and Alaska.

"Engineer" means an engineer registered and authorized to practice in Delaware as a Professional Engineer by the "Delaware Association of Professional Engineers".

"Equivalent method" means any testing or analytical method approved by the Secretary under Part 260 of Subpart C of these regulations.

"Existing hazardous waste management (HWM) facility" or **"existing facility"** means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(2) (i) A continuous on-site, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time. Within this definition, "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

"Existing portion" means that land surface area of an existing waste management unit included in the original Part A application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or **"existing component"** means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986 for HSWA tanks, as defined in §260.10, or August 29, 1988 for non-HSWA tanks, as defined in §260.10. Installation will be considered to have commenced if (1) the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and (2) either (i) a continuous on-site physical construction or installation program has begun, or (ii) the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

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"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" or "Hazardous Waste Management (HWM) Facility" means:

1. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combination of them).

2. For the purpose of implementing corrective action under §264.101, all contiguous property under the control of the owner or operator seeking a permit under 7 Del.C., Chapter 63. This definition also applies to facilities implementing corrective action under 7 Del.C., Chapter 63.

3. Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to §264.101, but is subject to corrective action requirements if the site is located within such a facility.

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of these regulations are no longer conducted at the facility unless subject to the provisions in §262.34.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

"Geologist" means a geologist registered by the "Delaware State Board of Registration of Geologists."

"Ground-water" means water below the land surface in a zone of saturation.

"HSWA tank" means a tank owned or operated by a small quantity hazardous waste generator, a new underground tank, or a tank which cannot be entered for inspection.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these regulations.

"Hazardous waste" means a hazardous waste as defined in §261.3 of these regulations.

"Hazardous waste constituent" means a constituent which caused the Secretary to list the hazardous waste in Part 261, Subpart D of these regulations, or a constituent listed in Table 1 of §261.24 of these regulations.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Inactive portion" means that portion of a facility which is not operated after the effective date of Part 261 of these regulations. (See also **"active portion"** and **"closed portion"**.)

"Incinerator" means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

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- (2) Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

- (1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
- (2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases. (See appendix V of parts 264 and 265 of this chapter for examples.)

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns
- (2) Lime kilns
- (3) Aggregate kilns
- (4) Phosphate kilns
- (5) Coke ovens
- (6) Blast furnaces
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
- (8) Titanium dioxide chloride process oxidation reactors
- (9) Methane reforming furnaces
- (10) Pulping liquor recovery furnaces
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
- (12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (13) Such other devices as the Secretary may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (i) The design and use of the device primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to produce a material product; and
 - (vi) Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of **"tank"** in §260.10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Injection well" means a well into which fluids are injected. (See also **"underground injection"**.)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

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"Lamp" also referred to as **"universal waste lamp"**, is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Large quantity generator" means a generator who generates any of the following amounts in a calendar month:

- (1) Greater than or equal to 1,000 kilograms (≈2,200 pounds) of non-acute hazardous waste; or
- (2) Greater than 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; or
- (3) Greater than 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tank) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

"Manifest" 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.

"Manifest tracking number" means: The alphanumeric identification number (*i.e.*, a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contain elemental mercury integral to its function.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster

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munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective active management unit, unit eligible for a research, development, and demonstration permit under §122.65, or staging pile.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"New hazardous waste management facility" or **"new facility"** means a facility which began operation, or for which construction commenced after November 19, 1980. (See also **"Existing hazardous waste management facility"**.)

"New tank system" or **"new tank component"** means a tank system or component that will be used for storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986 for HSWA tanks, as defined in §260.10; except, however, for purposes of §264.193(g)(2) and 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986 for HSWA tanks and August 29, 1988 for non-HSWA tanks. (See also "existing tank system.")

"Non-acute hazardous waste" means all hazardous wastes that are not acute hazardous waste, as defined in this section.

"Non-HSWA tank" means a tank which is not owned or operated by a small quantity hazardous waste generator and is either an existing underground tank or a tank that can be entered for inspection.

