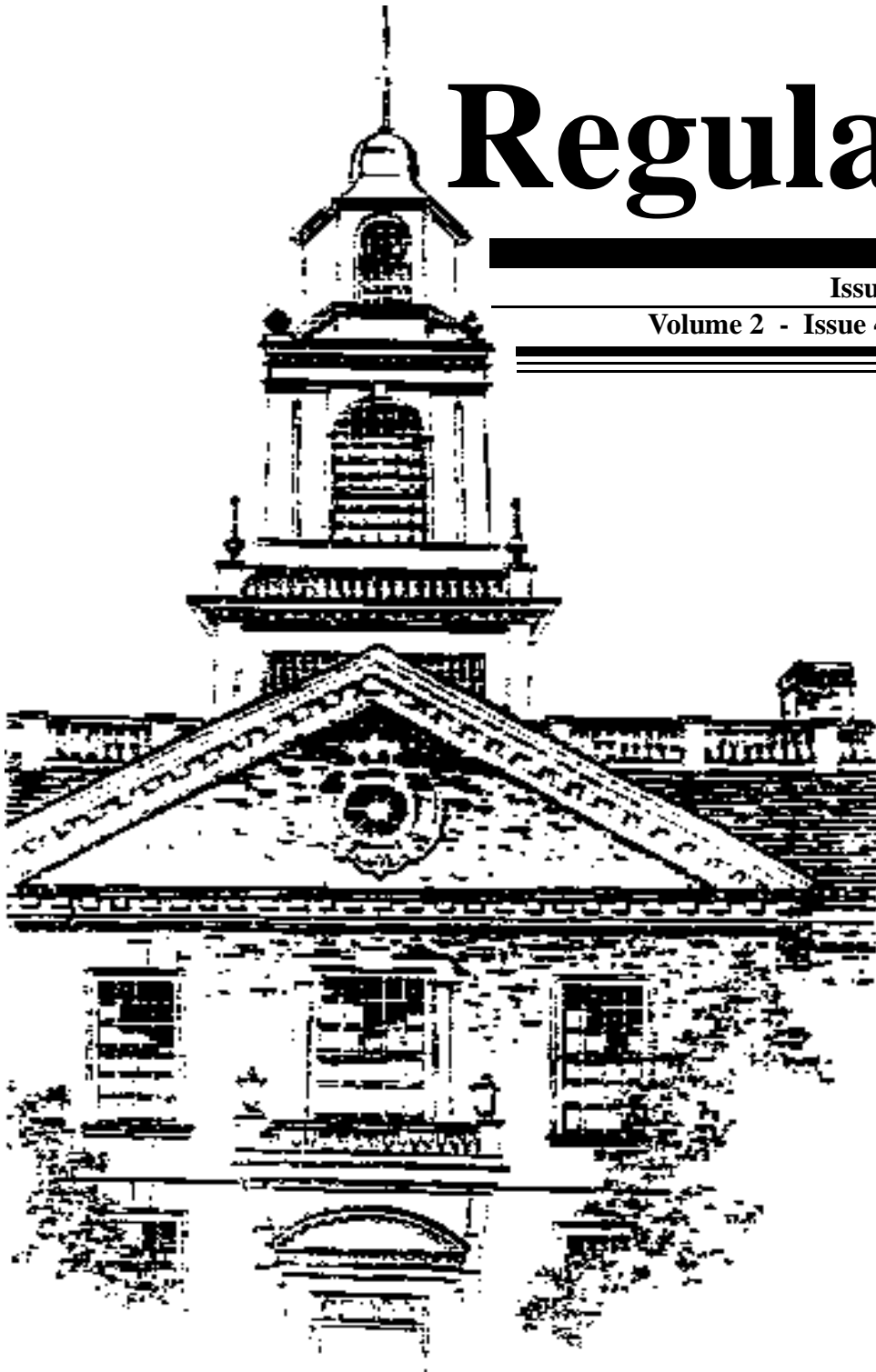


# Delaware Register of Regulations



Issue Date: October 1, 1998

Volume 2 - Issue 4

Pages 431 - 713

## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Appointments

Attorney General

Opinions

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before September 15, 1998.

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

---

## CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

---

## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$100.00. Single copies are available at a cost of \$9.00 per issue, including postage. For more

information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

---

## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

---

ISSUE DATE	CLOSING DATE	CLOSING TIME
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.

---

### DIVISION OF RESEARCH STAFF:

**William S. Montgomery**, Director, Division of Research; **McDonald T. Coker**, Deputy Director; **Kathleen K. Amalfitano**, Secretary; **Walter G. Feindt**, Legislative Attorney; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Administrative Assistant; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

Cumulative Tables..... 436

## PROPOSED REGULATIONS

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Cosmetology and Barbering..... 440  
Delaware Gaming Board..... 444

### DEPARTMENT OF AGRICULTURE

Harness Racing Commission .....455

### DEPARTMENT OF EDUCATION

Multicultural Education Regulations.....462  
Policy for Establishing a School District Planning  
Process.....464  
Prohibition of Discrimination.....465

### DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

DSSM, Sections 11000 & 12000, Child Care &  
First Step Programs.....466  
DSSM, Title XXI, Delaware Healthy Children Program,  
General Policy Manual and Eligibility Manual.....485  
DSSM, Section 16000, Eligibility Manual.....492  
DSSM, Section 14900, Eligibility Manual.....493  
DSSM, Section 3005, TANF Program.....494  
DMAP, Ambulatory Surgical Center Manual.....495  
DMAP, Practitioner Manual.....496  
DMAP, Inpatient Hospital Manual.....496  
DMAP, Outpatient Hospital Manual.....497  
DMAP, General Policy Manual.....497

### DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

Delaware Coastal Management Program, Federal  
Consistency Policies.....500

### DIVISION OF AIR & WASTE MANAGEMENT

Regulations Governing Solid Waste.....545  
Accidental Release Prevention Regulation .....629

### DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

Regulation No. 5.121.0002, Procedures Goerning the  
Creation & Existence of an Interim Bank..... 669  
Regulation No. 5.701/774.0001, Procedures for  
Applications to Form a Bank, Bank & Trust  
Company or Limited Purpose Trust Company  
Pursuant to Chapter 7 of Title 5 of the  
Delaware Code..... 671  
Regulation No. 5.833.0004, Application by an  
Out-of-State Savings Institution, Out-of-State  
Savings & Loan Holding Company or Out-of-State  
Bank Holding Company to Acquire a Delaware  
Savings Bank or Delaware Savings and Loan  
Holding Company..... 673  
Regulation No. 5.844.0009, Application by an  
Out-of-State Bank Holding Company to  
Acquire a Delaware Bank or Bank Holding  
Company 5 Del.C. 844 ..... 676

### PUBLIC SERVICE COMMISSION

PSC Regulation Docket No. 44, Information  
Required to be Filed by a Manufacturer to  
Establish an Additional Dealer or to Relocate  
an Existing Dealership Pursuant to 6 Del.C. 4915(a)679

## FINAL REGULATIONS

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Nursing.....682  
Board of Pharmacy.....683

### DEPARTMENT OF AGRICULTURE

Amend Chapter VII, Rule VI-M-14, Whipping.... 684

### DEPARTMENT OF EDUCATION

School Attendance.....685  
Student Progress Grading & Reporting.....686  
Summer School Programs.....687

**DEPARTMENT OF HEALTH & SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Temporary Assistance for Needy Families (TANF) ....688

**DEPARTMENT OF INSURANCE**

Regulation No. 65, Workplace Safety.....688

**DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SSECTION**Regulation 1 & 24, Definition of Volatile Organic  
Compounds (VOC)..... 690**DEPARTMENT OF TRANSPORTATION**

Subdivision Plan Review Fee Procedures.....693

**PUBLIC SERVICE COMMISSION**PSC Regulation Docket 12 (Track III), Rules to  
Govern Payphone Services.....695

---

**GOVERNOR**

Governor's Appointments.....696

---

**ATTORNEY GENERAL**No. 98-IB05, FOIA Complaint Against Appoquinimink  
School District.....699  
No. 98-IB06, Candidacy of Richard L. Abbott.... 700  
No. 98-IB07, Sworn Payroll Information  
29 Del. C. § 10002.....703  
No. 98-IB08, FOIA Complaint Against Town  
of Townsend.....705**CALENDAR OF EVENTS/HEARING  
NOTICES**Board of Cosmetology & Barbering, Notice of  
Public Hearing..... 708  
Delaware Gaming Control Board, Notice of  
Public Hearing..... 708  
Harness Racing Commission, Notice of Public  
Hearing..... 708  
Department of Education, Notice of Monthly  
Public Hearing..... 709  
Div. of Social Services, DSSM, Sections 11000 &  
12000, ChildCare & First Step Programs,  
Notice ofPublic Comment Period..... 709  
Div. of Social Services, DSSM, Section 16000,  
Eligibility Manual, Notice of Public Comment.... 709  
Div. of Social Services, DSSM, Section 14900,  
Eligibility Manual, Notice of Public Comment.... 709  
Div. of Social Services, DSSM, Section 3005,  
TANF Program..... 710  
Div. of Social Services, TANF Program, Notice  
of Public Comment..... 710  
Div. of Social Services, Ambulatory Surgical Center,  
Practitioner, Inpatient Hospital, Outpatient  
Hospital & General Policy Provider Manual(s),  
Notice of Public Comment..... 710  
DNREC, Delaware Coastal Management Program,  
Federal Consistency Policies, Notice of  
Public Hearing..... 711  
DNREC, Regulations Governing Solid Waste, Notice  
of Public Hearing..... 711  
Dept. of State, Office of the State Banking Commissioner,  
Notice ofPublic Hearing..... 712  
Public Service Commission, Notice of Public  
Hearing..... 712  
Delaware River Basin Commission, Notice of  
Public Hearing..... 713

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

#### Attorney General

Opinion No. 98-IB03, Authority to Delegate Approval of Certain Personnel Transactions. ....2:2 **Del.R.** 324

Opinion No. 98-IB04, FOIA, Complaint Against Appoquinimink School District..... 2:2 **Del.R.** 325

#### Department of Administrative Services

##### Division of Professional Regulation

Board of Clinical Social Work Examiners.....2:2 **Del.R.** 164 (Prop.)

Board of Funeral Services.....2:2 **Del.R.** 207 (Final)

Board of Examiners in Optometry.....2:1 **Del.R.** 95 (Final)

Board of Examiners of Psychologists.....2:1 **Del.R.** 103 (Final)

2:3 **Del.R.** 341 (Prop.)

Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid

Dispensers .....2:3 **Del.R.** 370 (Finan)

Board of Pharmacy .....2:1 **Del.R.** 6 (Prop.)

Board of Professional Counselors of Mental Health.....2:1 **Del.R.** 12 (Prop.)

2:3 **Del.R.** 371 (Final)

Delaware Council on Real Estate Appraisers.....2:3 **Del.R.** 372 (Final)

#### Department of Agriculture

Forest Service Regulations for State Forests.....2:3 **Del.R.** 348 (Prop.)

##### Thoroughbred Racing Commission

Prohibition on Racing Claimed Horses, Rule 13.18.....2:1 **Del.R.** 93 (Final)

Racing Claimed Horses, Rule 13.19.....2:1 **Del.R.** 6 (Prop.)

2:3 **Del.R.** 373 (Final)

#### Department of Education

Comprehensive School Discipline Program.....2:3 **Del.R.** 374 (Final)

Constitution & Bylaws of DSSAA.....2:1 **Del.R.** 113 (Final)

Cooperative Education Program.....2:1 **Del.R.** 110 (Final)

Delaware Testing Requirements for Initial Licensure.....2:1 **Del.R.** 32 (Prop.)

Diversified Occupations Programs.....2:1 **Del.R.** 111 (Final)

Establishing a School District Planning Process, Repeal of Policy.....2:2 **Del.R.** 166 (Prop.)

General Education Development (GED).....2:1 **Del.R.** 16 (Prop.)

2:3 **Del.R.** 376 (Final)

James H. Groves High School.....2:1 **Del.R.** 17 (Prop.)

2:3 **Del.R.** 378 (Final)

Middle Level Education Regulation.....2:2 **Del.R.** 167 (Prop.)

Middle Level Education Section of Handbook for K-12 Education, Repeal of.....2:1 **Del.R.** 23 (Prop.)

Middle Level Mathematics & Science Certification.....2:1 **Del.R.** 21 (Prop.)

2:3 **Del.R.** 377 (Final)

Policy for School Districts on the Possession, Use & Distribution of Drugs & Alcohol..... 2:2 **Del.R.** 213 (Final)

Promotion Policy .....2:2 **Del.R.** 171 (Prop.)

Releasing Students to Persons other than their Parents or Legal Guardians.....2:3 **Del.R.** 357 (Prop.)

Safety .....2:2 **Del.R.** 215 (Final)

---

---

# CUMULATIVE TABLES

437

School Attendance .....	2:2	<b>Del.R.</b> 172	(Prop.)
School Custodians .....	2:3	<b>Del.R.</b> 353	(Prop.)
Student Progress, Grading & Reporting, Repeal of .....	2:2	<b>Del.R.</b> 171	(Prop.)
Student Rights & Responsibilities.....	2:1	<b>Del.R.</b> 112	(Final)
Summer School Programs, Repeal of.....	2:2	<b>Del.R.</b> 172	(Prop.)
Title I Complaint Process.....	2:2	<b>Del.R.</b> 217	(Final)
Unit Count .....	2:1	<b>Del.R.</b> 25	(Prop.)
	2:3	<b>Del.R.</b> 382	(Final)
Department of Finance			
Division of Revenue			
Proposed Tax Ruling 98- , Contractors License Tax.....	2:1	<b>Del.R.</b> 40	(Prop.)
Proposed Technical Information Memorandum 98-2, Effect of Federal Small Business Job Protection Act.....	2:1	<b>Del.R.</b> 41	(Prop.)
	2:3	<b>Del.R.</b> 384	(Final)
Office of the State Lottery			
Video Lottery Regulations, Operations Employees, License Renewal, etc.....	2:1	<b>Del.R.</b> 115	(Final)
Video Lottery Regulaitons, 5.2(2) Maximum Bet Limit & 7.9 Redemption Period.....	2:3	<b>Del.R.</b> 358	(Prop.)
Department of Health & Social Services			
Division of Public Health			
Office of Health Facilities Licensing & Certification			
Managed Care Organizations.....	2:1	<b>Del.R.</b> 42	(Prop.)
Regulations Governing Lead-Based Paint Hazards.....	2:2	<b>Del.R.</b> 234	(Final)
Division of Social Services			
A Better Chance/Food Stamp Program.....	2:1	<b>Del.R.</b> 118	(Final)
DMAP 270.10, DMAP 301.25 & DMAP 307.60.....	2:3	<b>Del.R.</b> 385	(Final)
DMAP 301.25 Composition of Budget Unit.....	2:2	<b>Del.R.</b> 219	(Final)
DMAP 301.25C, Adult Expansion Population.....	2:3	<b>Del.R.</b> 387	(Final)
DMAP Durable Medical Equipment, EPSDT & Practitioner Provider Manuals.....	2:2	<b>Del.R.</b> 221	(Final)
DME Provider Manual, Reimbursement for Services.....	2:1	<b>Del.R.</b> 66	(Prop.)
	2:3	<b>Del.R.</b> 389	(Final)
DSSM Section 3008, Children Born to Teenage Parent.....	2:1	<b>Del.R.</b> 65	(Prop.)
DSSM Section 9007.1, Citizenship & Alien Status.....	2:3	<b>Del.R.</b> 359	(Prop.)
DSSM Section 9068, Food Stamp Program.....	2:2	<b>Del.R.</b> 174	(Prop.)
DSSM Section 9092, Simplified Food Stamp Program.....	2:2	<b>Del.R.</b> 174	(Prop.)
General Policy, Aliens.....	2:1	<b>Del.R.</b> 67	(Prop.)
	2:3	<b>Del.R.</b> 389	(Final)
Long Term Care, Home Health, Ground Ambulance & Hospice Provider Manuals.....	2:3	<b>Del.R.</b> 389	(Final)
Long Term Care Provider Manual, Durable Medical Equipment.....	2:1	<b>Del.R.</b> 68	(Prop.)
	2:3	<b>Del.R.</b> 389	(Final)
Medicaid Eligibility Manual, Renumbering of.....	2:3	<b>Del.R.</b> 359	(Prop.)
Non-Emergency Transportation Provider Manual, Unloaded Mileage.....	2:3	<b>Del.R.</b> 389	(Final)
Pharmacy Provider Manual, Reimbursement for Services.....	2:1	<b>Del.R.</b> 67	(Prop.)
	2:3	<b>Del.R.</b> 389	(Final)
Simplified Food Stamp Program, ABC Benefits.....	2:1	<b>Del.R.</b> 120	(Final)
Temporary Assistance for Needy Families (TANF).....	2:1	<b>Del.R.</b> 60	(Prop.)
Department of Insurance			
Regulation No. 37, Defensive Driving Course Discount (Automobiles & Motorcycles.....	2:1	<b>Del.R.</b> 68	(Prop.)
Regulaiton No. 47, Education for Insurance Adjusters, Agents, Brokers, Surplus Lines Brokers & Consultants.....	2:1	<b>Del.R.</b> 122	(Final)
Regulation No. 63, Long-Term Care Insurance.....	2:2	<b>Del.R.</b> 187	(Prop.)
Regulation No. 65, Workplace Safety.....	2:1	<b>Del.R.</b> 71	(Prop.)

Regulation No. 80, Standards for Prompt, Fair and Equitable Settlements of Claims for Health Care Services.....	2:2	<b>Del.R.</b>	277	(Final)
Department of Natural Resources & Environmental Control				
Division of Air & Waste Management				
Air Quality Management Section				
Delaware Low Enhanced Inspection & Maintenance (LEIM) Program.....	2:2	<b>Del.R.</b>	234	(Final)
Regulation 20, New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators.....	2:3	<b>Del.R.</b>	390	(Final)
Regulation 1 & 24, Definition of Volatile Organic Compounds (VOC).....	2:1	<b>Del.R.</b>	74	(Prop.)
Regulation 20, New Source Performance Standards for Hospital/ Medical/Infectious Waste Incinerators.....	2:1	<b>Del.R.</b>	75	(Prop.)
Division of Water Resources				
NPDES General Permit Program Regulations Governing Storm Water Discharges Associated with Industrial Activity.....				
	2:3	<b>Del.R.</b>	393	(Final)
Water Supply Section				
Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers & Pump Installers.....				
	2:2	<b>Del.R.</b>	176	(Prop.)
Watershed Assessment Section				
Total Maximum Daily Loads (TMDLs) for Indian River, Indian River Bay, and Rehoboth Bay, Delaware.....				
	2:2	<b>Del.R.</b>	183	(Prop.)
Total Maximum Daily Loads (TMDLs) for Nanticoke River & Broad Creek,.....				
	2:2	<b>Del.R.</b>	185	(Prop.)
Department of Services for Children, Youth & Their Families				
Office of Child Care Licensing				
Child Abuse Registry .....	2:1	<b>Del.R.</b>	129	(Final)
Department of State				
Office of the State Banking Commissioner				
Regulation No. 5.1403.0001, Procedures Governing Filings and Determinations Respecting Applications for a Foreign Bank Limited Purpose Branch or Foreign Bank Agency....				
	2:2	<b>Del.R.</b>	299	(Final)
Regulation No. 5.1403.0002, Application by a Foreign Bank for a Certificate or Authority to Establish a Foreign Bank Limited Purpose Branch or Foreign Bank Agency Pursuant to 5 Delaware Code § 1403.....				
	2:2	<b>Del.R.</b>	299	(Final)
Regulation No. 5.1403/1101.0003, Regulations Governing the Organization, Chartering Supervision, Operation and Authority of a Delaware Foreign Bank Limited Purpose Branch, a Delaware Foreign Bank Agency and a Delaware Foreign Bank Representative Office.....				
	2:2	<b>Del.R.</b>	312	(Final)
Regulation No. 5.1422.0004, Application by a Foreign Bank for a License to Establish a foreign Bank Representative Office Pursuant to Subchapter II, Chapter 14, Title 5, Delaware Code.....				
	2:2	<b>Del.R.</b>	315	(Final)
Regulation No. 5.2102(b)/2112.0001, Mortgage Loan Brokers Operating Regulations.....	2:3	<b>Del.R.</b>	361	(Prop.)
Regulation No. 5.2210(d).0001, Licensed Lenders Operating Regulations.....	2:3	<b>Del.R.</b>	362	(Prop.)
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Changes .....	2:3	<b>Del.R.</b>	364	(Prop.)
Regulation No. 5.2741.0001, Licensed Cashier of Checks, Drafts or Money Orders Operating Regulations.....	2:3	<b>Del.R.</b>	365	(Prop.)
Regulation No. 5.2743.0002, Licensed Cashier of Checks, Drafts or Money Orders Posting of the Fee Schedule & Minimum Requirements for Content of Books and Records .....	2:3	<b>Del.R.</b>	366	(Prop.)
Regulation No. 5.2905(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books and Records.....	2:3	<b>Del.R.</b>	366	(Prop.)
Regulation No. 5.2905(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations .....	2:3	<b>Del.R.</b>	367	(Prop.)



---

---

# CUMULATIVE TABLES

---

439

Regulation No. 5.3404.0001, Preneed Funeral Contracts Regulations Governing Irrevocable Trust Agreements.....	2:2	<b>Del.R.</b>	319	(Final)
Regulation No. 5.751.0013, Procedures Governing the Dissolution of a State Chartered Bank or Trust Company.....	2:2	<b>Del.R.</b>	296	(Final)
Regulation No. 5.853.0001P, Procedures Governing the Registration of Delaware Bank Holding Companies with the Bank Commissioner Pursuant to the Provision of Section 853 of Title 5, Delaware Code, Repeal of.....	2:2	<b>Del.R.</b>	320	(Final)
Regulation No. 5.852.0002, Application to Become a Delaware Bank Holding Company..	2:2	<b>Del.R.</b>	297	(Final)
Department of Transportation				
Aeronautical Regulations .....	2:1	<b>Del.R.</b>	130	(Final)
Governor's Office				
Appointments & Nominations.....	2:1	<b>Del.R.</b>	145	
			2:2	<b>Del.R.</b> 322
			2:3	<b>Del.R.</b> 425
Executive Order No. 54 .....	2:1	<b>Del.R.</b>	143	
Public Service Commission				
PSC Regulation Docket No. 41, Implementation of the Telecommunications Technology Investment Act .....	2:2	<b>Del.R.</b>	280	(Final)
PSC Regulation Docket No. 4, Minimum Filing Requirements for all Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	2:1	<b>Del.R.</b>	81	(Prop.)

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 Del.C. §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF COSMETOLOGY AND BARBERING**

Statutory Authority: 24 Delaware Code  
Section 3714 (3) (24 Del. C. 3714(3))

The Delaware Board of Cosmetology and Barbering propose to revise current Rules and Regulations in accordance with 29 Del.C. 10111 et. seq. And 24 Del.C. 5106. The purposes of the proposed changes are to: (1) add time frames for completing apprenticeships; (2) require licensees to ensure their employees are appropriately licensed; (3) clarify the documents which must be submitted when applying for licensure; (4) adopt Division of Public Health and National Interstate Council (NIC) standards concerning health, safety and infection controls; (5) limit the use of electric nail files and drills and prohibit the use of laser technology for hair removal; and (6) renumber and reformat the Rules to make them easier to use.

A public hearing will be held Monday, October 26, 1998 at 9:00 a.m. in the Cannon Bldg., Conference Room A, 861 Silver Lake Blvd., Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulation may obtain some from the Board office, Division of Professional Regulations, Cannon Bldg., Suite 203, 861 Silver Lake Blvd., Dover DE, 19904. Written comments should be submitted to the Board office at the above address on or before October 30, 1998. Those individuals wishing to make oral comments at the public hearing are requested to

notify the Board office at (302) 739-4522, extension 204.

**TABLE OF CONTENTS**

	Page
Section 1 - Demonstrations	2
Section 2 - Temporary Work Permits	2
Section 3 - Instructor Curriculum for Barbering and Cosmetology	3
Section 4 - Instructor Requirements	3
Section 5 - Reciprocity Requirements	4
Section 6 - Equipment for Cosmetology and Barbering Schools	4
Section 7 - Equipment for Nail Technology Schools	5
Section 8 - Equipment for Electrology Schools	5
Section 9 - Course outline for Aesthetician	6
Section 10 - Equipment for Aesthetics Schools	6
Section 11 - Registration of Salons and Schools	6
Section 12 - Apprenticeship - Nail Technician	7
Section 13 - Transfer of Nail Technician Hours to Cosmetology Programs	7
Section 14 - Licensure Requirements	8
Section 15 - Foreign Diplomas	8
Section 16 - Health and Sanitation: Electric Nail Files and Laser Technology	8

**\* The above page numbers refer to the original document, not to the Register of Regulations**

DELAWARE BOARD OF COSMETOLOGY AND  
BARBERING  
RULES AND REGULATIONS

Section 1 - Demonstrations

~~I. 24 Del. C. Subsection 5103 (1). Demonstrations.~~

1.1 Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year.

(24 Del.C. Subsection 5103 (1))

Section 2 - Temporary Work Permits

~~H. 24 Del. C. Subsection 5106 (7). Temporary Work Permits.~~

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware ~~as required in Subsection 5109.~~ 24 Del.C. Subsection 5106 (7)

Section 3 - Instructor Curriculum for Barbering and Cosmetology

III. 24 Del. C. Subsection 5106 (13). Instructor Curriculum for Barbering and Cosmetology.

3.1 COURSE OUTLINE - INSTRUCTOR 500 HOURS

SUBJECT MATTER	MINIMUM CLOCK HOURS
Orientation	50
Practical Laboratory Management	200
Classroom Teaching and Management	200
Theory and Testing	50

3.2 COURSE OUTLINE - INSTRUCTOR 250 HOURS

SUBJECT MATTER	MINIMUM CLOCK HOURS
Orientation	25
Practical Laboratory Management	100
Classroom Teaching and Management	100
Theory and Testing	25

(24 Del.C. Subsection 5106(13))

Section 4 - Instructor Requirements

~~IV. 24 Del. C. Subsection 5106 (13). Instructor Requirements.~~

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber.

(24 Del.C. Subsection 5106 (13)).

Section 5 - Reciprocity Requirements

V. 24 Del. C. Subsection 5109 (a). Reciprocity Requirements.

5.1 Any applicant from a state with less stringent requirements than Delaware, would be required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one year before making application.

Reference ~~Subsection 5106~~ Section 2 for temporary work permit.  
(24 Del.C. Subsection 5109(a))

Section 6 - Equipment for Cosmetology and Barbering Schools

VI. 24 Del. C. Subsection 5117 (a). Minimum Equipment for Cosmetology and Barbering Schools.

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

1. (4) Shampoo basins.
2. (8) Hair dryers.
3. (4) Manicure tables and chairs.
4. (4) Dry sterilizers (sanitizers).
5. (4) Wet sterilizers (sanitizers).
6. (6) Dozen permanent wave rods.
7. (2) Reclining chair with headrest
8. (1) Mannequin per student.
9. (12) Work Stations.
10. Mirrors and chairs.
11. (1) Locker for each student.
12. (4) Closed containers for soiled linen.
13. (3) Closed waste containers.
14. (1) Container for sterile solution for each manicure table.
15. (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
16. (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
17. (1) Cabinet for towels.
18. An arm chair or usable table and chair for each student in the theory room.
19. (3) Timer clocks.
20. Attendance records.
21. (1) Soap machine.
22. (1) Textbook for each student.

(24 Del.C. Subsection 5117 (a))

Section 7 - Equipment for Nail Technology Schools

VII. 24 Del. C. Subsection 5117 (a). Minimum Equipment for Nail Technology Schools.

7.1 A school enrolling up to 25 students shall have, at a

minimum, the following equipment:

1. (4) Manicure tables and chairs.
2. (4) Manicure lights.
3. (1) First Aid Kit.
4. (1) Pedicure basin and stand.
5. (1) Covered Waste Container.
6. (1) Closed storage cabinet for soiled linen.
7. (1) Closed towel cabinet for clean linen.
8. Clean linen.
9. (1) Container for sterile solution for each manicure table.
10. (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
11. (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
12. Attendance Records.
13. Reception Desk.
14. Proper Ventilation.
15. (4) Dry Sterilizers.
16. (4) Wet Sterilizers.
17. Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del C. Subsection 5117 (a))

Section 8 - Equipment for Electrology Schools

~~VIII. 24 Del. C. Subsection 5117 (a). Minimum Equipment for Electrology Schools.~~

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

1. (1) Epilator (Short Wave or Blend) Needle type only.
2. (1) All purpose chair or lounge.
3. (1) Magnifying lamp (wall mounted or on a stand).
4. (1) Tweezers for each student.
5. (1) Movable table for the epilator.
6. (1) Adjustable stool on wheels.
7. All needles used for treatment must be disposable type only.
8. Sterilizing materials and rubber gloves.
9. (1) Textbook for each student.

(24 Del. C. Subsection 5117(a))

Section 9 - Course Outline for Aesthetician

IX. 24 Del. C. Subsection 5132 (a). Course Outline for Aesthetician.

<u>9.1 SUBJECT MATTER</u>	<u>CLOCK HOURS</u>
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
<b>TOTAL MINIMUM HOURS</b>	<b>300</b>

(24 Del.C. Subsection 5132(a))

Section 10 - Equipment for Aesthetics Schools

X. 24 Del. C. Subsection 5130 (a). Minimum Equipment for Aesthetics Schools.

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

1. (1) Complete set of skin care equipment as follows:  
Steamer - Brush Unit - Vacuum Spray -Galvanic - High Frequency Unit.
2. (1) All purpose chair or lounge.
3. (1) Magnifying lamp (wall mounted or on a stand).
4. (1) Adjustable stool on wheels.
5. Sterilizing materials and rubber gloves.
6. (1) Textbook for each student.

(24 Del.C. Subsection 5130(a))

Above Rules and Regulations effective on 8/29/94

Section 11 - Registration of Salons and Schools

XI. 24 Del. C. Subsection 5117

11.1 A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration ~~required by Subsection 5117.~~

(24 Del.C. Subsection 5117)

Section 11 effective on 12/28/94~~Above Regulation XI effective on 12/28/94~~

Section 12 - Apprenticeship and Supervision

~~XII. 24 Del. C. Subsection 5107 -- Apprenticeship and Supervision of Nail Technicians~~

~~Nail Technicians -- May apprentice under the supervision of a~~

~~licensed nail technician or a licensed cosmetologist.~~

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. Subsection 5107)

Section 13 - Transfer of Nail Technician Hours to Cosmetology Programs

~~XIII. 24 Del. C. Subsection 5107 -- Transferability of Nail Technician Hours to Cosmetology Programs~~

13.1 Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours.

(24 Del.C. Subsection 5107)

Section 12 and 13 effective October 30, 1996  
Above regulations effective on October 30, 1996

Section 14 - Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, form corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment

shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs unlicensed individuals may be subject to discipline pursuant to 24 Del. C § 5113(a)(b).

(24 Del.C. §5103)

#### Section 15 - Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

#### Section 16 - Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails.

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under section 5113 of Title 24 Del. C.

(24Del C. § 5100, 5101(4), 5112 and 5113)

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE GAMING CONTROL BOARD**  
Statutory Authority: 28 Delaware Code  
Section 1122 (28 Del.C. 1122)

The Delaware Gaming Board propose the following reorganization of existing regulations, corrections of technical errors, and substantive amendments. The Board proposes these regulations pursuant to 28 Del.C. §1122 and 29 Del. C. § 10111.

The public may obtain copies of the existing regulations and proposed regulations from the Board's Office, Division of Professional Regulation, c/o Lynn Houska, Cannon Building, Suite #203, 861 Silver Lake Boulevard, Dover, DE 19904, phone - (302) 739-4522. The Board will accept written comments from November 1, 1998 to November 30, 1998. A public hearing will be held at the Board's monthly meeting on November 5, 1998 at 1:00 p.m. at the Cannon Building, Second Floor Conference Room.

The following is a summary of the proposed revisions to the regulations:

#### I. Bingo Regulations

1. The existing Bingo Regulations are renumbered and reorganized to follow the format currently used for the Board's Raffle Regulations and Charitable Gambling Other Than Raffles Regulations.

2. Section 1.01(i) clarifies the statutory section authorizing bingo.

3. Section 1.01(12) includes the definition of "instant bingo" contained in 28 Del.C. 1102(7).

4. Section 1.01(13) is a proposed definition of "cookie jar bingo" as that term is used in the recently passed statute 28 Del.C. § 1139(h)(1), 71 Del. Laws 444 (1998).

5. Section 1.02(2) reorganizes a previously adopted Board regulation on promotional giveaways.

6. Section 1.02(4) incorporates the license fee contained in 28 Del. C. §1133(a).

7. Section 1.03(1) incorporates the Board's duty to consider the geographical impact of new license applications under 28 Del.C. § II 3 2(a).

8. Section 1.03(2) specifies the factors to be considered by the Board prior to issuance of a license under 28 Del.C. § II 3 2(b).

9. Section 1.04(2) incorporates the time restrictions for bingo games contained in 28 Del.C. § 1139(a).

10. Sections 1.04 (6-7) are amended to comply with the recent statutory amendment to 28 Del.C. § 1139(h).

11. Section 1.04(20) provides the correct statutory reference for prize limits.

12. Section 1.04(24) incorporates the provisions for admission fees in 28 Del.C. § 1139(h)(1).

13. Section 1.04(25) requires persons assisting in games be active members of the organization as specified in 28 Del.C. § 1139(e).

14. Section 1.04(26) incorporates the restrictions on an organization's payment of expenses as specified in 28 Del.C. § 1139(f).

15. Section 1.06(1) is amended to clarify that license hearing procedures are governed by the Administrative Procedures Act.

16. Section 1.07 is a new regulation to provide a severability provision.

17. Sections 1.03(9) and 1.04(4) incorporate the restrictions on the holding of bingo events in a month contained in 28 Del. C. §113 9 (c).

18. Section 1.04(8) provides that no newly licensed bingo organization may allow its building to be used by other licensed organization as provided in 28 Del. C. § II 39(h)(5).

## II. Raffle Regulations

1. The existing Raffle Regulations are reorganized to incorporate all prior promulgated regulations into a single document,

2. Section 2.06(b) is a new regulation that incorporates the \$15 license fee contained in 28 Del.C. §1133(a).

3. Sections 2.06 (c-d) incorporates the factors to be reviewed by the Board in considering a new license application under 28 Del.C. §1132.

4. Sections 2.06 (e-f) set forth the restrictions on raffle applications and licenses contained in 28 Del.C. §1134.

5. Section 2.08 sets forth a formal procedure for the suspension and revocation of licenses which is modeled after the existing procedure for bingo licenses.

## III. Charitable Gambling Other Than Raffle Regulations

1. Section 3.01(8) is amended to contain the definition of "instant bingo" set forth in 28 Del.C. § 1102(7).

2. Section 3.08(1) is amended to specify the permitted time for commencement of charitable games under 28

Del.C. § 1139(a).

3. Sections 3.11 (b-c) are new regulations on license fees modeled after 28 Del.C. § 1133.

4. Section 3.11 (d-e) are new regulations that incorporate the factors to be considered by the Board in considering a new license application under 28 Del.C. §1132.

5. Sections 3.11 (f-g) are new regulations that set forth the restrictions on charitable gambling applications and license contained in 28 Del.C. 1134.

6. Section 3.13 sets forth a formal procedure for the suspension and revocation of license which is modeled after the existing procedure for bingo license.

---

## DELAWARE GAMING CONTROL BOARD REGULATIONS GOVERNING BINGO

### Section

1.01 Definitions

1.02 Applications for Bingo Licenses

1.03 Bingo Licenses

1.04 Conduct of Bingo

1.05 Reports After Games

1.06 Suspension & Revocation of Licenses

#### 1.01: Definitions

(1) "Bingo Statute." The statutory law concerning bingo, as contained in ~~Chapter 65, 51 laws of Delaware~~ (28 Delaware Code, Section 1101 et. seq.)

(2) "Bingo." A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers previously designated arrangement of numbers on such a card.

(3) "Equipment." The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

(4) "Proceeds." The gross income received from all activities engaged in or on occasion when bingo is played, less only such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

(5) "Occasion." A single gathering or session at which a series of successive bingo games (regular, special, or

otherwise) is played, not to exceed forty (40) in number.

(6) "Qualified Organization." A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

(7) "Board." The Delaware Gaming Control Board.

(8) "Districts." Those districts mentioned in Article II, §17A of the Delaware Constitution.

(9) "Member in Charge." A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

(10) "Game." The game of bingo.

(11) "Color Coded." A different color for each of the five letters of the word "BINGO."

(12) "Instant Bingo." A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

(13) "Cookie Jar Bingo." A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to entry into a later drawing for the total funds deposited by all other players in the cookie jar or container.

#### 1.02: Applications For Bingo License.

(1) Original applications shall be filed upon:

(i) the first application of an organization for a license;

(ii) after the first application and upon a subsequent change in the organization's charter or bylaws; or

(iii) in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.

(2) Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.

(3) All original applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion. All supplemental applications shall be filed fifteen (15) days prior to the first date of the occasion.

(4) No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.

(5) No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensees' records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

#### 1.03 Bingo Licenses

(1) Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

(2) The Board may issue a license only after it determines that:

(i) The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

(ii) The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

(iii) The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

(iv) The proceeds are to be disposed of as provided in the State Constitution and statutes.

(v) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.

If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

(3) The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

(4) If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

(5) In the event of a request for an amendment of a



license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

(6) No license shall be effective for a period of more than one year from the date it was issued.

(7) No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

(8) No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

(9) No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998).

#### 1.04: Conduct of Bingo.

(1) The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.

(2) The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.

(3) No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money.

No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

(4) No organization licensed prior to enactment of 71 Del. Law 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 Del. Laws 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998).

(5) The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.

~~(6) No license shall provide by contract or other arrangement transportation of patrons to the place where any game of bingo is played. The providing of such transportation by another to the knowledge of the licensee shall be presumed to be the act of the licensee and shall constitute a violation of these Rules and Regulations.~~

(7) No prize greater in an amount or value than \$250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event. Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations.

~~No licensee shall offer, distribute, or give any service or thing of value without charge, other than the prizes awarded in the conduct of a game of bingo.~~

(8) Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 Del. Laws 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.

(9) No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.

(10) All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

(11) All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.

(12) When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.

(13) The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.

(14) The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.

(15) No arrangement of numbers shall be required to be covered in order to win the game other than the following:

- a. One unspecified horizontal row;
- b. One unspecified vertical row;
- c. One unspecified full diagonal row;
- d. One unspecified row (horizontal, vertical, or diagonal);
- e. Two or more of the foregoing, forming a specified arrangement;
- f. The entire card;
- g. Four corners;
- h. Eight spaces surrounding the free space.

(16) Within the limits contained in 28 Del. C. §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.

(17) Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.

(18) No licensee shall conduct more than forty (40) games on a single occasion.

(19) In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.

(20) Within the limits contained in 28 Del. C. §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.

(21) The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

(22) Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.

(23) The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.

(24) A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

(25) No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.

(26) No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are

reasonably necessary for the conduct of the game.

#### 1.05: Reports After Games

(1) When no game is held on any date when a licensee is authorized to hold such game, a report to that effect shall nonetheless be filed with the Secretary of the Board.

(2) If a licensee fails to file a report within the time required or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to it and any existing license shall be suspended until such time as the default has been corrected.

#### 1.06 Suspension & Revocation of Licenses

(1) Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.

(2) When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.

(3) When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

(4) Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

#### 1.07 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

## REGULATIONS GOVERNING RAFFLES

### Section

- 2.01 Definitions
- 2.02 Disclosure
- 2.03 Obligations of the Sponsoring Organization
- 2.04 Record Keeping, Financial Control
- 2.05 Violations of Regulations
- 2.06 Application
- 2.07 Reports After the Drawing
- 2.08 Suspension & Revocation of Licenses
- 2.09 Severability

These regulations shall apply to any raffle conducted under 28 Del. C. §1130 in which the value of the prize or prizes to be awarded is \$5,000 or more or in which the ticket price is \$5.00 or more for a single drawing for prizes, or \$15.00 or more for a series of drawings for prizes occurring on a periodic schedule exceeding one month. These regulations are issued pursuant to the authority granted the Delaware Gaming Control Board in 28 Del. C. §1122(2).

#### 2.01: Definitions

(1) Prize. Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

(2) Sponsoring Organization. Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

#### (3) Related Party. Includes:

(a) An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

(b) A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

(c) A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

(4) Qualified Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

(a) Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

(b) Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

(c) Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

(d) Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

(e) Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

(5) Board. The Delaware Gaming Control Board.

(6) Raffle. A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

## 2.02: Disclosure

(1) In any raffle conducted pursuant to 28 Del. C. §1130, the sponsoring organization must disclose the following information on the raffle ticket itself:

- (a) A full and fair description of the prize;
- (b) The appraised value of the prize;
- (c) If there is a minimum number of tickets to be sold, what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
- (d) The drawing date for the raffle;
- (e) The exact nature of the charitable purpose for which the proceeds will be used.

## 2.03: Obligations of the Sponsoring Organization.

(1) If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within thirty days.

(2) No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. The sale of tickets alone shall not constitute the promotion and operation of a raffle for purposes of this section. Nothing in this section prohibits the award of a prize to a person for selling a winning ticket.

(3) The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchaser has a chance to be selected as the prize winner and that prize winner is selected in an entirely

random manner.

(4) In cases where the sponsoring organization purchases the prize from a third party, the Board may require that the sponsoring organization arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.

(5) If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.

(6) No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them unless all members of the public have an equal chance to receive bonus chances or books of chances when buying a certain number of chances or books of chances.

(7) The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purpose specified in their application under 28 Del. C. §1130.

## 2.04: Record Keeping, Financial Control.

(1) A record keeper shall be designated from among the members of the organization as defined in 2.01(4) and shall have been a member for a minimum of two (2) years prior to the commencement of the raffle. The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid-for and completed ticket stubs, and the maintenance of the records prescribed by this section during and after the completion or suspension of the raffle for a period of at least two years.

(2) The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold.

(3) The record keeper shall maintain and periodically update as the need arises, the following types of records:

(a) all documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;

(b) all permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;

(c) a list or access to a list of all persons authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle. If raffle tickets are given to one person to sell and this person recruits other

persons to help sell raffle tickets, the record keeper need only keep a list of those persons to whom the record keeper has directly distributed raffle tickets.

(d) a ledger book or other suitable record keeping device listing the number of tickets distributed, and the number of tickets returned as sold.

(e) the ticket stubs used to conduct the drawing for a period of not less than six months.

(4) Financial records shall be maintained by the record keeper sufficient to show:

(a) the current amount of proceeds received on account of the raffle;

(b) all expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

#### 2.05: Violations of Regulations.

Failure to comply with any of the Regulations shall subject the violator to suspension or revocation of any valid license issued under 28 Del. C. §1130 and criminal prosecution.

