

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)
7 **DE Admin. Code** 1302

PROPOSED

REGISTER NOTICE

SAN # 2011-08

1. TITLE OF THE REGULATIONS:

1302 Regulations Governing Hazardous Waste (RGHW)

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the *RGHW* that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations. Some of the changes DNREC is proposing to make are already in effect at the federal level. Additionally, DNREC is proposing to adopt required federal regulations and miscellaneous changes to correct errors and add consistency or clarification.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to RGHW will be held on Monday, October 24, 2011 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

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

2011 Proposed Amendments
For Public Comment
Start Action Notice # 2011-08

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Division of Waste and Hazardous Substances
Solid and Hazardous Waste Management Section
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ID #	Description
1	Federal Technical Corrections – Checklist 223
2	Federal Withdrawal of the Emission-Comparable Fuel Exclusion – Checklist 224

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| 3 | Federal change regarding saccharin de-listing – Checklist 225 |
| 4a | Delaware change regarding Academic transport |
| 4b | Delaware clarification regarding 270 day accumulation |
| 4c | Delaware clarification regarding SQG recordkeeping and reporting |
| 4d | Delaware clarification regarding retention of Contingency Plan submission record |
| 4e | Delaware clarification regarding CESQG container requirements |
| 4f | Delaware correction regarding regional contingency plan under 40 CFR 1510 |
| 4g | Delaware requirement for container closure at used oil facilities |

Proposed Amendments to
Delaware's *Regulations Governing Hazardous Waste*
(**DRGHW**)

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

AMENDMENT 1:
Technical Corrections

Adopt Federal Checklist 223 regarding EPA's "Hazardous Waste Technical Corrections and Clarifications Rule" published in the March 18, 2010 Federal Register (Volume 75, Number 52, pages 12989-13009), and amended June 4, 2010 in the Federal Register (Volume 75, Number 107, pages 31716-31717).

Background: The EPA rule made a number of technical changes that corrected existing errors in the federal hazardous waste regulations that occurred over time in numerous final rules published in the Federal Register, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections were necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarified existing parts of the hazardous waste regulatory program and updated references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA final rules.

Delaware was required to adopt the revisions to the manifest regulations (the addition of paragraph 262.23(f)). This was completed during the "2010" amendments (under Start Action Notice # 2010-09), effective 1/21/11.

EPA received adverse comment on four of the specific amendments and withdrew them on June 4, 2010 (75 FR 31716). The four amendments were for: §262.34(a), §262.34(a)(2), §262.34(a)(5), and §266.20(b). As a result of withdrawing the amendment for §262.34(a)(5), the related amendment for §262.34(a)(1)(iv)(B) was also withdrawn by the EPA. Finally, because of a typographical error, the amendment to the entry "K107" in the table at §261.32(a) was withdrawn.

The SHWMB determined that out of 99 amendments within the EPA rule, 35 were selected for adoption into the DRGHW. The remaining Federal amendments from checklist 223 were either already correct within the DRGHW, were not applicable to Delaware, or were less stringent than the existing DRGHW.

ID# 1

260 Appendix I: Amend part 260 by removing Appendix I in its entirety.

ID# 2

261.1(c)(10):

"Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§261.4(a)(1314)).

ID# 3

261.2(c), table 1:

~~Scrap metal other than excluded scrap metal (see §261.1(c)(9)).~~

Scrap metal that is not excluded under §261.4(a)(13).

ID # 4

261.5(e):

If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266, 268 and Parts 122 and 124 of these regulations, and the notification requirements of 7 **Del.C.**, Chapter 63:

(1) A total of one kilogram of acute hazardous wastes listed in §§261.31, ~~261.32~~, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§261.31, ~~261.32~~, or 261.33(e).

[**Comment: Full regulation** means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

ID# 5

261.5(g):

In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of ~~less than 100 kilograms~~ 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

ID# 6

261.5(g)(2):

The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time ~~more than a total of 1000 kilograms~~ 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of ~~between 100 kg and 1000 kg~~ greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266, 268 and Parts 122 and 124 of these regulations, and the applicable notification requirements of 7 **Del.C.**, Chapter 63. The time period of §262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

ID# 7

261.6(a)(2):

The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through H ~~N~~ of Part 266 of these regulations, Subpart E of Part 263, and all applicable provisions in Parts ~~268~~, 122 and 124 of these regulations:

ID# 8

261.6(a)(2)(ii):

Hazardous wastes burned ~~for energy recovery~~ (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of these regulations (Subpart H);

ID# 9

261.7(a):

(1) Any hazardous waste remaining in either: (i) an empty container; or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of ~~these regulations~~ this section is not subject to regulation under Parts 261 through ~~265 of these regulations~~ 266, or Parts 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.**, §§6304, 6306 & 6307.