"Onground tank" means a device meeting the definition of **"tank"** in §260.10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion;
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residue
- (3) Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Parts 264 and 265 of these regulations at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

"Personnel" or **"facility personnel"** means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of these regulations. For the purpose of personnel training, the definition of *personnel* or *facility personnel* includes emergency coordinators.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

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- (1) Is a new animal drug under FFDCA section 201(w), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Publicly owned treatment works" or **"POTW"** means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a **"State"** or **"municipality"** (as defined by §502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Qualified Engineer" or **"Qualified Geologist"** shall mean that the responsible professional geologist or engineer is qualified by training and experience to gather and evaluate the data required by these regulations.

"Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport.

"Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

"Regional Administrator" means the Regional Administrator for the Environmental Protection Agency Region in which the facility is located, or his designee.

"Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing clean-up.

"Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under §264.101, but is subject to corrective action requirements if the site is located in such a facility.

"Replacement Unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or **"zone of saturation"** means that part of the earth's crust in which all voids are filled with water.

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control, or his duly authorized designee.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, stormwater management unit, or air pollution control facility not including the treated effluent from a water treatment plant or stormwater management unit.

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"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small Quantity Generator" means a generator who generates the following amounts in a calendar month:

- (1) Greater than 100 kilograms (≈220 pounds) but less than 1,000 kilograms (≈2,200 pounds) of non-acute hazardous waste; and
- (2) Less than or equal to 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; and
- (3) Less than or equal to 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

"Solid waste" means a solid waste as defined in §261.2 of these regulations.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

"Sorb" means to either adsorb or absorb, or both.

"Staging pile" means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Secretary according to the requirements of §264.554.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or **"impoundment"** means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also **"incinerator"** and **"open burning"**.)

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 273.13(c)(2) or 273.33(c)(2).

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

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"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine:

- (1) Whether the waste is amenable to the treatment process,
- (2) What pretreatment (if any) is required,
- (3) The optimal process conditions needed to achieve the desired treatment,
- (4) The efficiency of a treatment process for a specific waste or wastes, or
- (5) The characteristics and volumes of residuals from a particular treatment process. Also included in

this definition for the purpose of the §261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Treatment Zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also **"injection well"**.)

"Underground tank" means a device meeting the definition of "tank" in §260.10 whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Part 273 of these regulations:

- (1) Batteries as described in §273.2 of these regulations;
- (2) Pesticides as described in §273.3 of these regulations;
- (3) Mercury-containing equipment as described in §273.4 of these regulations;
- (4) Lamps as described §273.5 of these regulations; and
- (5) Aerosol cans as described in §273.6 of these regulations.

"Universal Waste Handler":

- (1) Means:
 - (i) A generator (as defined in this section) of universal waste; or
 - (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.
- (2) Does not mean:
 - (i) A person who treats (except under the provisions of §273.13(a) or (c), or §273.33(a) or (c)), disposes of, or recycles (except under the provisions of §273.13(e) or §273.33(e)) universal waste; or
 - (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" or **"zone of aeration"** means the zone between the land surface and the water table.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"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.

"Very small quantity generator" means a generator who generates less than or equal to the following amounts in a calendar month:

- (1) 100 kilograms (≈220 pounds) of non-acute hazardous waste; and
- (2) 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; and
- (3) 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Wastewater treatment unit" means a device which:

- (1) Is part of a wastewater treatment facility which is subject to regulations under either §402 or §307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in §261.3 of these regulations, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations; and
- (3) Meets the definition of tank or tank system in §260.10 of these regulations.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection": (See **"Underground injection"**.)