#### 2.06: Application.

(a) All applications for a license to conduct a raffle shall be submitted on Form BCC-2 at least six (6) weeks prior to the date of the function. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.

(b) There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.

(c) The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.

(d) The Board may issue a license only after it determines that:

(1) The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and

(2) The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral

turpitude; and

(3) The proceeds are to be disposed of as provided in the State Constitution and statutes; and

(4) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.

(e) No raffle license application shall be effective for a period of more than one year from the date it was issued.

(f) No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or 17B of the State Constitution.

#### 2.07: Reports After the Drawing.

Within fifteen (15) days of the date for awarding the prize as specified in the license application, the record keeper shall furnish in writing to the Board, the name and address of each person to whom a prize was awarded, the gross receipts derived from the selling of raffle tickets, and the total expenses incurred for the raffle.

#### 2.08 Suspension & Revocation of Licenses

(1) Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a raffle pending hearing, in which case the hearing must be held within five (5) days after such action.

(2) The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the raffle or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 Del. C. §10131.

(3) When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.

(4) When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

(5) Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any

other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

## 2.09: Severability.

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

## REGULATIONS GOVERNING CHARITABLE GAMBLING OTHER THAN RAFFLES

### Section

- 3.01 Definitions
- 3.02 Licensing
- 3.03 Conduct of Games
- 3.04 Limitation of Participation of Certain Persons
- 3.05 Equipment and Premises
- 3.06 Operation of Games
- 3.07 Prohibited Acts
- 3.08 Limitation of Functions
- 3.09 Record Keeping
- 3.10 Violation of Regulations
- 3.11 Application
- 3.12 Reports After Function
- 3.13 Suspension & Revocation of Licenses
- 3.14 Severability

### 3.01: Definitions

(1) Sponsoring Organization. Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

(2) Net Proceeds is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

(3) Function is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of games as defined in §3.01(7). This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

(4) Gross Receipts means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

(5) Board. The Delaware Gaming Control Board.

(6) Charitable Gambling. Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant

factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board's Regulations for Raffles.

(7) Game shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

(8) Instant bingo shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as "rip-offs" and "Nevada pull-tabs."

### 3.02: Licensing List Required To Be Kept: Membership List.

Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

### 3.03: Conduct of Games.

#### (1) Workers.

(a) Member in Charge. Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license.

(b) List of Workers. A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensees' records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

(c) Participation of Worker Restricted. No person shall assist in the conduct of a Function except a bona fide member of the Sponsoring Organization whose name appears on the lists required by §3.03(1)(b) of these Regulations.

(d) Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or

she:

(1) Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,

(2) Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,

(3) Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,

(4) Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,

(5) Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,

(6) Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,

(7) Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.

(e) Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.

(f) Officer Responsible for Gross Receipts. The Sponsoring Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person designated member-in-charge pursuant to §3.03(1)(a).

(g) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the

conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

#### 3.04: Limitation of Participation of Certain Persons.

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

#### 3.05: Equipment and Premises.

(1) Ownership of Equipment. The licensed Organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.

(2) Equipment. Equipment used in the conduct of a bazaar must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.

(3) The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

#### 3.06: Operation of Games.

(1) The maximum wager permitted on any game at any function shall be one dollar, except that a five dollar wager shall be permitted in the game of blackjack with doubling allowed and in other card games such as draw poker or stud poker, the maximum ante shall be one dollar and the maximum wager on any card for any draw shall be one dollar with three raises.

(2) House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with

these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.

(3) Monitoring of Poker Tables. An association which has obtained the proper license to conduct poker shall assign one monitor or dealer per table during the playing of poker.

### 3.07: Prohibited Acts.

(1) Wagering Among Participants Not Permitted. No Sponsoring Organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly administered by the Sponsoring Organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.

(2) Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring Organization except for the receipt of checks in the exact amount for any admission charge.

(3) Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.

(4) Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.

(5) Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

### 3.08: Limitation of Functions.

(1) No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours except as permitted by §3.08(2). Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time or time.

(2) When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

### 3.09: Record Keeping.

(1)(a) Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.

(b) Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring Organization required by subsection (a).

(c) Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.

(2) Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

### 3.10: Violations of Regulations.

Failure to comply with any of the Regulations shall be deemed a violation of 28 Del. C. chapter 11.

### 3.11: Application.

(a) All applications for a license to conduct a Function shall be submitted on Form BCC-3. The information supplied must include the name, address, and phone number of the Sponsoring Organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.

(b) There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.



(c) There shall be an annual license fee of \$300 for each organization sponsoring instant bingo games.

(d) The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.

(e) The Board may issue a license only after it determines that:

(1) The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and

(2) The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and

(3) The proceeds are to be disposed of as provided in the State Constitution and statutes; and

(4) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.

(f) No charitable gambling license shall be effective for a period of more than one year from the date it was issued.

(g) No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or 17B of the State Constitution.

### 3.12: Reports After the Function.

Within thirty (30) days of the last day of the Function, the member-in-charge shall submit a report to the Board stating the amount of Gross Receipts, the Net Proceeds and the list of expenses incurred. This report must indicate the specific charitable purposes for which the proceeds will be used.

### 3.13 Suspension & Revocation of Licenses

(1) Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.

(2) The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 Del. C.

§10131.

(3) When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.

(4) When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

(5) Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

### 3.14: Severability.

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

---

## **DEPARTMENT OF AGRICULTURE**

### **HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 Del.C. 10027)

The Delaware Harness Racing Commission is proposing regulations that are amendments to the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. § 10027.

The Commission proposes nineteen rule amendments which are summarized below:

1. Amend chapter 111, rule I-G-3 to clarify the Commission's powers to appoint officials in compliance with 3 Del.C. § 10007.

2. Amend chapter 111, rule XIV to replace the existing definition of Investigator and replace it with the definition of Investigator in 3 Del. C. § 10007(c).

3. Amend chapter 111, rule XV to add a definition for

the position of Administrator of Racing as specified in 3 Del. C. § 10007(e).

4. Amend chapter III by renumbering the sections to include the definition of Administrator of Racing.

5. Amend chapter 111, rule I-A to add Administrator of Racing to the list of Commission officials.

6. Amend chapter 11 by enacting a new section X to state the Commission's powers for regulating drug testing as specified in 3 Del. C. § 10029.

7. Amend chapter IV, rule 1-5 to add Delaware-owned or bred races as specified under 3 Del. C. § 10032 as permitted races.

8. Amend chapter VI, rule 11-B-1 to add Delaware-owned or bred conditions for races.

9. Amend chapter IV, to enact a new rule VI to define Delaware-owned or bred races as specified under 3 Del. C. § 10032.

10. Amend chapter VI, rule III-A- I to require the filing of a claiming authorization at the time of declaration.

11. Amend chapter VI, rule III-C- 1 7 to revise the procedures for the claiming of a horse that tests positive for an illegal substance or is ineligible.

12. Amend chapter VI, rule II-B-c to prohibit the racing of horses 15 years or older except in matinee races.

13. Amend chapter VI, rule II-A-5 to revise the procedure for selection of races in divisions.

14. Amend chapter VI, rule II-B-5 to clarify the conditions for non-winners and winners of over \$ 100.

15. Amend chapter X, rule II-1-2 to clarify the payment of court reporter costs by licensees filing appeals before the Commission.

16. Amend chapter III, rule 11-H-2-3 to revise the procedure for horses placed on the Stewards' List.

17. Amend chapter VII, rule I- (F) to revise the procedure for determination of preference dates.

18. Amend chapter VII, rule 11-13-9 to revise the conditions for number of horses in a field.

19. Amend chapter IV, rule 111-M to add a new rule for calculation of time allowance based on weather conditions.

The public may obtain copies of the proposed regulations from the Commission's Office, 2320 S. DuPont Highway, Dover, DE 19901, phone - (302) 739-481 1. The Commission will accept written public comments from October 1, 1998 to October 31, 1998. A public hearing will also be conducted at Harrington Raceway, Harrington, DE, on October 22, 1998 at 1:00 p.m.

1. AMEND chapter III, rule I-G-3 to now provide as follows:

G. Appointment

1. A person shall not be appointed to more than one

racing official position at a meeting unless specifically approved by the Commission. No person shall be appointed toorholdanysuchofficeorpositionwhoholdsanyofficialrelation to any person, association, or corporation engaged in or conducting harness racing within this State. No Commissioner, racing official, steward, or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission. All employees appointed under 3 Del. C. §10007(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.

2. The Commission shall appoint or approve the State Steward and judges at each harness race meeting. In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of steward must be certified by a national organization approved by the Commission. An applicant for the position of steward or race judge must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a harness racing meeting for a period of not less than forty-five days during three of the past five years, or have at least five years of experience as a licensed driver who has also served not less than one year as a licensed racing official at a harness racing meeting or have ten years of experience as a licensed harness racing trainer who has also served not less than one year as a licensed racing official at a harness racing meeting.

3. The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of 3 Del. C. chapter 100.

2. AMEND chapter III, rule XIV to replace the existing rule in its entirety and to now provide as follows:

#### XIV. INVESTIGATOR

(a) The Commission may appoint a racing inspector or investigator for each harness racing meet. Such racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. Such racing inspector shall have full and free access to the books, records, and papers pertaining to the pari-mutuel system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any harness racing meeting to which he shall be assigned for the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The racing inspector shall investigate whether such rules and

regulations promulgated by the Commission are being violated at such harness race track or enclosure by any licensee, patron, or other person. Upon discovering any such violation, the racing inspector shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The racing inspector shall devote his full time to the duties of his office and shall not hold any other position or employment, except for performance of similar duties for the Thoroughbred Racing Commission.

(b) Subject to the approval of the Commission, and under the direction of the Administrator of Racing, the Investigator may be delegated one or more of the following responsibilities:

1. Supervising the licensing function of the Commission, including performing background checks and fingerprinting applicants for licensure, and facilitating the Commission's participation in a uniform, multi-jurisdictional reciprocal licensing scheme;

2. Consulting with track security and with law enforcement agencies both within and outside of Delaware;

3. Supervising the human and equine drug-testing programs provided for in these Rules;

4. Conducting vehicle and stall searches;

5. Intelligence gathering and dissemination;

6. Responding to patron complaints regarding the integrity of racing; and

7. Where appropriate, presenting complaints to the Commission for disposition, including complaints seeking disciplinary action against licensees of the Commission.

3. AMEND chapter III by renumbering rule XV to provide as follows:

#### XV. ADMINISTRATOR OF RACING

The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. The Administrator of Racing shall devote his full time to the duties of the office and shall not hold any other office or employment, except that he can perform the same duties as Administrator of Racing for the Thoroughbred Racing Commission. The Administrator of Racing shall be the representative for the Commission at all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents, and papers entrusted to its care. He shall be the executive office of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The

Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the steward or racing judges.

4. AMEND chapter III by renumbering the former rule XV to now be rule XVI to now provide as follows:

#### XVI. ANY OTHER PERSON DESIGNATED BY THE COMMISSION

The Commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Section I of this chapter.

5. AMEND chapter III, rule I-A to now provide for a new subsection 16 and renumbering the existing subsection 16 to now be subsection 17 to provide as follows:

#### I. GENERAL PROVISIONS

##### A. Racing Officials

Officials at a race meeting may include the following, as determined by the Commission:

1. State Steward;
2. board of judges;
3. racing secretary;
4. paddock judge;
5. horse identifier and equipment checker;
6. clerk of the course;
7. official starter;
8. official charter;
9. official timer;
10. photo finish technician;
11. patrol judge;
12. program director;
13. State veterinarian;
14. lasix veterinarian;
15. investigator;
16. Administrator of Racing;
17. any other person designated by the

Commission.

6. AMEND chapter II, by enacting a new section designated as chapter II, rule X to provide as follows:

#### X. COMMISSION'S POWERS

The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health

of horses in races in which they are to participate. The Commission is also authorized to promulgate administrative regulations for the legal drug testing of licensees. The Commission is authorized to contract for the maintenance and operation of a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests for enforcement of the Commission's drug testing rules and regulations. The licensed persons or associations conducting thoroughbred racing shall reimburse the Commission for all costs of the drug testing programs established pursuant to this section. Increases in costs of the aforementioned testing program shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission may not unreasonably expand the drug testing program beyond the scope of the program in effect as of June 30, 1998. Any decision by the Commission to expand the scope of the drug testing program that occurs after an administrative hearing, at which the persons or associations licensed under 3 Del. C. §10121 consent to such expansion, shall not be deemed an unreasonable expansion for purposes of this section. The Commission, in addition to the penalties contained in 3 Del. C. §10125, may impose penalties on licensees who violate the drug testing regulations including imposition of fines or assessments for drug testing costs.

7. Amend chapter VI, to enact a new rule I-5 to provide as follows:

## I. TYPES OF RACES PERMITTED

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

1. Overnight events which include:
  - a) Conditioned races;
  - b) Claiming races;
  - c) Preferred, individual, handicap, open or free-for-all races;
  - d) Schooling races; and
  - e) Matinee races
2. Added money events which include:
  - a) Stakes;
  - b) Futurities;
  - c) Early closing events; and
  - d) Late closing events
3. Match races
4. Qualifying Races (See Chapter VII -- "Rules of the Race")
5. Delaware-owned or bred races as specified in 3 Del. C. §10032.

8. Amend chapter VI, rule II-B-1 to now provide as follows:

## B. Conditions

1. Conditions may be based only on:
  - a) horses' money winnings in a specified number of previous races or during a specified time;
  - b) horses' finishing positions in a specified number of previous races or during a specified period of time;
  - c) age;
  - d) sex;
  - e) number of starts during a specified period of time;
  - f) special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
  - g) the exclusion of schooling races;
  - h) Delaware-owned or bred races as specified in 3 Del. C. §10032; or
  - i) any one or more combinations of the qualifications herein listed.

9. Amend chapter VI, to enact a new rule VI to provide as follows:

## VI. DELAWARE OWNED OR BRED RACES.

(a) Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

(b) For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United State Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

(c) All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry,

all owners must meet the requirements for a Delaware resident specified below.

(d) The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

(i) Payment of the purchase price over time beyond the date of registration;

(ii) Payment of the purchase price through earnings beyond the date of registration;

(iii) Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

(iv) Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees;  
or

(v) Leasing a horse to a non-resident of Delaware.

(e) The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

(f) The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

(1) Where the person lives and has been living;

(2) The location of the person's sources of income;

(3) The address used by the person for payment of taxes, including federal, state and property taxes;

(4) The state in which the person's personal automobiles are registered;

(5) The state issuing the person's driver's license;

(6) The state in which the person is registered to vote;

(7) Ownership of property in Delaware or outside of Delaware;

(8) The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

(9) The residence claimed by a person on a loan application or other similar document;

(10) Membership in civic, community, and other

organizations in Delaware and elsewhere.

None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

(g) Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

(h) If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

(i) After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

(j) If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it

shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

(k) Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

(l) Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or her licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may not participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

(m) Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 Del. C. §10144.

10. AMEND chapter VI, rule III-A-1 to now provide as follows:

### III. CLAIMING RACES

#### A. General Provisions

1. No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary ~~at least one hour prior to post time of its race~~ prior to declaration. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who

shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

11. AMEND chapter VI, rule III-C-17 to now provide as follows:

17. The judges, ~~at the option of the claimant,~~ shall rule a claim invalid:

a) ~~at the option of the claimant~~ if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

b) if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

12. AMEND chapter VI, rule II-B-c to now provide as follows:

#### B. Conditions

1. Conditions may be based only on:

a) horses' money winnings in a specified number of previous races or during a specified previous time;

b) horses' finishing positions in a specified number of previous races or during a specified period of time;

c) age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

13. AMEND chapter VI, rule II-A-5 to now provide as follows:

## II. OVERNIGHT EVENTS

### A. General Provisions

5. Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

a) No such divisions shall be used in the place of regularly scheduled races which fill.

b) Where races are divided in order to fill a program, starters for each division ~~must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex~~ may be determined by the racing secretary.

e) ~~However, where necessary to fill a card, not more than one race per day may be divided into not more than two divisions after preference has been applied. The~~

~~divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be lot unless the conditions provide for a division based on performance, earnings or sex.~~

14. AMEND chapter VI, rule II-B-5 to now provide as follows:

B. Conditions

5. For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100 \$301 or Winners over \$1,001. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded.

15. AMEND chapter X, rule II-I-2 to now provide as follows:

I. Appeals

2. An appeal under this section must be filed with the State Steward not later than 48 hours after the ruling. The appeal must be accompanied by a deposit in the amount of \$250, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's attendance together with a check or money order payable to a court reporter designated by the Commission in an amount charged for the reporter's attendance at and recording of the hearing before the Commission on the appeal. Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant. In no event shall the advance payment of the court reporter's fee be refunded.

16. AMEND chapter III, rule II-H-2-3 to now provide as follows:

H. Steward's List

2. A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations ~~and/or entries on said~~ the horse shall be refused, but the owner or trainer shall be notified in writing of such action and the reason as set forth above shall clearly be stated on the notice. ~~The owner or trainer shall be notified of such action and the reason shall be clearly stated.~~ When any horse is placed on the Steward's

List, the Clerk of the Course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the Steward's List, the reason therefore, and the date of removal if the horse has been removed.

3. All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and ~~may not be removed~~ can not race for ~~seven (7)~~ five (5) days from the date of the ~~race from which they were scratched~~ race. ~~No entries will be accepted on these horses until the seven day period has expired.~~ Entries will be accepted during this five (5) day period for a race to be contested after the fifth day.

Veterinarians may put a horse on the Stewards' List for sickness or lameness for more than five (5) days if necessary. In that instance, the horse may not race until the proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

17. AMEND chapter VII, rule I-(F) to now provide as follows:

F. Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

1. The date of the horse's last previous start in a purse race ~~during the current year~~ is its preference date with the following exceptions:

a) The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

b) When a horse is racing for the first time ~~after February 1 in the current year ever~~, the date of its ~~the~~ first declaration into a purse race shall be considered its preference date.

c) Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by lot.

18. AMEND chapter VII, rule II-B-9 to now provide as follows:

II. OVERNIGHT EVENTS

B. Conditions

9. In overnight events at extended pari-mutuel meetings and Grand Circuit meetings, not more than eight horses shall be allowed to start on a half-mile track and not more than ten horses on larger tracks ~~one trailer shall be permitted, regardless of the size of the track except with the~~

~~approval of the Commission. At least eight feet per horse must be provided the starters in the front tier. Trailers are not permitted where the track has room to score all horses abreast, allowing eight feet per horse.~~

19. Amend chapter IV, rule III-M to add a new rule to now provide as follows:

### III. FACILITIES AND EQUIPMENT

#### M. Weather Equipment

1. An association shall place a wind gauge and thermometer in an area outside the paddock to be used to determine an appropriate weather allowance. The Presiding Judge shall consult at least one member of the driver's committee by the third race to determine an allowance. The following guidelines shall be used in making this determination:

#### Temperature or Windchill

32 degrees - 25 degrees(F) = 1 second allowance

24 degrees - 15 degrees(F) = 2 second allowance

14 degrees - 0 degrees(F) = 3 second allowance

Other relevant factors such as precipitation shall also be considered.

---

## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** 122(d))

EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)

### MULTICULTURAL EDUCATION REGULATIONS

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education to amend the regulations Policy for Multicultural Education, L.3.a., b., and c., pages A-35 to A-37 in the Handbook for K-12 Education. The existing regulations focused on the local school district as the entity to assure that Multicultural Education issues were addressed. The amended regulations place the focus on the school building as well as the district, include a definition of Multicultural Education and require the identification of disparities and gaps in achievement among different groups of students.

The amended regulations have also combined and clarified the previous requirements. Items 1-6, 10 and 11, remain essentially the same, items 7, 8, 9, 12, and 13 have been removed because the focus is no longer on a separate multicultural program but on an infusion of the multicultural education requirements into the Consolidated Grant Planning Process and Quality Review Process.

#### C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations address issues of diversity which may effect student achievement indirectly.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations do address those issues that help insure that all students receive an equitable education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations do not address health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations, although not specifically about students' legal rights, do address diversity issues.

5. Will amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations do not place any additional reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state



educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The regulations are being amended to reflect the needs of the Consolidated Grant process for state and federal funds.

10. What is the cost to the state and to the local school boards of compliance with the regulation?

There is no additional cost associated with these amendments.

### 3. POLICY FOR MULTICULTURAL EDUCATION

#### a. Philosophy

~~The State Board of Education is committed to a statewide educational environment that supports educational excellence regardless of race, gender, national origin, handicapping conditions or religion. Equitable academic programs and services which respond to the needs of a diverse student population and which prepare all students for a changing workplace and pluralistic society are essential.~~

#### b. Local District Responsibility

~~All districts have an obligation to incorporate, as part of their overall educational program, the following essential elements of a comprehensive, multicultural educational program.~~

~~(1) Multicultural information infused into the K-12 curriculum should equip all students with the knowledge and skills necessary to participate productively in a multiracial/multiethnic society.~~

~~(2) Creation of an atmosphere which recognizes, accepts and promotes cultural, racial and ethnic diversity and respects and values differences as a positive integral resource of a democratic society.~~

~~(3) Student counseling, assessment, discipline and placement that is culturally appropriate.~~

~~(4) The facilitation of the full participation and success of Limited English Proficient Students.~~

~~(5) Employment of a variety of instructional strategies and related techniques appropriate for diverse learners.~~

~~(6) Staff training to address multicultural awareness and related concerns.~~

~~(7) Involvement of administrators, teachers, counselors, parents, business and community members of diverse backgrounds to serve as resources and role models.~~

~~(8) Establishment of a district-wide multicultural education advisory committee to include parents, social~~

~~workers, teachers, administrators, students, counselors, human relations specialists, community members and agency representatives. This committee should be representative of the diversity within the district and society at large.~~

~~(9) Identification of an individual at the district level and in each building to coordinate the K-12 multicultural education program.~~

~~(10) Means to attract and retain a diverse faculty, staff and student body in all curricular and co-curricular offerings.~~

~~(11) Measures to avoid and address inequitable/prejudicial behaviors among employees and students.~~

~~(12) Development of a multicultural education needs assessment and methods to evaluate the effectiveness of the total multicultural education effort.~~

~~(13) Local school districts are required to submit the names of the district-wide multicultural education advisory committee members and the names of the district and school level program coordinators, to the Improvement and Assistance Branch of the Department of Public Instruction in the fall of each school year.~~

#### e. Department of Public Instruction Responsibility

~~It is the responsibility of the Department of Public Instruction to provide technical assistance by training staff, assisting districts to incorporate multicultural education elements into their programs and helping districts to assess the impact of the program.~~

~~(State Board Approved September 1990)~~

### Multicultural Education Regulations

#### 1. Definition:

a. Education that is Multicultural recognizes, accepts, values, affirms and promotes individual diversity in a pluralistic setting. Further, the term "multicultural" embraces and accepts the interdependence of the many cultural groups within our country and the world at large: racial, ethnic, regional, religious, and socio-economic groups, as well as men and women, the young and the old, and persons with disabilities.

#### 2. Each school district shall:

a. Infuse multicultural information throughout the K-12 curriculum in order to equip students with the knowledge and skills necessary to participate productively in a culturally diverse society.

b. Provide professional development to equip all teachers with various instructional techniques and best practices for effectively meeting the needs of diverse learners.

c. Describe in district and school plans how disparities and gaps in student achievement associated with the student's gender, race, ethnicity, socioeconomic status,

Limited English Proficiency, or disability will be identified and eliminated.

d. Provide student counseling, assessment, discipline and placement that is culturally appropriate.

e. Ensure full participation and success of Limited English Proficient Students.

f. Describe a strategy to attract and retain a highly skilled and committed faculty and staff reflective of the diversity in the school community.

g. Enact measures to avoid and address inequitable and prejudicial behaviors among employees and students.

h. Describe specific ways principals and building staff create an atmosphere which recognizes, accepts and values diversity as a positive, integral resource of a democratic society.

## POLICY FOR ESTABLISHING A SCHOOL DISTRICT PLANNING PROCESS

### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulation, Policy for Establishing a School District Planning Process, L.9.a., b. and c. on pages A-41 and A-42 in the Handbook for K-12 Education. The regulation, established ten years ago, mandated that every school district develop a five year strategic plan and submit it to the Department of Education for approval and then submit progress reports to the Department for review thereafter. The existing regulation also required that the local district's strategic plan include a list of defined components. The amended regulation would still require that the districts maintain a multi-year strategic planning process but would not specify the components of the process, or the number of years and would not require pre-approval and review by the Department of Education.

### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation addresses planning issues which can effect the districts' ability to monitor student progress.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses planning issues, not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses planning issues, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation addresses planning issues, not legal rights issues.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation preserves and increases the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation reduces the reporting and administrative requirements at the local board and school level.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The amendment is necessary to modify the requirements of the original regulation.

10. What is the cost to the state and to the local school boards of compliance with the regulation?

There will be no additional cost to the state and local boards for compliance with the amended regulation.

### ~~L.9. POLICY FOR ESTABLISHING A SCHOOL DISTRICT PLANNING PROCESS~~

a. Preface

The State Board of Education believes that systematic planning processes must be installed in each school district so that the districts can efficiently and effectively improve and accommodate change. Change is confronting public education from all quarters: demographic, economic, sociological, political, technological, environmental and educational. School policy makers must understand the changing context in which they find themselves and respond from an informed and reasoned position.

As part of its leadership role the State Board of Education, through a planning process, has developed long range goals to guide public education. The Board desires that each district complement this action by developing and installing a planning process that considers the forces of change, builds consensus in the district and focuses resources on attaining both the state and local goals. Further, the Board believes that through an articulated state and local planning partnership, with commonly held goals, public education in Delaware will be positioned to confront change in a proactive manner. Therefore, the following policy is proposed:

b. Policy

Each school district shall develop a strategic planning process for guiding the district for a period of five years. The district planning process shall be submitted to the Department of Public Instruction for State Board of Education approval by August, 1991.

Once approved, the planning process will be implemented during the 1992-1993 school year. The initial district five year plan will be used to guide budgeting for the 1994-1995 school year. Through annual updates the district shall maintain a current five year plan. Progress reports based on the plan shall be submitted to the State Board for review.

e. Strategic Planning Process

The strategic planning process, as a minimum, must include the following components:

Strategies for:-

- (1) Developing wide community involvement and consensus building in the school district
- (2) Developing a mission statement for the district
- (3) Documenting the district's history, strengths and shortcomings
- (4) Recognizing the unique aspects and/or limitations of the school district
- (5) Addressing the national and state goals for education
- (6) Developing five year goals for the district
- (7) Translating the district goals into action at the school level
- (8) Budgeting the plan
- (9) Developing accountability procedures and indicators of progress

(10) Updating the plan annually  
(State Board Approved September 1990)

Strategic Planning Regulation

Each school district shall maintain a multi-year strategic planning process to serve as the foundation for all other required plans and grant applications and for the purpose of assuring and monitoring continuous program improvement and student achievement.

**\*PLEASE NOTE: The Department of Education proposed to repeal the above regulation in the August 1998 issue of the Register (2:2 Del. R. 166). The Department of Education has instead decided to amend the regulation.**

---

**PROHIBITION OF DISCRIMINATION**

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the consent of the State Board of Education to amend the regulation Prohibition of Discrimination, C.1., Page A-3, in the Handbook for K-12 Education. The regulation remains essentially the same and the amendments are designed simply to update the language.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation addresses discrimination issues, not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses discrimination as to program access and will help contribute to an equitable educational experience for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses discrimination issues, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation assures equal access to educational programs which is part of ensuring that students'

legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school level.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The regulation must be in place and the amendments only serve to bring the language of the regulation up to date.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost associated with the amended regulation.

### **C. DISCRIMINATION**

#### **1. PROHIBITION OF DISCRIMINATION**

~~The following assurance of compliance with Title 19 of the Delaware Code and the "Rules and Regulations" of the State Board of Education was approved in October 1972. This assurance is applicable to all public education programs.~~

"No person in the State of Delaware, shall, on ground the basis of race, color, creed, national origin, handicapping condition, disability, or sex gender, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving approval ~~and/or~~ financial assistance from or through the Delaware State Board of Education and the Delaware Department of Education."

**\* PLEASE NOTE: THE ABOVE REGULATORY CHANGES WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS MONTHLY MEETING ON THURSDAY, OCTOBER 15, 1998.**

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 **Del.C.** 512)

The Delaware Health and Social Services, Division of Social Services, is proposing to change policy governing the Child Care and First Step programs to the Division of Social Services' Manual Sections 11000 and 12000. The policy changes arise from the Personal Responsibility and Work Opportunity Act, the new Child Care and Development Block Grant and *A Better Chance* provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 30, 1998.

#### SUMMARY OF PROPOSED REVISIONS:

- Eliminates AFDC and Transitional Child Care references in DSS Child Care policy.
- Eliminates entirely DSS policy Section 12000 known as First Step AFDC. DSS First Step AFDC policy was the DSS version of the JOBS program for Delaware.

#### NATURE OF PROPOSED REVISIONS:

DSSM Section 12000.

#### ~~12001 PURPOSE AND DEFINITIONS~~

~~This section provides the purpose of the Job Opportunities and Basic Skills Training (JOBS) program and defines the mission of the First Step program. A list of programmatic terms and definitions are also provided.~~

#### ~~12001.1 PURPOSE~~

~~The Purpose of the First Step AFDC program under Titles IV A and IV F of the Social Security Act is to ensure~~

that needy families with children obtain the education, training and employment that will help avoid long term welfare dependence. To accomplish this purpose, the First Step AFDC program is intended to:

A. encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

B. provide participants with the opportunity to acquire the education and skills necessary to qualify for employment;

C. provide necessary supportive services, including transitional child care and medical assistance, so that participants can participate in First Step AFDC and accept employment;

D. promote coordination of services at all levels of government in order to make a wide range of services available, especially for participants at risk of long term welfare dependency, and to maximize the use of existing resources; and

E. emphasize accountability for both participants and service providers.

The First Step Employment and Training Program, operated by the Department of Health and Social Services, Division of Social Services (DHSS, DSS), is available to AFDC and Food Stamp families. The program is designed to help these families obtain education, training, and employment necessary to become self-sufficient. The program offers a variety of services from vocational assessment to basic academic and life skills development. DSS offers this program to mandated, targeted families, and volunteers.

Services are provided by DSS and by other entities charged with providing educational, training, and employment services. First Step Employment and Training Program Case Managers work with the participant in establishing employment goals based on participant interests and abilities and assessment results.

The information contained in the First Step Employment and Training Policy Handbook is intended to complement the information contained in the DSS Public Assistance Manual Sections 3004 - 3004.8 and is a compilation of the policies, goals and objectives approved in Delaware's First Step AFDC and Supportive Services State Plans.

#### ~~12001.2 PROGRAMMATIC TERMS AND DEFINITIONS~~ 212001.2 PROGRAMMATIC TERMS AND DEFINITIONS

The First Step Employment and Training program has a long list of commonly used terms and definitions. Below is a list of these commonly used terms. Please note that the definition of many terms provides important policy information.

~~A. ABE - Adult Basic Education.~~

~~B. AFDC - Aid to Families with Dependent Children - A state / federal funded financial assistance program for families and their dependent children.~~

~~C. AFDC-UP - Aid to Families with Dependent Children - Unemployed Parents.~~

~~D. Basic Literacy Level - The basic literacy level in Delaware is 8.9 as determined by an appropriate assessment.~~

~~E. CDL - Commercial Drivers License~~

~~F. Component - An allowable activity under First Step AFDC.~~

~~G. Custodial Parent - A parent who lives with a child.~~

~~H. CWEP - Community Work Experience Program.~~

~~I. DCIS - Delaware Client Information System.~~

~~J. DHHS - Department of Health and Human Services (federal).~~

~~K. DHSS - Department of Health and Social Services.~~

~~L. DOL - Department of Labor.~~

~~M. DPI - Department of Public Instruction.~~

~~N. DPIC - Delaware Private Industry Council.~~

~~O. DSS - Division of Social Services.~~

~~P. EDP - Employability Development Plan - A comprehensive document addressing the range of needs of the participant, supportive services and First Step activities required to enable the recipient to move from welfare to work. The EDP outlines specific goals for the participant.~~

~~Q. Enhanced Federal Funding - Greater federal funding than 50/50 percentage. In the First Step AFDC Program, enhanced federal funding is not received by the State unless certain participation rates are met.~~

~~R. E & T - Employment and Training.~~

~~S. E & T MIS - Employment and Training Management Information System.~~

~~T. Exempt - Not required to participate in First Step as a condition of continuing eligibility.~~

~~U. FSA - Family Support Act.~~

~~V. FY - Fiscal Year: The Delaware State Fiscal Year is July 1 through June 30; the federal Fiscal Year is October 1 through September 30.~~

~~W. GED - General Equivalency Diploma.~~

~~X. JAS - JOBS Automated System which in Delaware is called the Employment and Training MIS system.~~

~~Y. JOBS - Federal JOB Opportunities and Basic Skills Training program, Title II of the Family Support Act of 1988; otherwise known as First Step in Delaware.~~

~~Z. JOB Training Partnership Act (JTPA) - Federally authorized legislation which provides job training and employment service for economically disadvantaged adults, youth, dislocated workers and others. The goal of this Act is to move the jobless into permanent, unsubsidized, self-sustaining employment.~~

~~AA. KEVAS - Key Educational Vocational Assessment System - Delaware's assessment instrument.~~

~~AB. Make Good Progress and Making Satisfactory~~

**Progress**—A participant in an education or training activity who is meeting a consistent standard of progress developed by the institution and approved by the agency.

**AC. Mandatory/Nonexempt**—An AFDC recipient who, as a condition of continuing eligibility for assistance, is required to participate in First Step.

**AD. MCI**—Master Client Index.

**AE. OJT**—On The Job Training.

**AF. OSHA**—Office of Safety and Health Administration.

**AG. Private Industry Council (PIC)**—Representatives of the public and private (PIC) sector appointed to plan job training and employment service programs at the Service Delivery Area (SDA).

**AH. Sanction**—Excluding a non-exempt or mandatory participation from the AFDC grant for failure to participate in First Step without good cause.

**AI. Target Group**—A group of individuals targeted for participation and service in the First Step—AFDC program. Target groups are identified below:

A. An individual receiving AFDC for any 36 of the previous 60 months.

B. A custodial parent under 24 years of age who has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction.

C. A custodial parent under 24 who had little or no work experience in the past year.

D. A member of a family in which the youngest child is within two years of being ineligible for AFDC because of age.

**AJ. VR**—Vocational Rehabilitation.

**AK. Volunteer**—An AFDC recipient who chooses to participate in First Step.

## 12002 ADMINISTRATION

This section describes the entities responsible for the administration of First Step—AFDC, and those agencies that coordinate activities with First Step—AFDC.

### 12002.1 ADMINISTRATION OF FIRST STEP—AFDC

The State agency responsible for the administration or supervision of the State First Step—AFDC plan is responsible for the administration or supervision of the First Step—AFDC program. In Delaware, First Step—AFDC is administered by DSS.

### 12002.2 COORDINATION AND CONSULTATION

DSS is required to ensure coordination of First Step—AFDC Program services, including Child Care and Supportive Services, with related services provided by other agencies. DSS is also required to ensure that the goals of First Step are in concert with the goals of the Governor's State Job Training Plan.

At a minimum the Division must coordinate with the following:

A. Department of Labor,

B. JOB Training Partnership Act (JTPA),

C. Department of Public Instruction,

D. Department of Children, Youth and Their Families,

E. Department of Public Housing, and

F. Private Industry Council.

Federal regulations require use of existing services such as current JTPA programs in order to avoid duplicating employment and training services. Additionally, the establishment of interagency agreements is necessary to assure coordination of employment and training services.

Interagency agreements have been established with the Department of Labor, the Delaware Private Industry Council, the Department of Public Instruction, the Division of Alcoholism, Drug Abuse and Mental Health.

## 12002.3 CONTRACTING AUTHORITY

DSS carries out the First Step—AFDC Program directly or through arrangements or under contracts with JTPA, State and local education agencies, other public agencies or private organizations, including community-based organizations.

## 12003 RESPONSIBILITIES

Responsibility for administration of the First Step Program lies with the Central Office, First Step Offices, and Contract Agencies.

### 12003.1 CENTRAL OFFICE

First Step Employment and Training Programs Central Office staff's responsibilities include, but are not limited to, the following:

A. establishing program goals and objectives;

B. producing federal reports;

C. providing training for First Step staff;

D. developing and distributing First Step policy, procedures, brochures, and forms; and

E. providing guidance and direction to First Step staff.

### 12003.2 FIRST STEP OFFICES

First Step staff responsibilities include, but are not limited to, the following:

A. providing participants with information about First Step Program rights and responsibilities, available activities, and supportive services;

B. assessing program participants using the Key Education Vocational Assessment System (KEVAS);

C. establishing an Employability Development Plan (EDP) with each participant and revising it when necessary;

D. documenting the EDP on the E&T MIS system, obtaining the participant's signature, and providing a copy to the participant;

E. determining good cause for failure to participate using conciliatory methods and, when necessary, applying a sanction according to established regulations;

F. providing sufficient referrals to contracted and inter-agency agreement providers;

G. maintaining current information on the Employment and Training Management Information System (E&T MIS);

H. coordinating and collaborating with Division, Department, community-based providers, and others; and

I. completing follow-up activities.

#### 12003.3 FIRST STEP CONTRACT AGENCIES

Contract Agencies' responsibilities include, but are not limited to, the following:

A. processing referrals from First Step Case Managers;

B. using assessment results to develop a Personal Achievement Target for each participant;

C. providing basic skills and self-directed job search training;

D. referring participants to other training providers to meet their employment and educational needs;

E. coordinating and collaborating with Division, Department, community-based providers, and others;

F. notifying First Step of changes, progress, and non-compliance;

G. completing agency required reports;

H. documenting the E & T MIS system;

I. maintaining current information on the E & T MIS; and

J. completing follow-up activities.

#### 12004 PARTICIPANT REQUIREMENTS, EXEMPTIONS, AND SANCTIONS

This section discusses requirements for participation in the First Step - AFDC program, exempt individuals, individual exemptions granted on a case by case basis, exemption verification requirements, volunteers, participant requirements for education and unemployed parents, priority for service, and sanctions.

#### 12004.1 PROGRAM PARTICIPATION

Individuals participate in the First Step - AFDC program because they are mandatory (required to participate) or because they volunteer.

##### 12004.1.1 Exempt Individuals

All AFDC recipients are required to participate in First Step - AFDC unless they meet one of the following conditions:

**NOTE:** these are **program** exemptions used to exempt an individual from participation at either the financial eligibility or the First Step - AFDC Case Manager level.

A. All persons under age 16.

B. Children who are:

1. 16 or 17; and

2. not a minor parent; and

3. attending an elementary, secondary, or vocational or technical school full time.

C. Minor parents who are 16 or 17 years old and:

1. have successfully completed a high school education (or its equivalent), and

2. are attending vocational or technical school full time.

Minor parents who are still in high school are mandatory First Step - AFDC participants.

**NOTE:** Look at two factors for parents age 16 or 17. Is the parent a **high school graduate?** If the parent is not a high school graduate, the parent is a mandatory First Step - AFDC participant. If the parent is a high school graduate, look at whether the parent is attending school full time. If the parent is a high school graduate and not attending school full time, the parent is a mandatory First Step - AFDC participant.

**EXAMPLE 1:** A 16 year old has a two (2) month old baby. The minor parent has not graduated from high school or its equivalent. The minor parent is a mandatory First Step - AFDC participant.

**EXAMPLE 2:** A 16 year old has a two (2) month old baby. The minor parent has not graduated from high school or its equivalent and is attending school full time. The minor parent is a mandatory First Step - AFDC participant.

**EXAMPLE 3:** A 16 year old has a two (2) month old baby. The minor parent has graduated from high school or its equivalent and is no longer attending school. The minor parent is a mandatory First Step - AFDC participant.

**EXAMPLE 4:** A 16 year old has a two (2) month old baby. This minor parent has graduated from high school or its equivalent and is attending school full time. This minor parent is exempt from participating in First Step - AFDC.

D. Parents who are 18 or 19, and:

1. have successfully completed a high school education (or its equivalent), and

2. are personally providing care for their child under age three (3) with absences from the child that average no more than 29 hours per week. Examples of such absences include, but are not limited to, working part time, attending school part time, and participating in community projects. Children under age three (3) may be absent from the home to attend pre-school or Head Start or be absent for any other allowable reason, and the caretaker remains exempt from participation;

**NOTE:** Look at two (2) factors for parents age 18 or 19. Is the parent a **high school graduate?** If the parent is not a high school graduate, the parent is a mandatory First

Step—AFDC participant. If the parent is a high school graduate, consider the age of the youngest child. If the parent is a high school graduate and the youngest child is age three, the parent is a mandatory First Step—AFDC participant.

**NOTE:** When an participant graduates high school, evaluate for volunteer or exemption status.

**EXAMPLE 1:** An 18 year old has a two (2) month old baby. The parent has not graduated from high school or its equivalent. The parent is a mandatory First Step—AFDC participant.

**EXAMPLE 2:** An 18 year old's youngest child is age three (3). The parent has graduated from high school or its equivalent. The parent is a mandatory First Step—AFDC participant.

**EXAMPLE 3:** An 18 year old has a two (2) month old baby. The parent graduated from high school or its equivalent. The parent is exempt.

**EXAMPLE 4:** A 20 year old has a two (2) month old baby. The parent has not graduated from high school or its equivalent. The parent is exempt.

E. Parents, age 20 or over, or other caretaker relatives of children under age three (3) who are personally providing care for the child, with absences from the child that average no more than 29 hours per week. Examples of such absences include, but are not limited to, working part time, attending school part time, and participating in community projects. Children under age three (3) may be absent from the home to attend pre-school or Head Start or be absent for any other allowable reason, and the caretaker remains exempt from participation.

F. A person who is ill or incapacitated as determined by medical evidence and the illness and/or injury or incapacity is serious enough to prevent participation in First Step—AFDC activities.

**PROCEDURE 1:** Ill or incapacitated persons must be referred to the Division of Vocational Rehabilitation (VR) by the Financial Services Worker, if the estimated duration of the incapacity stated on the Medical Certification (Form 184) is twelve (12) months or more, or indefinite. If the First Step—AFDC worker discovers the illness or incapacity, use the Medical Certification to verify this. Forward a copy of the Medical Certification to the Financial Services Worker with a request to make a VR referral if appropriate. Refer the participant(s) using Referral to Vocational Rehabilitation (Form 220), unless they have been referred from another source such as a physician, the Social Security Administration, or self-referral. Document such referral in the record. If the estimated duration of the incapacity is less than twelve (12) months, do not refer the participant(s) to VR.

**PROCEDURE 2:** Review with the Financial Services Worker the status of incapacity at each

redetermination and no later than the end of the period of stated incapacity. Set a review date on the E & T MIS Worklist for no later than the stated period of incapacity. If the period is **indefinite**, set the review date at the end of six months. When incapacity ends, the individual **must** be referred to First Step—AFDC for participation.