(2) Any hazardous waste in either: (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through ~~265~~ 266, and Parts 268, 122 and 124 of these regulations and to the notification requirements of 7 **Del.C.**, §§6304, 6306 & 6307.

ID# 10

261.7(b)(1):

A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§261.31, ~~261.32~~, or 261.33(e) of these regulations is empty if:

ID# 11

261.7(b)(3):

A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§261.31, ~~261.32~~ or 261.33(e) is empty if:

ID# 12

261.23(a)(8)

It is a forbidden explosive as defined in ~~49 CFR Part 173 or a Class A explosive as defined in 49 CFR Part 173 or a Class B explosive as defined in 49 CFR Part 173.~~ 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

ID# 13

261.30(d):

The following hazardous wastes listed in §261.31 ~~or §261.32~~ are subject to the exclusion limits for acutely hazardous wastes established in §261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027

ID# 14

261.31(a) table:

Petroleum refinery primary oil/water/solids separation sludge. -- Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and ~~oil~~ oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under §261.4(a)(12)(i), if those residuals are to be disposed of.

ID# 15

261.33(f), U239

U239	1330-20-7	Benzene, dimethyl- (I,T)
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ID# 16

261 Appendix VII,

Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. "K064," "K065," "K066," "K090," and "K091"

ID# 17

262.34(a)(4):

The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with §265.16, and with ~~§268.7(a)(5)~~ all applicable requirements of Part 268 of these regulations.

ID# 18

262.34(c)(1):

A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) as applicable of this section provided he:

ID# 19

262.34(c)(2): Note that the 2nd change to add "(d)" is a DNREC clarification rather than EPA

A generator who accumulates either hazardous waste or acutely hazardous waste listed in §261.31 or §261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply immediately with paragraph (a) or (d) as applicable of this section or other applicable provisions of these regulations. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

ID# 20

262.34(d)(4):

The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of Subpart C of Part 265, ~~the requirements of §268.7(a)(5)~~ with all applicable requirements of Part 268 of these regulations; and

ID# 21

262.42(c):

For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of §§264.72(e)(1) through (6) or §§265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) ~~and or~~ (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. * * * * *

ID# 22

262.60(b):

When importing hazardous waste, a person must meet all the requirements of §262.20(a) for the manifest except.*****

ID# 23

264.56(d)(2): Delaware has made an additional change to align this paragraph with its Part 265 equivalent (see ID#36).

He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, ~~in the contingency plan~~ or the National Response Center (using their 24-hour toll free number (800) 424-8802) and the Department of Natural Resources and Environmental Control (using the nos. (800) 662-8802 or (302) 739-9401). The report must include:

ID# 24

264.552(e)(4)(iv)(F):

Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Secretary may specify a leaching test other than the TCLP (SW846 Method 1311, 40 CFR 260.11~~(a)(11)(c)(3)(v)~~) to measure treatment effectiveness, provided the Secretary determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

ID# 25

265.56(d)(2): Delaware has made an additional change to align this paragraph with its Part 264 equivalent.

He must immediately notify either the government official designated as the on-scene coordinator for that geographical area ~~(in the applicable regional contingency plan under Part 1510 of 40 CFR,~~ or the National Response Center (using their 24 hour toll free number (800) 424-8802) and the Department of Natural Resources and Environmental Control ~~of Delaware~~ (using the nos. ~~(302) 739-9401 or (800) 662-8802 or (302) 739-9401~~). The report must include:

ID# 26

265.72(f)(7):

For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its

records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6) and (8) of this section.

ID# 27

265.316(b):

The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with ~~§264.315(f)~~ 265.314(f) to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

ID# 28

268.40(j), table entry K156: see table below

ID# 29

268.40(j), table entry K157: see table below

ID# 30

268.40(j), table entry K158: see table below

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>

ID# 31

122.4(a)(1): see below

ID# 32

122.4(a)(2): see below

ID# 33

122.4(a)(3): see below

ID# 34

122.4(a)(4): see below

ID# 35

122.4(a): see below

Section 122.4 Effect of a permit.