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

(Amended November 21, 1985, August 29, 1988; August 10, 1990; June 19, 1992; November 19, 1993; July 26, 1994, August 1, 1995, July 23, 1996, August 21, 1997, January 1, 1999, June 2, 2000, April 23, 2001, February 12, 2004, August 21, 2006)

12 DE Reg. 808 (12/01/08)

18 DE Reg. 896 (05/01/15)

22 DE Reg. 678 (02/01/19)

24 DE Reg. 711 (01/01/21)

Section 260.11 Incorporation by Reference

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(a) When used in Parts 260 through 268, and 122 of these regulations, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

- (1) ASTM D 93–79 or D 93–80, “Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,” IBR approved for § 261.21.
- (2) ASTM D 1946–82, “Standard Method for Analysis of Reformed Gas by Gas Chromatography,” IBR approved for §§ 264.1033, 265.1033.
- (3) ASTM D 2267–88, “Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography,” IBR approved for § 264.1063.
- (4) ASTM D 2382–83, “Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method),” IBR approved for §§ 264.1033, 265.1033.
- (5) ASTM D 2879–92, “Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,” IBR approved for § 265.1084.
- (6) ASTM D 3278–78, “Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester,” IBR approved for § 261.21(a).
- (7) ASTM E 168–88, “Standard Practices for General Techniques of Infrared Quantitative Analysis,” IBR approved for § 264.1063.
- (8) ASTM E 169–87, “Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis,” IBR approved for § 264.1063.
- (9) ASTM E 260–85, “Standard Practice for Packed Column Gas Chromatography,” IBR approved for § 264.1063.
- (10) ASTM E 926–88, “Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals,” Test Method C—Bomb, Acid Digestion Method.

(c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

- (1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA–450/2–81–005, December 1981, IBR approved for §§ 264.1035, 265.1035, 122.24, 122.25.
- (2) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT–HEM; Non-polar Material) by Extraction and Gravimetry, PB99–121949, IBR approved for Part 261, appendix IX.
- (3) The following methods as published in the test methods compendium known as “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW–846, Third Edition. A suffix of “A” in the method number indicates revision one (the method has been revised once). A suffix of “B” in the method number indicates revision two (the method has been revised twice). A suffix of “C” in the method number indicates revision three (the method has been revised three times). A suffix of “D” in the method number indicates revision four (the method has been revised four times).
 - (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.
 - (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.
 - (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.
 - (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.

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- (v) Method 1311, dated September 1992 and in Update I, IBR approved for Part 261, Appendix IX, and §§ 261.24, 268.7, 268.40.
- (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for Part 261, Appendix IX.
- (vii) Method 1312 dated September 1994 and in Update II, IBR approved for Part 261, Appendix IX.
- (viii) Method 0011, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX and Part 266, Appendix IX.
- (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.104.
- (x) Method 0031, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX.
- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, § 266.106, and Part 266, Appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, § 266.106, and Part 266, Appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for Part 261, Appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and Part 261, Appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and §§ 268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and §§ 268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and § 261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.
- (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, Part 261, Appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 268.32.
- (d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
 - (1) "Flammable and Combustible Liquids Code" (NFPA 30), 1977 or 1981, IBR approved for §§262.16(b), 264.198(b), and 265.198(b).
 - (2) [Reserved]
- (e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.
 - (1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," IBR approved for § 265.1084.
 - (2) [Reserved]

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(f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.

(1) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for Part 266, Appendix IX.

(2) [Reserved]

(g) The following materials are available for purchase from the Organisation for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, F-75775 Paris Cedex 16, France.

(1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§262.82(a), 262.83(b),(d), and (g), and 262.84(b) and (d) of these regulations.

(2) [Reserved]

(Amended November 21, 1985; August 29, 1988; June 19, 1992; July 26, 1994, August 1, 1995, July 23, 1996, January 1, 1999, June 2, 2000, July 11, 2002)

22 DE Reg. 678 (02/01/19)

24 DE Reg. 711 (01/01/21)

Subpart C - Rulemaking Petitions

Where the Administrator of EPA has granted a Rulemaking Petition pursuant to 40 CFR Part 260, §§ 260.20, 260.21 or 260.22, the Secretary of DNREC, may in his discretion, accept such determination and amend the Delaware regulations accordingly, or grant a waiver provided that the person whose petition was granted can furnish appropriate evidence of the Administrator's action and provided further that the Secretary determines such action to be consistent with the policies and purposes of the Hazardous Waste Management Act of 1980 (7 **Del.C.**, Chapter 63).