G. A Person who is sixty (60) years of age or older.

H. Persons whose presence in the home is required because of the illness or incapacity of another member of the household. (This exemption requires a physician's verification.)

I. Persons working 30 hours per week and earning the federal minimum wage.

J. Pregnant women beginning in the third (3rd) month of pregnancy.

K. A full-time volunteer serving under the Volunteers In Service to America (VISTA) Program, pursuant to Title I of the Domestic Volunteer Service Act of 1973.

**NOTE 1:** A **full-time** college student is **not** exempt from First Step—AFDC participation, even if the student attends school less than 29 hours per week.

**NOTE 2:** For cross reference purposes see DSS policy manual section DSSM 3004.

#### 12004.1.2 Individual Exemptions

In addition to program exemptions, certain individual exemptions can be granted on a case by case basis.

The following are allowable individual exemptions in the First Step—AFDC Program that prevent participation in the program:

- A. lack of adequate child care;
- B. health related problems;
- C. court required appearances;
- D. inadequate transportation;
- E. inclement weather that prevents travel;
- F. a household emergency, meaning a major disruption to normal household functioning, such as fire, household accident, breakdown of heating system, and so forth;
- G. the participant is in treatment (such as drug, alcohol or other counseling) and is unable to focus on participation; and
- H. the participant is experiencing a significant family crisis that prevents participation at the present time.

#### 12004.1.3 Verification Requirements for Exemptions

Verify participation exemptions as follows:

A. Employment = Employment letter; employment subsequent to referral is verified by the Financial Services Worker and/or First Step—AFDC staff

B. Illness/Incapacity = Medical Certification Form #184



C. Persons needed in the home to care for another ill or incapacitated family member = Medical Certification Form #184

D. Pregnancy = Medical Certification Form #184

E. Absences by a caretaker of a child under age three = Dependent upon nature of absence, i.e., employment, education, hospitalization

F. Completion of High School = High School Diploma, GED certificate, letter from school

#### 12004.1.4 Volunteers

Any recipient of AFDC who is exempt may volunteer to participate in the First Step AFDC Program. Give priority for participation in the program to volunteers as available resources permit.

#### 12004.2 PARTICIPANT REQUIREMENTS FOR EDUCATION

Delaware has not elected to excuse custodial parents under age 18 who have not successfully completed high school or its equivalent from participation in educational activities. A custodial parent is defined as the parent who lives with the child. Custodial parents under age 20 who have not completed high school or its equivalent and are not exempt from participation are required to participate in educational activities as described in the First Step AFDC Components Section 12005.6.

##### 12004.2.1 Custodial Parents Age 18 or 19

If an 18 or 19 year old custodial parent is not making satisfactory progress in attaining a high school diploma or its equivalent as supported by school records, seek alternate placement in training or work activities, subject to the 20 hour limit.

##### 12004.2.2 Custodial Parents Age 20 and Over

The assessment results which includes educational performance data combined with the participant's employment goals determines the appropriateness of educational placement. In such cases where an educational activity is inappropriate, vocational skills training is the primary option.

#### 12004.3 PARTICIPANT REQUIREMENTS UNEMPLOYED PARENTS (AFDC-UP)

As a part of the Family Support Act of 1988, a requirement was passed for states to implement a work program for AFDC-UP families effective October 1, 1993. The basic requirement is that states have a percentage of their AFDC-UP caseload in certain work activities for at least 16 hours per week. Failure to meet this participation requirement results in loss of enhanced federal funding for the First Step AFDC Program. AFDC-UP recipients in the First Step AFDC Program age 25 or older must be actually

working or participate in a work-related activity such as CWEP, or a combination of both, in order for those activities to count towards the participation rate.

The participation rate requirements for the AFDC-UP work program for FY 1994 through 1998 are:

A. 40 percent average for each month in fiscal year 1994;

B. 50 percent average for each month in fiscal year 1995;

C. 60 percent average for each month in fiscal year 1996, and

D. 75 percent average for each month in fiscal years 1997 and 1998.

To meet this requirement, First Step AFDC requires all non-exempt AFDC-UP recipients to **participate** for a total of 16 hours per week. Activities that count towards the AFDC-UP work requirement are:

A. participation in a Community Work Experience Program, if the individual participates for the maximum number of hours in any month;

B. parents under age 25 who have not completed high school or an equivalent course of education; based on the Assessment and Employability Development Plan, DSS may require the individual to participate in an educational activity that leads to obtaining a high school diploma or GED;

C. unsubsidized employment (private or public employer that does not receive a DSS stipend or subsidy) that equals or exceeds an average of 16 hours per week in a month; and

D. unsubsidized employment (see C. above) plus work activities (CWEP) in any combination that equals or exceeds an average of 16 hours per week in a month.

Count actual hours of participation, not scheduled hours, in determining if a participant meets the 16-hour requirement.

**NOTE:** See CWEP Component in Section 12006.3 for a detailed description of the maximum computation.

#### 12004.4 PRIORITY FOR SERVICE

First Step AFDC Program resources may not allow everyone to participate. As a result, participants are assigned to an activity by a First Step AFDC Case Manager in the following priority order:

A. sanctioned participants seeking to cure their sanction;

B. young parents 16-19 who are members of a federal target group as resources/slots are available through the Multiple Alternatives (MAP) and Reflections Programs [Mandatory (M) or Voluntary (V)];

C. non-parents teens 16-18 who are not enrolled in a school or training program, as resources/slots are available;

D. parents 20 or older who are members of a federal target group (Mandatory or Voluntary);

E. at least one parent in an AFDC-Unemployed

family; and

F. all other individuals required to participate and not in a federal target group.

#### 12004.4.1 Federal Target Groups

Groups of individuals have been identified by federal regulations as targeted for First Step AFDC services. Target group status is different from the determination of mandatory or voluntary participation status. Not all target group members are required to participate. Target groups are identified below:

A. An individual receiving AFDC for any 36 of the previous 60 months.

B. A custodial parent under 24 years of age who has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction.

C. A custodial parent under 24 who had little or no work experience in the past year.

D. A member of a family in which the youngest child is within two years of being ineligible for AFDC because of age.

The Financial Services Worker identifies target group status and codes this information into the Delaware Client Information System. This information is transmitted to First Step AFDC staff upon referral to the program. The First Step AFDC Case Manager assumes responsibility for reviewing, updating, and correcting the target group status.

The target group is directly related to funding. Enhanced federal funding will be reduced to 50 percent in any fiscal year in which Delaware spends less than 55 percent of the First Step AFDC expenditures on target population participants.

#### 12004.5 SANCTIONS

Sanctions are penalties imposed on mandatory (non-exempt) First Step AFDC participants who fail without good cause to participate. When an AFDC recipient who is a mandatory participant in the First Step AFDC Program has been found to have failed or refused without good cause to participate in the program, the participant is sanctioned.

##### 12004.5.1 Good Cause

The participant may have legitimate reasons for not cooperating with First Step AFDC activities. A participant has "good cause" when a circumstance or condition in her personal or family situation becomes a barrier to active participation in First Step AFDC activities. The barrier may not appear at the participant's initial meeting with First Step AFDC.

Failure to participate without good cause is determined by the First Step AFDC Case Manager. Good cause for refusal to accept employment exists when:

A. The participant is the parent or other relative

personally providing care for a child under age three (3) and employment would require such participant to work more than 30 hours per week.

B. Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to accept employment and such care is not available and DSS fails to provide such care.

C. The employment would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income, and cash assistance.

**EXAMPLE:** Ms. X is offered a job approximately 1 1/2 hours drive away from home. The hours of the job require her to work until midnight. She will not get home until 1:30 a.m. Her daycare cost for her four year old child is very high to compensate for providing care until 1:30 a.m. After calculating her reduced AFDC check, it is determined that travel costs and extra day care costs will cause Ms. X to have less cash after paying these expenses than if she did not work and continued receiving a full AFDC check.

In addition to the good cause criteria previously described, the following are additional examples of good cause for failure to participate or accept employment. (Good cause is not limited to those identified below. Seek supervisory approval for other circumstances):

D. Illness of another household member requiring the presence of the participant.

E. Court required appearance.

F. Unavailability of transportation.

G. Inclement weather which prevents travel.

H. Household emergency, e.g. major disruption to normal household functioning — fire, household accident, breakdown of heating system, etc.

I. Participant is in treatment (e.g. drug, alcohol or other counseling) and is unable to focus on participation.

J. Participant is experiencing a significant family crisis (e.g. child in need of either physical or emotional help, transient lifestyle causes an unstable housing situation, or current family dysfunction caused by breakdown in family structure) which prevents participation at present time.

##### 12004.5.2 Sanction Penalties

Once sanctioned, the sanctioned individual's needs are not taken into account in determining the family's need for assistance. The income, without disregards and resources of the sanctioned individual, is considered available to the assistance unit. In addition, as long as the AFDC case of the sanctioned individual remains open, the sanctioned individual is ineligible for child care services until the sanction is cured.

When the sanctioned individual is the only dependent

child in the home, the child is considered a dependent child for the purpose of determining eligibility for the family. The parent/caretaker remains technically eligible for assistance. For the first occurrence of failure or refusal to participate without good cause, the individual is sanctioned until the failure to comply ceases. For the second occurrence of failure or refusal to participate without good cause, the individual is sanctioned for three (3) payment months or until the failure to comply ceases, whichever is longer. For the third and subsequent occurrences of failure or refusal to participate without good cause, the individual is sanctioned for six (6) payment months or until the failure to comply ceases, whichever is longer.

12004.5.3 Sanction Procedures

Sanction procedures include the conciliation process, the process for ending a sanction, and fair hearing requirements.

12004.5.3.1 Conciliation

The conciliation process gives the worker an opportunity to explain further First Step AFDC requirements and the recipients rights and responsibilities. It also provides an opportunity for the participant to explain his/her situation. A decision to sanction must be made within 30 days. Record the date and the summary of the conciliation conference in the participant's First Step AFDC record.

Take the following steps as part of the conciliation process:-

**A. STEP 1:** The conciliation process begins the day following the date the Case Manager learns of the non-compliance. This begins the 30 day time period. The 30 days are calendar days, not work days. Use this date to set the time by which the sanction notice must be issued. This can be:

1. the day after a participant misses the initial or subsequent interview with the Case Manager;
2. the day after a contractor notifies the Case Manager that the participant missed an interview or a component session, or the day after the Case Manager learns that the participant failed to complete the number of job search contacts.

**EXAMPLE:** A participant misses an initial screening interview with the Case Manager on September 10. The next day, September 11, begins the conciliation process. The Case Manager has until October 9 to issue a sanction. This is the last day the worker can do the sanction in DCIS and have the notice issued before the end of the thirty day period, which would be October 10.

**NOTE:** When a sanction is performed in DCIS, the actual notice is not mailed until the next day. On a weekend or before a holiday, notices are not mailed until the following Monday or the day after the holiday. Take this

factor into account when determining the time in which to issue the notice.—

**B. STEP 2:** Within five days of learning of the non-compliance, send the participant notification which:

1. notifies the non-compliant participant of the potential loss of benefits, including child care, if applicable;
2. informs the non-compliant participant to call the Case Manager if there is good reason for not complying;
3. informs the non-compliant participant of the requirements of the First Step AFDC program; and
4. informs the non-compliant participant what must be done and by when to avoid a sanction.—

**EXAMPLE:** By September 15, the Case Manager sends the participant who missed the September 10 screening interview a copy of letter A. This letter instructs the participant to contact the Case Manager no later than September 25.—

**C. STEP 3:** Determine good cause. If the non-complying participant contacts the Case Manager with a good reason for not complying, determine if this reason meets good cause conditions. The good cause determination leads to either:

1. a finding of good cause, in which case reschedule the activity, or
2. a finding that good cause does not exist, in which case inform the participant of what must be done to comply, such as appearing for an interview with the First Step AFDC Case Manager or rescheduling an activity with a contractor and making sure the participant attends that activity.

**D. STEP 4:** Give the non-complying participant a definite date by which compliance is to take place. Set this date 10 to 15 working days from the date the original notice was sent. In addition, inform the non-complying participant of the actions necessary to achieve compliance and what specifically must be done to avoid the sanction. The action must be a verifiable act of compliance, such as attending a job search activity. Verbal commitments by the household member are not sufficient, unless the member is prevented from complying by circumstances beyond the control of the household member.

**EXAMPLE:** Continuing the example above, by September 25 the participant contacts the Case Manager. The Case Manager then informs the participant that he/she must appear for another scheduled screening interview on October 2. If the participant does not keep this interview, the worker must issue a sanction.—

**E. STEP 5:** If the participant does not respond to the original letter or does not perform a verifiable act of compliance, issue a sanction no later than the last day of the 30 day conciliation period. If it is evident that the participant will not comply, such as the participant refuses to comply and does not have good cause for doing so, issue the sanction earlier than the last day of the 30 day conciliation period.—

**F. STEP 6:** Inform the Financial Services Worker of the sanction through a work listing message through the Letter Generation E&T MIS function. Inform the Child Care Worker to deny child care benefits.

#### 12004.5.3.2 Ending A Sanction

Participants who have been First Step AFDC sanctioned must reapply at the end of the sanction period and participate in First Step AFDC before they can be added to the assistance unit, and have payment for child care services re-instituted.

When the participant successfully participates in First Step AFDC, the sanction is considered ended as of the day she/he agreed to participate for the first sanction, or the sanction period ends for the second sanction and any sanction thereafter, whichever is later. In all instances, the participant must agree to participate before reapplying. For the purpose of determining that an participant's failure to comply has ceased, First Step AFDC may require the individual to participate in the activity to which she/he was previously assigned or an activity designed to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual is eligible for child care and support services which First Step AFDC determines necessary for participation.

The Case Manager has thirty (30) days to determine whether the individual is participating.

**EXAMPLE 1:** Ms. X began her second sanction on August 1. Ms. X reapplies for AFDC on November 1. She brings all necessary verifications to the November 1 interview and states she is willing to participate in First Step AFDC. On November 18 the Case Manager notifies the Financial Services Worker that Ms. X is added to the AFDC grant effective November 1.

**EXAMPLE 2:** Ms. X began her second sanction on August 1. She states she is willing to participate in First Step AFDC on August 15. On August 20 the Case Manager notifies the Financial Services Worker that Ms. X is participating in First Step AFDC. Ms. X cannot be added to the AFDC grant until November 1, the end of the three month sanction period.

Procedures for ending a sanction are as follows:

A. The Financial Services Worker sends a reminder at the end of three (3) months to any participant who has been sanctioned. The reminder states that the participant has the option:

1. to end the sanction by participating in First Step AFDC if this is the first or second sanction, or
2. to end the sanction at the end of six (6) months if this is the third or subsequent sanction.

B. The Financial Services Worker will inform the Case manager via a DCIS worklist item of the participant's willingness to participate.

C. Within thirty (30) days, give a worklist to the Financial Services Worker indicating whether the participant is participating.

D. The Financial Services Worker will change a sanctioned individual's participation's status according to the following rules:

1. 1st Sanction: if the participant agrees to cooperate or the individual becomes exempt.
2. 2nd and Subsequent Sanction: upon expiration of the minimum sanction period.

#### 12004.5.3.3 Becoming Exempt During a Sanction

Eligibility may be re-established during the first sanction period and benefits authorized if the sanctioned participant becomes **exempt**. For second and subsequent sanctions, the minimum sanction period must expire prior to exemption. Exemption in this situation means a participant is no longer mandatory for First Step AFDC but is still an AFDC recipient.

**EXAMPLE 1:** Ms. X begins her second sanction on February 1. She will be sanctioned from July 1 through April 30. On February 20 the Eligibility Services Worker receives confirmation that Ms. X is five months pregnant. Even though Ms. X has a valid exemption status, her lost benefits will not be restored until May 1. She is First Step AFDC exempt on May 1.

**EXAMPLE 2:** Using Example 1 above, if Ms. X begins her third sanction on February 1, her sanction period will end on July 31. Even though it is verified that she is five months pregnant on February 20, Ms. X is not considered First Step AFDC exempt until August 1.

#### 12004.5.3.4 Fair Hearings

If the non-compliance dispute is not resolved through conciliation efforts, provide the participant with an opportunity for a fair hearing. The fair hearing process follows the established process described in Section 5000 of the DSS policy manual.

### 12005 OPERATION OF FIRST STEP AFDC PROGRAM/ COMPONENTS

This section discusses providing information to participants, case management, the Assessment, the Employability Development Plan, the Agency Participation Agreement, and First Step AFDC components.

#### 12005.1 PROVIDING INFORMATION TO PARTICIPANTS

The Financial Services Worker refers all mandatory and voluntary participants by correctly coding the DCIS document. Exempt status of participants is monitored at and between redetermination periods by the Financial Services Worker. Those no longer exempt are referred to the program. AFDC recipients who must participate are

informed of the penalties for failure to participate (Refer to DSSM 3004.5).

#### 12005.2 CASE MANAGEMENT

The DSS case management effort encompasses an integrated systems approach to the delivery of client services. Such an approach assures that all actual providers of service, including the Financial Services Worker, the First Step — AFDC Case Manager, the contractor, and other service providers, are working toward the same ultimate client goal of promoting participant strengths in order to achieve self-sufficiency. There is a central logic to the continuum of services provided by each unit within the system.

In addition to traditional case management and the integrated systems approach, DSS also employs a competency-based approach to case management. This approach entails identifying participant strengths, eliminating participant self-doubts and building on participant strengths through the creation of a series of action steps designed to work the participant toward the successful process of achieving self-sufficiency.

Once the participant moves toward participation in the First Step — AFDC program, Case Managers build on the competency-based philosophy to foster the development of an employability plan. Utilizing an holistic approach, the Case Manager conducts activities that include:

- A. in-depth Assessment;
- B. Employability Development Plan;
- C. Agency Participation Agreement;
- D. child care approval;
- E. referral to employability development and other services that are needed to ensure effective participation in a program;
- F. follow-up monitoring;
- G. conciliation, and
- H. sanctioning as necessary.

Building on the competency based approach, Case Managers use available contractors to provide specific participant services. Contractors also use the competency based approach to enable the participant to achieve the employability goal.

#### 12005.3 ASSESSMENT

Assessment is the initial activity for volunteer or non-exempt participant in the First Step — AFDC program. The instrument used for assessment is the Key Education Vocational Assessment System (KEVAS). The KEVAS session is approximately 2 1/2 - 3 hours in duration and is conducted in three phases: a structured interview, "machine work" on a personal testing station, and more traditional paper and pencil activities. The assessment measures psychophysical functioning, work-related competencies and social and motivational functioning.

Within a reasonable time period prior to participation, make an initial assessment of employability based on:

- A. the individual's educational, child care, and other supportive services needs;
- B. the individual's proficiencies, skills deficiencies, and prior work experience;
- C. a review of family circumstances, which may include the needs of any child of the individual; and
- D. other factors that are relevant in developing the employability plan.

Review assessment results with the participant and assign appropriate component activities.

#### 12005.4 EMPLOYABILITY DEVELOPMENT PLAN

Complete the Employability Development Plan (EDP) prior to referring the participant to any component activity. Do not consider the EDP a contract. It is a written document signed and agreed upon by both the participant and the Case Manager. It is a plan used to guide the participant toward an established employment goal. Give every consideration to the participant's interests and aspirations in completing the EDP. However, the final approval rests with the Case Manager.

The completion of the EDP establishes the participant's employment goal and identifies the steps to be taken by the participant and the Case Manager to accomplish this goal. The EDP outlines the immediate and short-term goals which may be accomplished within a twelve-month period. The overall employment goal may require a greater length of time.

When completing the EDP, to the maximum extent possible, give consideration to:

- A. the participant's goals and interests;
- B. the participant's skill levels and aptitudes;
- C. available program resources;
- D. local employment opportunities; and
- E. the participant's supportive services needs.

During this process, identify and discuss the participant's needs for supportive services and make plans with the participant to obtain/provide the services within available resources. Together with the participant, identify any barriers that may preclude the participant from attaining employment goals and what the participant and Case Manager must do to overcome the barriers. Revise the EDP when necessary to meet the changing needs of the participant throughout the twelve-month period.

**NOTE:** If a participant is already enrolled in an educational or training activity prior to assignment to a First Step — AFDC component, initiate an EDP and evaluate the activity to determine if it is consistent with the participant's employment goal and meets the requirements for self-initiated activity.

#### 12005.5 AGENCY PARTICIPATION AGREEMENT

Following the initial assessment and development of the Employability Plan, all participants are required to enter into an Agency Participation Agreement. This agreement indicates at a minimum:

- A. the purpose of the agreement;
- B. the participant's obligations under the program;
- C. the length of participation in the program, including the number of hours of participation per week, and
- D. educational, training, and employment activities and the supportive services, including child care, to be provided by DSS during the period of participation.

#### ~~12005.6 COMPONENTS~~

The Delaware First Step AFDC program includes both the following required activities as well as those activities the State elects to offer.

##### ~~12005.6.1 Mandatory Components~~

The following are mandatory First Step AFDC components:

~~A. Educational Activities Below the Post-Secondary Level:~~

~~1. Basic Life Skills Enrichment:~~ A contracted activity designed to provide participants with the academic and life management skills necessary to overcome significant barriers to both controlling their life and finding employment, e.g., proper interviewing techniques, resume construction, and appropriate work behavior techniques.

~~2. Adult Basic Education (ABE) or Remedial Education:~~ Adult basic education or remedial education that will provide a participant with a basic literacy level, which is defined as 8.9 (8.9 is typically viewed as an individual's reading level).

~~3. High School Diploma/General Equivalency Diploma (GED):~~ The placement of adults in programs to provide them with a high school diploma or a general equivalency diploma.

~~4. English as a Second Language:~~ Training for participants whose English proficiency acts as a barrier to gainful employment.

~~B. Job Skills Training:~~ This includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area. Vocational Skills Training includes the placement of participants in JTPA and other vocational training programs.

~~C. Job Readiness:~~ Those activities which prepare participants for work by teaching general workplace expectations, work behavior and attitudes necessary to compete successfully in the labor market.

~~D. Job Development / Placement:~~ The active job search by DSS/contracted agencies to prospective employers who can create or modify a position to fit the skills of the participant. This component involves the marketing of participants and securing job interviews for participants.

##### ~~12005.6.2 Optional Components~~

The following are optional First Step AFDC component activities the State elects to offer participants:

~~A. Job Search:~~ A participant is limited to the job search component to eight (8) consecutive weeks (or its equivalent) in any period of 12 consecutive months. This component is comprised of both individual and group job search activities.

~~1. Independent Job Search:~~ includes provision of counseling, job seeking skills training, information dissemination, and support on a one-to-one basis.

~~2. Group Job Search:~~ includes the same provisions as independent job search but is completed in a group setting. Participants may participate in a job search component not in excess of 8 weeks in any period of 12 consecutive months.

~~B. On-The-Job Training:~~ The placement of participants in a specific job in a workplace setting for a designated period of time in order for the participant to master the skills required of that job. Placements are made through a referral to a job training agency. (such as Department of Labor).

~~C. Community Work Experience (CWEP):~~ The placement of participants in unsalaried, focused, work-related environments in order to expose the participant to the daily routine of work. Participants are placed in assignments that serve only a useful public purpose in fields such as: health, social service, environment protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety and daycare.

Objectives of CWEP are to enable a participant:

- ~~1. with no relevant employment for their chosen employment goal to obtain actual experience;~~
- ~~2. with unsatisfactory or no employment history to develop job-keeping skills;~~
- ~~3. to obtain an exploratory experience before skills training;~~
- ~~4. with no employment skills to obtain, develop, and enhance learned skills prior to entering intensified job search/skill activities; and~~
- ~~5. to enable parents in an AFDC-UP case to meet the work requirement.~~

A participant cannot be **required** to participate in CWEP for more than nine (9) months during any continuous period of AFDC eligibility. Continuous eligibility means there is no break of at least one month in which the participant was ineligible to receive AFDC benefits. A participant may volunteer for CWEP beyond the ninth month for an additional six months. During this voluntary participation period the participant must be involved in intensified job search a minimum of one (1) day per week.

~~1. Coordinate between contractors, First Step AFDC Case Managers, and public and private organization to ensure job placement is a priority.~~

2. Take into account the recipient's prior training experience and skills to make appropriate assignments, as well as the participant's physical capacity, family responsibilities, place of residence, and the participant's employment goal.

3. Job Placement can take place at any point during the CWEP component.

4. Provide information to the participant regarding the worksite sponsor's expectations, worksite rules, hours of operation, and so forth, prior to assignment. If the participant indicates an inability to comply with the requirements of the work sponsor, explore placement with a different sponsor.

5. Do ~~not~~ assign participants to worksites that require that they travel for unreasonable distances from their homes or remain away from their homes overnight without their consent. Unreasonable is defined as two hours per day, unless commuting standards are greater.

6. Monitor each participant's progress on a monthly basis.

7. Each participant's progress and EDP must be re-evaluated during the sixth month of work experience and at the end of each work experience assignment.

8. Make a worksite visit at least once per quarter or as often as necessary to ensure that the sponsor is abiding by the terms of the agreement.

The maximum number of hours that a participant may be required to work or undergo training (or both) in CWEP is the number of hours which result from dividing the family's monthly grant amount by the greater of the federal or the applicable State minimum wage. Exclude Child Support above the \$50 pass-through amount in determining the maximum number of hours.

In situations where more than one individual in the assistance unit is required to register for First Step - AFDC and CWEP is an appropriate component, the total number of hours of work experience that can be required of both participants cannot exceed the hours as determined by the formula above.

**EXAMPLE 1:** A family of 3 is receiving an AFDC grant of \$ 338.00. The State minimum wage is \$ 4.25. Since the State and federal minimum wages are equal, \$4.25 is used to determine the maximum number of hours of participation. If the minimum wages were different, the greater of the two would be used.

$\$338.00$  (Monthly AFDC grant) divided by  $\$4.25$  (Applicable Minimum Wage) equals 79.5, which is rounded to 80 Monthly Participation Hours.

**EXAMPLE 2:** A family of 3 is receiving an AFDC grant of \$338. You determine that the participant receives \$ 70 child support. (\$ 50 is received by the participant and \$ 20 is received by the State).

$\$338$  (Monthly AFDC grant) minus  $\$20$  (Support) equals \$318.

$\$318$  divided by  $\$4.25$  (Applicable Minimum Wage) equals 74.8, which is rounded to 75 Monthly Participation Hours.

If a participant agrees to participate in CWEP more than the required hours, obtain a signed participation waiver indicating this has been agreed to by the participant.

Participants who agree to sign the waiver cannot be sanctioned beyond the maximum hours of participation.

**EXAMPLE 3:** A participant's required number of hours is 16 and agrees to participate 20 hours. This participant cannot be sanctioned for only working 16 hours.

**D. Self-Initiated Education or Training:** Allows a participant to attend training or educational programs on their own initiative, as long as the education or training is consistent with the Employability Development Plan, it can reasonably lead to employment, and does not involve the pursuit of a second college degree.

Participants may wish to enroll or already be enrolled in educational and/or training activities at the time of referral to the First Step - AFDC program. When this occurs, complete an EDP and evaluate the education and/or training activity to determine its relevance to the participant's employment goal. A participant's self-initiated activity may be approved under the following conditions:

1. the participant demonstrates the pre-requisite skills through either the KEVAS assessment or assessments completed by recognized organizations such as DPI and JTPA programs sponsored by DPIC; and

2. the participant is attending at least half-time as defined by the institution; and

3. the participant is making satisfactory progress in such institution, school, or course; and

4. the course of study is consistent with the participant's employment goal included in the EDP; and

5. the course of study provides a reasonable opportunity for the participant to obtain employment in the particular field; and

6. when considering approval of a self-initiated education program, the participant is only placed in post-secondary schools that are accredited; training institutions are considered either on the basis of their accreditation status or the reputation of the institution.

**NOTE:** Pursuance of a graduate degree or other advanced degrees are not allowable First Step - AFDC activities. Participants who already have a 4 year degree and who are unemployed must participate in a job search activity. In the instance where job search is not successful, vocational training is an option. However, vocational training must be in a specific skill area and it cannot lead to a participant obtaining another 4 year degree. The cost of such education is not a reimbursable expense under First Step - AFDC.

E. Post-Secondary Education

1. The participant must demonstrate the pre-

requisite skills to be eligible for enrollment in appropriate post secondary education programs as indicated through the KEVAS assessment tool or assessments completed by recognized organizations such as Department of Public Instruction (DPI) and JTPA programs sponsored by the Delaware Private Industry Council (DPIC):

2. The participant must pursue a certificate, diploma, associate, or bachelor's degree with support of the Case Manager. The Case Manager must substantiate the participant's skill level.

3. All post secondary education approved for the participant must be related to the goal of obtaining useful employment in a recognized occupation.

4. Participants are only placed in post secondary schools that are accredited, such as accredited colleges or universities.

**NOTE:** The cost of such education is not a reimbursable expense under First Step AFDC.

**F. Part-Time Employment:** This activity is used when a participant combines part-time employment with another allowable First Step AFDC component in order to meet the 20-hour participation requirement. Enroll participants in both components on the E & T MIS system.

Count the hours of a participant who is concurrently participating in an approved First Step AFDC activity or component and working in unsubsidized employment as follows:

1. For any month in which an participant both participates in a First Step AFDC activity and is employed, count the scheduled hours of component activity and the hours of employment.

2. The number of hours of employment that may be counted can be no greater than the otherwise countable hours of the First Step AFDC activity.

**EXAMPLE:** A participant scheduled to attend school 10 hours per week and working 15 hours per week is considered a First Step AFDC participant for 20 hours per week (10 of school and 10 of work).

3. A participant must have **satisfactorily participated** in the scheduled First Step AFDC component or activity in order for the hours of employment to be counted in any month.

4. Count the hours of participation in unsubsidized employment based on scheduled hours of work.

5. Job Entry (Part-Time): There are times when a participant is only working part-time and is not participating in any other component activity. This activity can be counted toward the 20-hour participation rate for the actual number of hours of work in the month of entry and the following month, if the participant participated in First Step AFDC or received job development and placement services in the month of entry or the prior month.

**PROCEDURE:** When participation is considered

job entry (part-time), and the participant subsequently becomes enrolled in another allowable First Step AFDC component that can be combined to achieve the 20-hour standard, do the following:

a. close the Job Entry component utilizing completion codes 1 through 9, and

b. enroll the participant in both the part-time employment component and the other approvable First Step AFDC component.

#### 12006 SUPPORTIVE SERVICES

This section discusses supportive services for the First Step AFDC program, including child care, fees related to education and employment, CWEP payments, accessories for work or training, and remedial medical costs. First Step AFDC pays support services based on the actual cost of services. The limit is imposed when the cost exceeds the maximum allowed. Participants are not automatically entitled to the maximum cost. Support services are paid or reimbursed to the participant based on the verified actual amount and the participant's need.

##### 12006.1 CHILD CARE

The State IV-A agency must guarantee child care for a dependent child who is: under 13, 13 or older who is physically or mentally handicapped or under court order requiring adult supervision, and for a child who would be a dependent child except for the receipt of benefits under SSI or foster care payments to the extent that such child care is necessary to permit an AFDC eligible family member to:

A. accept employment or remain employed; or

B. participate in an approved education or training activity under First Step AFDC (including self-initiated education or training).

Payment may be made or continued when the participant is waiting for entry into employment on an approved education training, or First Step AFDC components for:

A. up to two weeks; or

B. up to 30 days if it is verified that the child care arrangement would be lost if payment is not made or continued.

**NOTE:** Refer to the Child Care Subsidy Manual 11000 for further information.

##### 12006.2 FEES

Fees include purchase of either certificates, licenses or testing needed for education or to obtain employment, such as Commercial Divers License (CDL) or license for nursing assistants, and GED test fees.

A. Basis For Determining Need: Evaluate each education testing or licensing request on an individual basis. Give consideration for jobs where such licenses are necessary for employment or to obtain such employment.



Education testing includes GED test fees.

B. ~~Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual for licensing and/or testing per occurrence as determined by need.~~

#### ~~12006.3 CWEP PAYMENTS~~

~~CWEP payments include reimbursement to the participant or vendor payment to the provider for the following costs: purchase of lunch, personal grooming aids, clothing, and transportation.~~

~~CWEP payments include reimbursement for purchase of lunch, as well as needed personal grooming aids, in order to enhance participation in CWEP. In addition, payments can be made to help CWEP participants purchase clothes for wear at their community placement sites.~~

~~CWEP activity involves real job situations in a general office environment. For this reason, it is important for participants to look and dress appropriately. Looking and dressing well also adds to feelings of self-worth and can lead to a positive attitude toward work. Payments for lunches, grooming aids and clothing help to support CWEP participants in the performance of their CWEP activities and creates a beneficial atmosphere for CWEP participation.~~

~~CWEP payments may also include transportation expenses. These costs are paid above and beyond the lunch and grooming payments.~~

~~A. Basis for Determining Need: A participant's ability to afford this expense.~~

~~B. Monetary Limit of Service / Expense:~~

~~1. Verified actual cost up to \$4.00 per day per participant up to \$92.00 per month as determined by need, for lunch and grooming aids. Need is determined by actual attendance at the CWEP site. Verify attendance by receipt of the attendance sheet completed by the CWEP agency and signed by the participant.~~

~~2. Verified actual cost up to \$150.00 per participant as determined by need, for clothing voucher. This service may be paid one time only.~~

~~3. Provide bus tokens to cover the expense of public transportation and to reimburse for participant mileage at \$.20 per mile for participants not served by public transportation. The transportation limitation is \$200 per month, per individual.~~

~~**PROCEDURE:** CWEP Check Stop Payments: Use the following procedures to place a stop-payment on a CWEP check that is reported by a participant as lost, stolen, or not received at least five days after the mailing date:~~

~~A. Have the participant sign the Affidavit of Forgery and Request for Replacement of Lost Check or ATP (Form 124) indicating that the CWEP check was not received, or was lost or stolen.~~

~~B. Complete the Stop Payment or Rescind Payment (Form 230) requesting a stop payment on the CWEP check.~~

~~C. Forward Form 230 and Form 124 to the Division of~~

~~Management Services.~~

~~D. Division of Management Services will mail a replacement check to the recipient four working days after the receipt of the affidavit.~~

#### ~~12006.3.1 CWEP Over Payments~~

~~When it is determined that a participant receiving CWEP supportive services was actually ineligible for the service and thus an over-payment took place, forward all pertinent information to the Welfare Fraud Unit. Complete a Notice of Overpayment (Form 940).~~

~~**NOTE:** Refer to DSSM 7001, 7003 to 7009 for procedures in such cases.~~

#### ~~12006.4 ACCESSORIES FOR WORK OR TRAINING~~

~~These services include purchase of either safety equipment, uniforms, shoes, or tools required to participate in training or work.~~

~~A. Basis for Determining Need: Evaluate each request on an individual basis. Give consideration for jobs where such safety equipment or tools are required by Office of Safety and Health Administration (OSHA) regulations.~~

~~B. Monetary Limit of Service / Expense: Verified actual cost up to \$100.00 per individual, per month as determined by need.~~

#### ~~12006.5 REMEDIAL MEDICAL~~

~~A. Physical Exam~~

~~1. Basis for Determining Need: When a participant is required to undergo a physical exam to participate in training or accept employment and such exam is not available through a public health facility or covered by Medicaid.~~

~~2. Monetary Limit of Service / Expense: Verified actual cost up to \$100.00 per individual, per month as determined by need.~~

~~B. Dental Services~~

~~1. Basis for Determining Need: When a participant's dental condition poses a significant barrier to employment.~~

~~2. Monetary Limit of Service / Expense: Verified actual cost up to \$400.00 per individual, per month as determined by need.~~

~~C. Eye exams and eyeglasses~~

~~1. Basis for Determining Need: When the Assessment indicates the individual's vision is impaired, or when the individual indicates difficulty in seeing, or when the individual needs glasses to continue in a component or job.~~

~~2. Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.~~

~~D. Transportation~~

~~Provide bus tokens to cover expense of public~~

transportation and to reimburse for participant mileage at \$.20 / mile for participants not served by public transportation.

1. Basis for determining need: Participant must live at least 10 blocks from services provided.

2. Monetary limit of Service / Expense: Verified actual cost up to \$200.00 monthly per individual, as determined by need.

#### 12007 FUNDING

The Federal JOBS Program is a capped entitlement program which has an annual allocation established in law. In order to maximize the total level of federal resources, the following State policy on target group expenditures has been established:

A. At least 55% percent of all First Step AFDC funds must be spent on target group participants. In any fiscal year, if a state fails to spend 55% of its First Step AFDC funds on members of a state's target population, federal matching rates for all expenditures will be reduced to 50 percent.

B. Federal regulations require that federal funds not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis.

#### 12007.1 MATCHING RATES / COST CATEGORIES

The Family Support Act (FSA) creates two different types of matching rates: 60/40 and 50/50. The law requires that expenditures at all levels be tracked in accordance with the matching rates.

#### 12007.2 PARTICIPATION RATES

The need to document and track attendance of First Step AFDC participants is based on several sections of the JOBS regulations. The key regulation states that expenditures normally matched on a 60/40 basis (six federal dollars for every four state dollars) and expenditures matched on a 90/10 basis (nine federal dollars provided for every state dollar) will be matched at a 50/50 rate if the state's participation rate for the preceding fiscal year (October - September) does not meet specified percentages.

The FSA set monthly participation rates for State JOBS Programs, beginning at 7% in FY 1990, and going up to 20% by FY 1995.

The computation of a state's participation rate requires a complex methodology that involves attendance records. To calculate a state's participation rate, the state must be able to determine the number of participants who:

A. had sufficient number of hours of education or training scheduled for an average participation of twenty hours a week through the month. For example, a state may average a participant scheduled with 15 hours and a participant scheduled with 25 hours as two participants averaging 20 hours a week. But a state may not treat four

individuals participating 15 hours a week as the equivalent of three 20 hour participants. Rather, if the state only has four people participating for 15 hours a week, the state has 0 participants, since there is no group of persons averaging 20 hours a week.

B. attended at least 75% of scheduled hours of their activities through the month.

**EXAMPLE:** If Ms. Jones is scheduled for 20 hours and attends 15, she is counted as having participated for 20 hours. If she is scheduled for 20 hours and attends 14, she is counted as having participated for 0 hours.

Many people participating in First Step AFDC do not count as "participants" for purposes of participation rates.

Under the rules, it may help to view someone who is scheduled for 20 hours a week (and attends at least 15 of those hours) as a "full participant." Therefore, if the state has 10 people participating at this level, the state has 10 participants. In contrast, someone scheduled for 10 hours a week should not be thought of as a "full participant" for participation rate purposes, because she/he won't help the state meet its rates unless "paired" with someone scheduled for 30 hours, or two people scheduled for 25 hours, and so forth.

A state may count time spent in:

A. assessment and employability plan development, but only for one month in each period a participant receives AFDC;

B. any component specified in the state JOBS plan, except job development and job placement;

C. any approved self-initiated education or training;

D. job entry, for the actual number of hours of work, in the month of entry and the following month, if the individual participated in First Step AFDC or received job development and placement services in the month of entry or the prior month;

E. for a high school student between school years, the average weekly level for the prior year, if she/he is expected to return to high school next year;

F. individuals participating in any educational activity are considered to be participating for their assigned hours during shorter, scheduled school breaks.

#### 12008 ATTENDANCE TRACKING REQUIREMENTS

To gather the data needed to identify who can be included in the participation rate formula, a system for collecting attendance information must be in place. At a minimum, this system must collect for each participant:

A. the number of planned hours of training or education for each week, and

B. the number of actual hours of training or education attended each week.

Case Managers must record in the E & T MIS weekly attendance data (scheduled and attended hours per week) on **all** participants who have any scheduled hours of training

during the month. The E & T MIS counts and tracks attendance.

#### 12008.1 GUIDELINES FOR COUNTING ATTENDANCE

The E & T MIS counts attendance based on the attendance data input by the Case Manager. In counting the scheduled and attended hours for a participant, the following guidelines apply:

A. If the participant was enrolled under Assessment or Employability Development Plan, count that person's hours for one month only.

B. If the participant obtained a full-time job during the month, add the hours of employment in the month to any hours spent in training/education components during the month to yield the total hours of participation for that individual. The hours of employment during the second month after the month of employment may also be counted if the participant was still employed at the end of the second month.

C. Participants in educational activities, other than those in high school, are not considered to be participating in an educational activity between school years. The only way that this participant can be counted in any activity between school years is if he/she participates in another activity, for example CWEP. In this case the only activity that can be counted is the CWEP activity.

D. Consider participants in high school to have the same weekly number of scheduled hours between school years that they had during the prior school year, if:

1. the student was enrolled and attended high school in the last semester of the school year,
2. the student is expected to return to high school for the next school year, and
3. the student participated satisfactorily during the semester.

Hours attended should equal hours scheduled during this period between school years.

E. Consider participants in educational activities to have scheduled hours during planned school breaks such as Christmas and Spring break. **Hours attended should equal hours scheduled during this break period.**

F. Consider participants in training activities to have scheduled hours during planned breaks such as Christmas and Spring breaks, only if the vendor providing the training is closed due to the break. **Hours attended should equal hours scheduled during this break period.**

G. Participants in an Individual Job Search activity must report their actual hours of attendance per week.

H. Participants in a Self-Initiated activity must report their actual hours of attendance per week.

#### 12008.2 ACTIVITIES EXCLUDED FROM FEDERAL MATCHING

There are certain activities for which federal matching

under the First Step AFDC program is not available under any circumstance. They are as follows:

A. Union Dues;

B. Self-Initiated Education or Training Costs: Such costs include tuition, books, fees, room, and board; participants in these programs, however, are eligible for child care, transportation, and other supportive services; and

C. Construction Costs: The prohibition on construction does not pertain to costs for remodeling, rearranging, or altering facilities in order to make the area more appropriate for the First Step AFDC Program.

#### 12009 UNIFORM DATA COLLECTION REQUIREMENTS

This section discusses the federal requirement for uniform data collection and required case record data.

##### 12009.1 UNIFORM DATA COLLECTION

Delaware must provide to the Department of Health and Human Services (DHHS) a sample of monthly unaggregated case record data. The sample must be in formats specified by DHHS. Data must be submitted electronically. The sample must be large enough to be statistically meaningful. Delaware elects to submit 100% of its First Step AFDC case records.

The sample is drawn from the population of participants scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month, or the month previous to the sample month.

First Step AFDC must verify that the participant satisfactorily participated in the sample month. A participant is considered to have satisfactorily participated if he/she attended an activity for at least 75% of the monthly hours scheduled. The hours of participation must equal or exceed 20 hours per month. For job entries, First Step AFDC must verify only that the participant was employed at the end of the sample month.

For the purposes of determining **participation rates**, First Step AFDC must report, for each month, on a quarterly basis, the aggregate number of participants required to participate.