(a) (1) Compliance with a State hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with 7 Del.C., Chapter 63 except for those requirements not included in the permit which:

- (1)(i) Become effective by statute;
- (2)(ii) Are promulgated under Part 268 of these regulations restricting the placement of hazardous wastes in or on the land;
- (3)(iii) Are promulgated under Part 264 of these regulations regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of Section 122.42 Class 1^{*} permit modifications; or
- (4) (iv) Are promulgated under Subparts AA, BB, or CC of Part 265 of these regulations limiting air emissions.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§122.41 and 122.43, or the permit may be modified upon the request of the permittee as set forth in § 122.42.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

AMENDMENT 2:**Withdrawal of Emission Comparable Fuel Exclusion**

Adopt Federal Checklist 224 regarding EPA's withdrawal of the emission comparable fuel exclusion-published in the June 15, 2010 Federal Register (Volume 75, pages 33712-33724).

Background: Delaware is adopting the Federal rule that withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA withdrew this conditional exclusion because the Agency concluded that ECF is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this rule. Therefore, this rule is equivalent to and also supersedes the June 19, 1998 (63 FR 33782) known as checklist 168, which Delaware adopted in 1999.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Section 261.4 is amended by revising paragraph (a)(16) to read as follows:

§261.4 Exclusions.

(a) * * *

(16) Comparable fuels or comparable syngas fuels (~~i.e., comparable, syngas fuels~~) that meet the requirements of §261.38.

* * * * *

The entire §261.38 is replaced with the text below to read as follows:

§261.38 Exclusion of comparable fuel and syngas fuel.

(a) Specifications for excluded fuels. Wastes that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or (a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) Comparable fuel specifications.—

(i) Physical specifications.—

(A) Heating value. The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).

(B) Viscosity. The viscosity must not exceed: 50 cS, as-fired.

(ii) Constituent specifications. For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).

(2) *Synthesis gas fuel specifications.*— Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

- (i) Have a minimum Btu value of 100 Btu/Scf;
- (ii) Contain less than 1 ppmv of total halogen;
- (iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N₂);
- (iv) Contain less than 200 ppmv of hydrogen sulfide; and
- (v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this part.

(3) *Blending to meet the specifications.*

(i) Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:

(ii) *Blending to meet the viscosity specification.* A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations; and

(C) Not violate the dilution prohibition of paragraph (a)(6) of this section.

(4) *Treatment to meet the comparable fuel specifications.*

(i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations; and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a comparable fuel remain a hazardous waste.

(5) *Generation of a syngas fuel.*

(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of parts 264, 265, or § 262.34 of these regulations or is an exempt recycling unit pursuant to §261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subpart D of this part to generate a syngas fuel remain a hazardous waste.

(6) *Dilution prohibition.* No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or paragraph (a)(2) of this section for syngas.

(b) *Implementation.*—

(1) *General.*—

(i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.

(2) *Notices.*

(i) *Notices to State RCRA and CAA Directors in authorized States or regional RCRA and CAA Directors in unauthorized States.*

(A) The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded fuel;

(3) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this

section, that will burn the excluded fuel:

(4) An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and

(5) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative: Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of DRGHW §261.38 have been met for all comparable fuels identified in this notification. Copies of the records and information required at DRGHW §261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(B) If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.

(C) Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.

(ii) *Public notice.* Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and RCRA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.

(3) *Burning.* The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the Clean Air Act and 7 DE Admin. Code 1100, *Air Quality Management Section*:

(i) Industrial furnaces as defined in §260.10 of these regulations;

(ii) Boilers, as defined in §260.10 of these regulations, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of these regulations and applicable CAA MACT and 7 DE Admin. Code 1100, *Air Quality Management Section* standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(4) *Fuel analysis plan for generators.*

The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

(i) At a minimum, the plan must specify:

(A) The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

(D) The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations

from analytical methods written in the plan or from any other activity written in the plan which occurred:

(G) All laboratory results demonstrating whether the exclusion specifications have been met; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) Excluded fuel sampling and analysis.

(i) General. For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the waste must test for all the constituents in appendix VIII to this part, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:

(A) A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in DRGHW §268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (b)(5): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

(ii) Use of process knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in §262.11 of these regulations, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.

(vii) Viscosity condition for comparable fuel.

(A) Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as generated.

(B) If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:

(1) Analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and

(2) After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.

(viii) Excluded fuel must be retested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner that may affect conformance with the specifications.

(6) (Reserved)

(7) Speculative accumulation. Excluded fuel must not be accumulated speculatively, as defined in §261.1(c)(8).