Section 260.20 General

(a) Any person may petition DNREC to modify or revoke any provision in Parts 260 through 266, 268 and 273 of these regulations. This section sets forth general requirements which apply to all such petitions. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from §261.3 of these regulations or the lists of hazardous wastes in Subpart D of Part 261. Section 260.23 sets forth additional requirements for petitions to amend Part 273 of these regulations to include additional hazardous wastes or categories of hazardous waste as universal waste.

(b) Each petition must be submitted to the Secretary by certified mail and must include:

- (1) The petitioner's name and address;
- (2) A statement of the petitioner's interest in the proposed action;
- (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
- (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The Secretary will make a tentative decision to grant or deny a petition and will public notice such tentative decision, either in the form of a proposed regulatory amendment, or a tentative determination to deny the petition, in accordance with 7 **Del.C.**, §6312.

(d) Upon the written request of any interested person, the Secretary may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Secretary may in any case decide on his own motion to hold an informal public hearing.

(e) After evaluating all public comments the Secretary will make a final decision by publishing a public notice of a regulatory amendment or a denial of the petition.

(Amended July 23, 1996, August 21, 1997)

Section 260.21 [Reserved]

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Section 260.22 Petitions

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and §260.20. To be successful:

(1) The petitioner must demonstrate to the satisfaction of the Secretary that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Secretary must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(b) The procedures in this section and §260.20 may also be used to petition the Secretary for a regulatory amendment to exclude from §261.3(a)(2)(ii) or (c), a waste which is described in these sections and is either a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

(c) If the waste is listed with codes "I", "C", "R", or "E", in Subpart D:

(1) The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in §261.21, §261.22, §261.23, or §261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in §261.21, §261.22, §261.23, or §261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Secretary must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(d) If the waste is listed with code "T" in Subpart D:

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in Appendix VII of Part 261 of these regulations) that caused the Secretary to list the waste; or

(ii) Although containing one or more of the hazardous constituents (as defined in Appendix VII of Part 261) that caused the Secretary to list the waste, does not meet the criterion of §261.11(a)(3) when considering the factors used by the Secretary in §261.11(a)(3) (i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Secretary must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in §261.21, §261.22, §261.23, and §261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(e) If the waste is listed with the code "H" in Subpart D,

(1) The petitioner must demonstrate that the waste does not meet the criterion of §261.11(a)(2); and

(2) Based on a complete application, the Secretary must determine, where he has a reasonable basis to believe that additional factors (including additional constituents) other than those for

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which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in §261.21, §261.22, §261.23, and §261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(f) **[Reserved for listing radioactive wastes.]**

(g) **[Reserved for listed infectious wastes.]**

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must include, in addition to the information required by §260.20(b):

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in §261.11(a)(3);

(8) A description of the methodologies and equipment used to obtain the representative samples;

(9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(10) A description of the tests performed (including results);

(11) The names and model numbers of the instruments used in performing the tests; and

(12) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(j) After receiving a petition for an exclusion, the Secretary may request any additional information which he may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Secretary may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

22 DE Reg. 678 (02/01/19)

Section 260.23 Petitions to amend Part 273 to include additional hazardous wastes.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Part 273 of these regulations may petition for a regulatory amendment under this section, 260.20, and Subpart G of Part 273.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Secretary that regulation under the universal waste regulations of Part 273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 260.20(b). The petition should also address as many of the factors listed in 273.81 as are appropriate for the waste or category of waste addressed in the petition.

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(c) The Secretary will grant or deny a petition using the factors listed in 273.81. The decision will be based on the weight of evidence showing that regulation under Part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Secretary may request additional information needed to evaluate the merits of the petition.
(Amended July 23, 1996)

Section 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in §260.31 and the procedures in §260.33, the Secretary may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §261.1(c)(8) of these regulations):

(b) Materials that are reclaimed and then reused within the original production process in which they were generated.