For the purpose of calculating whether First Step AFDC spent 55% of its Title IV-A funds on target groups, Delaware elects to report the previous federal fiscal year's average total First Step AFDC cost per participant per month of participation.

##### 12009.2 REQUIRED CASE RECORD DATA

The First Step AFDC Program must maintain an individual case record for each First Step AFDC participant. (For the purposes of this section, a First Step AFDC participant is an individual who is actively engaged in assessment or employability planning; or assigned to a

component, including self-initiated education or training.

The minimum data required are:

- A. MCI Number;
- B. Birth date;
- C. Program status and exemption code;
- D. Youngest child's date of birth;
- E. Date of most recent AFDC opening;
- F. Number of months within the most recent 60 months of receipt of AFDC;
- G. Education level (highest grade completed) & date of completion;
- H. Literacy level;
- I. Target group code and date of entry into First Step AFDC;
- J. Identifier for a person not exempt;
- K. Assignment status: scheduled hours, beginning and ending dates for the following (if applicable):
  1. assessment & employability development planning;
  2. each First Step AFDC component, including a special identifier for self-initiated education or training;
  3. job status, including date of job entry;
- L. An indicator of satisfactory participation;
- M. Amount of supportive services, other than child care, paid during the month;
- N. Amount of child care payment for the month;
- O. Type of child care; and
- P. Any additional data as specified by the Department.

#### 11002.6 Legal Authority

The Delaware Child Care Subsidy Program operates under authority of both State and federal laws and regulations. The State grants authority under title 31 of the Delaware Code. Federal authority is granted through ~~Title IV-A~~ Title XX of the Social Security Act, ~~the Omnibus Budget Reconciliation Act of 1990~~, and Work Requirements under Section 273.7, title 7, Chapter II of the Revised Code of Federal Regulations and the Child Care and Development Block Grant as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

#### 11002.6.2 Federal Law/Regulation

In addition to the State Law noted above, Delaware's Child Care Subsidy Program operates under the authority of several federal mandates including the following rules, including:

A. Sections 402, 403, and 1102 of the Social Security Act establishes child care services as a supportive service during an AFDC recipient's participation in JOBS. The purpose of this Act as noted in Rule 255.0 of the CFR states, "State IV-A agencies must provide child care, under conditions specified in this part, to eligible families to allow participation in employment, education or training." Such child care is called JOBS Child Care or in "Delaware, it is

called First Step AFDC Child Care. Care under this rule is available to persons Providing child care to families receiving TANF benefits who must participate in ABC Delaware's First Step AFDC program or to persons who work and receive AFDC TANF (Categories 11 and 12).

B. Sections 402, 403, and 1102 of the Social Security Act also establishes child care for certain AFDC TANF recipients who lose AFDC TANF because of work and/or other income-related reasons.

The purpose of this Act as noted in Rule 256.0 of the CFR states: "This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from employment or as a result of the loss of income disregards due to the expiration of the time limits." Such child care is called Transitional Child Care and is available for working families, for up to 12 months after the loss of AFDC (Category 13).

C. Section 402, 403 and 1102 of the Social Security Act also establishes child care for certain low-income families who work and who are at risk of becoming eligible for AFDC.

The purpose of this Act as noted in Rule 257.0 of the CFR states: "This permits States to provide assistance to low-income, working families who need child care in order to work and are otherwise at risk of becoming eligible for AFDC." Such child care is called At-Risk Child Care (part of Category 31).

C. Title 7, Chapter II of the Code of Federal Regulations, Part 273.7 (A) states: "A dependent care reimbursement shall be provided to an Employment and Training participant for all dependents requiring dependent care unless otherwise prohibited by this section...if dependent care is necessary for participation of a household member in the Employment and Training program." Such child care is provided as part of the State's Food Stamp Employment and Training Program also known as First Step – Food Stamps (Category 21).

D. Public Law 101-508 of the Omnibus Budget Reconciliation Act of 1990 establishes the Child Care and Development Block Grant (part of Category 31) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The purpose of the CCDBG as stated in Rule 98.1 of the CFR is, "to increase the availability, affordability and quality of child care services." The goals of the grant are:

1. to provide low-income families with the financial resources to find and afford quality care,
2. to enhance the quality and increase the supply of child care for all families,
3. to provide parent/caretakers with a broad range of options in addressing their child needs,

- 4. to strengthen the role of the family,
- 5. to improve the quality and coordination of child care programs and early childhood development programs, and
- 6. to increase the availability of early childhood development and before and after school services.

E. Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act of 1981 establishes child care under the Social Services Block Grant (part of Category 31).

11002.9

**T. Family Child Care Home** - A place where licensed care is provided for one to six children who are not related to the caregiver.

U. **ABC Child Care** - The name of the child care program for ABC recipients who work or who are in First Step - ABC. Under the CCMIS, this is Category 11 and 12.

V. **Food Stamp Employment and Training** - The program by which certain unemployed mandatory and/or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as First Step - Food Stamps. Under the Division's CCMIS, this is Category 21.

W. **In-Home Care** - Care provided for a child in the child's own home by either a relative or non-relative, where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

X. **Income** - Any type of money payment that is of gain or benefit to a family. Examples of income include, wages, social security pensions, public assistance payments, child support, etc.

Y. **Income Eligible** - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

**AA. Income Limit** - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 155 percent of the federal poverty level.

AB. **Job Training** - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: First Step contracted programs, JTPA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

11003.2.1 ~~First Step—AFDC and Non-First Step (Working AFDC) Child Care Guarantee/Notice Requirements~~

~~First Step—AFDC Child Care services are considered an entitlement. This means that AFDC recipients who are working, participating in First Step, or involved in a self-initiated activity similar to First Step, and who need child care to continue this activity, are guaranteed child care services. An AFDC recipient can consider DSS failure to provide child care as good cause for not participating in First Step. DSS considers parent/caretakers receiving First Step—AFDC Child Care a priority, and will typically provide service when DSS has a waiting list.~~

~~Because First Step—AFDC Child Care is an entitlement for eligible families, they are to receive timely and adequate notice before any termination or reduction in benefits resulting from a change in their family situation. Timely notice means that the parent/caretaker receives the notice at least 10 days before the action is effective. Adequate notice means that the information is complete (such as what action DSS is taking and the reason why DSS is taking it) when DSS informs parent/caretakers about an action taken. Unlike other AFDC entitlements, if as a result of this notice a parent/caretaker requests a Fair Hearing, benefits ARE NOT continued pending the results of the hearing. See DSSM 5000 for a discussion on Fair Hearings.~~

11003.2.2 ~~First Step—AFDC Sanctions ABC Sanctions—~~

~~Mandatory~~ recipients who fail without good cause to meet requirements for ~~First Step~~ ABC are sanctioned. A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the ~~AFDC~~ TANF grant. When these recipients receive sanctions, they lose their ~~First Step—AFDC~~ ABC Child Care and, as long as the ~~AFDC~~ TANF case remains open, they cannot receive other categories of child care. In order to retain ~~First Step—AFDC~~ ABC-Child Care, the recipient will have to cure the sanction, meaning they will have to cooperate with their ~~First Step—AFDC~~ ABC requirements, or they will have to become exempt.

~~Refer to DSSM 3004 and 3004.1 to 3004.8 for a further discussion of First Step—AFDC.~~

11003.4 Transitional Child Care

Parent/caretakers who received ~~AFDC~~ TANF and who are working ~~are entitled for up to 12 consecutive months of child care can continue to receive child care if they:~~

- A. stopped receiving ~~AFDC~~ TANF because of income from work or because their income disregards expired,
- B. received ~~AFDC~~ in at least three of the six months before losing ~~AFDC~~ eligibility, and
- C. request Transitional Child Care (Category 13).

**Example:** A family's ~~AFDC~~ case closes in December. In April they apply for Transitional Child Care. Three of the last six month periods will be figured from December, when their ~~AFDC~~ case closed, not from April. The family must

have received AFDC in three of the six months from July through December, when their AFDC case closed, not three of the six months prior to April. However, the starting date for TCC is January, the first month after the AFDC closing, and runs until the following December.

Parent/caretakers who meet the above requirements need to also meet financial eligibility requirements. They must have income equal to or under 155 percent of poverty. Parent/caretakers also need to be working in order to qualify. A family that participates in education or training does not qualify for TCC.

The ineligibility for AFDC has to be the result of an increase in earned income, not unearned income. However, there is the possibility that increases in both earned and unearned income together may cause eligibility for TCC.

**Example:** A family's child support increases along with their income from work. Neither the increase in child support alone nor the increase from work alone will cause the AFDC case to close. However, when added together, the combination closes the AFDC case. This family would be eligible for TCC. To show this another way:

A. if unearned income only means loss of AFDC = yes for TCC;

B. if unearned income only means loss of AFDC = no for TCC; and

C. if unearned and unearned combined, and if the unearned income alone does not cause loss of AFDC = yes for TCC.

#### 11003.4.1 Certain AFDC Families May Qualify Even if Their Case Closes for a Reason Other Than Income

Certain families may also qualify to receive Transitional Child Care if the AFDC case closed because they:

- E. failed to file a monthly report,
- F. failed an incomplete monthly report,
- G. failed to provide information, or
- H. failed to keep a redetermination appointment.

If DSS can determine that despite any of the above reasons, the family's AFDC case would have closed because of either earnings from work, increased earnings, or loss of the income disregards and the family received AFDC in three of the last six months, then the family could qualify for TCC.

**Example:** A recipient is working part-time. A raise increases her income. She knows it will make her ineligible for AFDC and she doesn't send in a monthly report. Her AFDC case is subsequently closed for failure to file a monthly report. She would be deemed to have met the required reasons for AFDC ineligibility and she would be eligible for TCC for 12 months from the time she ceased being eligible for AFDC as long as she met income limits.

#### 11003.4.2 Transitional Child Care Request

To receive TCC, a family has to request it. The AFDC closing notice alerts certain families about TCC. However, in addition to the closing notice, those AFDC families receiving Category 11 or 12 Child Care (First Step AFDC and Non-First Step working AFDC), will also receive a letter from their First Step Case Manager about the closing of their First Step AFDC Child Care. This letter will also notify the family of their eligibility for TCC if they call their Child Care Case Manager. Those families who contact their Case Manager can receive TCC if they are otherwise technically and financially eligible. This contact, whether by phone or in person, is a sufficient request. Staff will document this request in the case file. The family does not have to complete another application for child care unless the current review is due. To the extent possible, this family should experience no disruption in child care service. Except for making the category change, child care services in this instance are seamless.

Those AFDC families not previously receiving any child care will get a letter from DSS alerting them to the possibility that they could be eligible for child care. They are told to contact the nearest child care office and to request TCC. Case Managers will need to make appointments for these families and the family will need to complete an application.

#### 11003.4.3 Transitional Child Care Guarantee

To the extent that a family meets TCC requirements and continues to meet them, DSS guarantees Transitional Child Care. Therefore, DSS must provide services when it identifies an eligible family. DSS considers TCC a child care priority and will typically maintain service when DSS has a waiting list.

Because TCC is a guarantee to eligible families, it is an entitlement program. Therefore, families must receive adequate and timely notice of any termination or reduction in TCC services resulting from a change in the family situation. Timely notice means that the parent/caretaker receives the notice at least 10 days before the action is effective. Adequate notice means that the notice is complete when informing parent/caretakers about the reason for the action and why it is being taken. If as a result of this notice parent/caretakers request a Fair Hearing, TCC benefits ARE continued pending the results of this hearing, except if after the 12-month limit.

##### 11003.4.3.1 Length of TCC Guarantee

DSS guarantees TCC assistance for up to 12 months. The 12 months start the first month the family is no longer eligible to receive AFDC, and continues for 12 consecutive months thereafter.

**Example 1:** A family's AFDC case closes on June 30 because of increased earnings. TCC would begin July 1 and continue until June 30 of the following year.

Certain families may not need child care immediately after their AFDC case closes. These families may still later request and receive child care for the remaining balance of their 12 month period.

**Example 2:** A family with school age children has their AFDC case closed in April. In June, when school is out, they need child care for their child. They may request and receive TCC because the time, May through April, is still within their 12 month eligibility period.

A family may also have a break in service and still be eligible for TCC for the months remaining on their 12 month eligibility period.

**Example 3:** A family receives TCC for five months when their income decreases, causing the family to requalify for AFDC. AFDC is received for two months when earnings again increase, causing the AFDC case to close. The family would resume eligibility for the remaining five months of the 12 month period of TCC eligibility.

DSS can provide TCC services for no more than 12 months. At the end of TCC eligibility, DSS will determine a family's continued eligibility for child care based on income eligibility (Category 31, see Section 11003.6) criteria. As long as the TCC family meets income eligibility requirements, DSS will continue child care without an interruption in service. This means that the family can maintain the same provider and will not need to file another child care application. The requirement to continue TCC benefits pending the results of a Fair Hearing does not apply if the 12 month TCC time period has ended.

**NOTE:** If the end of the TCC period coincides with the review date, the participant will be required to complete a new application.

#### 11003.4.4 Requirements to Continue Receiving TCC

A. Families not only need to meet the qualifying rules to receive TCC, they also need to continue to meet certain rules to continue receiving TCC. If they do not continue to meet these rules, they could lose their TCC. These families must continue to meet the following rules:

1. they are not to quit or lose a job without good cause;
2. they need to agree to cooperate with child support;
3. they need to continue to meet AFDC standards of deprivation, i.e., have a child who is deprived (see DSSM 3001), unless the family was eligible for AFDC based on the unemployment of the parent; or
4. they need to pay their child care fee.

B. Parent/caretakers who quit or lose a job with good cause do not lose their TCC. They can continue to get TCC for up to one month to enable them to find other employment. If they find a job, they can continue receiving TCC without any interruption in service. If after the one month period they do not find another job, their TCC ends.

Good cause for quitting or losing a job includes, but is not necessarily limited to:

1. The individual is the parent or other relative personally providing care for a child under six and the employment would require the individual to work more than 20 hours per week;
2. Care for an incapacitated person living in the same home as a dependent child is necessary for the individual and such care is not available;
3. Employment would result in the family experiencing a net loss of income;
4. On the job discrimination
5. Illness, or
6. Lack of transportation.

C. Parent/caretakers may also have good cause for not cooperating with child support. Good cause could exist for parent/caretakers who refuse to cooperate in establishing paternity and in securing support if:

1. It can be reasonably anticipated that cooperation will result in physical or emotional harm to the child or the child's caretaker, or
2. The child was conceived as a result of rape or incest, or
3. Legal proceedings for adoption are pending, or
4. The caretaker is currently being assisted by a social service agency to resolve the issue of relinquishing the child for adoption and the issue has been pending for less than three months.

---

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medical Assistance Program is publishing a summary of the State Plan for Title XXI – the Delaware Healthy Children Program (DHCP) and changes to its Medical Assistance Provider Manuals (General Policy section), and the Division of Social Services Manual (DSSM) for eligibility.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg.,

Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

## Summary of State Plan for Delaware Healthy Children Program

### Title XXI of the Social Security Act

#### **Overview:**

The Delaware Healthy Children Program (DHCP) is targeted to children under age 19 with income at or below 200% of the Federal Poverty Level (FPL) who are not eligible for Medicaid. Children who are eligible for Medicaid may not choose the DHCP as an alternative to Medicaid.

The service package will include all of those basic benefit services provided under the State's Medicaid Managed Care program as it was structured during 1998. Services will be provided by the same managed care organizations (MCOs) that participate with Medicaid. In addition, participants in the DHCP will receive pharmacy services comparable to the Medicaid population. They will also receive 31 days of mental health and substance abuse treatment services (any treatment modality) in a calendar year in addition to the basic MCO benefit of 30 outpatient visits for mental health.

Children are eligible under Title XXI (DHCP) only after enrollment with a MCO.

There is a premium for this program (see **Premiums** below) that must be paid in order to guarantee coverage. The premium is a nominal per family per month fee. As long as the premium is paid, eligibility is guaranteed for 12 months.

There is a \$10 copayment for inappropriate use of an emergency room.

#### **Eligibility:**

Countable income after deductions will be compared to 200% of the FPL for a family the size of those in the immediate family with one exception (a pregnant woman will count as two [2] people for determining the FPL level to use). Income less than or equal to 200% of the FPL will

qualify the children for eligibility for The Delaware Healthy Children Program.

\* "Immediate family" is defined a unit (living in the same household) comprised of various adults who are legally/financially responsible for each other, and various children (related or unrelated) for whom the adults have legal responsibility or for whom the adults have accepted parental-like responsibility. This is the same definition that is used for Medicaid eligibility.

The child must have been uninsured for at least 6 previous months (see **Other Insurance** below)

The child must be a resident of Delaware and the family must intend to maintain Delaware residence.

The child must be (1) a citizen of the United States or must have legally resided in the US for at least 5 years if their date of entrance into the US is 8/22/96 or (2) meet the Personal Responsibility and Work Opportunity Reconciliation Act of 1997 (PRWORA) definition of qualified alien; and (3) ineligible for enrollment in any State employee group health plan.

The family must give the State rights to recover money from other sources that may cover medical care (for example, if a child is in an accident and an insurance settlement is made, the Title XXI program, through the Managed Care Organization, will have the right to recover from that settlement payments made on behalf of that child). The family must cooperate with the Division of Child Support Enforcement in locating any absent parent that may be able to purchase health insurance for the child.

#### **Other Insurance:**

The Delaware Title XXI program is targeted to uninsured children and is not expected to supplant any health insurance currently provided to any applicant. Delaware's approach to crowd out is:

Children are not eligible for the Delaware Title XXI program unless they have been without health coverage for at least the six preceding months. Exceptions to this would be made if coverage is lost due to:

- death of parent,
- disability of parent,
- termination of employment,
- change to a new employer who does not cover dependents,
- change of address so that no employer-sponsored coverage is available
- expiration of the coverage periods established by COBRA
- employer terminating health coverage as an benefit for all employees.

Premiums:



- \$10 per family per month (PFPM) for families with countable incomes between 101% and 133% of the Federal Poverty Limit (FPL),
- \$15 PFPM for families with incomes between 134% and 166% of the FPL, and
- \$25 PFPM for families with incomes between 167% and 200% of the
- Incentives for pre-payment of premiums will be considered.

If premiums have not been paid for two months, eligibility will be suspended and enrollment in the program will end.

The family will then be **ineligible for six months** from the date of suspension and disenrollment, unless they can demonstrate good cause for non-payment of premiums.

---

**REVISION – PROVIDER MANUALS:**

General Policy Manual

**B. DELAWARE HEALTHY CHILDREN PROGRAM (DHCP)**

Section 4901 of the Balanced Budget Act of 1997 (P.L. 105-33) establishes Title XXI of the Social Security Act which defines a new State Child Health Insurance Program (SCHIP). This enables States to initiate and expand the provision of health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage's for children.

Enabling legislation in Delaware named this program the Delaware Healthy Children Program (DHCP) and established rules within the requirements of Title XXI with a mandated premium for participation (a per family per month fee).

**Health Benefits Manager**

DHSS contracts with a provider of health benefits management services. The Health Benefits Managers (HBM) will:

- Provide outreach and education relative to enrollment.
- Explain plan and enroll beneficiaries.
- Help teach beneficiaries how to use managed care.
- Act as beneficiary services representative.
- Monitor beneficiary satisfaction or problems with plan.
- Establish linkages with the community and the health plan.
- Collect and track premiums.

**Who will provide the service?**

Selected MCOs will provide health services to DHCP beneficiaries. The providers in these plans are Delaware hospitals, doctors, federally qualified health centers and other providers that people use. The MCOs are encouraged to work with community providers of mental health, substance abuse, home health care and other services that enrolled beneficiaries will need.

**Beneficiary Rights and Responsibilities**

When clients enter the DHCP, they should be able to find primary care physicians who will provide medical homes for them. It is the plan's responsibility to see that clients get appropriate, timely care and that they are treated courteously. DHSS will be monitoring the performance of the plan. If the MCO or HBM cannot resolve a problem, the State's formal grievance procedure can be invoked. Beneficiaries have the responsibility to utilize preventive services, such as receiving regular check-ups, available health screenings, and appropriate immunizations. They should keep appointments and follow doctors instructions. Plans also have the right to disenroll clients for good cause, such as consistently using the emergency room inappropriately. The client must then select another plan. The client may not opt out of the MCO program.

**Who is eligible for the DHCP?**

To be eligible for the DHCP the child must:

- be under the age of 19 years (through 18);
- have a family income less than or equal to 200% of the Federal Poverty Level (FPL);
- be a current Delaware resident with intent to remain;
- be uninsured for at least 6 previous months (exceptions to this would be made if coverage is lost due to: death of parent, disability of parent, termination of employment, change to a new employer who does not cover dependents, change of address so that no employer-sponsored coverage is available, expiration of the coverage periods established by COBRA, employer terminating health coverage as a benefit for all employees);

NOTE: Applicants who have been uninsured less than 6 months will be given a time when their pending application for the program can be approved. If children have been enrolled in the DHCP, but premiums have not been paid for 2 months, eligibility will be suspended and enrollment in the MCO will end. The family will then be ineligible for 6 months from the date of suspension and disenrollment, unless they can demonstrate good cause, as defined by the State, for non-payment of premium.

**Other Standards**

A child must:

- be a citizen of the United States or must have legally resided in the US for at least 5 years if their date of entrance into the US is 8/22/96; or
- meet the Personal Responsibility and Work Opportunity Reconciliation Act of 1997 (PRWORA) definition of qualified alien who is not subject to the 5 year bar; AND
- be ineligible for enrollment in any public health plan.

All DHCP beneficiaries MUST enroll with an MCO. This population is not eligible for any services until the effective date of their MCO enrollment.

Families may not choose the DHCP coverage as an alternative to Medicaid. Federal law requires that any child eligible under Medicaid must accept Medicaid coverage if they wish to participate in either program.

**Coverage under the DHCP MCO Benefits Package**

Those eligible for the DHCP will receive two (2) insurance cards. One card will be issued by the MCO and valid for services included in the DHCP basic benefit package.

The following services are included in the DHCP and are covered as part of a basic MCO benefit package when medically necessary:

- Inpatient hospital services;
- Outpatient hospital services;
- Physician services;
- Surgical services;
- Clinic Services (including health center services) and other ambulatory health care services;
- Laboratory and radiological services;
- Prenatal care and pre-pregnancy family planning services and supplies;
- Outpatient mental health services, other than outpatient substance abuse treatment services, but including services furnished in a State-operated mental hospital and including community-based services - 30 days of outpatient care included in the basic MCO benefit;
- Durable medical equipment and other medically-related or remedial devices such as prosthetic devices, implants, eyeglasses, hearing aids, and adaptive devices);
- Disposable medical supplies;
- Home and community-based health care services - limited to medically necessary home health services provided by the MCOs as part of the basic benefit. Does NOT include personal care, chore services,

day care, respite care, or home modifications. Home health aide services are covered as medically necessary according to the State's published definition;

- Nursing care services - there is a limit of 28 hours of Private Duty Nursing Services per week in the basic benefit, no additional hours available;
- Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest – subject to the rules for Federal funding;
- Outpatient substance abuse treatment services – limited to 30 days inclusive of outpatient mental health services;
- Case management services;
- Care coordination services;
- Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders;
- Hospice care;
- Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services;
- Medical transportation - emergency transportation only as provided in the basic benefit package;

NOT included in this program are dental services, non-emergency transportation and any other service not specified above.

**Additional Services Are Covered Under The Medical Assistance Program**

The second insurance card will be a DHCP card that will be used for services not covered by the MCO but are reimbursed by Medicaid. These services are often referred to as “wrap around services”.

Wrap Around Services that are Covered by Medicaid for DHCP Eligible Recipients

- Prescription drugs - with the same limitations as the Title XIX program;
- Over-the-counter medications - limited to drug categories where the over-the-counter product may be less toxic, have fewer side effects, and be less costly than an equivalent legend product;
- Inpatient mental health or substance abuse services for up to 31 days per calendar year (including outpatient residential and any other treatment modality). Children who need inpatient services beyond this will convert to Medicaid Long-Term Care;
- Outpatient mental health services - additional days (up to 31), see coverage as described above (Inpatient mental health services).

**Emergency Room Co-Pay**

The family must pay a \$10.00 co-pay (coinsurance) per emergency room visit. This co-pay will be waived if the emergency room visit results in immediate inpatient hospitalization or if a prudent layperson would interpret the need for the visit to the ER to be an emergency.

END OF PROVIDER MANUAL

REVISION – ELIGIBILITY MANUAL:

DSSM 18000 – 18800.4

Division of Social Services Manual

18000 Delaware Healthy Children Program  
18100 General Eligibility Requirements  
18100.1 State Residency  
18100.2 Alien Status  
18100.3 Fair Hearings  
18100.4 Limitations on Retroactive Coverage  
18200 Technical Eligibility  
18200.1 Age Requirement  
18200.2 Uninsured Requirement  
18200.2.1 Definition of Comprehensive Health Insurance  
18200.2.2 Good Cause for Loss of Health Insurance  
18200.3 Children of Public Agency Employees  
18200.4 Residents of Institutions  
18200.4.1 Patient in an Institution for Mental Disease  
18200.4.2 Inmate of a Public Institution  
18300 Composition of Budget Unit  
18400 Financial Eligibility  
18500 Eligibility Determination  
18600 Managed Care Enrollment Requirements  
18700 Premium Requirements  
18700.1 Initial Premium  
18700.2 Premiums to Continue Coverage  
18700.3 Advance Payment of Premiums  
18700.4 Refunds of Premiums  
18700.5 Cancellation of Coverage for Nonpayment of Premiums  
18700.6 Good Cause for Nonpayment of Premiums  
18800 Continuous Eligibility  
18800.1 Termination of Eligibility  
18800.2 Changes in Family Income  
18800.3 Continuously Eligible Newborns  
18800.4 Redetermination of Eligibility

18000 Delaware Healthy Children Program

The Balanced Budget Act of 1997, enacted on Augusts 5, 1997, establishes a new “State Children’s Health Insurance Program” by adding a new Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the

provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children.

The new law does not create any entitlement on the part of children to child health assistance. The law creates a capped allotment to the funds on the part of the states. The law “constitutes budgetary authority in advance of appropriations and represents the obligation of the Federal Government” to provide for the payment to States of the amounts specified for each of the fiscal years 1998-2007. Because Title XXI is not an entitlement program, enrollment and expenditures will be monitored closely against the allotment. Enrollment will be stopped when total expenditures are projected to equal the available funding level.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Healthy Children Program (DHCP) as authorized under Title 19, Chapter 99, Section 9905 of the Delaware Code. The DHCP is implemented January 1, 1999, with benefits for children beginning February 1, 1999.

18100 General Eligibility Requirements

The Medicaid rules at Section 14000 of the Division of Social Services Manual (DSSM 14000) also apply to DHCP except as provided in this section.

18100.1 State Residency

The child must be actually residing in Delaware.

18100.2 Alien Status

The DHCP does not provide state-funded benefits to qualified aliens subject to the 5 year PRWORA bar or to legally residing nonqualified aliens. The DHCP does not provide coverage of emergency and labor and delivery services to illegally residing and ineligible aliens.

18100.3 Fair Hearings

Applicants and recipients do not maintain a right to a fair hearing. The rules at DSSM 5000 Fair Hearing Practice and Procedures do not apply to DHCP.

18100.4 Limitations on Retroactive Coverage

Retroactive coverage is not available to any child eligible under DHCP. The rules on retroactive eligibility at DSSM 14920 through 14920.5 do not apply to DHCP.

18200 Technical Eligibility

The following requirements are factors of eligibility specific to DHCP.

18200.1 Age Requirement

The individual must be under the age of 19. The rules

on emancipated minors at DSSM 16220.2.3 will also apply to DHCP.

#### 18200.2 Uninsured Requirement

The DHCP is limited to uninsured, low-income children. The following children are not eligible for DHCP:

1. Children who are eligible for Medicaid.
2. Children who, at the time of application, have insurance coverage that meets the definition of comprehensive health insurance.
3. Children who have had comprehensive health insurance (other than Medicaid) within the six months preceding the month of application unless good cause exists for the loss of health insurance. The month of application is the month in which a signed application is received by DSS.
4. Children who are eligible for or who have access to coverage under a state health benefits plan on the basis of a family member's employment with a public agency in the state.

#### 18200.2.1 Definition of Comprehensive Health Insurance

A benefit package comparable in scope to the "basic" benefit package required by the State of Delaware's Small Employer Health Insurance Act at Title 18, Chapter 72 of the Delaware Code. This package covers hospital and physician services as well as laboratory and radiology services. The term "comprehensive" does not mean coverage for benefits normally referred to as "optional," e.g., prescription drugs.

#### 18200.2.2 Good Cause for Loss of Health Insurance

Good cause for loss of health insurance in the six months preceding the month of application are:

- death of parent
- disability of parent
- termination of employment
- change to a new employer who does not cover dependents
- change of address so that employer-sponsored coverage is not available – the provider service network is not available within the county in which the family resides
- expiration of the coverage periods established by COBRA
- employer terminating health coverage as a benefit for all employees

#### 18200.3 Children of Public Agency Employees

A child who has a family member who works for a public agency within Delaware and is eligible to participate in the State health benefits plan with an employer premium subsidy is not eligible for DHCP. Family member is defined as the parent of the child or the individual who has legal custody of the child. The State health benefits plan is

the plan that is offered or organized by the State of Delaware on behalf of State employees or other public agency employees within the state. The State health benefits plan does not include separately run county plans, city plans, or other municipal plans.

The State of Delaware health benefits plan is only offered to employees of the State of Delaware and the Department of Education. It is not offered to employees of any county, city or municipality and is not offered to employees of State contractors.

#### 18200.4 Residents of Institutions

A child who is a patient in an institution for mental disease (IMD) or who is an inmate of a public institution is not eligible.

##### 18200.4.1 Patient in an Institution for Mental Disease

An Institution for Mental Disease (IMD) is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, not including mental retardation.

A child who is an inpatient in an IMD at the time of application, or during the scheduled redetermination, is not eligible for DHCP. If a child enrolled in DHCP subsequently requires inpatient services in an IMD, the receipt of inpatient services will not make the child ineligible during a period of continuous eligibility.

##### 18200.4.2 Inmate of a Public Institution

An inmate of a public institution is a person who is living in a public institution. A public institution is an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

A child is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. A child awaiting trial in a detention center is considered an inmate of a public institution. A child living in a detention center after his or her case has been adjudicated and other living arrangements are being made (such as a transfer to a community residence) is not an inmate of a public

institution. Children who are sent to a privately supported institution as an alternative to a detention or prison sentence are not inmates of a public institution.

#### 18300 Composition of Budget Unit

The composition of the family budget unit for DHCP will be determined using the rules at DSSM 16240 through 16240.3.

#### 18400 Financial Eligibility

Financial eligibility for DHCP will be determined using the rules at DSSM 16230 through 16230.3.

#### 18500 Eligibility Determination

After applying appropriate disregards to income, countable family income must be at or below 200% FPL. Compare the countable family income to the income eligibility standard for the budget unit size.

#### 18600 Managed Care Enrollment Requirements

Children who are found eligible must enroll with a managed care organization and pay a monthly premium to receive coverage of medical services. The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process including premium requirements. The service package and wrap around services are described in the General Policy Section of the Delaware Medical Assistance Program Provider Services Manual.

#### 18700 Premium Requirements

Families with eligible children are required to pay a premium in order to receive coverage. The premium is per family per month regardless of the number of eligible children in the family. The monthly premium will vary according to countable family income as follows:

<u>Countable Family Income</u>	<u>Premium</u>
<u>&gt; 100% FPL &lt; or = 133%FPL</u>	<u>\$10</u>
<u>&gt; 133% FPL &lt; or = 166% FPL</u>	<u>\$15</u>
<u>&gt; 166% FPL &lt; or = 200% FPL</u>	<u>\$25</u>

Payments that are less than one month's premium will not be accepted.

#### 18700.1 Initial Premium

Coverage begins the first of the month following payment of the initial premium. Payments for the initial premium will be accepted through a monthly cut-off date known as the authorization date. The authorization date is set by the automated eligibility system. If payment of the initial premium is received by the authorization date, coverage under DHCP will be effective the following month.

#### 18700.2 Premiums to Continue Coverage

A monthly premium notice will be sent to the family. The premium is due by the 20<sup>th</sup> of the month for the next month's coverage. Premium payments for ongoing coverage will be accepted through the last day of the month.

#### 18700.3 Advance Payment of Premiums

Families will be able to pay in advance and purchase up to one year's coverage. The following incentive is offered for advance payments:

Pay 3 months – get 1 premium free month

Pay 6 months – get 2 premium free months

Pay 9 months – get 3 premium free months

The advance premium payments for coverage may extend beyond the scheduled eligibility redetermination. If the child is determined to be ineligible, the advance premium payments will be refunded to the family.

#### 18700.4 Refunds of Premiums

When a child is determined ineligible for DHCP, any advance premium payments will be refunded to the family. Premium payments for a current month of eligibility will not be refunded.

#### 18700.5 Cancellation of Coverage for Nonpayment of Premiums

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. A notice of cancellation will be sent to the family advising the family to report any change in circumstances, such as a decrease in income that may result in eligibility for Medicaid. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated. Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums cannot reenroll for six months from their coverage end date. There is no automatic reenrollment at the end of the six month cancellation period. The family must initiate reenrollment and must pay an initial premium.

Eligibility redeterminations will be processed without regard to the families' enrollment status.

#### 18700.6 Good Cause for Nonpayment of Premiums

Good cause for nonpayment of premiums will be determined by DSS on a case-by-case basis.

#### 18800 Continuous Eligibility

Continuous eligibility means continued eligibility under DHCP during the 12-month period of time between the first

month of eligibility and the next scheduled redetermination.

The initial month of the continuous period of eligibility is the first month in which eligibility is determined. A new period of continuous eligibility will be established beginning with the month following the last month of the previous period of continuous eligibility, when a scheduled redetermination is completed and the child is determined to be eligible.

A new 12-month period of continuous eligibility will also begin after any break in DHCP eligibility.

#### 18800.1 Termination of Eligibility

A child who is determined eligible for DHCP remains eligible for a 12-month period of continuous eligibility unless he or she becomes ineligible for the following reasons:

- a. the child becomes 19 years of age
- b. the child dies
- c. the child acquires comprehensive health insurance
- d. the child becomes eligible for the State health benefits plan
- e. the child becomes eligible for Medicaid
- f. the child becomes an inmate of a public institution
- g. the child is no longer a Delaware resident
- h. the child no longer meets citizenship or qualified alien status

#### 18800.2 Changes in Family Income

There is no interruption of the continuous eligibility period because of an increase in the family's income. This includes an increase in countable income because of a change in family size.

If there is a decrease in family income or an increase in family size, eligibility will be redetermined. A decrease in income could result in the family becoming eligible for Medicaid or the child remaining eligible for DHCP with a lower premium. If the decrease in income results in a lower premium for the family, the child will receive a new 12-month period of continuous eligibility.

#### 18800.3 Continuously Eligible Newborns

A baby born to a mother eligible for DHCP is deemed eligible at birth. The newborn's continuous eligibility will coincide with the mother's 12-month period of continuous eligibility.

#### 18800.4 Redetermination of Eligibility

A redetermination of eligibility is required by the end of a 12 month period of continuous eligibility.

END OF DSSM POLICY MANUAL

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

#### REVISION:

Division of Social Services Eligibility Manual

#### DSSM 16230.1.4

##### Deductions from Earned Income

~~Earned income deductions apply to pregnant women and to families with children. There are no earned income disregards for single adults or couples age 19 or over who do not have children.~~

- \$90 earned income deduction per month per earner ~~(for families with children only)~~
- actual child care expenses up to \$175 per month per child for age two and older; up to \$200 per child for under age two. Convert weekly amount to a monthly amount. The dependent child must be related to the wage earner or must be included in

the budget unit in order to allow the child care deduction.

There is a special income disregard for pregnant teens. Exclude one-half of the gross parental income (includes earned and unearned income) in the eligibility determination for the pregnant teen.

#### DSSM 16230.2

##### Unearned Income

Unearned income is income received without performing work-related activity. Unearned income is counted as paid without application of any disregards. There is an exception for child support payments and pregnant teen disregard as listed below. Unearned income includes but is not limited to:

- Annuities
- Black Lung benefits
- Cash contributions from organizations, churches, friends, relatives, or social agencies
- Child support payments - ~~deduct \$50 per month from total child support payments~~ deduct the first \$50 per month of child support received for each child
- One-half of the gross parental income for pregnant teen
- Insurance benefits
- Interest, dividends, and income from capital investments
- Lump sum payments, including insurance settlements
- Military allotments
- Payments from estates, trust funds, or other personal property which cannot be converted into cash because of legal provisions
- Pensions
- Railroad Retirement
- Social Security (use gross amounts except when an overpayment is being deducted by the SSA)
- Unemployment Compensation
- Veterans' Benefits
- Workman's Compensation

#### DSSM 16230.3

##### Excluded Income

- Earned Income Tax Credits (EITC)
- ~~First \$50 per month of the total child support payments~~ First \$50 per month of the child support received for each child
- Governmental (federal, state, or local) rent and housing subsidies, including payments made

directly to the applicant/recipient for housing or utility costs, e.g., HUD utility allowances

- Income owned by or received for the benefit of the siblings
- Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid. Also exclude other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.
- One half of the gross parental income for minor pregnant teens
- Payments made by a third party directly to landlords or other vendors
- SSI benefits
- Earned income of a minor child regardless of student status
- Earned income of an 18 year old or emancipated minor who is a full time student or a part time student but not a full time employee attending a school, college, university, or a course of vocational or technical training.

---

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these

proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

#### REVISION:

#### Division of Social Services Eligibility Manual

#### DSSM 14900

##### Enrollment in Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the *Diamond State Health Plan*. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The *Diamond State Health Plan* is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

The majority of the Medicaid population receiving non-institutional services will be enrolled into the *Diamond State Health Plan*. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in *Diamond State Health Plan*:

- A. Individuals entitled to or eligible to enroll in Medicare
- B. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- C. individuals covered under the home and community based waivers
- ~~D. individuals who have accessible managed care insurance as a primary payor and Medicaid as a secondary payor~~
- E. non lawful and non qualified non citizens (aliens)
- F. individuals who have CHAMPUS

#### DSSM 14920.1

##### RETROACTIVE COVERAGE LIMITATIONS

Effective January 1, 1996, Retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the *Diamond State Health Plan*. Individuals who are excluded from the *Diamond State Health Plan* may be found eligible

for retroactive Medicaid coverage. These individuals include:

- those entitled to or eligible to enroll in Medicare,
- ~~those who have accessible managed care coverage,~~
- those who have CHAMPUS
- those receiving long term care services (nursing facility and the home and community based waivers), and
- those living out of state but considered Delaware residents, such as a child placed out of state by DSCYF.

#### DSSM 16210

##### Limitations on Retroactive Coverage

Retroactive Medicaid eligibility is discussed in the common eligibility section of the Medical Assistance Manual. The demonstration waiver eliminates prior quarter eligibility. Retroactive Medicaid coverage is NOT available to any individual who, in the month of application, is eligible for enrollment under the *Diamond State Health Plan*.

Certain individuals, who are excluded from the *Diamond State Health Plan*, may be found eligible for retroactive Medicaid. Individuals who may be found eligible for retroactive Medicaid are:

- those who are entitled to or eligible to enroll in Medicare,
- ~~those who have accessible managed care coverage,~~
- those who have CHAMPUS
- those receiving long term care services (nursing facility and the home and community based waivers), and
- those living out-of-state but considered Delaware residents, such as a child placed out-of-state by DSCYF.

---

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. 512)

**PUBLIC NOTICE**  
**DIVISION OF SOCIAL SERVICES**  
**TANF PROGRAM**

The Delaware Health and Social Services / Division of Social Services / Temporary Assistance for Needy Families Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3005. The change would transfer to the Division of Child Support Enforcement (DCSE) the responsibility for determining good cause for a client's failure to cooperate with DCSE in



establishment of paternity and in securing child support. The option to do so was presented with passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**COMMENT PERIOD**

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 30, 1998.

**SUMMARY OF PROPOSED REVISIONS:**

- Transfers to the Division of Child Support Enforcement the responsibility for making good cause determinations related to a client's failure to cooperate with that agency in establishing and securing child support.

**NATURE OF PROPOSED REVISIONS:****3005.4 Good cause determination**

It is the responsibility of the ~~DSS~~ Division of Child Support Enforcement (DCSE) to determine if good cause for refusing to cooperate exists. When good cause is determined to exist, the applicant may participate in the ABC program and will not be required to cooperate in support collection activities.

**3005.5 Enforcement without the caretaker's cooperation**

When good cause for non-cooperation exists, ~~DSS~~ DCSE must decide whether or not child support enforcement activities can proceed without risk to the child or caretaker if the enforcement activities do not include cooperation. DSS will ask the applicant if he/she believes that enforcement activities can proceed and ~~may also consult with the DCSE in making the decision~~ will relay that information to DCSE.

If a DCSE's recommendation is ~~made~~ to proceed with enforcement activities, DSS will notify the applicant and give the applicant the opportunity to withdraw the application or close the case before enforcement activities begin.

**3005.6 Assignment of child support rights and Fair Hearings**

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS or DCSE decision made in regard to the child support assignment, non-cooperation, or good cause claim issues. DCSE will handle the fair hearing requests on issues of non-cooperation and good cause claim.

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

## Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medical Assistance Program is amending its ambulatory surgical center, practitioner, inpatient hospital, outpatient hospital and general policy provider manual(s).

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

**REVISION:**

The changes in the Ambulatory Surgical Center, Practitioner, Inpatient, and Outpatient Hospital policy manuals regarding abortions has been federally mandated. The change does not affect the current policy for rape and incest.

**Ambulatory Surgical Center****Abortions**

The DMAP reimburses ASCs/FSSCs for abortion procedures for eligible Medicaid clients if ~~the procedure is covered by Medicare.~~ Medicare covers the procedure.

**Endangerment to Mother's Life**

Federal regulation, 42 CFR 441.203, permits the DMAP to reimburse for abortions if the "life of the mother would be

endangered by the pregnancy."