(8) Operating record. The generator must maintain an operating record on site containing the following information:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA ID number of the person claiming the exclusion;

(B) For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were

discarded; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

(iii) The monthly and annual quantities of each fuel claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;

(vii) If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) *Records retention.* Records must be maintained for a period of three years.

(10) *Burner certification to the generator.* Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a onetime written, signed statement from the burner:

(i) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(ii) Identifying the name and address of the facility that will burn the excluded fuel; and

(iii) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) *Ineligible waste codes.* Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in appendix VII of this part, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

(12) *Regulatory status of boiler residues.* Burning excluded fuel that was otherwise a hazardous waste listed under §§261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

(13) *Residues in containers and tank systems upon cessation of operations.*

(i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under parts 262 through 265, 268, 122, and 124 of these regulations.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed under §§261.31 through 261.33 when the exclusion was claimed.

(iii) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:

(A) The waste exhibits a characteristic of hazardous waste under §§261.21 through 261.24; or

(B) The fuel were otherwise a hazardous waste listed under §§261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

(14) *Waiver of RCRA Closure Requirements.* Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under §262.34 of these regulations, are not subject to the closure requirements of DRGHW § Parts 264, and 265 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.

(15) *Spills and leaks.*

(i) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is

discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§261.31 through 261.33.

(ii) For excluded fuel that would have otherwise been a hazardous waste listed in §§261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103 and 7 Del.C. §6028 (see 7 DE Admin. Code 1203, *Reporting of a Discharge of a Pollutant or Air Contaminant*), which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) Failure to comply with the conditions of the exclusion. An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or the Department may take enforcement action under RCRA section 3008(a) or 7 Del.C. Chapters 60 and/or 63.

The image of the replacement Table 1, below, is shown in black.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**AMENDMENT 3:
Saccharin De-listing**

Adopt Federal Checklist 225 regarding the de-listing of saccharin as a listed hazardous waste. See Federal Register: December 17, 2010 (Volume 75, Number 242).

Background: Delaware is adopting the EPA removal of saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded.

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Sec. 261.33 [Amended]

Section 261.33 is amended by removing the entries for the **U202** hazardous waste in the table under paragraph (f).

U202	181-07-2	Saccharin, & salts
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Appendix VIII [Amended]

Appendix VIII to part 261 is amended by removing the entries for ``**Saccharin**" and ``**Saccharin salts**" from the table "Hazardous Constituents."

Saccharin	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81-07-2	U202
Saccharin salts	—	—	U202

PART 268--LAND DISPOSAL RESTRICTIONS

Sec. 268.40 [Amended]

Section 268.40 is amended by removing the entry for waste code **U202** from the table ``Treatment Standards for Hazardous Wastes."

U202	Saccharin and salts	Saccharin	81-07-2	(WETOX — or CHOXD) — fb CARBN; — or CMBST	16
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Appendix VII [Amended]

Appendix VII to part 268 is amended by removing the entry for waste code **U202** from Table 1, ``Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs--Comprehensive List."

U202	All	Aug. 8, 1990.
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AMENDMENT 4a:
Academic Transport

Adjust the "Munitions Rule" to allow qualifying colleges/ universities the ability to transport hazardous waste (without using a manifest) on roads that are along or through the contiguous property belonging to the institution.

Background: The State of Delaware has a more stringent "Munitions Rule." Under the Federal version, all hazardous waste is eligible to be transported along a generator's contiguous property without using a manifest. However, in DRGHW the ability to transport along contiguous property is restricted to specific military situations. Also, Delaware has chosen not to adopt the "Academic Laboratory Rule." To afford qualifying colleges/universities the ability to transport hazardous waste to an accumulation area (without using a manifest) using roads that are along or through contiguous institution property, the SHWMB is revising paragraph (f) of §262.20. The definition of *College/University* is from EPA's Academic Laboratory Rule.

Section 262.20 General requirements.

(a) (1) A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050 0039) on EPA Form 8700 22 and, if necessary EPA Form 8700 22A, according to the instructions included in the appendix to this part.

(2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.34, 262.54, 262.60, and the appendix to part 262 of these regulations shall not apply until September 5, 2006. The manifest form and procedures in §§260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in the parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(e) [Reserved]

~~(f) The requirements of this subpart and §262.32(b) do not apply to transportation during an explosives or munitions emergency response or transport of military munitions as defined in §260.10 of these regulations on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding §263.10(a), the generator or transporter must comply with the requirements for transporters set forth in §263.30 and §263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.~~

(f) (1) The requirements of this subpart and §262.32(b) are not applicable to the transport, on a public or private right-of-way within or along the border of contiguous property under the control of the same person (even if such contiguous property is divided by a public or private right-of-way), of:

(i) explosives or munitions during an emergency response, or

(ii) military munitions as defined in §260.10 of these regulations, or

(iii) subject to the Department's written approval, waste generated by a college or university that is taken to that generator's accumulation area.