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

(Amended November 21, 1985; August 29, 1988, July 23, 1996)

Section 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Secretary may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Secretary's decision will be based on the following criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss;

(5) Other relevant factors.

(b) The Secretary may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than the reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it;

(7) Other relevant factors.

(c) The Secretary may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:

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- (1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
- (2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
- (3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
- (4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);
- (5) Whether the partially-reclaimed material is handled to minimize loss.
- (6) [Reserved]

(Amended November 21, 1985, July 23, 1996)

22 DE Reg. 678 (02/01/19)

Section 260.32 Variances To Be Classified As A Boiler.

In accordance with the standards and criteria in §261.10 (definition of "boiler") and the procedures in §260.33, the Secretary may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §260.10, after considering the following criteria:

- (a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
- (b) The extent to which the combustion chamber and energy recovery equipment are of integral design;
- (c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
- (d) The extent to which exported energy is utilized;
- (e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and
- (f) Other factors, as appropriate.

(Amended November 21, 1985, July 23, 1996)

Section 260.33 Procedures for variances from classification as solid waste or variances to be classified as a boiler.

The Secretary will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

- (a) The applicant must apply to the Secretary for the variance. The application must address the relevant criteria contained in §260.31 or §260.32 of this part.
- (b) The Secretary will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Secretary will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Secretary will issue a final decision after receipt of comments and after the hearing (if any).
- (c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §260.31 or §260.32, upon which a variance has been based, the applicant must send a description of the change in circumstances to the Secretary. The Secretary may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or may require the facility to re-apply for the variance.
- (d) Variances shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance. If a facility re-applies for a variance within six months, the facility may continue to operate under an expired variance until receiving a decision on their re-application from the Secretary.

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(e) Facilities receiving a variance must provide notification as required by §260.42 of these regulations.

(Amended November 21, 1985, July 23, 1996, August 21, 1997, January 1, 1999)

22 DE Reg. 678 (02/01/19)

Section 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Secretary may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §261.6(a)(2)(iii) of these regulations should be regulated under §261.6 (b) and (c) of these regulations. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Secretary will consider the following factors:

- (1) The types of materials accumulated or stored and the amounts accumulated or stored;
- (2) The method of accumulation or storage;
- (3) The length of time the materials have been accumulated or stored before being reclaimed;
- (4) Whether any contaminants are being released into the environment, or are likely to be so released; and
- (5) Other relevant factors.

The procedures for this decision are set forth in §260.41 of these regulations.

(Amended November 21, 1985)

Section 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

The Secretary will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §261.6(a)(2)(iii) under the provisions of §261.6 (b) and (c), rather than under the provisions of Subpart F of Part 266 of these regulations.

(a) If a generator is accumulating the waste, the Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subparts A, C, D and E of Part 262 of these regulations. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Secretary will hold a public hearing. The Secretary will provide notice of the hearing to the public and allow public participation at the hearing. The Secretary will issue a final order after the hearing stating whether or not compliance with Part 262 is required. The order becomes effective 30 days after service of the decision unless the Secretary specifies a later date or unless review by the Appeals Board is requested. The order may be appealed to the Appeals Board. The Appeals Board may choose to grant or deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Parts 122 and 124 of these regulations. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Secretary's decision he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Department's determination. The question of whether the Secretary's decision was proper will remain open for consideration during the public comment period discussed under §124.11 of these regulations and in any subsequent hearing.