~~Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.~~

~~A physician must certify in writing, that in his/her professional judgment, the life of the mother would be endangered if the fetus was carried to term. The certification must contain the patient's name, address, Medical Assistance ID number, and documentation of the reason why the pregnancy endangers the mother's life. In addition, the physician must attach the complete medical record to the HCFA 1500.~~

~~It is the responsibility of the ASC/FSSC to secure both a copies of the Abortion Justification Form certification letter and the complete medical record from the attending practitioner for their billing purposes. See Appendix C for a copy of the Abortion Justification Form.~~

### Practitioner Manual

#### Insurance Co-Payments

~~DMAP recipients may also be covered by plans such as BC/BS's Total Health Plus, CIGNA's Healthplan of Delaware, and Healthcare of Delaware, etc. as well as other HMOs. Under these kinds of plans, the patients choose a primary care physician who provides total care. The primary care physician refers patients to member specialists when necessary. There is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc.~~

~~In those instances where a Medicaid recipient is also covered by a plan for which payment of the above mentioned co-pays is required, the DMAP will cover the applicable co-pay amounts. (co-pays are differentiated from "non-covered" or "non-allowed" charges.)~~

~~Any person who is a member of an accessible managed care organization must use the services of the accessible managed care organization. Refer to the Accessible Managed Care Insurance Carriers section of the General Policy.~~

#### Abortions

##### Endangerment to Mother's Life

~~Federal regulation, 42 CFR 441.203, permits the DMAP to reimburse for abortions if the "life of the mother would be endangered by the pregnancy."~~

~~Effective November 13, 1997 Federal law enacted new~~

~~Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.~~

~~A physician must certify in writing, that in his/her professional judgment, the life of the mother would be endangered if the fetus was carried to term. The certification must contain the patient's name, address, Medical Assistance ID number, and documentation of the reason why the pregnancy endangers the mother's life. complete an Abortion Justification Form (see Appendix J) that will detail the new Hyde Amendment requirement. In addition to the Abortion Justification Form, the physician must attach the complete medical record to the HCFA 1500.~~

~~It is the responsibility of the attending physician to supply both a copy of the certification letter Abortion Justification Form and the complete medical record to the hospital and the anesthesiologist for their billing purposes.~~

### Inpatient Hospital Manual

#### Abortions

##### Endangerment to Mother's Life

~~Federal regulation, 42 CFR §441.203, permits the DMAP to reimburse acute care inpatient general hospitals for abortions if the "life of the mother would be endangered by the pregnancy" and if the inpatient admission is medically necessary.~~

~~Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.~~

~~A physician must certify in writing, that in his/her professional judgment, the life of the mother would be endangered if the fetus was carried to term. The certification must contain the patient's name, address, Medical Assistance ID number, and documentation of the reason why the pregnancy endangers the mother's life. The hospital must obtain an Abortion Justification Form from the attending physician that will detail the above Hyde Admendment requirement. (see Appendix F for a copy of the Abortion Justification Form. In addition to the Abortion Justification Form the hospital must attach the complete medical record to the UB 92.~~

It is the responsibility of the facility to secure ~~both~~ a copy of the ~~certification letter~~ Abortion Justification Form and the complete medical record (including hospital record) from the attending practitioner for their billing purposes.

### **Outpatient Hospital Manual**

#### **Abortions**

##### Endangerment to Mother's Life

Federal regulation, 42 CFR 441.203, permits the DMAP to reimburse for abortions if the "life of the mother would be endangered by the pregnancy."

Effective November 13, 1997 Federal law enacted new Hyde Amendment requirements for federally-funded abortions. One of those requirements is that, in order for Medicaid to reimburse for an abortion, a physician must certify that a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

The outpatient hospital facility must obtain ~~a letter~~ an Abortion Justification Form from the attending physician that will detail the Hyde Amendment requirement (see Appendix J for a copy of the Abortion Justification Form) ~~certifies that in his/her professional judgment the life of the mother would be endangered if the fetus was carried to term. The certification must contain:~~

- ~~patient's name;~~
- ~~address;~~
- ~~Medical Assistance ID number; and~~
- ~~documentation of the reason why the pregnancy endangers the mother's life.~~

In addition to the Abortion Justification Form the outpatient hospital facility must attach the complete medical record to the UB92 claim form. The outpatient hospital facility shall obtain a copy of medical records from the attending practitioner.

### **General Policy Manual**

#### Prescribed Pediatric Extended Care

In circumstances where a child is exempt from managed care coverage the following policy will be applied.

The DMAP will cover Prescribed Pediatric Extended Care (PPEC) for medically and/or technology-dependent children who can be maintained in the community as an alternative to inpatient hospital or nursing home care when supported by PPEC. PPEC provides up to twelve hours of care daily (Monday through Friday) at the PPEC facility upon prescription from a child's primary physician, thus

allowing a child to obtain necessary medical services and monitoring without institutionalization. PPEC services are authorized based on the level of nursing care and rehabilitative therapy needed. The prescribing practitioner may request prior authorization by sending a letter with the following information to Medicaid's Physician Consultant:

- Name of patient.
- Patient's Delaware Medical Assistance ID number.
- Date of birth.
- Detailed medical history that documents the need for PPEC services.
- Documentation that the child would require inpatient hospital or nursing home care in the absence of PPEC services.
- Estimated amount and duration of required services (the number of days per week and the number of weeks/months that the patient is expected to need these services).
- If home health services or private duty nurse services are ordered concurrently with PPEC, medical justification for the combination of services is required.
- Name and address of the PPEC organization which will provide the care.

#### **Qualified Medicare Beneficiaries (QMB)**

~~Effective September 1, 1996, Medicaid will reimburse the full co-insurance and deductible for QMBs after Medicare's payment except for services provided in an institution for mental diseases (IMDs)/psychiatric facility for individuals aged 21 through 64 years.~~

For all other groups, inpatient psychiatric hospital/facility services for individuals age 21-65 are not covered.

#### **A. DIAMOND STATE HEALTH PLAN**

##### **Who Must Enroll In The DSHP**

##### Categorically Eligible

All categorically eligible beneficiaries MUST enroll in the DSHP except the following exempt groups:

- Medicaid recipients in long term care institutions, such as nursing homes, ICF/MRs and ICF/IMDs (limited to Medicaid eligible persons who are 65 years of age or older).
- Those who are eligible for home and community based services through the Medicaid Waivers for the Elderly and Disabled, AIDS/HIV, and Mental Retardation.
- Medicaid recipients who also have Medicare or CHAMPUS.
- Transient farm workers who reside in the State for less than three months a year.

- Illegally and legally residing non-qualified aliens.
- ~~Medicaid eligibles who have other accessible managed care insurance. An individual who is enrolled in a Delaware managed care organization but NOT through the DSHP is in an accessible managed care plan provided the MCO is licensed to do business in the insured's county of residence.~~

Covered services (refer to Medicaid Eligibility Groups and Covered Services, Categorically Eligible section of this General Policy) provided to these exempt individuals will be reimbursed on a "fee for service" basis.

### Expanded Population

All expanded population beneficiaries MUST enroll in the DSHP. This population is not eligible for any services until the effective date of their MCO enrollment. This population is eligible for all services included in the MCO benefit package **PLUS** pharmacy, non-emergency transportation, ~~private duty nursing services that exceed twenty eight (28) hours per week that are authorized by Medicaid staff for persons under age twenty one (21)~~, dental clinic services for recipients under age twenty-one (21), behavioral health services, and EPSDT/CSCR services provided by enrolled school districts.

The following individuals/families may be eligible for Medicaid in Delaware as part of the expanded population if they meet certain requirements:

- Any uninsured adult age 19 or over who has family income at or below 100% of the federal poverty level.
- Any adult age 19 years and over who is receiving a General Assistance check.

### **Coverage Under The MCO Benefits Package**

Eligible MCO beneficiaries will receive two (2) insurance cards. One card will be issued by the MCO and valid for the services included in the MCO benefit package chosen by the beneficiary.

The services listed below are included when medically necessary in the MCO Benefit Package for both the categorically eligible and expanded population and should not be billed to the Medicaid program:

- Physician;
- Inpatient and outpatient hospital – includes all pharmaceuticals and blood products;
- Independent laboratory;
- Home health;
- Emergency transportation;
- Medically necessary durable medical equipment/supplies;
- Podiatry;
- Optometry/optician;

- Rehabilitation agency;
- Ambulatory surgical center;
- Dialysis center;
- Family planning - These services can be directly accessed by Medicaid individuals without prior authorization through any Medicaid provider (who will bill the MCO and be paid on a fee-for-service basis);
- Nurse/midwife;
- Certified registered nurse practitioner;
- General medical clinic services except environmental investigation for source for lead and Preschool Developmental Diagnostic Nursery;
- EPSDT screening clinic except Part **H C** Multidisciplinary Assessment;
- Methadone clinic;
- Hospice;
- Extended pregnancy;
- EPSDT group and individual services;
- EPSDT nutrition services, occupational, speech and physical therapies.
- Mental health and substance abuse services: for children, up to 30 outpatient units; for adults, up to 20 outpatient days and 30 inpatient days (an unused inpatient day can be exchanged for three (3) outpatient days or two (2) residential treatment days).
- Federally Qualified Health Center.
- Skilled nursing services in a nursing facility up to 30 day annual limit.
- Private duty nursing services
- Preschool Developmental Diagnostic Nursery (PDDN);
- Prescribed Pediatric Extended Care (PPEC) services for clients under the age of 21.

Some MCOs may include additional benefits, such as eye exams and eyeglasses for adults, which are not mandated by the DMAP to be part of the basic benefit.

### **Additional Services Are Covered Under The Medical Assistance Program**

The second insurance card will be a Medical Assistance card that will be used for services not covered by the MCO benefits package but reimbursed by the Medical Assistance Program. These services are often referred to as "wrap around services". The categorically eligible and the expanded population receive a different package of "wrap around services".

### Wrap Around Services that are Covered for the Categorically Eligible Medicaid Recipient

The services listed below are not included in the MCO Benefit Package but are covered for the categorically eligible

Medicaid recipient using their Medical Assistance Card:

- Pharmacy (only if dispensed by a pharmacy provider to a client or the client’s representative for use in other than a hospital setting).
- Extended behavioral health services authorized by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) for adults deemed severely and persistently ill (SPI).
- Non-emergency transportation.
- Day health and rehabilitation.
- ~~Private duty nurse services that exceed 28 hours per week that are authorized by Medicaid staff.~~
- Environmental investigation for source of lead provided by DPH for recipients under age 21.
- ~~Preschool Developmental Diagnostic Nursery.~~
- Part ~~H~~C Multidisciplinary Assessment.
- Dental clinic services for recipients under age 21.
- ~~Prescribed Pediatric Extended Care (PPEC) services for recipients under the age of 21 that are authorized by Medicaid staff.~~
- EPSDT/CSCRП services provided by enrolled school districts.
- Chronic renal disease program transportation services authorized by Medicaid staff.
- Part ~~H~~C developmental therapy and social work.
- Behavioral health services for children authorized by the Department of Services for Children, Youth, and Their Families.

Wrap Around Services that are Covered for the Expanded Population

The services listed below are not included in the MCO Benefit Package but are covered for the expanded population Medicaid recipient using their Medical Assistance Card:

- Pharmacy (only if dispensed by a pharmacy provider to the client or client’s representative for use in other than a hospital setting).
- Extended behavioral health services authorized by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) for clients deemed seriously and persistently ill.
- Non-emergency transportation.
- Chronic renal disease program transportation services authorized by Medicaid staff.
- ~~Private duty nurse services that exceed 28 hours per week that are authorized by Medicaid staff for persons under age 21 (effective 11/1/96).~~
- Dental clinic services for recipients under age 21 (effective 11/1/96).
- EPSDT/CSCRП services provided by enrolled school districts.

**Accessible Managed Care Insurance Carriers**

The health service provider should notify the Medicaid

TPL Unit at (302)577-4900 in the following two instances:

- ~~If a client presents a DSHP card and also has MCO/HMO coverage through one of the insurance carriers on the table below with an accessibility as “Y” in the county which he reside (if the insurance carrier on the table below indicates a “N” in the county which the client resides, the insurance is not accessible), and~~
- ~~If a client presents a DSHP card and MCO/HMO coverage but the insurance carrier is not listed on the table.~~

Effective 8/1/96 clients will be required to comply with the rules and procedures of their private accessible managed care insurance. The DMAP will no longer pay for medical services that have been denied by private accessible managed care insurance carriers for reasons related to the insured’s failure to comply with the policy’s procedures. Examples are claims denied by the private managed care insurance because:

- There was no referral from the primary care physician.
- The medical provider was out of the network.
- There was no precertification or authorization.
- Emergency room service without referral for a non-emergency service.

Services that are not included in the accessible managed care insurer’s plan but are covered by the DMAP will ~~continue to be paid by the DMAP, be paid by the DSHP MCO that the client has selected~~

HMO/MANAGED CARE TABLE		ACCESSIBILITY		
RESOURCE CODE	NAME OF INSURANCE	NCC	KENT	SUSSEX
G13	Aetna Health Plan	Y	Y	Y
H13	Aetna Life Insurance	Y	Y	Y
FO3	BC/BS of DE	Y	Y	Y
F53	Cigna Health Plan	Y	Y	Y
C26	Cigna Health Plans	Y	Y	Y
C25	Cigna Health Plans	Y	Y	Y
C83	Cigna Health Plans of DE	Y	Y	Y
K24	Delaware Valley HMO	Y	N	N
246	Delaware Valley HMOY	Y	N	N
375	Delmarva Health Plan	N	Y	Y
C02	Delmarva Health Plan	N	Y	Y
H71	Healthcare Delaware	Y	N	N
310	Healthcare Delaware	Y	N	N
E03	Healthcare of DE	Y	N	N
073	HMO of Delaware	Y	Y	Y
E75	HMO of Delaware	Y	Y	Y

818	<del>MDIPA Optimum Choice</del>	N	Y	Y
K54	<del>Mid Atlantic</del>	Y	N	N
835	<del>Optimum Choice Preferred</del>	N	Y	Y
F52	<del>Optimum Choice, Inea</del>	N	Y	Y
415	<del>Principal Health Care DE</del>	Y	Y	Y
G55	<del>Principal Health Care DE</del>	Y	Y	Y
994	<del>Prudential Service Bureau</del>	N	N	N
306	<del>Total Health Plus</del>	Y	Y	Y
340	<del>U. S. Healthcare</del>	Y	N	N
978	<del>U. S. Healthcare</del>	Y	N	N
E81	<del>US Healthcare</del>	Y	N	N
E98	<del>Cigna Health Plans</del>	Y	Y	Y
A07	<del>Champus</del>	Y	Y	Y
793	<del>Keystone Healthplan East</del>	N	N	N
F46	<del>Keystone Healthplan East</del>	N	N	N
E39	<del>Keystone Healthplan East</del>	N	N	N
E09	<del>Keystone Healthplan East</del>	N	N	N
930	<del>Medical IPA Health Plan</del>	N	N	N
998	<del>Greater Atlantic</del>	N	N	N

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DELAWARE COASTAL MANAGEMENT PROGRAM**

Statutory Authority: 15 CFR Part 930,  
15 CFR 923.84(a)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

The Delaware Coastal Management Program – Federal Consistency Policies

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

Delaware has a federally approved Coastal Management Program. One of the core duties of the Delaware Coastal Management Program (DCMP) is to review certain federal activities in the coastal management area (the entire state) for consistency with the program. The types of activities subject to review are: 1) those requiring a Federal permit or license (e.g. US Army Corps of Engineers 404 permits); 2) Direct Federal Actions (e.g. Main Channel Deepening project); 3) those receiving federal assistance; and 4) Outer Continental Shelf exploration/projects.

The proposed changes to the existing Federal Consistency Policies reflect new and updated existing regulations (DNREC, Dept. of Agriculture, State Historic Preservation Office, etc.) as well as new or revised Executive Orders signed by the Governor of Delaware. The

policies added or revised in this Federal Consistency Policy Document were selected for their ability to protect, preserve, restore, and develop Delaware's coastal resources in the most environmentally sensitive manner. All of the policies contained within the Federal Consistency Policy document have been promulgated and adopted (i.e. they are existing regulations and/or Executive Orders). There are no new regulations being introduced through this process.

The update and changes to the Delaware Federal Consistency Policies are considered a Routine Program Change under the NOAA Statute (15 CFR 923.84(a)).

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

15 CFR Part 930 – Federal Consistency with Approved Coastal Management Programs and 15 CFR 923.84(a) – Routine Program Changes to the Coastal Management Program

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

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing will be held on October 14, 1998 at 7:00 p.m. in the Secretary's Conference Room at the DNREC office building located at 89 Kings Highway in Dover. Written comments must be received by 4:30 p.m. on October 30, 1998. Comments may be mailed to the attention of Miriam A. Lynam, Sr. Resources Planner, Delaware Coastal Management Program, 89 Kings Highway, Dover, DE 19901 or E-Mailed to [mlynam@dnrec.state.de.us](mailto:mlynam@dnrec.state.de.us).

7. PREPARED BY:

Miriam A. Lynam ([mlynam@dnrec.state.de.us](mailto:mlynam@dnrec.state.de.us)) 302-739-3451 September 10, 1998

Federal Consistency Policy Document  
Delaware Coastal Management Program  
Routine Program Change  
September 1998

Program Contact:

Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program  
89 Kings Highway  
Dover, DE 19901  
(302) 739-3451

This *Draft Federal Consistency Policy Document* is an

update of the existing March 1993 Comprehensive Update and Routine Program Implementation (Policy Document).

All of the changes/additions to the document are underlined to assist the reader in identifying new policies. All of the additions/changes are based on existing regulations, statutes, or executive orders which have been promulgated or developed since the publication of the March 1993 Policy Document.

No new regulations or statutes were promulgated as a result of the compilation of this Federal Consistency Policy Document.

Comments on this *Draft Federal Consistency Policy Document* should be sent to:

Miriam A. Lynam  
Delaware Coastal Management Program  
DNREC, Division of Soil & Water Conservation  
89 Kings Highway  
Dover, Delaware 19901

Phone: (302) 739-3451  
e-mail: mlynam@dnrec.state.de.us

Delaware Coastal Management Program Summary

### **Background**

The Coastal Zone Management Act (CZMA) was signed in 1972 (P.L. 92-583). It has since been amended, with the most recent amendment in 1996. The Act and its amendments affirmed a national interest in the effective protection and development of the coastal zone. The CZMA authorized the Federal Grant-in-aid program to be administered by the Secretary of Commerce. They in turn appointed the National Oceanic and Atmospheric Administration (NOAA) as the responsible authority for the federal CZMA.

In response to the CZMA of 1972, Delaware prepared a Final Environmental Impact Statement (FEIS) for the development of a coastal program and submitted it to NOAA. In 1979, the Delaware Coastal Management Program was approved by NOAA under authority of the CZMA (15 CFR Part 923). The FEIS established the Delaware Coastal Management Program (DCMP), as well as its goals and policies and became Delaware's Program Document. The Department of Natural Resources and Environmental Control (DNREC) is the agency responsible for administering the state's Coastal Management Program.

Section 306 of the CZMA provides states with approved coastal management programs the authority to review federal activities (direct actions, licenses or permits, assistance, and Outer Continental Shelf exploration) for consistency with State Coastal Management Policies. In 1993, the DCMP recognized that many of the original policies developed in 1979 were outdated. At that time the

DCMP undertook a major revision to the Policy sections of the 1979 Program Document. The DCMP also committed to preparing subsequent revisions of the Policies on a routine interval.

The purpose of this 1998 Policy Document is to update and revise the 1993 Policy Document. Many of Delaware's environmental laws and regulations have been amended and/or new ones established since 1993. As a result, DCMP has updated and/or deleted the 1993 policies accordingly. All applicable environmental laws or regulations which have been promulgated since 1993 have also been incorporated. This Routine Program Change updates and revises the DCMP Policies as well as our Federal Consistency Procedures. The result is a new working document containing policies and procedures for utilization during federal consistency reviews.

### **Routine Program Change**

Section 306 of the Coastal Zone Management Act, as amended, provides states with a means to update their coastal programs with approval from NOAA. This procedure is called a Routine Program Change (RPC). NOAA issued new guidance in July, 1996 regarding RPC's. The DCMP has revised this Policy Document in accordance with the RPC Guidance and determined this update qualifies as an RPC. In addition to updating our Policies, the DCMP is also updating the 1979 Program Document to reflect changes and progress since its inception. The New Program Document will incorporate this Policy Document Update.

### **Delaware's Coastal Management Area**

Delaware has defined its Coastal Management Area as the entire state for the purposes of the federally approved coastal management program.

### **Delaware Coastal Zone Act and the Delaware Coastal Management Program**

The State of Delaware promulgated the Delaware Coastal Zone Act (7 Del. Code, Chapter 70) in the early 1970's. This State law allows the DNREC to regulate industry in the Coastal Strip of Delaware. The Coastal Strip is defined in the statute. It is approximately any lands and waters east of State Routes 13, 113, and 1 (north-south corridors), and an area on the north and south of the Chesapeake and Delaware Canal.

The Delaware Coastal Zone Act is incorporated into the DCMP Policy Document. Industrial development activities within the Coastal Zone Strip require a permit from the DNREC. The Delaware Coastal Zone Act is administered by the DNREC Office of the Secretary.

### **Introduction to Federal Consistency**

The Federal Coastal Zone Management Act of 1972 as

amended (CZMA) (16 USC §1451 to §1464) provides that each federal agency conducting or supporting activities, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone, must do so in a manner which is, to the maximum extent practicable, consistent with Delaware's Coastal Management Program (DCMP).

In addition, federal permits and licenses, outer continental shelf (OCS) plans, and grants-in-aid which may affect Delaware's coastal zone management area must be consistent with the DCMP. The federal consistency provisions are intended to provide a means for improved federal-local coordination regarding important federal actions which could affect the Delaware coastal resources.

Consistency reviews enable the State to:

1. Plan for and manage impacts resulting from a federal project, permit or program.
2. Provide for analysis of the effects of federal actions.
3. Identify federal actions which could adversely affect coastal resources, general land use patterns, or public investment requirements.
4. Provide for an examination of federal actions in the context of the goals, objectives, and policy network contained in the DCMP.

Consistency offers Delaware's state agencies, through the DCMP housed in the Department of Natural Resources and Environmental Control (DNREC), Division of Soil & Water Conservation, an opportunity for a positive voice in federal actions. It ensures that state concerns and policies will be considered by federal agencies in federal development projects, the issuance of federal licenses and permits, the approval of OCS plans and programs, and the award of federal grants, loans, subsidies, insurance, or other forms of federal aid.

### Applicability of Consistency Provisions

Sections 307(c) and (d) of the CZMA provide that:

1. Federal activities and development projects affecting any land or water use or natural resource of Delaware's coastal zone management area shall be conducted consistent with the DCMP to the maximum extent practicable.
2. No federal license or permit shall be granted until: a) the DCMP has concurred with the applicant's certification; or until, b) by the DCMP's failure to act, consistency is conclusively presumed; or, c) on appeal to the Secretary of Commerce, the Secretary overrides the state's objection. See section on Secretarial appeals (page 18).
3. No federal agency shall grant a license or permit for any activity described in detail in an OCS plan which affects any land or water use or natural resource in the coastal zone until the DCMP concurs with the certification of consistency made by the person submitting the OCS plan, except upon an override by the Secretary of Commerce. See section on

Secretarial appeals.

4. Federal agencies shall not approve proposed assistance projects to state and local governments that affect the coastal management area and are inconsistent with the DCMP, except upon an override by the Secretary of Commerce. See section on Secretarial appeals (page 18).

### Procedures for Federal Consistency Reviews

Applicants should send their Consistency Certifications and all supporting documentation (including federal application packages, maps, technical drawings, etc.) to:

Sarah W. Cooksey, Administrator  
 Delaware Coastal Management Program  
 Dept. of Natural Resource & Environmental Control  
 Division of Soil & Water Conservation  
 89 Kings Highway  
 Dover, DE 19901  
 Phone: (302) 739-3451

### Direct Federal Activities and Development Projects

Federal agencies proposing activities and development projects must submit a consistency determination to the DCMP where such projects are likely to affect Delaware's coastal resources. Under federal regulations this includes all functions of a federal agency performed by it or on its behalf, including: planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources. See 15 CFR Section §930.31.

A flow chart which summarizes the consistency review process is provided as Appendix A. The following procedures apply to federal activities and development projects:

### Notification

Federal agencies must provide the DCMP, at the earliest practicable time, with consistency determinations for all proposed federally conducted or supported activities directly affecting the coastal zone management area. Such consistency determinations must be received at least 90 days before the federal activity or development project reaches a final decision stage likely to restrict the consideration of alternative approaches or measures. In a limited number of cases, federal agencies must also submit a consistency determination for ongoing activities initiated prior to approval of the DCMP. See 15 CFR § 930.38.

The consistency determination from the federal agency must contain:

- a) A brief statement indicating how the proposed action will be undertaken in a manner consistent to the maximum extent practicable with the DCMP. The term 'maximum extent practicable' describes the requirement for



federal activities to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the federal agency's operations. See 15 CFR §930.32.

b) An evaluation of the relevant enforceable policies of the DCMP.

c) A detailed description of the proposed action, its associated facilities and their combined coastal zone effects.

d) Relevant data and information, including time schedules, sufficient to support the federal consistency determination.

#### **State Review**

Pursuant to 15 CFR §930.41, the DCMP shall inform the federal agency of its agreement or disagreement with the federal agency's consistency determination at the earliest practicable time. The response time will not exceed 45 days following receipt of federal notification unless an extension has been granted.

Upon receipt of a federal consistency determination the DCMP will notify those agencies and individuals with the expertise to properly review the federal activity or development project. The DCMP shall be responsible for coordinating the review, compiling comments, and responding to the federal agency.

The State will also provide adequate public notice of the proposed federal action. The public notice process is as follows:

#### **Public Notice**

a) The DCMP will give at least 20 days public notice prior to response to consistency certification. In the event that a state permit is required for the same activity, the DCMP will coordinate their review with the state permitting agencies.

b) The notice shall describe the subject matter of the certification review, including a summary of the proposed activity and an announcement of the availability of consistency certification and accompanying public information.

c) The notice shall request interested parties to comment on the proposed activity.

d) The notice shall provide the date, time, and place of any hearing to be held by the DCMP and/or State permitting agency.

e) The notice shall be published in a minimum of two Delaware newspapers of general circulation.

f) Public notice may be expanded in proportion to the degree of likely public interest involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good reasons.

#### **DCMP Objection to a Consistency Determination**

In the event the DCMP disagrees with the federal agency's consistency determination, a notification will be sent to the affected federal agency and to the Director of the federal Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA). The notification shall:

a) Describe how the proposed activity is inconsistent with specific enforceable policies of the management program;

b) Identify alternative measures, where feasible, which would make the proposed action consistent; and

c) Describe the nature and necessity of additional information that may be required for making a consistency determination if the objection is based on insufficient information.

Whenever the DCMP objects to a consistency determination, the DCMP will attempt to resolve its concerns with the federal agency. However, in the event of a serious disagreement between a federal agency and the DCMP, either party may request formal mediation through the Secretary of Commerce as provided for in 15 CFR Part 930, Subpart G, or informal negotiations through OCRM. Both processes are voluntary and non-binding.

#### **Modification of Consistency Determination Process**

The DCMP recognizes the need for flexibility in this process, such as shorter review time, special consistency agreements, and waivers in the interests of national security or overriding national interest. The DCMP, through direct negotiations with federal agencies, may agree to limit the applicability of consistency review based upon the scope, size, location or other characteristics of the proposed federal action.

#### **Federal Licenses and Permits**

Activities requiring a federal license or permit are subject to consistency when the activities, whether in or outside the coastal zone, are likely to affect any land or water use or natural resource of Delaware's coastal zone management area. Applicants for federal licenses or permits must certify to the permitting federal agency and the DCMP that the proposed project will be conducted in a manner consistent with the enforceable policies of the DCMP. Proposed activities subject to this section include those requiring federal authorizations, certifications, approvals, or other forms of permission granted by any federal agency to an applicant, except OCS leases and federal agencies permit applications for federal permits which are covered separately.

Pursuant to 15 CFR §930.53(b), the DCMP has prepared a list of those federal licenses and permits which are considered to "affect the coastal zone". No federal license or permit described on this list (see Appendix C) can be granted

until after the applicant certifies that the proposed activity complies with and will be conducted in a manner consistent with the DCMP and the DCMP concurs.

The following procedures apply to federal licenses and permits:

#### **Notification**

Federal agencies are required to inform applicants for listed federal licenses and permits of the applicant's responsibility for notification to the State and submission of required information and a consistency certification. The notice and consistency certification shall comply with 15 CFR §930.57 and §930.58.

Applicants should consult with the DCMP at the earliest practicable time for assistance regarding the DCMP policies applicable to the proposed project.

When satisfied that the proposed activity meets the federal consistency requirements, all applicants for federal licenses or permits subject to consistency shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. The applicant's consistency certification shall be in letter format and be accompanied by the necessary data and information. The consistency certification shall contain the following statement:

"The proposed activity complies with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."

At the same time an application is submitted to the federal agency for a listed federal license or permit, the applicant shall transmit a copy of the application and consistency certification to the DCMP.

#### **Necessary Data and Information**

The applicant shall furnish the DCMP with necessary data and information along with the consistency certification. Such information and data shall include:

a) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. This includes, but is not limited to, a copy of the federal permit application package, maps, diagrams, technical data, etc.

b) A brief assessment relating the probable coastal zone effects of the proposed project and its associated facilities on any land or water use or natural resource of the coastal zone to the relevant enforceable policies of the Delaware Coastal Management Program.

c) A brief set of findings, derived from the above assessment, indicating that the proposed activity, its associated facilities, and their effects are all consistent with the provisions of the DCMP.

d) Upon the applicant's request, the DCMP shall provide assistance for developing the assessment and findings described in items b and c above.

#### **State Review**

Pursuant to 15 CFR §930.60, State review of a federal license or permit application is initiated upon receipt of the consistency certification and the necessary data and information as specified in 15 CFR §930.57 and §930.58.

The State will also provide adequate public notice of the proposed federal permit or license. The public notice process is as follows:

#### **Public Notice**

a) The DCMP will give at least 30 days public notice prior to response to consistency certification. In the event that a state permit is required for the same activity, the DCMP will coordinate with the state permitting agencies.

b) The notice shall describe the subject matter of the certification review, including a summary of the proposed activity and an announcement of the availability of consistency certification and accompanying public information.

c) The notice shall request interested parties to comment on the proposed activity.

d) The notice shall provide the date, time, and place of any hearing to be held by the DCMP and/or State permitting agency.

e) The notice shall be published in a minimum of two Delaware newspapers of general circulation.

f) Public notice may be expanded in proportion to the degree of likely public interest involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good reasons.

#### **Review Process**

Review of consistency certifications and supportive information will be conducted by the DCMP. If a state permit is required for the same activity, the State permitting agency's review of the permit applications will become part of the DCMP's consistency review.

Consistency certifications and/or state permit applications will be reviewed to determine whether or not:

a) Sufficient information was submitted to determine consistency.

b) The proposed activity by itself, or in consideration with existing projects, would cause a violation of a Delaware statute, regulation, or enforceable policy contained in the program, or result in an adverse impact of an unacceptable nature as defined by the management program.

c) Alternative measures exist, which if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the DCMP.

**Concurrence with a Consistency Certification**

At the earliest practicable time following the close of the public comment period, the DCMP shall notify the applicant and the federal and/or state permitting agency whether it concurs or objects to the consistency certification. Concurrence shall be in writing. If the DCMP does not respond within six months from the commencement of review, concurrence shall be conclusively presumed. If a consistency decision has not been issued within 90 days of commencement of review, the DCMP shall notify both the federal permitting agency and applicant of the status and provide justification for further delay.

**Federal Action following Delaware Concurrence with a Consistency Certification**

If the DCMP issues a concurrence (or concurrence is conclusively presumed) with the applicants' consistency certification, the federal agency may approve the application for a federal license or permit (state permits may still be required).

**Federal Action following Delaware Objection to a Consistency Certification**

At any time during the six month review period, the DCMP may object to the consistency certification. Such objection will be contained in a written notice from the DCMP to the applicant, the federal agency, and the Director of OCRM. The objection shall:

- a) Describe how the proposed action is inconsistent with the enforceable policies of the management program.
- b) Identify alternative measures, where feasible, which would make the proposed action consistent.
- c) Describe the nature and necessity of additional information required for making a consistency determination if the objection is based on insufficient information. See 15 CFR §930.64(d)
- d) Describe the applicant's right to appeal to the Secretary of Commerce.

Upon receipt of a State's objection, the federal agency shall not grant the federal license or permit, except where, upon appeal to the Secretary of Commerce, the Secretary overrides DCMP's objection based upon a finding that the proposed activity is either consistent with the purposes of the CZMA or is in the interest of national security (15 CFR Part 930, Subpart H). The State's objection shall include a statement informing the applicant of a right to appeal to the Secretary of Commerce. See section on Secretarial appeals. Regardless of DCMP's consistency decision or the Secretary's decision in an appeal, the project may not commence until all necessary State permits are obtained.

**Modification of Consistency Certification Process**

Pursuant with 15 CFR§930.54 the DCMP, with

assistance from federal agencies, may monitor other federal license and permit activities which may reasonably be expected to affect Delaware's coastal zone management area, but which are not listed in the DCMP. Delaware intends to monitor unlisted federal license and permit activities through the A-95 Process/State and Regional Clearinghouses, NEPA environmental impact statements, and routine reporting of regional resource agencies.

Should the DCMP determine that an unlisted license or permit activity could be reasonably expected to affect the coastal zone, notification will be sent to the appropriate federal agency, the Director of OCRM, and the applicant of the DCMP's intent to review the activity for consistency pursuant to 15 CFR §930.54.

**Federal Assistance to State and Local Governments**

Pursuant with 15 CFR Part 930, Subpart F, state and local governments submitting applications for federal assistance affecting Delaware's coastal zone management area shall certify that the applications are consistent with the DCMP. Federal assistance means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. An applicant agency means any unit of state or local government which submits an application for federal assistance.

**DCMP Consistency Provision Relative to Federal Assistance**

Applications by state, county and municipal agencies for federal assistance must be reviewed by the state Federal Aid Review Committee (FARC). Additionally, all applications from governmental entities which receive State funds must be reviewed and approved by the Delaware State Clearinghouse Committee (DSCC), a legislatively mandated review body whose membership includes representatives of the executive and legislative branches of State government. The DSCC may veto applications and prevent their further consideration by a federal agency. Other reviews are also required at the regional level for projects in New Castle County.

To ensure consistency with the DCMP and conform with NOAA regulations, DCMP will review all federal assistance applications and make the final consistency determination in consultation with the FARC and the DSCC.

In the event the DCMP objects to the applicant agency's proposal on grounds of inconsistency with the DCMP, the objection must include the reasons and supporting information for such action. The DCMP will then notify the applicant agency and the federal agency of the State's objection.

The State's objection notification will:

- a) Describe how the proposed project is inconsistent with specific elements of the management program.

- b) Identify alternative measures, if any, which would make the proposed action consistent.
- c) Describe the nature and necessity of additional information required for making a consistency determination if the objection is based on insufficient information.
- d) Describe the applicant's right to appeal to the Secretary of Commerce.

### Modification of Consistency Certification Process

The DCMP will monitor federal assistance projects and programs through the clearinghouse review process and other means. If the monitoring indicates that significant impacts on the State's coastal resources have occurred or could occur from federal assistance projects, a formal consistency review and determination pursuant to the federal regulations will be requested. In such cases, the DCMP will notify the applicant agency, involved federal agencies, and the OCRM Director of its intention to make such a determination.

Some federal assistance programs are not subject to OMB Circular A-95 nor to the review process required by the Delaware State Clearinghouse Committee. In these cases the DCMP will monitor program activity through the Federal Register, informal and formal federal agency contact, newsletters, State-local technical assistance projects, and other means. Where it is determined that such programs could have a significant impact, the DCMP will review the federal program and, if appropriate, request that such federal program be subject to the A-95/Clearinghouse review and approval process. A formal consistency certification may subsequently be required.

The DCMP reserves the right to establish a federal assistance program consistency list based on either or both of the preceding evaluations and to implement the federal assistance consistency certification process and authorities provided by 15 CFR Part 930, Subpart F.

### OCS Exploration, Development and Production Activities

The federal regulations, 15 CFR Part 930, Subpart E, provides that OCS plans submitted to the U.S. Secretary of the Interior for OCS exploration, development and production, and all associated federal licenses and permits described in detail in such OCS plans, shall be subject to a certification of their consistency with a State's coastal management program.

This requirement applies to:

- a) License and permit activities which are described in detail in the OCS plan, such as, permits to drill, and rights-of-use and easements for the construction and maintenance of structures, platforms, gathering and flow lines.
- b) OCS-related licenses and permits, such as for pipeline corridors, artificial islands or other fixed structures,

transport of dredged materials, and discharges or emissions subject to the Clean Water Act of 1987 or the Clean Air Act of 1990.

### OCS Activities Subject to Consistency

A certification of consistency for each activity described in detail in the OCS plan shall be attached to the OCS plan at the time it is submitted to the Secretary of the Interior. No federal official or agency shall grant any license or permit for any activity described in detail in the OCS plan until the State has received such certification and plan together and until the State has concurred or conclusive concurrence is presumed.

OCS plan license and permit actions not described in detail in the OCS plan are subject to the provisions for federal licenses and permits.

### Notification and Review Process

Any person submitting to the U.S. Secretary of the Interior any OCS plan must furnish the DCMP with a copy of the OCS plan certification.

When satisfied that the proposed activities described in detail in the OCS plan meet the Federal consistency requirements, the OCS lessee or operator shall declare in the consistency certification that:

"The proposed activities described in detail in this plan comply with Delaware's approved coastal management program and will be conducted in a manner consistent with such program."

Supporting information to accompany the certification shall include the comprehensive offshore, nearshore and onshore data and material required by the Department of the Interior's operating regulations governing exploration, development and production operations on OCS (30 CFR §250.34). Information supplied must include an assessment of the probable coastal zone effects, and a set of findings indicating that the proposed activities, their associated facilities, and their combined effects, are all consistent with the provisions of the management program.

In order to ensure that all levels of government and the general public are aware of and have an opportunity to comment on such plans, the DCMP will provide public notice of the receipt of such plans, the procedures for comments, and the review closing date.

### State Concurrence with Consistency Certification

At the earliest practicable time the DCMP will notify the person, the Secretary of the Interior, and the Director of OCRM whether it concurs with or objects to the consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of an objection within six months following commencement of State review.

If the DCMP has not issued a decision within 90 days following the beginning of review, it will notify the applicant, the Secretary of the Interior and the Director of OCRM of the status of the matter and the basis for further delay.

If the State issues a concurrence or if conclusive concurrence is presumed, the OCS lessee or operator will not be required to submit additional certifications and supporting information for State review at the time federal applications are actually filed for the federal permit activities described in detail in the OCS plan. However, the lessee or operator must supply the DCMP with copies of permit applications to allow the State to monitor the approved OCS activities.

#### **State Objection to a Consistency Certification**

In the event the State objects to the OCS plan certification, it will accompany its objection with reasons and supporting information concerning each activity which the State finds to be inconsistent with the management program. The State's objection will include a statement informing the person of a right of appeal to the Secretary of Commerce on the grounds described below. Following receipt of a State agency objection, federal agencies may not issue any of the licenses or permits for activities described in detail in the OCS plan.

#### **Appeals and Secretarial Review Relative to Federal Consistency**

The provisions of 15 CFR Part 930, Subpart H, outline procedures by which the Secretary of Commerce may override a state's objection if the Secretary finds that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which is inconsistent with the DCMP, may be federally approved because the activity is consistent with the objectives or purposes of the federal CZMA, or is necessary in the interest of national security. In order to be "consistent with the objectives or purpose of the federal CZMA", an activity already inconsistent with the DCMP, must be found by the Secretary of Commerce to be permissible because it satisfies the following four requirements:

- a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the Act.
- b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest.
- c) The activity will not violate any requirement of the Clean Air Act, as amended, or the Clean Water Act, as amended.
- d) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the DCMP.

Pursuant to 15 CFR §930.125, an appellant may file a notice of appeal with the Secretary of Commerce within 30 days of the appellant's receipt of DCMP's objection to a consistency certification for a federal license or permit (including those described in an OCS plan), or a federal assistance program.

The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the federal and state agencies involved. An application fee must accompany the appeal to the Secretary: \$200 for minor appeals and \$500 for major appeals, unless the Secretary, upon consideration of an applicant's request for fee waiver, determines that the applicant is unable to pay the fee. The Secretary will also collect such other fees as are necessary to recover the full costs of administering and processing the appeals.

Federal Consistency Policies  
Delaware Coastal Management Program  
September, 1998

#### **CMP Policies for Wetlands Management**

1. The productive public and private wetlands in the state shall be preserved and protected to prevent their despoliation and destruction consistent with the historic right of private ownership of lands.

[Authority - 7 Delaware Code 6602]

2. Activities in or adjacent to wetlands shall be conducted so as to minimize wetlands destruction or degradation, to preserve the natural and beneficial values of wetlands, and to protect the public interest therein.

[Authority - 7 Delaware Code 6602, 6003(a)(2), 6119, and 4001]

3. Each state agency shall minimize the adverse effects to freshwater wetlands and conserve and enhance the environmental values and functions of freshwater wetlands in carrying out the agency's responsibilities.

[Authority - Executive Order No. 56, May 26, 1988]

4. Each state agency, to the extent permitted by law, shall avoid undertaking or providing financial assistance for construction located in freshwater wetlands which will substantially degrade or destroy for long or permanent duration the use and function of an altered area as a wetland environment, unless the head of the agency, through consultation with the DNREC, files written findings with DNREC that (a) there is no reasonable alternative to such construction, and that the proposed action includes all practicable measures to minimize undesirable impacts to

freshwater wetlands which may result from such use, or (b) that the request is consistent with the procedures and provisions of the following paragraph. In making this finding the head of the agency and DNREC may take into account social, economic, environmental and other pertinent factors.

[Authority - Executive Order No. 56, May 26, 1988]

5. The Secretary of the DNREC in conjunction with the Department of Agriculture, the Delaware Development Office and the Department of Transportation shall establish policy and procedures including a mechanism for consultation and interagency discussions that will ensure the consideration of the public health, safety and welfare, the active management of wetland systems, and the uses of freshwater wetlands including wetland enhancement, recreation, economic, scientific and cultural uses. DNREC may approve standard plans and procedures that shall be followed by a state agency that has similar type of activities that may affect a wetland more than one time and/or affect more than one wetland site.

[Authority - Executive Order No. 56, May 26, 1988]

6. Any requests for new authorizations, appropriations, or grants of state operating or capital funds, or for state loan assistance or guarantees shall indicate, based on best available information, if an action to be proposed will be located in or will adversely affect freshwater wetlands, whether the proposed action is in accord with Executive Order Number 56. The U. S. Fish and Wildlife Service's National Wetlands inventory maps shall be used as a guideline for freshwater wetlands determinations.

[Authority - Executive Order No. 56, May 26, 1988]

7. When State-owned freshwater wetlands are proposed for lease, easement, right-of-way or disposal to non-state public or private parties, the State agency shall (a) attach restrictions appropriate to Executive Order Number 56 to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (b) withhold such properties from disposal.

[Authority - Executive Order No. 56, May 26, 1988]

8. Wetlands to be managed by the Department of Natural Resources and Environmental Control are those meeting the criteria set forth in Section 6603(h) Chapter 66, Title 7, Delaware Code.

[Authority - 7 Delaware Code 6603(h)]

9. "Wetland-type" areas not subject to DNREC regulation, including freshwater wetlands, swamps, bogs, low lying and poorly drained lands not covered by the official wetlands maps, shall be evaluated for their wildlife, groundwater recharge, scenic and other values as part of the preparation

of registries of natural areas and the development of critical areas plans and state resource areas, as provided by the Delaware Natural Areas Preservation System Act, the Delaware Land Use Planning Act, and the Delaware Land Protection Act, respectively.