(2) Notwithstanding §263.10(a), the generator or transporter must comply with the requirements for transporters set forth in §263.30 and §263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

* * * * *

§260.10

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.

AMENDMENT 4b: 270 Day Accumulation

Clarify "must" in regards to 270 day accumulation.

Background: The State of Delaware is clarifying "must" to explain that no other off-site treatment, storage or disposal facility option is available within 200 miles.

Section 262.34 Accumulation time.

* * * * *

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who, due to there being no other option available, must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he, due to there being no other option available, must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the DNREC Secretary if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case by case basis.

* * * * *

(h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste code F006, and who, due to there being no other option available, must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of paragraphs (g)(1) through (g)(4) of this section.

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste onsite for more than 180 days (or for more than 270 days if the generator, due to there being no other option available, must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by DNREC if F006 waste must remain onsite for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Secretary on a case-by- case basis.

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AMENDMENT 4c:
SQG Recordkeeping and Reporting

Background: The State of Delaware is clarifying the Subpart D exemption for Small Quantity Generators.

Section 262.44 Special Requirements for Generators of Between 100 and 1000 Kilograms/Month.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the annual report requirements found in §262.40(b) and §262.41 of this subpart, ~~except for the recordkeeping requirements in paragraphs (a), (c), and (d) in §262.40, the Exception Reporting requirements in §262.40(b) and §262.42(b), and the requirements of §262.43.~~

* * * * *

AMENDMENT 4d:
Contingency Plan Submission Record

Background: The State of Delaware is clarifying the record retention period for proof of contingency plan submission.

Section 265.53 Copies of Contingency Plan.

A printed copy of the contingency plan and all provisions to the plan must be:

- (a) Maintained at the facility and made available immediately upon request; and
- (b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility. These records must be kept for a period of at least 3 years since last being applicable.

* * * * *

AMENDMENT 4e:
CESQG Container Requirements

Background: The State of Delaware is clarifying the container requirements for Conditionally Exempt Small Quantity Generators.

Section 261.5 Special conditions for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

- (4) Complies with §265.171, §265.172, and §265.173 of these regulations;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

- (4) Complies with §265.171, §265.172, and §265.173 of these regulations;

* * * * *

AMENDMENT 4f:

Correction of regional contingency plan under 40 CFR 1510

Background: The same as in Amendment 1 [265.56(d)(2)], the State of Delaware is correcting the reference to 40 CFR Part 1510 wherever else it appears. 40 CFR Part 1510 has been removed, and any references to it are obsolete.

* * * * *

279.52(b)(2)(ii)

If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, ~~40 CFR Part 1510~~, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this part.

* * * * *

279.52(b)(6)(iv)(B)

He must immediately notify either the government official designated as the on-scene coordinator for the geographical area ~~(in the applicable regional contingency plan under 40 CFR Part 1510)~~, or the National Response Center (using their 24-hour toll free number 800/424-8802), and give notice as required by Delaware regulations Reporting of a Discharge of a Pollutant or Air Contaminant to DNREC ((800) 662-8802 or (302) 739-4580).

* * * * *

AMENDMENT 4g:

Used Oil facility container closure

Background: The State of Delaware is improving the container standards for used oil facilities to match those for used oil generators. Note, the container standards for generators are found in DRGHW, §279.22(b).

Section 279.45 Used oil storage at transfer facilities.

* * * * *

- (c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities must be:
- (1) In good condition (no severe rusting, apparent structural defects or deterioration); and
 - (2) Not leaking (no visible leaks)- : and
 - (3) Closed during storage, except when it is necessary to add or remove oil.

* * * * *

Section 279.54 Used oil management.

* * * * *

- (b) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be:
- (1) In good condition (no severe rusting, apparent structural defects or deterioration); and
 - (2) Not leaking (no visible leaks)- : and
 - (3) Closed during storage, except when it is necessary to add or remove oil.

* * * * *

Section 279.64 Used oil storage.

* * * * *

- (b) Condition of units. Containers and aboveground tanks used to store oil at burner facilities must be:
- (1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks)- : and

(3) Closed during storage, except when it is necessary to add or remove oil.

* * * * *

15 DE Reg. 471 (10/01/11) (Prop.)