(Amended November 21, 1985)

Section 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under an approved variance pursuant to §260.30 must send a notification prior to operating under the regulatory provision and by March 1 of each year thereafter to the Secretary using EPA Form 8700-12 that includes the following information:

- (1) The name, address, and EPA ID number (if applicable) of the facility;
- (2) The name and telephone number of a contact person;

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- (3) The NAICS code of the facility;
 - (4) The regulation under which the hazardous secondary materials will be managed;
 - (5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
 - (6) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
 - (7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
 - (8) The quantity of each hazardous secondary material to be managed annually; and
 - (9) The certification (included in EPA Form 8700-12) signed and dated by an authorized representative of the facility.
- (b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Secretary within thirty (30) days using EPA Form 8700-12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

22 DE Reg. 678 (02/01/19)

Section 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

- (i) Contributes valuable ingredients to a product or intermediate; or
- (ii) Replaces a catalyst or carrier in the recycling process; or
- (iii) Is the source of a valuable constituent recovered in the recycling process; or
- (iv) Is recovered or regenerated by the recycling process; or
- (v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

- (i) Sold to a third party; or
- (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in Part 261 Subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in Appendix VIII of Part 261 of these regulations that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

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(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the DNREC Secretary of this activity using EPA Form 8700-12.

(b) [Reserved]

(c) [Reserved]

22 DE Reg. 678 (02/01/19)

Subpart D - Public Participation

In furtherance of the policies and purposes of 7 **Del.C.**, Chapter 63 and in the interest of providing an opportunity for an encouraging public participation in the efforts of the State toward a more effective Hazardous Waste Management Program, DNREC will:

(a) Investigate and provide written responses to all citizen complaints submitted in accordance with such reporting procedures as the Secretary may establish;

(b) Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, and regulation; and

(c) Publish and provide at least 30 days for public comment on any proposed settlement of a state enforcement action.

in accordance with the Notification Procedures of 7 **Del.C.**, Chapter 63, and obtain an EPA identification number.

It should be noted that people handling wastes listed in Subpart D of Part 261 who have filed, or who intend to file an application to exempt their waste from regulation under the Subtitle C rules, must also comply with the notification requirements.

If a person generates hazardous waste, Figure 4 indicates that he must comply with the Part 262 rules. If he transports it, he must comply with the Part 263 rules. The standards in both these Parts are designed to ensure, among other things, proper record keeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to a permitted treatment, storage, or disposal facility.

If a person owns or operates a facility which treats, stores, or disposes of hazardous waste, the standards with which he must comply depend on a number of factors. First of all, if the owner or operator of a storage facility is also the person who generates the waste, and the waste is stored at the facility for less than 90 days for subsequent shipment off-site, then the person must comply with §262.34 of the Part 262 rules.

All other owners or operators of treatment, storage, or disposal facilities must comply with either the Part 264 or the Part 265 rules. To determine with which of these sets of rules an owner or operator must comply, he must find out whether his facility qualifies for interim status. To qualify, the owner or operator must: (1) Have been treating, storing, or disposing of the hazardous waste, or commenced facility construction on or

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before November 19, 1980, (2) comply with the notification requirements, and (3) apply for a permit under Part 122 of these regulations.

If the owner or operator has done all of the above, he qualifies for interim status, and he must comply with the Part 265 rules. These rules contain administrative requirements, monitoring and closure standards, and an abbreviated set of technical and closure and post-closure cost estimate requirements. The owner or operator must comply with these standards until final administrative disposition of his permit application is made. If a permit is issued to the owner or operator, he must then comply with the permit which will be based on the Part 264 rules.

If the owner or operator has not carried out the above three requirements, he does not qualify for interim status. Until he is issued a permit for his facility, the owner or operator must stop waste management operations (if any) at the facility, and send his hazardous waste (if any) to a facility whose owner or operator has interim status or to a storage facility following the Part 262 rules.

In order to apply for a permit, the owner or operator must comply with the procedures specified in Part 122 of these regulations.

It should be noted that the Department will be periodically revising the rules depicted in Figures 3 and 4. All persons are encouraged to write to DNREC to verify that the regulations which they are reading are up-to-date. To obtain this verification, contact: DNREC, 89 Kings Highway, Dover, DE 19901. (302) 739-9403.

Appendix I - Overview of Regulations.

Repealed December 1, 2011

15 DE Reg. 862 (12/01/11)