[Authority - Executive Order No. 43, August 15, 1996; 7 Delaware Code, Chapter 73 and Chapter 75; and 29 Delaware Code, Chapter 92]

10. Activities which may adversely affect wetlands shall require state approval pursuant to the policy statements below. The CMP, however, requires no such approval for the following activities: construction of foot bridges, duck blinds, waterfowl nesting structures, boundary markers, or aids to navigation that do not prevent the ebb and flow of the tide; mosquito control activities authorized by the DNREC; and hunting, fishing, haying, trapping, and grazing of domestic animals.

[Authority - 7 Delaware Code 6604 and 6606; DNREC Wetlands Regulations, Section 1.04, revised November 3, 1994]

11. In order to assure that any activity in the wetlands is appropriate, state approval shall be required prior to the initiation of such activities, except no such approval shall be required for the activities identified in policy statement number 10. The following factors shall be considered prior to such approval: the environmental impact of the proposed use; the number and type of supporting facilities required and their impact; the effect of the activity on neighboring land uses; the appropriate state and local comprehensive plans for the general area; the economic impact of the activity in terms of jobs, taxes generated, and land area required; and the aesthetic impact of the proposed activity. Alternative methods of construction shall also be considered prior to permit approval.

[Authority - 7 Delaware Code 6604 and DNREC Wetlands Regulations, revised November 3, 1994]

12. In considering the environmental impacts of a proposed activity in wetlands, the Department of Natural Resources and Environmental Control shall consider the cumulative impact of individual projects.

[Authority - Executive Order No.43, August 15, 1996]

13. No permit will be issued to:

a. Dredge any channel through the wetlands deeper than the existing depth or the control channel depth specified by the Corps of Engineers at the point of connection to the adjacent navigable waterway to which the dredge channel is directly connected. A lesser depth may be specified by the Secretary of the DNREC in furtherance of the purposes of the Act.

b. Dredge any channel through the wetlands that has

only one outlet to navigable water through which the normal daily tide ebbs and flows unless the channel is equipped, by aerators or other means, to maintain the Water Quality Standards for Streams that are issued by the DNREC.

c. Dredge channels through wetlands with sides more nearly vertical than a slope that rises one foot vertically for each three feet of horizontal distance except where conditions of soil composition prevent slope stabilization, so that bulkheading must be used.

d. Utilize wetlands for any activity unless it:

(1) Requires water access for the central purpose of the activity; and

(2) Has no alternative on adjoining non-wetland property of the owner.

e. Building bulkheads on wetlands higher in elevation than the surface of the natural land. Navigational aids that do not prevent the ebb and flow of the tide may be higher.

[Authority - DNREC Wetlands Regulations, Section 2, revised November 3, 1994]

### **CMP Polices for Beach Management**

1. The public and private beaches of the State shall be preserved, protected, and enhanced to mitigate beach erosion, and to prevent their destruction and despoliation.

[Authority - 7 Delaware Code 6801, 6803, and 6810]

2. Publicly owned beaches and shorelines shall be managed and maintained to assure adequate and continued public access to these areas within the carrying capacity of the resource.

[Authority - 7 Delaware Code 4701(c)]

3. Beaches are the areas from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal north of Pickering Beach, which extends from the Mean High Water line of the Atlantic Ocean and Delaware Bay seaward 2,500 feet, and landward 1,000 feet.

[Authority - 7 Delaware Code 6802(1)]

4. No person shall, without first having obtained a permit or letter of approval from the Department, undertake any activity:

a. To construct, modify, repair or reconstruct any structures or facility on any beach seaward of the building line.

b. To alter, dig, mine, move, remove or deposit any substantial amount of beach or other materials, or cause the significant removal of vegetation, on any beach seaward of the building line which may affect the enhancement, preservation or protection of beaches.

[Authority - 7 Delaware Code 6805(a)]

5. Construction activities landward of the building line on

any beach, including construction of any structure or the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach or other materials, shall be permitted only under a letter of approval from the Department of Natural Resources and Environmental Control.

[Authority - 7 Delaware Code 6805(c)]

6. The Department shall grant or deny a permit or letter of approval required by Policies 4 and 5 in accordance with duly promulgated regulations. If any structure proposed to be built in whole or in part seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval.

[Authority - 7 Delaware Code 6805(d)]

7. By definition, the Building Line means a line generally paralleling the coast, set forth on maps prepared by the Division of Soil and Water Conservation with reference to the National Geodetic Vertical Datum (NGVD) and the Delaware State Plane Coordinate System, and based upon information provided by topographic surveys. The Building Line is located as follows:

a. Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen - 100 feet landward of the adjusted seawardmost 10-foot elevation contour above NGVD; and

b. Along beaches extending from the tip of Cape Henlopen to the southernmost limit of Primehook Beach - 100 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD;

c. Along beaches extending from the southernmost limit of Primehook Beach to the Old Marina Canal north of Pickering Beach - 75 feet landward of the adjusted seawardmost 7-foot elevation contour above NGVD; or at the landward limits of the beach, as defined in the Regulations Governing Beach Protection and the Use of Beaches dated December 27, 1983, whichever is most seaward.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Part 1 - Definitions, revised December 27, 1983]

8. If a structure located seaward of the Building Line is completely destroyed, no person shall undertake any restoration or reconstruction of the destroyed structure before the Division issues the person a permit or letter of approval pursuant to the Regulations Governing Beach Protection and the Use of Beaches.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 2.07,

revised December 27, 1983]

9. All structures, devices and facilities existing now or in the future which are devoted to the enhancement, preservation and protection of beaches shall be under sole jurisdiction, management and control of the Department of Natural Resources and Environmental Control.

[Authority - 7 Delaware Code 6803(b)]

10. No person shall commence or conduct, without a permit therefore from the Division of Soil & Water Conservation, construction of any structure or facility on any beach seaward of the Building Line, the primary function of which is beach erosion control or shore protection including, but not limited to, groins, jetties, seawalls, revetments, dikes, bulkheads, and beach nourishment; except that ordinary dune maintenance, as determined by the Division, including the proper installation of sand fence and the planting and fertilization of stabilizing vegetation, shall not require a permit.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 4.03, revised December 27, 1983]

11. No person shall commence or conduct without a permit therefore from the Division of Soil and Water Conservation, construction seaward of the Building Line, of any pipeline, dock, pier, wharf, ramp or other harbor work.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 4.04, revised December 27, 1983]

12. If a structure is to be either constructed or reconstructed following the complete destruction of the original structure, and such a structure does not have to be located seaward of the Building Line in order to achieve its intended purpose, then such a structure shall be required to be located entirely landward of the Building Line. However, if the Division of Soil and Water Conservation determines that there is inadequate space available entirely landward of the Building Line for the construction or reconstruction of a completely destroyed structure, said constructed or reconstructed structure shall be physically located as far landward as possible on the parcel of real property in question, taking into consideration all Federal, State and local laws, rules, regulations, and zoning and building ordinances.

[Authority - State of Delaware Regulations Governing Beach Protection and the Use of Beaches, Section 2.08, revised December 27, 1983]

13. The following activities are prohibited:

a. The operation of any motorized vehicle or machine on, over or across the primary dune on any State-owned beach except at those locations specified by the Department

for such use; and

b. Pedestrian traffic on, over or across the primary dune on any State-owned beach except at those locations specified by the Department for such use; and

c. The alteration, moving or removal of any facility, improvement or structure installed or maintained by the DNREC for enhancement, preservation or protection of any beach; and

d. The damaging, destruction or removal of any trees, shrubbery, beachgrass or other vegetation growing on any State-owned or maintained beach seaward of the Building Line.

[Authority - DNREC Regulations Governing Beach Protection and the Use of Beaches, Section 3.03, revised effective December 27, 1983]

14. Actions deemed necessary by DNREC to prevent and repair damages from erosion of public beaches shall be taken within the limits of funds made available for such purposes.

[Authority - 7 Delaware Code 6803(b) and 6808]

15. Action to reduce shoreline recession on private beaches may be taken by DNREC, but only under the following conditions:

a. Where dangerous conditions exist on any privately owned beach which constitute an emergency; or

b. In those instances where owners of private beaches allow free public use of such beaches in return for the assistance; or

c. Whenever two thirds or more of the property owners in the project area along the private beach have petitioned the Department to undertake the work.

[Authority - 7 Delaware Code 6801, 6804, 6806, and 6810]

16. To the maximum extent possible the following system of priorities shall be utilized for the expenditure of limited beach preservation funds:

a. First priority shall be given to those beaches which suffer substantial and chronic erosion due to the presence of public navigation works;

b. Second priority shall be given to those intensely used, publicly owned beaches undergoing critical erosion. This category will be subdivided further according to the degree of public use, ease of access, rate of erosion, value of the area to the economy, and possible beneficial effects protection efforts may have on downdrift Delaware beaches. Protection of private beachfront structures will not be an overriding consideration;

c. Third priority shall be given to all remaining publicly owned recreational beaches;

d. Fourth priority shall be given to intensely used, publicly accessible private beaches;

e. Fifth priority shall be given to sparsely used,



publicly accessible beaches; and

f. The last priority shall be given to privately owned, restricted beaches. In fact, all beach protection funds and State disaster-related reconstruction aid shall be restricted unless and until the beaches are opened to public use.

[Authority - Executive Order No. 43, August 15, 1996]

17. All bonds issued for beach preservation projects shall not be issued for a period longer than the expected useful life of the work being financed.

[Authority - Executive Order No. 43, August 15, 1996]

18. Non-structural erosion control methods are preferred over structures and are, therefore, encouraged by the CMP.

[Authority - Executive Order No. 43, August 15, 1996]

19. The supply and demand for access to Delaware's public beaches and other shorelines shall be studied periodically through the Statewide Comprehensive Outdoor Recreation Planning Process (SCORP). When the need for additional access facilities to these public beaches and shorelines, beyond those already in place, the state will undertake efforts to provide such access as long as it can be done in a manner consistent with the purposes for which these lands were set aside.

[Authority - 7 Delaware Code 4701(c); Executive Order No. 43, August 15, 1996]

### **CMP Policies for Coastal Waters Management**

1. The development and utilization of the land and water resources of the state shall be regulated to ensure that water resources are employed for beneficial uses and not wasted, to protect beneficial uses of water resources, and to assure adequate water resources for the future.

[Authority - 7 Delaware Code 6001 (a)(2) and (3)]

2. The water resources of the state shall be protected from pollution which may threaten the safety and health of the general public.

[Authority - 7 Delaware Code 6001 (a)(5) and 6001 (c)(2)]

3. The coastal water resources of the state shall be protected and conserved to assure continued availability for public recreational purposes and for the conservation of aquatic life and wildlife.

[Authority - 7 Delaware Code 6001 (a)(4)]

4. It is the policy of the DNREC to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.

[Authority - DNREC Regulations, Surface Water Quality Standards, Section 1.1, amended February 26, 1993]

5. The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria. Such uses shall include public water supply; industrial water supply; primary contact recreation involving any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water such as swimming and water skiing; secondary contact recreation involving a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water such as wading, boating and fishing; maintenance, protection and propagation of fish, shellfish, aquatic life and wildlife preservation; agricultural water supply; and waters of exceptional recreational or ecological significance (ERES waters).

[Authority - State of Delaware, Surface Water Quality Standards, Section 10, amended February 26, 1993]

6. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.1, revised February 26, 1993]

7. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that water quality shall be maintained and protected. In the case of E.R.E.S. waters, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the DNREC finds, after full satisfaction of public participation provisions of 7 Delaware Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the DNREC shall assure water quality adequate to protect existing uses fully. Further, the DNREC shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all

cost-effective and reasonable best management practices for nonpoint source control.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.2, amended February 26, 1993]

8. Where high quality waters constitute an outstanding national resource, such as waters of national parks and wildlife refuges, existing quality shall be maintained and protected.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.3, amended February 26, 1993]

9. In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.4, amended February 26, 1993]

10. Degradation of water quality in such a manner that results in reduced number, quality, river or stream mileage, of designated uses or violation of water quality standards shall be prohibited. Reduced quality shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.5, amended February 26, 1993]

11. Temporary sources of pollution, including but not limited to stream or ditch installation, improvement, maintenance, or stabilization projects, dredge operations, and waste site remediation projects, may be permitted even if degradation may be expected to occur. Permission may be granted provided that the applicant can demonstrate to the satisfaction of the DNREC that after a minimal period of time the number, quality, and river or stream mileage of designated uses, and the degree of attainment of water quality standards, will return or be restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

[Authority - State of Delaware Surface Water Quality Standards, Section 3.6, amended February 26, 1993]

12. All surface waters of the State shall meet the following minimum criteria:

a. Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

(1) Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a

nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

(2) Setttable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

(3) Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

[Authority - State of Delaware Surface Water Quality Standards, Section 4.1, amended February 26, 1993]

13. Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 of the Surface Water Quality Standards may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

[Authority - State of Delaware Surface Water Quality Standards, Section 6.2, amended February 26, 1993]

14. Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:

a. Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:

(1) Unacceptable levels of taste or odor in the treated water;

(2) Significant disruption of the treatment processes at the treatment facility; or

(3) Concentrations of toxic substances in the treated water that may be harmful to human health.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.2 (a), amended February 26, 1993]

15. Designated exceptional recreational or ecological

significance (ERES) waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.5(a)(i), amended February 26, 1993]

16. ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the DNREC shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

[Authority - State of Delaware Surface Water Quality Standards, Section 11.5(a)(ii), amended February 26, 1993]

17. The discharge of oil from a vessel, truck, pipeline, storage, tank or tank car which causes or poses a threat of making a film on, emulsion in or sludge beneath the waters of the state or its shoreline shall be prohibited.

[Authority - 7 Delaware Code, 6203, 6202(7)(5) and (9)]

18. At a minimum, any discharge of liquid waste - sewage, industrial waste or other waste to State waters shall be subject to effluent limitations, discharge requirements and any alternate effluent control strategy that reflect a practicable level of pollutant removal technology. For the purposes of this section, a practicable level of pollutant removal technology is defined as the application of "best" treatment technology, control measures and practices available to reduce or remove pollutants taking into account the cost of applying such technology, control measures or practices in relation to the effluent reduction benefits to be achieved, the age of equipment and facilities involved, the process(es) employed, non-water quality impacts (e.g. energy requirements) and other factors deemed appropriate. For the parameters, BOD<sub>5</sub> (5-day biochemical oxygen demand) and suspended solids, the degree of removal reflecting an application of a practicable level of pollutant removal technology shall be at least 85% of the BOD<sub>5</sub> and suspended solids contained in the influent to the treatment works or prior to application of the removal technology, control measures or practices. For discharges of sewage to State waters, a practicable level of pollutant removal technology shall be secondary treatment and disinfection.

a. No person shall cause or permit any discharge of liquid waste to the Delaware River, the Delaware Bay, or Atlantic Ocean except liquid waste which has received at least secondary treatment and disinfection.

b. No person shall cause or permit discharge of liquid waste to a lake or a pond or any tributary thereof, except liquid waste which has received at least secondary treatment, filtration, nutrient removal and disinfection.

c. No person shall cause or permit any discharge of liquid waste to the Little Assawoman Bay, Indian River Bay, or to Rehoboth Bay, including any tributaries to those waterbodies, except liquid waste which has received at least secondary treatment, filtration, and disinfection.

d. No person shall cause or permit any discharge of liquid waste to a stream, tidal or non-tidal, except liquid waste which has received at least secondary treatment, filtration, and disinfection. This subsection shall not govern discharge into the Delaware River, the Delaware Bay or the Atlantic Ocean, which shall be governed by subparagraph (a) hereof. For existing facilities, filtration may not be required if the existing facility has demonstrated the ability to continuously meet secondary treatment levels.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 7 and 8, revised June 30, 1993]

19. In the event that Delaware Surface Water Quality Standards are not achieved through application of the technology based requirements, additional effluent limitations and treatment requirements shall be imposed to assure compliance with the Surface Water Quality Standards. Such additional effluent limitations and treatment requirements must control all pollutants or pollutant parameters which the DNREC determines are or may be discharged at a level which will cause, have the reasonable potential to cause or significantly contribute to an excursion of any numerical or narrative water quality criterion contained within Delaware's Surface Water Quality Standards. The need for additional effluent limitations and treatment requirements shall be based upon the results of chemical and/or biological tests in conjunction with studies or analyses designed to assess the potential of the discharge to cause or contribute to in-stream excursions of Delaware's Surface Water Quality Standards.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 8.01, revised June 30, 1993]

20. Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.

[Authority - State of Delaware Surface Water Quality Standards, Section 1.2, amended February 26, 1993].

21. No person shall, without first having obtained a permit from the Delaware Department of Natural Resources,

undertake any activity:

- a. In a way which may cause or contribute to the discharge of an air contaminant; or
- b. In a way which may cause or contribute to the discharge of a pollutant into any surface or ground water; or
- c. In a way which may cause or contribute to withdrawal of ground water or surface water or both; or
- d. In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or
- e. To construct, maintain or operate a pipeline system including any appurtenances such as a storage tank or pump station; or
- f. To construct any water facility; or
- g. To plan or construct any highway corridor which may cause or contribute to the discharge of an air contaminant or discharge of pollutants into any surface or ground water.

[Authority - 7 Delaware Code 6003 (a)]

22. No person shall, without first having obtained a permit from the Delaware Department of Natural Resources and Environmental Control, construct, install, replace, modify or use any equipment or device or other article:

- a. Which may cause or contribute to the discharge of an air contaminant; or
- b. Which may cause or contribute to the discharge of a pollutant into any surface or ground water; or
- c. Which is intended to prevent or control the emission of air contaminants into the atmosphere or pollutants into surface or ground waters; or
- d. Which is intended to withdraw ground water or surface water for treatment and supply; or
- e. For disposal of solid waste.

[Authority - 7 Delaware Code 6003 (b)]

23. Regulatory variances for the activities identified in the preceding policy statement may be granted pursuant to 7 Delaware Code, Section 6011 if all of the following conditions exist in the opinion of the Secretary of the Delaware Department of Natural Resources and Environmental Control: (1) good faith efforts have been made to comply with these policies; (2) the cost of compliance is disproportionately high with respect to the benefits which would be bestowed by compliance, or the necessary technology is unavailable; (3) available alternative operating procedures or interim control measures are being or will be used to reduce adverse impacts; and (4) the activities are necessary to the national security or to the lives, health, or welfare of the occupants of Delaware.

[Authority - 7 Delaware Code 6011(b)]

24. No permit for the activities identified above shall be

granted unless the activities are consistent with county and municipal zoning regulations.

[Authority - 7 Delaware Code 6003(c)]

25. No person or entity shall commence construction or operation of any of the following without first having obtained a permit therefor: (1) any septic tank system or any aerobic home treatment plant system; (2) any liquid waste treatment system; (3) any facility used for the storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste in bulk form; (4) any facility used for the transfer of 20,000 gallons per day or more of any hazardous material, petroleum product, or liquid waste to or from any carrier; and (5) any sewer or pipeline which conveys liquid waste.

[Authority - DNREC Regulations, Regulations Governing the Control of Water Pollution, Sections 2.05, 2.06 and 4.01, revised June 30, 1993]

26. No person shall cause or permit to be discarded, thrown, or dumped into any waters or any drainage ditch in the State any garbage, refuse, dead animal, poultry, trash, carton, bottle, container, box, lumber, timber, paper, or light material or other solid waste.

[Authority - State of Delaware Regulations Governing the Control of Water Pollution, Section 12.01, revised June 30, 1993]

27. No person or entity shall construct, repair, install or replace any part of a septic tank system except by or under the supervision of a licensed septic tank installer.

[Authority - 7 Delaware Code 6023(b)]

28. No person or entity shall operate any liquid waste treatment system without a licensed liquid waste treatment plant operator.

[Authority - 7 Delaware Code 6023(c)]

29. No person shall engage in the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of a water well or water test well, except as, or under the supervision of a licensed water well contractor.

[Authority - 7 Delaware Code 6023(a)]

30. The Secretary of the DNREC may require that the person who has caused the contamination of a person's drinking water supply by contaminates other than bacteria, viruses, nitrate or pesticides, shall provide at no cost to each person who has had his drinking water supply contaminated an interim water supply that is of a quality and quantity to meet said person's needs as shall be determined by the Secretary on a case-by-case basis. In addition, the Secretary shall determine the dates on which the interim water supply shall commence and be terminated.

[Authority - 7 Delaware Code, Section 6037]

31. No permits or licenses shall be issued for the activities identified in the four preceding policy statements unless the Secretary of the Department of Natural Resources and Environmental Control finds that the applicant is prepared and willing to conduct such activities in a manner which is consistent with the CMP policies.

[Authority - 7 Delaware Code 6023(f), Executive Order No. 43, August 15, 1996]

32. No permits shall be issued for the discharge of any radiological, chemical or biological warfare agents or high-level radioactive wastes directly or indirectly into the surface waters or groundwaters of the state.

[Authority - DNREC Regulations Governing the Control of Water Pollution, Section 3.04(a), revised June 30, 1993]

33. No person shall cast, put, place, discharge in or permit or suffer to be cast, put, placed, discharged in or to escape into any running stream of water within the limits of this State, from which stream the inhabitants of any borough, town or city within this State are supplied wholly or in part with water for and as drink or beverage, any dye-stuffs, drugs, chemicals or other substance or matter of any kind whatsoever whereby the water so supplied as and for a drink or beverage is made and becomes noxious to the health or disagreeable to the senses of smell or taste.

[Authority - 16 Delaware Code 1301]

34. Water delivered to every consumer by any public water supplier shall be so protected by natural means, by proper constructions or by treatment so as to consistently equal or exceed the requirements established in the State of Delaware Regulations Governing Drinking Water Standards.

[Authority - State of Delaware Regulations Governing Public Drinking Water Systems, Section 22.304, Amended March 31, 1991]

35. After July 1, 1991, unless a particular activity is exempted by these regulations, a person may not disturb land without an approved sediment and stormwater management plan from the appropriate plan approval agency.

[Authority - Delaware Sediment and Stormwater Regulations, Section 8(1), revised March 11, 1993]

36. The following activities are exempt from both sediment control and stormwater management requirements:

a. Agricultural land management practices, unless the local Conservation District or the DNREC determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a Conservation District for the

development of such a plan, or to implement a plan developed by a Conservation District;

b. Developments or construction that disturb less than 5,000 square feet.

c. Land development activities which are regulated under specific State or federal laws which provide for managing sediment control and stormwater runoff, such as specific permits required under the National Pollutant Discharge Elimination System (NPDES) when discharges are a combination of stormwater and industrial or domestic wastewater.

d. Projects which are emergency in nature that are necessary to protect life or property such as bridges, culvert, or pipe repairs and above ground or underground electric and gas utilities or public utility restoration.

[Authority - Delaware Sediment and Stormwater Regulations, Section 3(1)(A)(B)(C) and (D), revised March 11, 1993]

37. A project may be eligible for a waiver of stormwater management for both quantitative and qualitative control if the applicant can demonstrate that: (1) the proposed project will return the disturbed area to a pre-development runoff condition and the pre-development land use is unchanged at the conclusion of the project; or (2) the proposed project consists of a linear disturbance of less than six (6) feet in width; or (3) the project is for an individual residential detached unit or agricultural structure, and the total disturbed area of the site is less than one acre; or (4) the proposed project is for agricultural structures in locations included in current soil and water conservation plans that have been approved by the appropriate Conservation District.

[Authority - Delaware Sediment and Stormwater Regulations, Section 3(2)(A)(1)(2)(3) and (4), revised March 11, 1993]

38. All erosion and sediment control plans shall comply with the Delaware Erosion and Sediment Control Handbook, dated 1989 and approved supplements.

[Authority - Delaware Sediment and Stormwater Regulations, Section 10(2)(B), revised March 11, 1993]

39. Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control is established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:

a. Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.

b. Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.

c. Watersheds, other than Designated Watersheds or Subwatersheds, that have well documented water quantity problems may have more stringent, or modified design criteria that is responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

[Authority - State of Delaware Sediment and Stormwater Regulations, Section 10(3)(D), revised March 11, 1993]

40. Water quality control is also an integral component of stormwater management. Control of water quality on-site will prevent further degradation of downstream water quality. The following design criteria is established for water quality protection unless a waiver or variance is granted on a case-by-case basis.

a. In general, the preferred option for water quality protection shall be ponds. Ponds having a permanent pool of water must be considered before a pond having no permanent pool. Infiltration practices shall be considered only after ponds have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.

b. Water quality ponds having a permanent pool shall be designed to release the first 1/2 inch of runoff from the site over a 24 hour period. The storage volume of the normal pool shall be designed to accommodate, at least, 1/2 inch of runoff from the entire site.

c. Water quality ponds, not having a normal pool shall be designed to release the first inch of runoff from the site over a 24 hour period.

d. Infiltration practices, when used, shall be designed to accept, at least, the first inch of runoff from all streets, roadways, and parking lots.

e. Other practices may be acceptable to the appropriate plan approval agency if they achieve an equivalent removal efficiency of 80% for suspended solids.

[Authority - Delaware Sediment and Stormwater Regulations, Section 10(3)(E), revised March 11, 1993]

### **CMP Policies Specific to Marinas**

1. Marina owners/operators for marinas that are located in whole or in part on tidal waters of the State, and that provide

dockage for vessels with a portable toilet(s) or Type III marine sanitation device(s) (MSD), shall provide convenient access, as determined by the DNREC, to an approved, fully operable and well maintained pumpout facility(ies) and/or dump station(s) for the removal of sewage from said vessels to a DNREC approved sewage disposal system.

a. Owners/operators may agree to pool resources for a single pumpout dump station with Departmental approval based on criteria of number and class of vessels, marina locations, cost per pumpout use, and ultimate method of sewage treatment and disposal (i.e. septic system or waste water treatment facility).

b. The owner/operator of any boat docking facility that is located in whole or in part on tidal waters of the State, and that provides dockage for a live-aboard vessel(s) with a Type III marine sanitation device(s), shall install and maintain at all times, in a fully operable condition, an approved dedicated pumpout facility at each live-aboard vessel slip for the purpose of removing sewage from the live-aboard vessel on a continuous or automatic, intermittent basis to a DNREC approved sewage disposal system.

c. Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State of Delaware is prohibited.

d. All vessels while on waters of the State of Delaware shall comply with 33 USC Section 1322, as amended February 4, 1987.

[Authority - 7 Delaware Code, Section 6035 (a) and (b)(1, 2, 3, & 4), Adopted June 23, 1992].

2. No person shall construct, install, modify, rehabilitate, or replace a marina unless such person has a valid permit issued by the DNREC pursuant to the State of Delaware Marina Regulations.

[Authority - State of Delaware Marina Regulations, Section I (B)(5)(a), revised February 22, 1993]

3. It is the policy of DNREC to prevent degradation of the surface and groundwaters of the State which might result from any pollutant source, so that all existing water designated uses are maintained and protected. Marinas shall be permitted only if they do not cause a violation of established Delaware water quality regulations either within the marina, or in adjacent ambient waters which mix or are contacted by waters from the marina. To achieve this goal:

a. These regulations set forth rebuttable presumptions that:

(1) land-based alternatives for non-water dependent activities are available.

(2) alternatives that do not involve the use of state waters for storage of boats have less adverse impact on the aquatic environment, and

(3) alternatives that do not involve the use of state

waters for storage of boats are available.

b. Marinas shall be designed to maximize flushing so as to prevent the possible accumulation of contaminants that could result in a violation of the Delaware Surface Water Quality Standards, and to meet the policy objectives as set forth above.

[Authority - State of Delaware Marina Regulations, Section II (D)(2)(a), II(C)(1)(a)(b) & (c), and II(E)(1)(a), revised February 22, 1993]

4. It is the policy of the State to preserve and protect public and private wetlands and to prevent their despoliation and destruction consistent with the historic right of private ownership of lands. Therefore, the Department shall strictly regulate the location of marinas in wetlands. Marinas shall be limited to those sites where short and long-term disturbances to wetlands and their functions shall be less than one acre, and even then, only to the extent necessary for the water dependent needs of the project.

Before disturbance of wetlands shall be permitted, the applicant shall demonstrate that all practicable alternatives to avoiding wetland impacts have been thoroughly examined and the results of such examinations shall be provided to the DNREC. In all cases, the applicant shall demonstrate that the purchase of additional property to avoid the wetland impacts is impracticable.

[Authority - State of Delaware Marina Regulations, Section II(D)(3)(a), revised February 22, 1993]

5. The requirements for protecting shellfish resources shall be consistent with the State of Delaware Marina Regulations.

[Authority - State of Delaware Marina Regulations, Section II(D)(4)(a)(b)(c)(d) & (e), revised February 22, 1993]

6. Marinas shall not be permitted in areas that will result in the destruction of submerged aquatic vegetation beds without corresponding compensation measures as approved by the DNREC.

[Authority - State of Delaware Marina Regulations, Section II (D)(10)(c)(2), revised February 22, 1993]

7. Dredging shall be limited to the minimum dimensions necessary for the project and shall avoid sensitive areas such as wetlands, shellfish resources, and submerged aquatic vegetation. Delaware Surface Water Quality Standards must not be violated because of dredging operations excluding whatever temporary and minimal turbidity is unavoidable when using sound dredging practices.

Marinas shall only be located in areas which, in the determination of the Department, offer safe and convenient access to waters of navigable depth. Such locations tend to present maximum opportunities for flushing, with less

danger of sedimentation than very shallow sites. Safe and convenient access will be determined on a case-by-case basis. Factors such as existing water depths, distance to existing channels and their depths, and tidal and wave action will be considered.

[Authority - State of Delaware Marina Regulations, Section II (E)(2)(b) and II (E)(4)(a), revised February 22, 1993]

8. Benthic resources are protected because of their importance in the food chain and their value as commercial and recreational food sources.

The status of a benthic community must be assessed by the applicant using frequency, diversity, and abundance measures approved by the DNREC. As a part of this determination, the rapid bioassessment techniques of Luckenbach, Diaz and Schaffner (1989) will be used by the Department to characterize benthic communities. The DNREC may modify this methodology as experience is gained in applying these techniques in Delaware waters.

The DNREC may require monitoring of the benthos as a permit condition.

[Authority - State of Delaware Marina Regulations, Section II(D)(6)(a)(b) & (c), revised February 22, 1993]

9. Construction of marinas shall not be permitted at sites that are recognized by the DNREC as critical habitats. "Critical Habitat" includes areas classified by the DNREC and serving an essential role in the maintenance of sensitive species. Areas may include unique aquatic or terrestrial ecosystems that support rare endangered or threatened plants and animals. Rare, endangered or threatened species are defined by both state and/or federal listings.

[Authority - State of Delaware Marina Regulations, Section II(D)(7), revised February 22, 1993 and DNREC Regulations Governing the Use of Subaqueous Lands dated September 2, 1992, Definitions (#10)]

### **CMP Policies for Subaqueous Lands and Coastal Strip Management**

1. The natural environment of the coastal strip shall be protected for recreation, tourism, fishing, crabbing, and gathering other marine life useful in food production.

[Authority - 7 Delaware Code 7001 and 6201]

2. The need for protection of the natural environment in the coastal strip shall be balanced with the need for new industry in the State's coastal areas.

[Authority - 7 Delaware Code 7001]

3. The location, extent and type of industrial development in the coastal strip that is most likely to pollute Delaware's bays and coastal areas shall be controlled.

[Authority - 7 Delaware Code 7001; Kreshtool v. Delmarva Power & Light Co., Delaware Super., 310 A. 2d 649(1973)]

4. The development and use of offshore oil, gas, and other mineral resources of the state shall be managed to make the maximum contribution to the public benefit and so as to balance their utilization, conservation, and protection.

[Authority - DNREC Regulations, September, 1971, Oil, Gas and Mineral Exploration Regulations, p.i.]

5. New heavy industrial uses shall be prohibited in the coastal strip. Such uses are ones characteristically involving more than 20 acres, and characteristically employing smokestacks, tanks, distillation or reaction columns, chemical processing equipment or waste-treatment lagoons. Heavy industrial uses shall not only be defined by their physical characteristics, however, but also by their potential to pollute in the event of human error or equipment failure. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. For purposes of this policy, public sewage treatment or recycling plants shall not be deemed heavy industrial uses.

[Authority - 7 Delaware Code 7002(e) and 7003; Kreshtool v. Delmarva Power & Light Co., Delaware Super., 310 A. 2d 649(1973)]

6. New manufacturing uses or the expansion of existing manufacturing uses shall be allowed in the coastal strip by permit only, although in no case shall new manufacturing uses be allowed in wetlands or where inconsistent with local zoning regulations. Manufacturing uses are ones which mechanically or chemically transform substances into new products, and characteristically employ power-driven machines and materials handling equipment. Manufacturing uses typically include establishments engaged in assembling components of manufactured products, provided the new products are not fixed improvements.

[Authority - 7 Delaware Code 7002(d) and (e) and 7004(a)]

7. The following factors shall be considered in passing on requests for permission to construct or operate a manufacturing use in the coastal strip:

a. Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions, as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface,

and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, the likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

b. Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.

c. Aesthetic effect, such as impact on scenic beauty of the surrounding area.

d. Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

e. Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.

f. County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

[Authority - 7 Delaware Code 7004(b)]

8. New offshore gas, liquid, or solid bulk product transfer facilities shall be prohibited in the coastal strip. Such facilities are docks or port facilities, whether artificial islands or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. However, a docking facility or pier for a single industrial or manufacturing facility and docking facilities located in the City of Wilmington for the Port of Wilmington, shall not be prohibited.

[Authority - 7 Delaware Code 7002(f) and 7003; Inf. Attorney General Opinion No. 65, October 22, 1974]

9. Offshore pipelines which transfer bulk quantities of gas, oil, or other liquids to terminals within the coastal strip shall be prohibited. Such pipelines generally shall be allowed if they transit the coastal strip and environmental safeguards are observed. However, if such pipelines represent a significant danger of pollution to the coastal strip or generate pressure for construction of industrial plants in the coastal strip, they shall be prohibited.

[Authority - 7 Delaware Code 7001, 7002 and 7003; Inf. Attorney General Opinion No. 77-33, July 6, 1977]

10. The Secretary of the DNREC, upon application by any person, may permit geological, geophysical and seismic surveys, including the taking of cores and other samples, or the tide and submerged lands of this State. Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulfur or other mineral lease. After consultation with those agencies of the State having an



interest in the possible effects of the leasing, the Secretary shall include such rules and regulations in the permit as it deems necessary to protect the fish, game, wildlife and natural resources of the State. The Secretary may prohibit such surveys on any area if it is determined that a lease, if applied for, should not be granted as to such areas. The Secretary shall include in a permit conditions and payment proper to safeguard the interests of the State.

[Authority - 7 Delaware Code 6103 & 6104].

11. No operations or activities shall be commenced on the drilling, deepening or plugging back of any offshore oil or gas wells located on underwater lands of Delaware without the permission of the state, and unless in conformance with the rules for such operations and activities adopted by the Delaware Department of Natural Resources and Environmental Control.

[Authority - DNREC Regulations, September 1971, Oil, Gas and Mineral Exploration Regulations, Numbers I-V]

12. Permission to develop the State's submerged lands shall not be granted without the prior approval of the U.S. Department of Defense, and shall be subject to any restriction or limitation imposed by the Department of Defense.

[Authority - 7 Delaware Code 6104].

13. Easements for mineral exploration and exploitation underlying that part of the surface of the Atlantic shore owned by the state be permitted at such times and places as necessary to permit the extraction and transportation of oil, gas, sulfur or other minerals from state, federal or private lands, but permanent interference with the surface of the Atlantic shore shall be prohibited.

[Authority - 7 Delaware Code 6102(d), 6118 and 6119(a)]

14. Before offering tide and submerged lands for leasing for possible mineral development, or whenever any person files a written application with the Secretary of DNREC requesting that lands be offered for leasing, accompanying the same with the required fee, the Secretary shall hold a public hearing as provided in 7 Delaware Code 6107. After the public hearing, the Secretary shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the Secretary shall consider whether a lease or leases of the area under consideration would:

a. Be detrimental to the health, safety, or welfare of persons residing in, owning real property or working in the neighborhood of such areas;

b. Interfere with the residential or recreation areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

c. Destroy, impair or interfere with the aesthetic and scenic values of the Delaware coast, or other affected area;

d. Create any air, water and other pollution;

e. Substantially endanger marine life or wildlife;

f. Substantially interfere with commerce or navigation; and

g. Protect state lands from drainage of oil, gas or other minerals or objectionable substances.

[Authority - 7 Delaware Code 6107]

15. Avoidable pollution or avoidable contamination of the ocean and of the waters covering submerged lands, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering submerged lands, or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited and the lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering submerged lands; provided, however, that this policy does not apply to the deposit on, or passing into, such water or waters not containing any hydrocarbons or vegetable or animal matter.

[Authority - 7 Delaware Code 6119(a)]

16. For the purposes of this section, "avoidable pollution" or "avoidable contamination" means pollution or contamination arising from:

a. The acts of omissions of the lessee or its officers, employees or agents; or

b. Events that could have been prevented by the lessee or its officers, employees or agents through the exercise of a high degree of care.

[Authority - 7 Delaware Code 6119(b)].

17. Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or navigable waters.

[Authority - 7 Delaware Code 7201].

18. No person shall deposit material upon or remove or extract materials from, or construct, modify, repair or reconstruct, or occupy any structure or facility upon submerged lands or tidelands without first having obtained a permit, lease or letter of approval from the DNREC. Such permit, lease or letter of approval, if granted, may include reasonable conditions required in the judgment of the DNREC to protect the interest of the public. If it is determined that granting the permit, lease or approval will result in loss to the public of a substantial resource, the

permittee may be required to take measures which will offset or mitigate the loss.

[Authority - 7 Delaware Code 7205].

19. The extent of jurisdictional authority over public or private subaqueous lands includes any activity in a navigable stream or waterbody, which have a hydrologic connection to natural waterbodies. "Activity" includes, but is not limited to, any human induced action, such as dredging, draining, filling, grading, bulkheading, mining, drilling, extraction of materials or excavation, or construction of any kind, including, but not limited to, construction of a boat ramp or slip, breakwater, residences, bridge, bulkhead, culvert, dam, derrick, deck, groin, jetty, lagoon, gabion, rip-rap, launching facility, marina, mooring facility, pier, seawall, walkway, or wharf.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 1.02(A)(1), amended September 2, 1992]

20. The following types of activities in, on, over, or under private subaqueous lands require a permit or letter of authorization from the DNREC:

- a. Construction of a convenience structure or boat docking facility.
- b. Construction of a shoreline erosion control structure or measure.
- c. Dredging, filling, excavating or extracting of materials.
- d. Excavation, creation, or alteration of any channel, lagoon, turning basin, pond, embayment, or other navigable waterway on private subaqueous lands which will make connection with public subaqueous lands.
- e. Dredging of existing channels, ditches, dockages, lagoons and other navigable waterways to maintain or restore the approved depth and width.
- f. Excavation of land which makes connection to public subaqueous lands.
- g. The laying of any pipeline, electric transmission line, telephone line, or any other utility structure in, on, over, or under the beds of private subaqueous lands.
- h. Installation of temporary or permanent mooring buoys or private marker buoys.
- i. Establishment of an anchorage for the use of a mooring for more than two (2) boats or for appurtenant onshore services.
- j. Anchoring or mooring a floating platform over private subaqueous lands and for a period of twenty-four (24) consecutive hours or more.
- k. Anchoring or mooring any vessel or platform over public subaqueous lands for revenue generating purposes.
- l. Repair and replacement of existing serviceable structures over private subaqueous lands, except no permit or letter is required for repairs or structural replacements

which are above the mean low tide and which do not increase any dimensions or change the use of the structure.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 1.03(C), amended September 2, 1992]

21. The following types of activities on public subaqueous lands require a lease, permit, or letter of authorization from the DNREC:

- a. Construction or use of any structure on, in, under, or over public subaqueous lands, including but not limited to, any convenience structures, shoreline erosion control structure or measure, or boat docking facility.
- b. Dredging, filling, excavating or extracting of materials.
- c. Continuous anchoring or mooring of a commercial vessel used in a commercial activity on or over public subaqueous lands for thirty (30) or more calendar days during any consecutive three (3) months.
- d. The laying of any pipeline, electric transmission line, or telephone line in, on, over, or under the beds of public subaqueous lands.
- e. Installation of temporary or permanent mooring buoys or private marker buoys.
- f. Establishment of an anchorage for mooring more than two (2) boats or which serves as a permanent place for resident vessels.
- g. Anchoring or mooring a floating platform over public subaqueous lands and for a period of twenty-four (24) consecutive hours or more.
- h. Maintenance dredging of existing or new channels, ditches, dockages, lagoon and other waterways to maintain or restore the approach depth and width.
- i. Anchoring or mooring any vessel or platform over public subaqueous lands for revenue generating purposes.
- j. Repair and replacement of existing serviceable structures over private subaqueous lands, except no permit or letter is required for repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.
- k. New dredging activities of channels, ditches, dockage, or other waterways.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 1.04(B), amended September 2, 1992]

22. The DNREC shall consider the public interest in any proposed activity which might affect the use of subaqueous lands. These considerations include, but are not limited to, the following:

- a. The value to the State or the public in retaining any interest in subaqueous lands which the applicant seeks to acquire, including the potential economic value of the interest.

b. The value to the State or the public in conveying any interest in subaqueous lands which the applicant seeks to acquire.

c. The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources and other uses of the subaqueous lands.

d. The extent to which any disruption of the public use of such lands is temporary or permanent.

e. The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).

f. The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.

g. Given the inability for avoidance or alternatives, the extent to which the applicant can employ mitigation measures to offset any losses incurred by the public.

h. The extent to which the public at large would benefit from the activity or project and the extent to which it would suffer detriment.

i. The extent to which the primary purpose of a project is water-dependent.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.01(A), amended September 2, 1992]

23. The DNREC shall consider the impact on the environment, including but not limited to, the following:

a. Any impairment of water quality, either temporary or permanent, which may reasonably be expected to cause violation of the State Surface Water Quality Standards. This impairment may include violation of criteria or degradation of existing uses;

b. Any effect on shellfishing, finfishing, or other recreational activities and existing or designated water uses;

c. Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna, and their habitats;

d. Any loss of natural aquatic habitat;

e. Any impairment of air quality either temporarily or permanently, including noise, odors, and hazardous chemicals;

f. The extent to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.01(B), amended September 2, 1992]

24. The DNREC shall also consider the following to determine whether to approve the application:

a. The degree to which the project represent an encroachment on or otherwise interferes with public lands, waterways or surrounding private interests.

b. The degree to which the project incorporates sound engineering principles and appropriate materials of construction.

c. The degree to which the proposed project fits in with the surrounding structures, facilities, and uses of the subaqueous lands and uplands.

d. Whether the proposed activity complies with the State of Delaware's Surface Water Quality Standards both during construction and during subsequent operation or maintenance.

e. The degree to which the proposed project may adversely affect shellfish beds or finfish activity in the area.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.01(C), dated September 2, 1992]

25. The following concerns for protecting water quality shall be specifically considered by the DNREC in evaluating applications for dredging projects:

a. All dredging is to be conducted in a manner consistent with sound conservation and water pollution control practices. Spoil and fill areas are to be properly diked to contain the dredged material and prevent its entrance into any surface water. Specific requirements for spoils retention may be specified by the DNREC in the approval, permit or license.

b. All material excavated shall be transported, deposited, confined, and graded to drain within the disposal areas approved by the DNREC. Any material that is deposited elsewhere than in approved areas shall be removed by the applicant and deposited where directed at the applicant's expense, and any required mitigation shall also be at the applicant's expense.

c. Materials excavated by hydraulic dredge shall be transported by pipeline directly to the approved disposal area. All pipelines shall be kept in good condition at all times and any leaks or breaks shall be immediately repaired.

d. Materials excavated and not deposited directly into an approved disposal area shall be placed in scows or other vessels and transported to either an approved enclosed basin, dumped, and then rehandled by hydraulic dredge to an approved disposal area, or to a mooring where scows or other vessels shall be unloaded by pumping directly to an approved disposal area.

e. When scows or other are unloading without dumping, they shall have their contents pumped directly into an approved disposal area by a means sufficient to preclude any loss of material into the body of water.

f. In approved disposal areas, the applicant may construct any temporary structures or use any means necessary to control the dredge effluent, except borrowing from the outer slopes of existing embankments and/or hydraulic placing of perimeter embankments. For bermed disposal sites, a minimum freeboard of two (2) feet,

measured vertically from the retained materials and water to the top of the adjacent confining embankment, shall be maintained at all times.

g. The applicant shall not obstruct drainage or tidal flushing on existent wetlands or upland areas adjacent thereto. The applicant shall leave free, clear, and unobstructed outfalls of sewers, drainage ditches, and other similar structures affected by the disposal operations. The dredged materials shall be distributed within the disposal area in a reasonably uniform manner to permit full drainage without ponding during and after fill operations.

h. The dredging operation must be suspended if water quality conditions deteriorate in the vicinity of dredging or spoil disposal site. Minimum water quality standards may be included as an element of the permit and shall be monitored by the applicant. Violation of these conditions shall be cause for immediate suspension of activity and notification of the DNREC. Dredging shall not be resumed until water quality conditions have improved and the DNREC has authorized the resumption.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.05(C), amended September 2, 1992]

26. The following types of dredging projects are prohibited:

a. Dredging of biologically productive areas, such as nursery areas, shellfish beds, and submerged aquatic vegetation, if such dredging will have a significant or lasting impact on the biological productivity of the area.

b. Dredging of new dead-end lagoons, new basins and new channels, which have a length to width ratio greater than 3:1 and for which the applicant cannot prove, by clear and convincing evidence, that such dredging would not violate State Surface Water Quality Standards. This subsection shall not apply to marina projects governed by the Marina Regulations.

c. Dredging channels, lagoons or canals deeper than the existing controlling depth of the connecting or controlling waterway, unless otherwise approved under Subsection 3.03B(8) of the State of Delaware Regulations Governing the Use of Subaqueous Lands.

d. Dredging channels, cleaning marinas or other subaqueous areas by using propeller wash from boats.

[Authority - State of Delaware Regulations Governing the Use of Subaqueous Lands, Section 3.05(D), amended September 2, 1992]

#### **CMP Policies for Borrow Pits**

1. The Secretary of the DNREC shall develop, implement and enforce, and may amend, modify and repeal, after notice and public hearing, a program to protect the waters of the State of Delaware from adverse environmental impacts relating to the operation of borrow pits. In addition to any

other authority which the Secretary may exercise for the purpose under 7 Delaware Code, Chapter 60\_ or other chapters of the Delaware Code, the Secretary may:

a. Require borrow pit owners/operators to obtain operating permits from the DNREC.

b. Require reclamation of abandoned pits by owners/operators;

c. Require borrow pit owners/operators to secure the borrow pit premises from illegal dumping, disposal of wastes or vandalism; and

d. Adopt, amend, modify or repeal rules or regulations to effectuate Section 6038 of 7 Delaware Code.

[Authority - 7 Delaware Code, Section 6038]

#### **CMP Policies for Inland Bays' Watershed Management**

1. The Delaware Inland Bays Estuary was selected for inclusion in the National Estuary Program in 1988. The draft Comprehensive Conservation and Management Plan (CCMP) for the Estuary has been completed and recommends a five-tiered approach to resolving the problems. These efforts include:

a. A Public Education and Outreach Program, which explains the benefits of the estuary, and the methods of preservation.

b. An Agricultural Source Action Plan, which proposes management of agricultural wastes and fertilizers.

c. A Habitat Protection Action Plan, which proposes various methods to control the loss of significant habitat and the preservation of existing aquatic and terrestrial ranges.

d. An Industrial, Municipal and Septic System Action Plan, which proposes a pollution control strategy and a long-term capital expenditure program for wastewater treatment.

e. A Land Use Action Plan, which evaluates current land-use practices and proposed mitigation measures.

2. The Center for the Inland Bays shall oversee and facilitate the implementation of a long-term approach for the wise use and enhancement of the Inland Bays' Watershed in accordance with the Inland Bay's Comprehensive Conservation and Management Plan (CCMP).

[Authority - 7 Delaware Code, Section 7602]

#### **CMP Policies for The Delaware Estuary Program**

1. The Goals of the Delaware Estuary Program are as follows:

a. Provide for the restoration of living resources of the Delaware Estuary and protect their habitats and ecological relationship for future generations;

b. Reduce and control point and nonpoint sources of pollution, particularly toxic pollution and nutrient enrichment, to attain the water quality conditions necessary to support abundant and diverse living resources in the

Delaware Estuary:

c. Manage water allocations within the Estuary to protect public water supplies and maintain ecological conditions in the Estuary for living resources;

d. Manage the economic growth of the Estuary in accordance with the goal of restoring and protecting the living resources of the Estuary; and

e. Promote greater public understanding of the Delaware Estuary and greater participation in decisions and programs affecting the Estuary.

[Comprehensive Conservation and Management Plan for the Delaware Estuary, September 1996]

**CMP Policies for "Public Lands" Management**

1. DNREC shall supervise, control and care for Delaware's "public lands".

2. The State shall pursue all necessary and appropriate remedies to address encroachments upon state "public lands" and to protect their integrity from further claim.

3. All private development on "public lands", except that authorized by DNREC for public use, shall be prohibited.

4. The "public lands" shall remain appropriately marked with permanent monuments and the location and coordinates of each monument shall be tied to the state plane coordinate system and recorded with the recorder of deeds for Sussex County. Detailed drawings, survey work sheets and field notes, perimeter descriptions, and other pertinent property records shall be likewise recorded.

5. DNREC shall manage these lands for public recreation purposes and for the conservation and preservation of their natural resources and beauty. A management priority shall be the maintenance of public access to the beach and ocean where such access can be accommodated without serious damage to the primary resources. The Department may lease certain portions for highway and utility purposes as it deems advisable and for the public good. Management of these lands shall be consistent with the State Comprehensive Outdoor Recreation Plan (SCORP) and in accordance with sound master planning activities.

[Authorities 1-5 - The authority for management of these resource areas is vested primarily in DNREC pursuant to Title 7, Chapters 45 and 47 of the Delaware Code]

**CMP Policies for Natural Areas Management**

1. The State, acting through DNREC, shall acquire and hold in trust for the benefit of the people an adequate system of nature preserves for the following uses and purposes:

a. For scientific research in such fields as ecology,

taxonomy, genetics, forestry, pharmacology agriculture, soil science, geology, conservation, archaeology, and other subjects;

b. or the teaching of biology, natural history, ecology, geology, conservation, and other subjects;

c. As habitats for plant and animal species and communities and other natural objects;

d. As reservoirs of natural materials;

e. As places of natural interest and beauty;

f. As living illustrations of our natural heritage wherein one may observe and experience natural biotic and environmental systems of the earth and their processes;

g. To promote understanding and appreciation of the scientific, educational, aesthetic, recreational and cultural values of such areas by the people of the State of Delaware.

h. For the preservation and protection of natural areas against modification or encroachment resulting from occupation, development, or other use which would destroy their natural or aesthetic conditions.

[Authority - 7 Delaware Code 7303, 7302(6) and 7306]

2. DNREC shall develop criteria and policies for selecting natural areas for acquisition and preservation. At a minimum, such criteria and policies shall consider the uses and purposes listed in policy statement number one, as well as areas of unusual natural significance. Until such criteria and policies are developed, DNREC shall, in its selection of natural areas for acquisition and preservation, consider policy statement number one and the unusual natural significance of areas which may be selected.

[Authority - 7 Delaware Code 7307(a) and 7305(a)(3 and 4); DNREC Regulations Governing Natural Areas and Nature Preserves, July, 1981]

3. DNREC shall establish and maintain a registry of natural areas of unusual significance to ensure that such areas are considered for possible dedication. DNREC is also encouraged to establish and maintain registries of other natural areas for the same purpose, and to develop criteria for the selection of natural areas for registration.

[Authority - 7 Delaware Code 7303, 7307 (2 and 6) and 7305(e)(2)]

4. DNREC shall make whatever surveys it deems necessary to accomplish the purposes of the natural areas program.

[Authority - 7 Delaware Code 7307(6)]

5. DNREC may acquire, for and on behalf of the State of Delaware, natural areas by gift, devise, purchase, exchange, or any other method of acquiring real property or any estate, interest, or right therein provided that any interest owned by the State or by any subdivision thereof may be acquired only by voluntary act of the agency having jurisdiction thereof.

The department may acquire the fee simple interest in natural areas or any one or more lesser estates, interests, and rights therein, including a leasehold estate, and easement either granting the state specified rights of use or denying the grantor specified rights of use or both, a license, a covenant, and other contractual rights.

[Authority - 7 Delaware Code 7306(a)]

6. DNREC shall publish and disseminate information pertaining to natural areas within the State as it deems necessary to effectuate the purposes of these policies.

[Authority - 7 Delaware Code 7307(7)]

7. DNREC may, as it deems necessary to effectuate the purposes of these policies, encourage and recommend to private, public and government entities that they dedicate natural areas to DNREC for preservation purposes.

[Authority - 7 Delaware Code 7307(5)]

8. All units, departments, agencies, and instrumentality's of the state, including counties, municipalities, schools, colleges and universities, are empowered and urged to transfersuitableareasorportionsofareaswithintheirjurisdiction to DNREC for preservation purposes.

[Authority - 7 Delaware Code 7311]

9. DNREC may accept transfers of real property for preservation purposes with the express understanding that the grantors may, under specified conditions, rescind such transfers.

[Authority - 7 Delaware Code 7306(d)]

10. DNREC shall adopt additional policies for the acquisition of natural areas as it deems necessary to effectuate the purposes of these CMP policies.

[Authority - 7 Delaware Code 7307(1)]

11. Natural areas acquired pursuant to these policies shall be established as nature preserves. Property shall not be acquired for the establishment of nature preserves unless the terms of acquisition restrict the use of the acquired area in a manner which adequately provides for its preservation and protection against modification or encroachment.

[Authority - 7 Delaware Code 7306(a and c)]

12. DNREC shall enforce the terms of acquisition of property acquired for nature preserves.

[Authority - 7 Delaware Code 7310, 7305(e)(4), 7307(4 and 8) and 7308]

13. Nature preserves shall not be taken for any use inconsistent with preservation except for another public use after:

a. A public hearing.

b. A finding by DNREC that an imperative and unavoidable public necessity for such other public use exists.

c. Approval of the governor after consultation with the Delaware Natural Areas Advisory Council.

d. A legislative act, not less than six months from the date of the governor's approval authorizing such taking.

This policy shall not apply, however, to natural areas dedicated as nature preserves if the terms of such dedication provide otherwise.

[Authority - 7 Delaware Code 7308 and 7309]

14. DNREC shall formulate additional policies and rules for the use, management, and protection of nature preserves as it deems necessary to effectuate the purposes of the CMP policies. At a minimum, such policies and rules shall provide that the extent and type of visitation and use to be permitted shall be consistent with the objectives of policy statement number one.

[Authority - 7 Delaware Code 7307(1), 7308, 7305(e)(4), and 7303]

15. DNREC is empowered and urged to foster and aid in the establishment, restoration, and preservation of natural areas within the state elsewhere than in nature preserves, including areas on the registries established pursuant to policy number three.

[Authority - 7 Delaware Code 7307(8)]

16. The Office of State Planning Coordination shall consider areas registered pursuant to policy number three during the preparation or amendment of the statewide plan designating critical areas pursuant to Title 29, Chapter 92 of the Delaware Code.

[Authority - Executive Order No. 43, August 15, 1996; 29 Delaware Code 9201 and 9202(4)]

### **CMP Policies for Flood Hazard Areas Management**

1. The primary responsibility for floodplain management in Delaware shall rest with the local units of government in the state.

[Authority - Delaware Const., art. II, Sect. 25; 9 Delaware Code Ch. 26, 30, 44, 49, 63, 68 and 69; 22 Delaware Code Ch. 3]

2. Local units of government in the state are authorized--pursuant to local zoning powers, subdivision regulations, building codes, and any other applicable power vested in such units of government--to manage flood hazard areas in a manner which is consistent with the Federal Flood Insurance Program.

[Authority - Delaware Const., art. II, Sect. 25; 9 Delaware Code Ch. 26, 30, 44, 49, 63, 68 and 69; 22 Delaware Code Ch. 3]

3. The designated lead state agency for the CMP implementation shall encourage local units of government in the state to participate in the Federal Flood Insurance Program.

[Authority - Executive Order No. 43, August 15, 1996]

4. The Delaware Department of Natural Resources and Environmental Control shall monitor and annually review local floodplain management programs adopted pursuant to the Federal Flood Insurance Program to determine if they are being administered properly and are achieving flood damage reduction objectives. The State shall also periodically review the federal floodplain standards as they apply to Delaware to determine if they are adequate to mitigate damage in the State's floodplains and to determine whether federal agencies are complying with the spirit and intent of presidential executive order number 11988. In the event that any of the above determinations indicate the need for remedial action, the aforementioned agency shall take whatever measures it deems appropriate to correct the situation.

[Authority - Executive Order No. 43, August 15, 1996]

5. All state agencies shall participate in and comply with the requirements of the Federal Flood Insurance Program.

[Authority - Executive Order No. 48, February 27, 1978 and 43, August 15, 1996]

6. State agencies shall to the maximum extent possible minimize the threat posed by flood hazards for the following activities: (1) the construction of state buildings, structures, roads or other facilities; (2) the administration of grant or loan programs involving such construction by other governmental entities or private parties; (3) the transfer of lands or other properties; and (4) programs which affect or influence land development.

[Authority - Executive Order Number 29, September 6, 1977, Executive Order Number 48, February 27, 1978 and Executive Order Number 43, August 15, 1996; 29 Delaware Code 9225]

7. All state agencies, in cooperation with the Delaware Department of Natural Resources and Environmental Control, shall conduct a survey of their holdings and identify those structures and sites which are flood prone. An inventory shall be maintained by such agencies and updated as of June 30 of each year, indicating: such structures, sites, and uses thereof; the replacement or current economic value of the structures, their contents, and sites; and records of flood-related damage incurred by the structures, contents or sites.

[Authority - Executive Order No. 48, February 27, 1978 and 43, August 15, 1996]

8. The designated lead state agency responsible for CMP implementation shall monitor federal actions which may affect state or local flood hazard areas management, and take whatever action it deems appropriate to encourage or require such actions which are inconsistent with such management to be modified in a manner that will make them consistent.

[Authority - Executive Order No. 43, August 15, 1996]

#### **CMP Policy for Port of Wilmington Management**

1. The long-term economic viability and competitiveness of the Port of Wilmington should be encouraged and supported.

2. The people who benefit from the Port of Wilmington should contribute to its support and help maintain the financial health of the port.

3. Expansion of the Port of Wilmington along the Delaware River is encouraged to meet future national and regional transshipment needs and to reduce the dredging and spoils disposal activities associated with port operations along the Christina River. Port expansion, however, should not proceed if such expansion means air and water quality standards cannot be kept.

4. The port should be promoted for general cargo transfer and, to the extent feasible, as a location for the support of outer continental shelf development.

#### **CMP Woodlands Policies**

1. Federal, state, and local government, as well as private individuals and entities, should support and encourage the prevention of unwarranted destruction or damage to woodlands. Public and private interests must recognize that woodlands have economic, recreational, wildlife, water supply and scenic values. State actions shall avoid the unnecessary damage or destruction of woodlands.

2. The General Assembly finds and declares that the pine and yellow-poplar forest resource of the State provides significant recreational, aesthetic, wildlife and environmental benefits as well as wood fiber essential to commerce and industry for the citizens of the State. The General Assembly has also determined that the pine and hardwood forest resources are being harvested at a greater rate than they are being replanted or reproduced and unless measures are instituted to ensure that the forest resources are sustained, this natural resource will be depleted to the detriment of the citizens of the State. It is, therefore, the declared public policy of this State to preserve and protect the pine and yellow-poplar forest resources of the State.

[Authority - 7 Delaware Code 2965]

3. No person shall commence a cutting operation unless seed trees have been reserved pursuant to the natural regeneration method set forth herein or pursuant to an alternate management plan approved by the State Forester or his designee. This policy shall not apply to cutting operations of timber from land being cleared for reservoirs, military installations, agriculture, residential, ditch and utility right-of-ways, industrial sites, railroads or to cutting operations undertaken pursuant to a contract executed prior to January 1, 1989.

[Authority - 7 Delaware Code 2967(a and b)]

4. No person shall cut or permit to be cut any pine or yellow-poplar tree or seedling required to be reserved for reseeded or planted under a reforestation plan or perform any act or permit any act to be performed which prevents reseeded or reforestation of any area in which a cutting operation has been conducted.

[Authority - 7 Delaware Code 2970]

### **CMP Policies for Silviculture**

1. The Forestry Administration shall provide for the protection of the waters of the State from pollution by sediment deposits resulting from silvicultural activities as provided in §2978 of Title 7. Through the adoption of subchapter VI, the State recognizes that water quality protection techniques for silvicultural practices are an integral component of properly managed forests. Further, the State recognizes the positive benefits that properly managed forest systems have on the environment, water quality and quality of life in Delaware.

[Authority - 7 Delaware Code 2977]

2. Special orders can be issued if the Forestry Administrator, or Forestry Administrator's designee, finds that any owner or operator is conducting any silvicultural activity in a manner which is causing or is likely to cause alteration of physical, chemical or biological properties of any state water, resulting from sediment deposition presenting an imminent and substantial danger to (a) the public health, safety, or welfare, or the health of animals, fish or aquatic life; (b) a public water supply; or (c) recreational, commercial, industrial, agricultural or other reasonable uses.

[Authority - 7 Delaware Code 2980]

3. All open water bodies, perennial streams, intermittent streams with a well-defined channel, and streams that have been hydrologically modified by dredging or straightening shall have a Streamside Management Zone (SMZ), unless the property or a portion of the property is covered by an approved Delaware Seed Tree Law application (Title 7, Chapter 29, Subchapter V) and is located on slopes of less

than five (5) percent. The minimum width for a SMZ is 50 feet from each side of qualifying streams. Within a SMZ, at least sixty (60) square feet of basal area per acre of trees well distributed throughout the area shall be retained, or at least sixty (60) percent of the overstory.

[Authority - Delaware's Forestry Practices Erosion and Sediment Law: Rules and Regulations, section 4(6), effective July 1, 1996]

### **CMP Agricultural Land Policies**

1. Agricultural practices should be conducted in a manner which reduces pesticides and sediment loads to estuaries, bays, and other waterbodies.

2. All public and private entities whose actions may substantially affect agricultural lands in Delaware, or the agricultural productivity of such lands, should consider the need to preserve and protect such lands prior to taking such actions, and should preserve and protect agricultural lands whenever practicable. State agencies shall protect and preserve agricultural lands to the maximum extent practical.

3. The development of scattered rural residential settlements should be discouraged as long as there are reasonable alternative locations for such development, such as in or immediately adjacent to existing communities or areas where underutilized sewer systems, water systems, police and fire facilities, and other community facilities and services are available.

4. The use of farmlands for non-agricultural purposes should be discouraged by the Farmers Home Administration and all other public financing programs. Instead, development should be directed to the numerous smaller communities which have adequate in-place public services and facilities, as well as adequate land area to accommodate new development.

### **CMP Policies for Tax Ditches**

1. Tax Ditch planning will be done on a watershed basis. A watershed area comprises all the land and water within the confines of a drainage divide and must follow hydrologic boundaries for engineering purposes. A watershed area may comprise the land and water of two or more minor drainageways that are separate tributaries to a stream, artificial waterway, lake, or tidal area. The watershed area considered for design must include all direct tributary drainageways and lands that contribute to flows in the planned channels.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining Drainage Ditches in the State of Delaware, section A, June 1995]



2. Channels proposed for cleanout should be limited to those which have reduced hydraulic capacity due to sediment, woody vegetation, and debris. Channels which do meet functional standards may be included in the tax ditch plan for future maintenance. Land use changes may have eliminated the need for reconstructing some channel segments.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining Drainage Ditches in the State of Delaware, section B, June 1995]

3. Environmental studies associated with tax ditch projects will concentrate primarily on impacts to wetlands, forestry and disruption of fish and wildlife resources. Most channel cleanout projects are small in scope and have limited impacts. Avoidance and minimization will be the primary methods of limiting negative impacts on fish and wildlife resources. Practices such as channel relocation, one sided construction, selective spoil placement and minimal clearing can be used both to protect existing sensitive areas and restore previously disturbed sensitive areas. Wildlife and water quality enhancement practices, such as plugging channels which drain wooded wetlands and creating berms along channels to prohibit wetland water from draining into the channel, will be included as part of the tax ditch plan when site conditions allow in order to mitigate temporary wildlife losses and to restore previously lost functions to these water dependent resources.

[Authority - Principle and Guidelines for Planning, Constructing, and Maintaining Drainage Ditches in the State of Delaware, section C, June 1995]

### **CMP Historic and Cultural Areas Policies**

1. All public and private entities whose actions may interfere with the enjoyment or other use of historic and cultural areas in Delaware should consider the need to preserve and protect these areas prior to taking such actions, and should preserve and protect such areas whenever practicable.

2. In order to protect and preserve archaeological and scientific information, matters and objects which are to be found on privately owned lands in this State, it is a declaration and statement of legislative intent that excavations on privately owned lands should be discouraged, except in accordance with and pursuant to the spirit and policy of Title 7 of the Delaware Code, Chapter 53.

[Authority - 7 Delaware Code 5305]

3. No person shall excavate, collect, deface, injure or destroy any archaeological resource or artifact, or otherwise disturb or alter an archaeological resource or artifact or its

surrounding location in context, in or on lands owned or controlled by this State, except with the permission of the Governor of this State or the person duly authorized by the Governor to extend and grant such permission. Archaeological resources and artifacts shall be defined to include any remains of past human life or activity that are at least 50 years old.

[Authority - 7 Delaware Code 5301]

4. The Governor may grant permits for archaeological survey and excavation of archaeological resources or artifacts on lands owned or controlled by this State to any person or institution which in his judgment is properly qualified to conduct such an excavation for the gathering of objects of historical or archaeological value or interest. The Governor may prescribe reasonable rules and regulations for carrying out such survey and excavations. The Governor may designate a person or persons to extend and grant the permission to survey and excavate as hereby provided for. No archaeological survey or excavation shall be carried out except for the benefit of reputable museums, universities, colleges, or other recognized scientific institutions, with the view to increase knowledge of such objects.

[Authority - 7 Delaware Code 5302]

5. State and local units of government shall, to the maximum extent possible, coordinate their activities which may adversely affect historic and cultural areas with the Delaware Division of Historical and Cultural Affairs.

6. All federal agencies and departments shall to the maximum extent possible: (1) coordinate their activities which may adversely affect historic and cultural areas in Delaware with the Delaware Division of Historical and Cultural Affairs; and, (2) otherwise cooperate with the Division in accordance with the federal agency's legally mandated responsibilities.

7. When unmarked burials or human skeletal remains are known or suspected in a construction area or being encountered as a result of construction or agricultural activities, said activity shall cease immediately upon discovery and the Medical Examiner or the Director of the Division of Historical and Cultural Affairs notified of the discovery.

[Authority - 7 Delaware Code 5405(b)]

### **CMP Policies for Living Resources**

1. No activity shall have an adverse environmental effect on living resources and shall include consideration of the effect of site preparation and the proposed activity on the following wetland values:

a. Value of tidal ebb and flow

(1) Production Value: carving organic matter to adjacent estuaries and coastal waters which serve as breeding areas for certain animal species (especially fish and shellfish).

(2) Value as a natural protective system of absorption of storm wave energy, flood waters, and heavy rainfall, thereby decreasing flood and erosion damage.

(3) The prevention of silting in certain harbors and inlets thereby reducing dredging.

(4) Removal and recycling of inorganic nutrients.

(5) Effect on the estuarine waters.

**b. Habitat Value**

(1) Habitat for resident species of wildlife including furbearers, invertebrates, finfish.

(2) Habitat for migratory wildlife species including waterfowl, wading birds, shorebirds, passerines, finfish, shrimp.

(3) Rearing area, nesting area, breeding grounds for various species.

(4) Habitat for rare or endangered plants.

(5) Presence of plants or animals known to be rare generally, or unique to the particular location.

(6) Presence of plants or animals near the limits of their territorial range.

(7) Presence of unique geologic or wetland features.

[Authority - DNREC Wetlands Regulations, Section 7.02 (A and B), revised November 3, 1994]

**CMP Policies for Fish and Wildlife**

1. The DNREC shall protect, manage and conserve all forms of protected wildlife of this State, and enforce by proper actions and proceedings the law relating thereto.

[Authority - 7 Delaware Code 102(a)]

2. The DNREC shall have control and direction of the shellfish industry and of the protection of shellfish resources throughout this State. The DNREC may adopt, promulgate, amend and repeal regulations consistent with the law, which shall be enforced by the DNREC or any peace officers for the following purposes:

a. To preserve and improve the shellfish industry of this State;

b. To prevent and control the spread of shellfish-borne diseases by providing for the sanitary harvesting, handling, transportation, processing, production and sale of shellfish;

c. To provide for the preservation and improvement of the shellfish resources of this State, when deemed necessary.

[Authority - 7 Delaware Code 1902 (a)(1),(2) and (5)]

3. Adequate funds should be provided for fish and wildlife management programs.

4. Mosquito and other pest controls shall use techniques of marsh management which reduce the application of chemicals and which substitute biological controls.

5. Federal actions which may interfere with or otherwise adversely affect fish and wildlife in Delaware shall be implemented only after careful consultation with DNREC and exploration of alternatives less damaging to such fish and wildlife.

**CMP Policies for Nongame and Endangered Species**

1. "Nongame" is that fauna, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

[Authority - 7 Delaware Code 202(a)]

2. It is in the best interest of the State to preserve and enhance the diversity and abundance of nongame fish and wildlife, and to protect the habitat and natural areas harboring rare and vanishing species of fish, wildlife, plants and areas of unusual scientific significance or having unusual importance to the survival of Delaware's native fish, wildlife and plants in their natural environment.

[Authority - 7 Delaware Code 201(1)]

3. Rare and endangered species are a public trust in need of active, protective management, and that it is in the broad public interest to preserve and enhance such species.

[Authority - 7 Delaware Code 201(2)]

**CMP Mineral Resource Policy**

1. The extraction and production of minerals should be encouraged, but in a manner which maintains environmental quality.

**CMP State Owned Coastal Recreation and Conservation Lands Policies**

1. State owned recreation and conservation lands shall be managed, preserved, and protected, for the long-range public recreation and conservation use and enjoyment thereof.

2. The General Assembly finds that:

a. The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.

b. Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.

c. The expansion of population, while increasing the need for such lands, will continually diminish the supply and

tend to increase the cost of public acquisition of lands available and appropriate for such purposes.

d. Rapid growth and spread of urban development in encroaching upon, or eliminating, many open areas and spaces of varied size and character. These areas and spaces, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic or economic assets.

e. The State must act now to protect and to help local governments to protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.

f. It is the public policy of the State and its political subdivisions that the preservation of open spaces shall be accomplished through the acquisition of interests or rights in real property, or donation of said lands, and that said acquisition constitutes a public purpose for which public funds have been expended or advanced and should be continued.

[Authority - 7 Delaware Code 7502]

### **CMP Public Trust Doctrine Policy**

1. The public have a right of navigation and fishery on all streams where the tide ebbs and flows, even though the riparian proprietor's lines cover the place; but they have no right to land fish on private property, above the high water marks.

[Authority - Bickel v. Polk, Delaware Supr. 5 Harr. 325 (1851)]

2. The DCMP will consider the Public Trust Doctrine during consistency reviews involving properties between the high and low water marks.

### **CMP Development Policies**

1. Community Patterns:

a. New community development actions should discourage "sprawl".

b. New community development generally should occur within or near existing population concentrations where utility networks and community facilities and services are already in place or can economically be expanded.

c. Established urban centers, small and large, should be revitalized and recognized for the values of their in place structures, facilities and institutions.

2. Commercial Land:

a. Commercial strip development that impedes traffic flow throughout the highway network, reduces the operating capacity of roadways, and decentralizes commercial activity should be significantly curtailed.

b. Major commercial development should be encouraged in existing central business districts.

c. Highway oriented uses should be clustered and not strung out along major highways.

3. Industry and Industrial Land Use:

a. Use of existing unused industrial sites and buildings should be encouraged wherever they can be adapted to today's industrial needs.

b. Delaware should encourage the introduction of new industries that optimize the State's resources and the special skills and needs of Delaware residents.

c. Delaware should encourage development of industrial areas that are located so that services can be provided economically, mass transportation can serve the needs of the workers, and the industries will draw on and support existing rail lines, ports, and air terminals.

d. Delaware should assume regulatory control over any future sites or rights-of-way for marine terminals, bulk transfer facilities, or utilities including pipelines.

e. Delaware and its local governments should establish standards and criteria for industrial location including optimum size, utility availability, accessibility, and the overall impact on local communities, such standards to be met prior to rezoning for industry. The State shall not promote a site for industrial purposes when utilization for that purpose is contrary to the land use plan in the area.

4. Institutional Land Use--Public and tax exempt private institutions, services, and facilities should be located to serve urban concentration and should comply with land use, drainage, and other regulatory plans.

### **CMP Energy Facilities Policies**

1. For the policies contained in Section 5.D.3, the "coastal zone" is defined as all that area of the State, whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads as defined in Section 7002 of the Delaware Coastal Zone Act, Title 7 Delaware Code, Chapter 70.

[Authority - 7 Delaware Code 7002]

2. Heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefore. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor.

[Authority - 7 Delaware Code 7003]

### **CMP Policies for Petroleum Refineries**

1. The CMP absolutely prohibits the construction of new petroleum refineries in wetlands or in the coastal strip lying between a series of inland roads and the Delaware River and Bay -- a stretch of land which varies from a few hundred yards wide in northern Delaware to a maximum of 12 miles in the south.

[Authority - 7 Delaware Code 7001 and 7003]

2. New petroleum refineries are not prohibited inland provided state and local environmental, land use and site development standards are met.

#### **CMP Policies for Deepwater Ports**

1. Deepwater ports on the Delaware side of the Delaware River and Bay are prohibited by the Coastal Management Program. Such ports are also prohibited within Delaware's three mile jurisdiction along the Atlantic Ocean.

[Authority - 7 Delaware Code 7001 and 7003]

2. Notwithstanding the Coastal Management Program objections to a Delaware Bay deepwater port, the program supports the concept of a port offshore the Atlantic Coast, provided it meets certain environmental standards including a location far enough off shore to minimize oil spill threats to the coast and to obviate dredging requirements; stringent construction and operation safeguards; a demonstrated reduction of tanker traffic and lightering in the bay; and assurances that state financial interests are protected.

#### **CMP Policies for OCS Oil and Gas Facilities**

1. The CMP generally supports OCS development facilities due to the compelling national interest and lack of viable alternatives.

2. The Coastal Management Program permits offshore oil and gas exploration and development in Delaware waters, on a case-by-case basis, provided adherence to strict environmental safeguards is assured.

[Authority - 7 Delaware Code, Chapter 60, Chapter 61, Chapter 69, and Chapter 70]

3. Offshore and onshore pipelines are permitted by the CMP, provided that state and local environmental control and land use standards are met and that state-designated wetlands are avoided wherever practical. However, the terminus of offshore pipelines from both OCS operations and deepwater ports is prohibited in the coastal strip.

[Authority - 7 Delaware Code 7001, 7002(f) and 7003]

4. New storage tanks connected to OCS facilities are permitted outside the coastal strip provided state and local environmental and land use standards are met.

#### **CMP Policies for Gas Plants**

1. The environmental impact of gas plants is such that the CMP prohibits them in wetlands and the coastal strip. Inland locations are acceptable on a case-by-case basis provided all state and local environmental and land use standards are met.

[Authority - 7 Delaware Code 7001, 7002(e) and 7003]

#### **CMP Policies for Liquefied Natural Gas (LNG) Facilities**

1. The CMP finds that there is no site in Delaware suitable for the location of any LNG import-export facility.

#### **CMP Policies for Power Plants**

1. The CMP permits power plants inland and in the coastal strip provided that state and local standards are met.

[Authority - 7 Delaware Code 7002(e), 7004 and appeal to CZA Case No. 4]

2. The Coastal Management Program recognizes the national interest in the use of coal fueled power plants and encourages the siting of such plants over others when air quality standards can be met.

[Authority - 7 Delaware Code, Chapter 60, Section 6003]

3. The Coastal Management Program also permits nuclear power generation facilities but recommends alternative fuels when feasible because of safety concerns and the unresolved problems of nuclear waste transfer, storage and disposal.

[Authority - 16 Delaware Code, 7414 and A. G. opinion dated April 3, 1974]

#### **CMP Public Investment Policies**

1. New state general obligation bond authorizations shall not exceed seventy-five percent (75%) of the previous fiscal year's repayment of principal.

2. The federal revenue sharing fund should be used to accelerate the retirement of the unfunded liability of the state pension plan.

3. Partly as a result of competition for scarce capital, additional large land acquisitions by state agencies are discouraged. Funding priority will be given to acquisition of inholdings, natural areas, public access sites or other tracts of particular value. Acquisition by donation, exchange or other non-cash methods is encouraged.

4. Completion and implementation of water quality management programs statewide (pursuant to Section 208 of Water Pollution Control Act) are encouraged in order to

solve point and non-point source pollution problems.

5. Expenditures for construction of sewage treatment and transmission facilities should be based on careful analysis of alternatives, consideration of the impacts on growth patterns with particular consideration given to the risks of over-extension and over-design, and an understanding of the law of diminishing returns related to the net improvement of water quality from additional capital expenditures.

6. The DCMP will encourage the use of the Delaware Water Pollution Control Revolving Fund (SRF) for projects which are consistent with DCMP policies. The SRF is authorized by Title VI of the Federal Clean Water Act as amended by the Water Quality Act of 1987 and Section 8003, Chapter 80, Title 29, Delaware Code.

7. Development of recycling and recovery systems is encouraged, by the development of the State's reclamation facility, by establishment of a recycling program for state agencies to reduce the volume of solid waste going into landfills, and by encouragement of research into and use of solid waste as fuel or raw material for new products.

8. Highest priority should be given to maintenance and safety improvements to the existing highway system, and in particular the correction of seriously deteriorated and substandard conditions.

9. Private development should bear the costs of highway improvements while existing and programmed roads will not be able to carry the additional traffic generated by the proposed development. In this regard, large traffic generators (shopping centers, industries, institutions, residential complexes) should be discouraged in areas where serious traffic or safety problems prevail.

10. State employment should be reduced where the volume of work no longer demands the previous number of employees and in order to reduce the need for new office and other state buildings.

11. Reuse of existing primary and secondary schools is encouraged. New school construction should be discouraged and renovation and reuse of existing buildings for educational and other purposes should be encouraged.

12. The concept of an enrollment ceiling is encouraged in evaluating needs for new higher education facilities. Curtailment of certain programs and greater cooperation between the separate institutions in curriculum development should be undertaken in order to reduce duplicate facility requirements.

13. The construction of public housing (under the state housing development fund) is encouraged: 1) when it is located in existing settled areas; 2) where it can be serviced by existing facilities; and 3) where it will provide ready access to stores, transportation, health care, and other services. Projects which do not meet these criteria should not be supported by state money; and

14. Consolidation of agencies and levels of government, redistribution of duties and responsibilities among agencies and other approaches which will reduce the duplication and overlap among governments are encouraged to reduce the cost of government at all levels.

#### **CMP Policies for Recreation and Tourism**

1. Government promotion of recreation and tourism, particularly in coastal areas, should be based on a study of their costs and benefits to Delaware residents. Recreation and tourist development that results in unnecessary or excessive expenditure of tax dollars for the benefit of a few individuals or groups should be discouraged.

2. Year-round recreational and tourism programs and facilities are encouraged in order to reduce the reliance on summer-time recreation.

3. Recreation and tourism planning and development programs, such as the State Comprehensive Outdoor Recreation Planning Program (SCORP), are to be encouraged.

#### **CMP Policies for National Defense and Aerospace Facilities**

1. National defense and national security facilities are among the higher priorities in the management of the coastal zone.

2. Military and aerospace agencies or firms shall comply with those regulatory and environmental standards imposed under federal law, and they are encouraged to cooperate with state and local governments in protecting and enhancing the environment.

3. "Air installation compatible use zones" should be considered in land use planning programs in order to protect citizens from noise and possible accident hazards associated with such facilities.

#### **CMP Policies for Transportation Facilities**

1. When essential to the national interest, the construction maintenance and improvement of transportation systems

shall predominate over less essential interests.

2. Construction of transportation facilities shall be consistent with CMP resource protection policies.
3. Transportation planning programs shall provide for alternatives to continued reliance on private motor vehicles with their associated highway requirements.
4. The State shall undertake an accelerated program of highway maintenance, upgrading, and safety improvements.
5. The maintenance of an adequate and efficient railroad network serving Delaware is encouraged.
6. The construction of airports and the development of air passenger and freight services is encouraged, provided such facilities adequately consider air and water quality, noise standards, and safety in order to minimize impacts on present and future development.
7. The expansion and promotion of the Port of Wilmington is encouraged.
8. Deepwater ports used to transfer bulk products in Delaware Bay are prohibited because of the environmental risks associated with their development and operation.
9. New or expanded ports which involve extensive and continual dredging and spoil disposal in order to keep them useable are discouraged unless it can clearly be demonstrated that such facilities can be developed in an environmentally sound manner and without imposing continuing maintenance costs on any level of government or the general public.
10. Alternatives to the continuation of the present lightering activity in the bay are encouraged. Strict enforcement of oil spill liability regulations are also encouraged to ensure that all transshipment activities are properly conducted.

### **CMP Polices for Air Quality Management**

1. In view of the rapid growth of population, agriculture, industry and other economic activities, the air resources of the State must be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. The State, in the exercise of its sovereign power, acting through the Department should control the development and use of the air resources of the State so as to effectuate full utilization, conservation and protection of the air resources of the State.

[Authority - 7 Delaware Code Chapter 60]

2. The provisions of item (1) above are carried out, mainly, through the adoption and implementation of the State of Delaware "Regulations Governing the Control of Air Pollution." The following, generally, identifies regulations of the State of Delaware "Regulations Governing the Control of Air Pollution" that apply to stationary sources. Consult these regulations and contact Air Quality Management Section personnel for additional and specific information.

a. Generally, sources which will emit to the atmosphere equal to or greater than 0.2 pound of air contaminant(s), in the aggregate, in any one day are subject one or more air permitting requirements.

[Authority - Regulation No. 2, 25 and/or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

b. Sources which will emit to the atmosphere particulate matter from fuel burning or industrial process equipment, construction and materials handling, or grain handling operations may be subject one or more emission limitations.

[Authority - Regulation No. 4, 5, 6, and/or 18 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

c. Sources which will incinerate either noninfectious or infectious waste may be subject one or more emission limitations.

[Authority - Regulation No.7 and 29 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

d. Sources which will emit to the atmosphere sulfur dioxide/compound emissions from fuel burning equipment or industrial operations may be subject one or more emission limitations.

[Authority - Regulation No.8, 9 and 10 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

e. Sources which will emit to the atmosphere carbon monoxide emissions from industrial process operations may be subject one or more emission limitations.

[Authority - Regulation 11 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

f. Sources which will emit to the atmosphere nitrogen oxides may be subject one or more emission limitations.

[Authority - Regulation 12 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

g. Sources which will conduct open burning may be subject one or more emission limitations.

[Authority - Regulation 13 of the State of Delaware "Regulations Governing the Control of Air Pollution"]

h. Sources which will emit to the atmosphere visible emissions (opacity) may be subject one or more emission limitations.

[Authority - Regulation 14 of the State of Delaware

“Regulations Governing the Control of Air Pollution”]

i. Sources which will emit to the atmosphere odorous air contaminants may be subject one or more emission limitations.

[Authority - Regulation 19 of the State of Delaware “Regulations Governing the Control of Air Pollution”]

j. Certain new, modified, and reconstructed sources may be subject to State adopted Federal requirements; particularly New Source Performance Standards (NSPS) found at 40 CFR Part 60, National Emission Standards for Hazardous Air Pollutant (NESHAP) standards found at 40 CFR Part 61, and Maximum Achievable Control Technology (MACT) standards found at 40 CFR Part 63.

[Authority - Regulation 20, 21, and 38 of the State of Delaware “Regulations Governing the Control of Air Pollution”]

k. Sources which will burn waste oil may be subject one or more emission limitations.

[Authority - Regulation 22 of the State of Delaware “Regulations Governing the Control of Air Pollution”]

l. Sources which will emit to the atmosphere volatile organic compounds may be subject one or more emission limitations.

[Authority - Regulation 24 of the State of Delaware “Regulations Governing the Control of Air Pollution”]

3. Where it is established that the Delaware air regulations are inadequate to attain or maintain any applicable air quality standard, the Department shall exercise its authority to require additional control measures. Further, the lack of a regulation governing an air contaminant or combination of air contaminants will not prevent the Department from taking any and all actions necessary to maintain a reasonable quality of air throughout the State.

[Authority - Regulation No. 1 and 3 of the State of Delaware “Regulations Governing the Control of Air Pollution”]

### **CMP Policies for Water Supply Management**

1. According to statute the Secretary (of the DNREC) shall approve the allocation and use of waters in the State on the basis of equitable apportionment (7 Delaware Code, Section 6010(F)). These regulations provide for the allocation and re-allocation of the waters of the State in such a manner as to provide an adequate quantity and quality of water for the needs of the people of Delaware in the present and future.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 1.01, effective March 1, 1987 and 7 Delaware Code Section 6010(F)]

2. Withdraws from ground waters shall be limited to those rates which will not cause:

a. long-term progressive lowering of water levels,

except in compliance with management water levels established by the DNREC;

b. significant interference with the withdrawals of other permit holders unless compensation for such injury is provided satisfactory to the DNREC;

c. violation of water quality criteria for existing or potential water supplies;

d. significant permanent damage to aquifer storage and recharge capacity; or

e. substantial impact on the flow of perennial streams below those rates specified for surface waters in the preceding section.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 3.04, effective March 1, 1987]

3. Withdraws from surface waters shall be limited to those rates which:

a. do not interfere with other permitted withdrawals unless compensation for such injury is provided satisfactory to the DNREC;

b. allow dilution and flushing of waste discharge and maintain adopted water quality standards;

c. protect valuable fish and wildlife;

d. maintain adequate flow over spillways of downstream impoundments;

e. prevent intrusion of saline waters where such intrusion threatens ground or surface water supplies; and

f. provide other ecological, recreational, aesthetic, and private benefits which are dependent upon surface water flows.

[Authority - State of Delaware Regulations Governing the Allocation of Water, Section 3.03, effective March 1, 1987]

4. The Department of Natural Resources and Environmental Control in cooperation with county and local governments and private water suppliers is encouraged to develop a comprehensive water supply management program including the reallocation of water resources, the protection of aquifer recharge areas, and, where necessary, the abrogation of allocations to marginal users provided compensation is provided.

### **CMP Policies for Construction and Use of Wells**

1. A well, defined as "any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, use, for extracting water from, or the artificial recharge of subsurface fluids, and where the depth is greater than the diameter or width; not to include geotechnical test; soil, telephone, and construction piling borings; fence posts, test pits, or horizontal closed loop

heatpump circulation systems constructed within twenty (20) feet of the ground surface”; including any well installed for the purpose of obtaining geologic or hydrologic information shall receive the prior approval of the DNREC in the form of a well permit.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 1.02 (D) and Section 2.61, revised April 1, 1997]

2. The DNREC, in considering applications and granting permits shall take into account the geology, hydrology and hydraulics of the area of interest, population density and water use, character of surface and subsurface, water quality, depletion rate of the water resources, sources of contamination, and other facts as may be relevant to the protection of the water resources and water supply.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10(B), revised April 1, 1997]

3. The DNREC may place special conditions on the well permit such as, but not limited to, a requirement for double casing, special grouting requirements, special use restrictions, depth restrictions, notification of installation date, and special material requirements to protect the water resources, water supply, and the public health, safety and welfare.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (C), revised April 1, 1997]

4. Where an approved public water supply system is legally and reasonably available to the area to be served, the DNREC shall deny an application for a well permit for a potable water well.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (D), revised April 1, 1997]

5. When proposed wells, with the exception of monitor, observation and recovery wells, are to be located within the jurisdiction or service area of a municipality serving public water the applicant shall submit a written statement of approval from said municipality with the well permit application.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (E), revised April 1, 1997]

6. The DNREC may require as a permit condition that certain tests be done such as, but not limited to, the performance of a geophysical log on the well, the determination of water quality parameters, and the taking of formation samples.

[Authority - State of Delaware Regulations Governing the Construction and Use of Water Wells, Section 3.10 (F), revised April 1, 1997]

### **CMP Policies for Underground Injection Control**

1. Any underground injection, except as authorized by permit issued under the Underground Injection Control (UIC) program or otherwise authorized herein, is prohibited. The construction of any well required to have a permit is prohibited until the permit is issued.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.23(a), effective August 15, 1983]

2. The construction, use, operation or modification of any Class II, III, or IV well as defined in the Regulations Governing Underground Injection Control is hereby expressly prohibited and no permit may be issued for any such activity.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.23(b), effective August 15, 1983]

3. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct and other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirement of this paragraph are met.

[Authority - State of Delaware Regulations Governing Underground Injection Control, Section 122.24(a), effective August 15, 1983]

### **CMP Policies for On-Site Wastewater Treatment and Disposal Systems**

1. The DNREC finds that a substantial portion of the State’s population lives where centralized water supply or wastewater treatment services are limited. It is the intent of the DNREC to aid and assist the public in the installation of on-site sewage disposal systems, where possible, by utilizing the best information, techniques and soil evaluations for the most suitable system that site and soil conditions permit.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, revised January 31, 1995, Forward]

2. The Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal



Systems all apply to all aspects of:

a. The planning, design, construction, operation, maintenance, rehabilitation, replacement, and modification of individual and community on-site wastewater treatment and disposal systems within the boundaries of the State of Delaware; and

b. The planning, design, construction, operation and maintenance of on-site wastewater holding tanks within the boundaries of the State of Delaware; and

c. The licensing of site evaluators, percolation testers, on-site system designers, on-site system contractors, and liquid waste haulers within the boundaries of the State of Delaware.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 1.02000, revised January 31, 1995]

3. Each and every owner of real property is jointly and severally responsible for:

a. Disposing of sewage on that property in conformance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems; and

b. Connecting all plumbing fixtures on that property, from which sewage is or may be discharged, to a central sewerage system or on-site sewage disposal system approved by the DNREC; and

c. Maintaining, repairing, and/or replacing the system as necessary to assure proper operation of the system.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.01000, revised January 31, 1995]

4. No person shall construct, install, modify, rehabilitate, or replace an on-site system or construct or place any dwelling, building, mobile home, modular home or other structure capable of discharging wastewater on-site unless such person has a valid permit issued by the DNREC pursuant to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.02000, revised January 31, 1995]

5. No permit may be issued by the DNREC under the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems unless the county or municipality having land use jurisdiction has first approved the activity through zoning procedures provided by law.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.03000, revised January 31, 1995]

6. At the sole discretion of the DNREC, if the proposed operation of a system would cause pollution of public waters or create a public health hazard, system installation or use shall not be authorized.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.08000, revised January 31, 1995]

7. All wastewater shall be treated and disposed of in a manner approved by the DNREC.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.09000, revised January 31, 1995]

8. No person shall dispose of sewage or septage at any location not authorized by the DNREC under applicable laws and regulations for such disposal.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.10000, revised January 31, 1995]

9. Discharge of untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into surface waters of the State, unless authorized by a permit issued by the DNREC, constitutes a public health hazard and is prohibited.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.11000, revised January 31, 1995]

10. No cooling water, air conditioning water, ground water, oil, or roof drainage shall be discharged into any system.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.12000, revised January 31, 1995]

11. Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily wastewater flow. The quantity of wastewater shall be determined from the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems or other information the DNREC determines to be valid that may show different flows.

[Authority - Regulations Governing the Design,

Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.14000, revised January 31, 1995]

12. A permit to install a new system can be issued only if each site has received an approved site evaluation and is free of encumbrances (e.g., easements, deed restrictions, etc.), which could prevent the installation or operation of the system from being in conformance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

[Authority - Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Section 3.15000, revised January 31, 1995]

### **CMP Policies for Land Treatment of Wastes**

1. Land treatment of wastewaters, sludges and other residual wastes is a proven and cost effective alternative to traditional technology over a wide range of circumstances where the necessary land is available at reasonable cost. For effluents and sludges, it is particularly attractive at locations where the design flow of receiving waters is low, waste treatment requirements are high and suitable to landfills is low. The full advantages of land treatment will not be realized, however, unless there is a concerted effort to focus the designs on essential features. Ground water quality and public health must be protected, but treatment hardware and operational criteria should be based on firm evidence of need. Lined earthen lagoons should be used whenever possible and concrete, steel, and firm-set structures limited except where fully justifiable. All persons involved in the planning, review, and supervisory processes should take steps to assure that these objectives are realized.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part I, Section 100, revised June 5, 1994]

2. The construction and operation of waste collection, treatment, and disposal systems and facilities discussed in the State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes are regulated by the DNREC. The Delaware Environmental Protection Act requires that a valid permit shall be obtained for collection, treatment, and disposal of waste. The Regulations specify minimum requirements needed to protect the public health and environmental quality. The technical guidelines provide guidance on system planning and design.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part I, Section 500, revised June 5, 1994]

3. Conditions necessary for the protection of the

environment and the public health may differ from facility to facility because of varying environmental conditions and wastewater compositions. The DNREC may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to:

- a. Chemical, biological, physical, and volumetric characteristics of the wastewater;
- b. Geological, topographic, and climatic nature of the facility site;
- c. Size of the site and its proximity to population centers and to the ground and surface water;
- d. Legal considerations relative to land use and water rights;
- e. Techniques used in wastewater distribution and the disposition of that vegetation exposed to wastewater;
- f. Abilities of the soils and vegetative cover to treat the wastewater without undue hazard to the environment or to the public health; and
- g. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, Part II, Section 200, Subsection 203(3)(a), revised June 5, 1994]

4. The purpose of DNREC's Guidance and Regulations Governing the Land Treatment of Wastes is to protect and improve environmental quality in Delaware by providing further treatment and recycling of wastes. The objectives are:

- a. To regulate and manage land treatment of wastewater and sludge.
- b. To assure long-term land productivity, such that no land is irreversibly removed from significant potential agricultural land use.
- c. To protect groundwater quality and assure that drinking water quality standards are met.
- d. To safeguard public health within reasonable standards.
- e. To improve the regulatory climate for land application of wastes, public understanding, and implementation of current and evolving technology by municipalities and industries.

5. Specific objectives in using land treatment technology are:

- a. To establish criteria for the application of wastes to the plant-soil system at such rates or over such limited time span that no land is irreversibly removed from some other potential societal usage (agriculture, development,

forestation, etc.).

b. To establish a methodology for the intimate mixing or dispersion of wastes into the upper zone of the plant-soil system with the objective of microbial stabilization, immobilization, selective dispersion, or crop recovery leading to an environmentally acceptable assimilation of the waste.

c. To promote effective regulation, public understanding, and implementation of current and evolving technologies by governmental units and industries in the State of Delaware.

d. To establish reasonable measures of protection for the environment and public health, safety, and welfare by providing for the proper design, operation, and management of land treatment systems; and the proper treatment, transport, handling, and beneficial use of wastes.

e. To require the use of plant-soil and waste management practices and technology that will function according to the performance criteria without causing the State's groundwater resources to violate duly promulgated drinking water standards on an average annual basis.

f. To dispose of non-hazardous sludges in landfills is an inefficient use of resources. Pretreatment programs and sludge management programs should be directed to provide adequate treatment for land application.

[Authority - State of Delaware Guidance and Regulations Governing the Land Treatment of Wastes, August 1988, Section 300]

### **CMP Policies for Disposal of Solid Wastes**

1. The General Assembly of the State of Delaware finds that historically millions of tons of solid wastes have been disposed of in the ocean and waters of the State, that these wastes are not land disposed in recognition of the threat posed by the presence of contaminants, by the lack of knowledge or appreciation of the harm such wastes can cause to the marine environment, or that it is cheaper to dispose of such wastes in the ocean or other waters of the State. Therefore, it is the intent of the General Assembly to prohibit the disposal of solid wastes in the ocean and other waters of the State of Delaware.

[Authority - 7 Delaware Code, Section 6071]

2. It is the intent of the DNREC to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

[Authority - State of Delaware Regulations Governing Solid Waste, Section 1, revised December 21, 1994]

3. Sanitary and industrial landfill facilities shall be located

only in areas where the potential for degradation of the quality of air, land and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(1) and 6(A)(1), revised December 21, 1994]

4. All sanitary and industrial landfill facilities shall be constructed to at least minimum design requirements as contained in the DNREC Regulations Governing Solid Waste.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(2) and 6(A)(2), revised December 21, 1994]

5. No cell of a new sanitary landfill shall be located:

a. Within the 100 year flood plain.

b. Within 200 feet of any state or federal wetland.

c. Within 200 feet of any perennial stream.

d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

e. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

f. So as to be in conflict with any locally adopted land use plan or zoning requirement.

g. Within the wellhead protection area of a public water supply well or well field.

h. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)

i. Within a seismic impact zone (unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(A)(4), revised December 21, 1994]

6. No new industrial landfill shall be located in an area such that solid waste would at any time be deposited:

a. Within the 100 year flood plain.

b. Within 200 feet of any state or federal wetland.

c. Within 200 feet of any perennial stream.

d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the DNREC.

e. So as to be in conflict with any locally adopted land use plan or zoning requirement.

f. Within the wellhead protection area of a public water supply well or well field.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 6(A)(3), revised December 21, 1994]

7. An impermeable liner shall be provided at all sanitary and industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water, in accordance with a DNREC approved quality assurance plan.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(C)(1) and 6(C)(1), revised December 21, 1994]

8. All sanitary and industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system, in accordance with a DNREC approved quality assurance plan.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 5(D)(1) and 6(D)(1), revised December 21, 1994]

9. No new dry waste disposal facility shall be located in an area such that solid waste would at any time be deposited:

- a. Within five (5) feet of the seasonal high water table.
- b. Within the 100 year flood plain.
- c. Within 200 feet of any state or federal wetland.
- d. Within 200 feet of any perennial stream.
- e. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.
- f. So as to be in conflict with any locally adopted land use plan or zoning requirement.
- g. Within the wellhead protection area of a public water supply well or well field.
- h. In an area that is particularly susceptible to environmental degradation.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 8(A), revised December 21, 1994]

10. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(1), revised December 21, 1994]

11. No new resource recovery facility shall be located in an area such that solid waste would be at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. Within 1,000 feet of any state or federal wildlife refuge, wildlife area, or park.
- d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(2), revised December 21, 1994]

12. In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 9(B)(2), revised December 21, 1994]

13. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(1), revised December 21, 1994]

14. Transfer stations shall be located adjacent to access roads capable of withstanding anticipated load limits.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(2), revised December 21, 1994]

15. No new transfer station shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(B)(3), revised December 21, 1994]

16. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as wash-out and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

[Authority - State of Delaware Regulations Governing Solid Waste, Sections 10(D)(1), revised December 21, 1994]

### **CMP Policies for Hazardous Waste Management**

1. The Delaware General Assembly finds that:
  - a. Continuing technological progress, increases in the amounts of manufacture and the abatement of air and water pollution have resulted in ever-increasing quantities of hazardous wastes.
  - b. The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner and where there are no commercial hazardous waste management facilities available;
  - c. The knowledge and technology necessary to alleviate adverse health, environmental and aesthetic

impacts resulting from current hazardous waste management and disposal practices are believed to be generally available at costs within the financial capability of those who generate such wastes, but that such knowledge and technology are not widely used;

d. The problem of managing hazardous wastes has become a matter of statewide concern.

[Authority - 7 Delaware Code 6301]

2. Therefore, it is hereby declared the policy of this State:

a. To protect the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

b. To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes; and

c. To assure the safe and adequate management of hazardous wastes within this State.

[Authority - 7 Delaware Code 6301]

3. "Hazardous Wastes" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

[Authority - 7 Delaware Code 6302(7)]

4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land, water or into the air so that such hazardous waste or any constituent thereof may enter the environment to be emitted into the air, or discharged into any water including groundwaters, or any other management of hazardous waste in which the handler voluntarily relinquishes control of the waste in a manner inconsistent with the requirements of this chapter and the regulations promulgated thereunder.

[Authority - 7 Delaware Code, Section 6302(4)]

5. No person shall generate, store, transport, treat or dispose of hazardous wastes in this State without reporting such activity to the DNREC as required by 7 Delaware Code, Chapter 63 and regulations promulgated hereunder.

[Authority - 7 Delaware Code, Section 6304(a)]

6. No person shall generate, store, treat, transport or dispose of hazardous wastes within this State except in compliance with 7 Delaware Code, Chapter 63 and regulations hereunder.

[Authority - 7 Delaware Code, Section 6304(b)]

7. Land emplacement units, defined as any facility involving the placement of hazardous waste into or onto the land and which is designed and operated to contain waste in a manner that prevents the migration of pollutants from the site such as landfills; land farms/land treatment; land burial following solidification or encapsulation; above ground perpetual storage; waste piles; surface impoundments; and on ground, in-ground, and underground tanks shall be prohibited in the following:

a. The 100-year flood hazard area.

b. Wetlands.

c. Freshwater wetlands.

d. Carbonate bedrock areas.

e. Carbonate bedrock drainage areas.

f. Public water supply watersheds upstream from the points of withdrawal.

g. Subcropping aquifer and aquifer recharge areas.

h. Significant environmental lands.

i. Areas where the transmissivity of the unconfined aquifer is greater than 10,000 ft<sup>2</sup>/day.

j. Areas where groundwater under natural conditions could come into contact with the waste.

k. Wellhead protection areas.

l. Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 1 and Section 3.1, revised October 22, 1996]

8. Non-land emplacement storage, treatment, and disposal units shall be prohibited in the following:

a. The 100-year flood hazard area.

b. Wetlands.

c. Freshwater wetlands.

d. Carbonate bedrock areas.

e. Carbonate bedrock drainage areas.

f. Public water supply watersheds upstream from reservoirs.

g. Significant environmental lands.

h. Areas within 500 feet of a fault that has experienced movement within the last 35,000 years (capable fault).

i. Wellhead protection areas.

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 4.1.1, revised October 22, 1996]

9. The following units shall be exempt from the Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities:

a. On-site reclamation units where the principle

activity at the facility is not the management of wastes.

b. Industrial boilers and furnaces that burn hazardous waste fuels for energy recovery.

c. Units authorized in accordance with Section 122.60 and 122.61 of the Delaware Regulations Governing Hazardous Waste concerning facilities that have permits by rule and/or approval to operate under an emergency administrative order.

[Authority - Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities, Section 6.1(i, ii, and iii), revised October 22, 1996]

### **CMP Policies for the Cleanup of Hazardous Substances**

1. The General Assembly of the State of Delaware recognizes that large quantities of hazardous substances are and have been generated, transported, treated, and stored within the State.

The General Assembly also recognizes that some hazardous substances have been stored or disposed of at facilities in the State in a manner insufficient to protect public health or welfare or the environment.

The General Assembly finds that the release of a hazardous substance constitutes an imminent threat to public health or welfare or the environment of the State.

The General Assembly intends by the passage of this chapter to exercise the powers of the State to require prompt containment and removal of such hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances.

[Authority – 7 Delaware Code 9102 (a)]

2. The General Assembly finds that private parties should be provided with encouragement to exercise their responsibility to clean up the facilities for which they are responsible, but that if they refuse to do so, then the State should conduct the cleanup and recover the costs thereof from the private parties.

[Authority – 7 Delaware Code 9102 (b)]

3. The General Assembly recognizes the need to remedy contaminated facilities and to promote opportunities and provide incentives to encourage the remedy of such facilities to yield economic revitalization and redevelopment within the state.

[Authority – 7 Delaware Code 9102 (c)]

4. The General Assembly finds that in order to effectuate the purposes of this chapter to remedy contamination resulting from past acts and to address more equitably the issue of who should bear the cost of remediation, 7 Delaware Code § 9105-Standards of Liability – shall apply to all

responsible parties without regard to the date of enactment of this chapter or any amendment thereto.

[Authority – 7 Delaware Code 9102 (d)]

5. Hazardous substance means: a. Any hazardous waste as defined in Chapter 63 of Title 7; b. Any hazardous substance as defined in CERCLA; or c. Any substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

[Authority – 7 Delaware Code 9103(9)]

6. Where a release or imminent threat of release of hazardous substances requires a response action, potentially responsible parties that have been noticed in accordance with Subsection 6.3 of these Regulations, shall conduct such response action as expeditiously as possible. Any approval by the Department of a response action shall occur through one of the settlement agreements described in Subsection 13.3 of these Regulations.

No person shall perform an interim response activity except as provided for in Section 8.2(3) or remedial action independently from and without concurrent oversight of the Department at facilities where there is a release or imminent threat of release of hazardous substances.

All procedures related to the Voluntary Cleanup Program shall be carried out in accordance with the applicable provisions of the Delaware Voluntary Cleanup Program Guidance, and these Regulations, as amended by the Department.

[Authority – State of Delaware Regulations Governing Hazardous Substance Cleanup, Section 13.1(1) -(3), revised September 1996]

### **CMP Policies for Underground Storage Tank Systems**

1. Pursuant to 7 Delaware C., Chapter 74, the General Assembly of the State of Delaware has found “that it is necessary to provide for more stringent control of the installation, operation, retrofitting and abandonment of underground storage tanks to prevent leaks, and where leaks should occur, detect them at the earliest possible stage and thus minimize further degradation of groundwater.”

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Section 1.01, revised March 12, 1995]

2. The requirements of the Regulations Governing Underground Storage Tank Systems shall apply to all owners and operators of an Underground Storage Tank (UST) system unless specifically exempted. An “Underground Storage Tank” is defined as a containment vessel, including underground pipes connected thereto, which is used to contain an accumulation of regulated

substances, and the volume of which, including the volume of the underground pipes connected thereto, is 10 per centum or more beneath the surface of the ground. Such terms does not include any:

- a. Septic tank.
- b. Pipeline facility (including gathering lines) regulated under:
  - i. The Natural Gas Pipeline Safety Act of 1968 (49 USC 1671 et seq.); or
  - ii. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC 2001 et seq.); or
  - iii. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph b(i) or (ii) of this definition.
- c. Surface impoundment, pit, pound, lagoon.
- d. Storm water wastewater collection system.
- e. Flow-through process tank.
- f. Liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
- g. Storage tank situated in an underground area (such as basement, cellar, mineworking drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Sect. 1.02, revised March 12, 1995 and 7 Delaware C. 7402(20)]

3. "Regulated Substance" means

- a. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC Section 9601(14)); but not including any substance regulated as a hazardous waste under Delaware's Regulations Governing Hazardous Wastes and/or RCRA Subtitle C.
- b. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, residual fuel oils, lubricants, petroleum solvents, and used oils.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 2 - Definitions, revised March 12, 1995]

4. The following underground storage tank systems shall be exempted from the requirements of the Regulations Governing Underground Storage Tank Systems with the exception of Part A, Section 4.11; Part A, Section 8.06 and 8.07; and Sections 3.04 and 4 of either Parts B or D.

- a. Agricultural/Farm and residential UST systems of

1,100 gallons or less used for storing motor fuels for non commercial purposes.

- b. UST systems containing heating oils of 1,100 gallons or less used for consumptive purposes on the premises where stored.

- c. The following UST systems:

- i. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;
- ii. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act,
- iii. Equipment and machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks,
- iv. Any UST system whose capacity is 100 gallons or less,
- v. Any UST system that contains a de minimis concentration of regulated substances, and
- vi. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 1.02 (A, B and C), revised March 12, 1995]

5. No person may install an Underground Storage Tank system deferred or exempted under Section 1.02 of the Regulations Governing Underground Storage Tank Systems for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

- a. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- b. Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
- c. Is constructed or lined with material that is compatible with the stored substance.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 1.03(A, B, and C), revised March 12, 1995]

6. Any person that owns or operates an underground storage tank system must register each underground storage tank system with the Department of Natural Resources and Environmental Control.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 4.01, revised March 12, 1995]

7. Prior to the installation of any underground storage tank system a site survey must be initiated by the facility owner

and operator. The pre-installation site survey must be conducted to determine the locations of nearby buildings, underground utilities and sewer lines. Private/public drinking water wells, rivers, streams, lakes, canals, and other environmentally sensitive locations shall be recorded and incorporated into the design of the underground storage tank system facility.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.03(A), revised March 12, 1995]

8. Owners and operators of new UST systems must provide a method, or combination of methods of release detection that:

a. Can detect a release from any portion of the tank and the connected underground piping that routinely contain product; and

b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

c. Meets the performance standards for release detection in this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after January 1, 1991 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this section with a probability of detection of at least 0.95 and a probability of false alarm no greater than 0.05.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.07(A, B, and C) revised March 12, 1995]

9. Not later than January 1, 1991, no person must use, or maintain any in-service existing UST system without complying with one of the following requirements contained in the Regulations Governing Underground Storage Tank Systems:

a. New UST system performance standards contained in Part B, Section 1; or

b. The upgrading/retrofitting requirements for both existing tanks, integral piping and release detection under Part B, Section 2.02 with the exception of the cathodic protection requirements under Section 2.02 (A)(2) and (B); or

c. Removal, abandonment requirements under Part B, Section 3 including applicable requirements for hydrogeologic investigation and/or corrective action under Part B, Section 4.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section

2.01(A)(1, 2 and 3), revised March 12, 1995]

10. The Department reserves the right to require secondary containment or equivalent protection for underground storage tank system installations where aquifers underlying the UST facility are determined to need such protection, or where groundwater below the UST facility is within a well head protection area, or where groundwater is susceptible to contamination in order to protect the safety, health, welfare and/or environment of the State.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.02(A), revised March 12, 1995]

### **CMP Policies for UST Systems Used for the Storage of Petroleum Substances**

1. All new Underground Storage Tanks (UST) systems installed for the storage of petroleum must be designed, constructed and installed in accordance with manufacturer's specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank must be compatible with the substance to be stored. All new UST systems must meet the following requirements:

a. Acceptable designs for UST system construction include cathodically protected steel, fiberglass-reinforced plastic, steel-fiberglass-reinforced-plastic composite, cathodically protected double-walled steel or double-walled fiberglass-reinforced plastic, or any of the above tanks in association with a secondary containment, or other equivalent design approved by the Department of Natural Resources and Environmental Control.

b. New petroleum UST systems must be installed in accordance with the manufacturer's specifications, accepted engineering practices and one of the following industry codes: American Petroleum Institute, Installation of Underground Petroleum Storage Systems, Recommended Practices 1615 or Petroleum Equipment Institute, Recommended Practices for Installation of Liquid Storage Systems, Recommended Practices 100-87.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 1.01(A and B) , revised March 12, 1995]

2. Owners and operators of existing petroleum UST systems must provide a method, or combination of methods, of release detection that:

a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.



b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

c. Meets the performance standards under Part B, Section 2.05 of the Regulations Governing Underground Storage Tank Systems, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after July 12, 1985 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this Section with a probability of false alarm of at least 0.95 and a probability of false alarm of no greater than 0.05.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part B, Section 2.05(A, B and C) , revised March 12, 1995]

3. Owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

a. For owners or operators of petroleum UST systems that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1 million.

b. For all other owners or operators of petroleum UST systems: \$500,000.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part F, Section 4.01, revised March 12, 1995]

4. Owners or operators of petroleum UST systems must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

a. For owners or operators of 1 to 100 petroleum UST systems: \$1 million; and

b. For owners or operators of 101 or more petroleum UST systems: \$2 million.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part F, Section 4.02, revised March 12, 1995]

#### **CMP Policies for UST Systems for the Storage of Heating Fuel**

1. All new UST systems with a capacity of greater than 1,100 gallons installed for the storage of heating fuel shall be designed, constructed and installed in accordance with manufacturer's specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank and piping shall be compatible with the substance to be stored. All new UST systems greater than 1,100 gallons shall meet the following requirements:

a. Acceptable designs for tank construction include cathodically protected steel, fiberglass-reinforced plastic, steel-fiberglass-reinforced plastic composite, cathodically protected double-walled steel or double-walled fiberglass-reinforced plastic, or any of the above tanks in association with a secondary containment system, or other equivalent design approved by the Department.

b. All new heating fuel underground piping systems shall be properly designed, constructed and protected from corrosion in accordance with accepted corrosion engineering practices and one of the following industry codes:

NFPA 30, NFPA 329, API 1615, API 1632, NACE Standard RP-01-69, UL Standard 971, UL Standard 567, UL of Canada ULC-107, UL of Canada S633-M81, and RP100-90.

1. All integral piping systems shall be designed, constructed, and installed in a manner which will permit periodic tightness testing of the entire system.

2. Each owner and operator of any integral piping system shall test the piping whenever the associated tank is tested. All tank and line tightness tests shall be conducted in accordance with NFPA 329 or other equivalent methods subject to the approval of the Department.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part C, Section 2.01, revised March 12, 1995]

2. Commencing January 1, 1999, no person shall use, or maintain any existing heating fuel UST system with a capacity of greater than 2,000 gallons without complying with one of the following requirements contained in the Regulations Governing Underground Storage Tank Systems:

a. New UST system performance standards under §2 of Part C; or

b. The upgrading/retrofitting requirements for both existing tanks, integral piping including release detection, spill and overfill protection, and corrosion protection requirements of §§3.02 and 3.03 of Part C; or

c. Closure requirements under §4 of Part C, including applicable requirements for corrective action under §5 of Part C.

d. Limiting the amount of product stored in the

existing UST system to 2,000 gallons or less and complying with requirements of §3.06, Alternative Compliance Category.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part C, Section 3.01, revised March 12, 1995]

### **CMP Policies for UST Systems for the Storage of Hazardous Substances**

1. "Hazardous Substances UST System" means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the CERCLA (but not including any substance regulated as a hazardous waste under RCRA Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part A, Section 2 - Definitions, revised March 12, 1995]

2. All new UST systems installed for the storage of hazardous substances must be designed, constructed and installed in accordance with manufacturer's specifications, and accepted engineering practices and procedures; and in a manner which will prevent releases of regulated substances to the ground waters, surface waters or soils of the State due to corrosion, structural failure, spills and overfills for the operational life of the tank. The material used in the construction and/or lining of the tank must be compatible with the substance to be stored. All new UST systems must meet the following requirements:

a. Acceptable designs for UST systems storing hazardous substance must be fabricated in double-walled construction using any of the following materials: double-walled cathodically protected steel or double-walled fiberglass-reinforced plastic, or double-walled steel fiberglass-reinforced plastic composite, or other equivalent design approved by the Department of Natural Resources and Environmental Control.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part D, Section 1.01, revised March 12, 1995]

3. Owners and operators of existing UST systems used for the storage of hazardous substance must provide a method, or combination of methods, of release detection that:

a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; and

b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

c. Meets the performance standards under Part D,

Section 2.05 of the Regulations Governing Underground Storage Tank Systems, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after July 12, 1985 except those permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for precision tank testing, automatic tank gauging, line leak detectors, and line tightness testing methods specified in this Section with a probability of false alarm of at least 0.95 and a probability of false alarm of no greater than 0.05.

[Authority - State of Delaware Regulations Governing Underground Storage Tank Systems, Part D, Section 2.05 (A, B and C), revised March 12, 1995]

### **CMP Policies for Pollution Prevention**

1. Whenever possible, the generation of waste should be reduced or eliminated as expeditiously as possible, and that waste that is generated should be recovered, reused, recycled, treated or disposed of in a manner that minimizes any present or future threats to human health or the environment.

[Authority - 7 Delaware Code 7802(a)(1)]

2. Industries should review their proposed projects for the possible use of pollution prevention opportunities.

3. DNREC's Pollution Prevention program is available to businesses to provide non-regulatory technical assistance and information on pollution prevention. Industries should utilize the DNREC Pollution Prevention Program's services to ensure that the potential for degradation of the quality of air, land, and water is minimal.

### **Coastal Management Coordination Policies**

1. State and local governments responsible for implementing the CMP shall provide an opportunity for one another, federal agencies, and other interested parties to review and comment on proposed actions which may be of more than local interest.

2. State agencies responsible for implementation of the CMP shall coordinate their CMP implementation responsibilities with each other to the extent necessary to assure well informed and reasoned program decisions.

3. All State agencies and local units of government shall consider, prior to any CMP decisions, the national interest in:

a. Planning for and locating facilities which are necessary to meet other than local requirements.

b. Coastal resource conservation and preservation.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**  
**WASTE MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch.60)

1. TITLE OF THE REGULATIONS:  
Regulations Governing Solid Waste

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

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the substantive changes.

3. POSSIBLE TERMS OF THE AGENCY ACTION:  
None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO  
ACT:  
Title 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:  
None

6. NOTICE OF PUBLIC COMMENT:  
A public workshop will be held on Thursday, October 22, 1998, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

7. PREPARED BY:  
Janet T. Manchester (302) 739-3820, Sept. 11, 1998

Synopsis of proposed revisions to  
Regulations Governing Solid Waste

General revisions

- Remove all time-limited requirements that are no longer applicable.
- Revise wording for purposes of providing clarification, facilitating understanding, correcting existing inaccuracies, and eliminating redundancies.

Section-by-section synopsis of substantive revisions

Section 1: Declaration of Intent

- No substantive changes.

Section 2: Scope and Applicability

- Delete "dry waste disposal facility" from the scope of the regulations. For disposal purposes, DNREC proposes to incorporate "dry waste" into the category "industrial waste."

Section 3: Definitions

- Provide definitions for previously undefined terms.
- Revise definition of "INDUSTRIAL WASTE" to specifically include dry waste.

Section 4: Permitting Requirements and Administrative Procedures

- Increase the maximum permit duration.
- Make a distinction between major and minor permit modifications.
- Provide guidance for meeting financial assurance requirements.
- Require permit applicant to reimburse DNREC for the cost of third-party review of financial assurance submittals.
- Provide for consistency in permit application forms.
- Simplify the procedure for moving through the phases of a solid waste facility (construction, operation, closure) by providing that only one permit is needed, to be modified as appropriate.

Section 5: Sanitary Landfills

- Provide for additional flexibility in siting and design, provided that the applicant can demonstrate there will be no increased risk to public health or the environment.
- Require that the leachate monitoring system be capable of preventing the leachate head on the liner from exceeding a depth of 12 inches.
- Require a more protective capping system.
- Clarify the procedures for accomplishing closure and post-closure care.

Section 6: Industrial Landfills

- Revise siting requirements to make them more consistent with the sanitary landfill siting requirements.
- Provide for additional flexibility in siting and design, provided that the applicant can demonstrate there will be no increased risk to public health or the environment.

- Establish a composite liner as the minimum acceptable liner system for industrial landfills.
- Provide more specific requirements concerning the design of the leachate monitoring system.
- Require an assessment of corrective measures, selection of remedy, and implementation of corrective action following confirmation of a contaminant release or exceedance of a performance standard.
- Require a more protective capping system.
- Require permittee to provide a list of transporters utilizing the facility.
- Clarify the procedures for accomplishing closure and post-closure care.

#### Section 7: Transporters

- Require subcontractors to carry proof of the subcontractor agreement in the vehicle.

#### Section 8: Dry Waste Disposal Facilities

- Delete this entire section, and reserve it for future use.

#### Section 9: Resource Recovery Facilities

- No substantive changes.

#### Section 10: Transfer Stations

- No changes.

#### Section 11: Special Wastes Management (Part 1 - Infectious Waste)

- Delete those definitions that duplicate definitions contained in Section 3.
- Establish that the term "REGULATED MEDICAL WASTE" is synonymous with the term "INFECTIOUS WASTE".
- Clarify small quantity generator exemptions.
- Delete permit requirements that duplicate requirements contained in Section 4.
- Revise packaging specifications to make them performance oriented rather than material specific.

#### Section 12: Severability

- No changes.

### SECTION 1: DECLARATION OF INTENT

The Delaware Department of Natural Resources and

Environmental Control finds and declares that improper solid waste handling and disposal practices may result in environmental damage, including substantial degradation of the surface and ground water and waste of valuable land and other resources, and may constitute a continuing hazard to the health and welfare of the people of the State. The Department further finds that the utilization of solid waste handling and disposal facilities which are properly located, designed, operated, and monitored will minimize environmental damage and protect public health and welfare.

It is the intent of the Department to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

The purposes of these regulations are:

1. To encourage, in all appropriate ways, recycling, reuse, and reclamation processes, and
2. To implement the provisions of 7 Del. Code, Chapter 60, the Delaware Environmental Protection Act, which directs the Department to put into effect a program for improved solid waste storage, collection, transportation, processing, transfer, and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

### SECTION 2. SCOPE AND APPLICABILITY

#### A. AUTHORITY

1. These regulations are enacted pursuant to 7 Del. Code, Chapter 60, entitled "Delaware Environmental Protection Act".
2. These regulations shall be known as "Regulations Governing Solid Waste" and shall repeal the "Delaware Solid Waste Disposal Regulation".

#### B. APPLICABILITY

1. These regulations apply to any person using land or allowing the use of land for the purposes of storage, collection, processing, transfer, or disposal of solid waste; and to any person transporting solid waste in or through the State of Delaware. The following shall be subject to the provisions of these regulations:
  - a. Sanitary landfills
  - b. Industrial landfills
  - ~~e. Dry waste disposal facilities~~
  - c. Resource recovery facilities
  - d. Transfer stations
  - e. Special wastes handling
  - f. Transportation of solid waste
  - g. Storage of solid waste

2. These regulations do not apply to those agricultural wastes that are subject to regulations promulgated by the Division of Water Resources.

~~3. For the purposes of these regulations, all liquid wastes as defined herein are not regulated as solid wastes. Liquid wastes are subject to regulations promulgated by the Division of Water Resources.~~

For the purposes of these regulations, all wastes defined herein and that are subject to regulations promulgated by the Division of Water Resources shall not be regulated as solid wastes.

4. These regulations do not apply to any waste which meets the criteria of hazardous waste as described in the Delaware Regulations Governing Hazardous Waste.

### C. EXEMPTIONS

The following activities are exempted from these regulations:

1. Disposal on a farm of the agricultural wastes which are generated on the farm or result from the operation of the farm, provided that the disposal is conducted in a manner that does not threaten potable drinking water supplies or surface waters.

2. Composting, on a private property, the leaves, grass clippings, and other vegetation originating on the property. For all other composting operations, written approval must be obtained from the Department prior to commencing the composting operation. To obtain an approval, a person must submit the following to the Department:

a. A written plan of operation sufficient to assure the Department that the person understands the principles and proper methods of composting and has the intention and capability of applying proper methods and of conducting the operation in a manner that will not pose a threat to human health or the environment; and

b. A written statement of how the applicant proposes to use or dispose of the compost.

3. Disposal of clean fill.

4. Creation of brush piles on the property on which the material was generated.

5. The use of vegetative matter and untreated ground wood products to construct berms on the property on which the materials were generated. (Notification must be made to the Department prior to commencing this activity.)

6. Recycling of solid wastes into specific market applications. Written approval must be obtained from the Department prior to commencing this activity. ~~Approval will be based on demonstration that there is an available market for the intended recycled material. To obtain~~

approval, a person must submit the following to the Department:

a. A written plan of operation describing the types and quantities of materials that will be accepted at the facility, the processing methods and equipment that will be used, and the products that will be produced; and

b. Documentation demonstrating the existence of markets for the product.

### D. TIMETABLE FOR COMPLIANCE

1. Existing facilities

a. ~~Sanitary and industrial landfills~~

All existing facilities must comply with the provisions of these regulations, must be in compliance with these regulations by October 9, 1993, with the following exceptions:

a. Closed facilities or closed portions of facilities will not be required to disturb or replace their cap or cover system for the purpose of coming into compliance with these regulations.

b. Facilities currently operating under a permit which does not require a liner and/or a leachate detection system will not be required to install a liner or leachate detection system in closed or currently active areas for the purpose of coming into compliance with these regulations.

~~b. Dry waste disposal facilities~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 8 of these regulations, follow the procedures described in Section 4.C.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.C.2.~~

~~e. Transfer stations~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 10 of these regulations, follow the procedures described in Section 4.E.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.E.2.~~

~~d. Resource recovery facilities~~

~~An owner or operator of an existing facility shall follow the procedures described in Section 4.D.2. All existing facilities must come into compliance with these regulations in accordance with the compliance plan and timetable approved by the Department pursuant to Section 4.D.2.b (12).~~

2. New facilities and expansions of existing facilities

All new facilities and all expansions of existing facilities shall comply with the provisions of these regulations.

E. Nothing in these regulations shall be construed as relieving an owner or operator of a facility from the obligation of complying with any other laws, regulations, orders, or requirements which may be applicable.

## SECTION 3: DEFINITIONS

The following words, phrases, and terms as used in these regulations have the meanings given below:

"100-YEAR FLOOD" means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"ACTION LEAKAGE RATE" means the flow rate that can be sustained by the drainage layer (in a double liner system) without the head on the secondary liner exceeding the drainage layer thickness.

"ACTIVE LIFE" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities.

"ACTIVE PORTION" means that portion of a facility that presently has an operating permit issued by the Department of Natural Resources and Environmental Control.

"AGRICULTURAL WASTE" means the carcasses of poultry or livestock which are being disposed for the purpose of disease control and crop residue or animal excrement which is returned to the land for use as a soil amendment.

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

"ASTM" means the American Society for Testing and Materials.

"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,

landfill manager, superintendent, or person of equivalent responsibility.

"BOTTOM ASH" means the residue remaining in the combustion chamber of an incinerator after the combustion of fossil fuels.

"BUFFER ZONE" means those on-site areas adjacent to the facility property line which shall be left undeveloped during the active life as well as the inactive life of the facility.

"BULKY WASTE" means items whose large size or weight precludes or complicates their handling by normal collection, processing, or disposal methods.

"CAP" or "CAPPING SYSTEM" means the material used to cover the top and sides of a sanitary or industrial landfill when fill operations cease.

"CELL" means a discrete engineered area that is designed for the disposal of solid waste and that is a subpart of a landfill.

"CERTIFICATION" means a statement of professional opinion based upon knowledge and belief.

"CFR" means the Code of Federal Regulations.

"CLAY", as a soil separate, means the mineral soil particles less than 0.002 mm in diameter. As a soil textured class, "CLAY" means soil material that is 40% or more clay, less than 45% sand, and less than 40% silt. Clay used as a liner or cap should be classifiable as a CL or CH (Unified Soil Classification System) with a liquid limit between 30 and 60, should place above the A-line on the plasticity chart, and should have a minimum plastic index of 15. A clay liner should have a cation exchange capacity greater than 15 meq/100 grams and be in the neutral pH range.

"CLEAN FILL" means a nonwater-soluble, nondecomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass, and/or clay or ceramic products.

"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 other applicable closure requirements.

"CLOSURE" means the cessation of operation of a facility or a portion thereof and the act of securing such a facility so that it will pose no significant threat to human health or the environment.

"CLOSURE PLAN" means written reports and engineering plans detailing those actions that will be taken by the owner or operator of a facility to effect proper closure of that facility or a portion thereof.

"COMMERCIAL WASTE" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities.

"CONFINED AQUIFER" means an aquifer containing ground water which is everywhere at a pressure greater than atmospheric pressure and from which water in a well will rise to a level above the top of the aquifer. A confined aquifer is overlain by material of distinctly lower permeability ("confining bed") than the aquifer.

"CONTAMINANT" means any substance that enters the environment at a concentration that has the potential to endanger human health or degrade the environment.

"CONTROLLING SLOPES" means slopes on those areas of a liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

"DAILY COVER" means a layer of compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste each working day.

"DEPARTMENT" means The Department of Natural Resources and Environmental Control.

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

"DISCHARGE" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a substance into or onto any land, water, or air.

"DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.

"DISPOSAL FACILITY" means any facility or portion of a facility at which solid waste is intended to be and/or is intentionally placed into or onto any land and at which solid waste will remain after closure has taken place.

"DOUBLE LINER SYSTEM" means a liner system consisting of two liners with a leachate detection and collection system in between.

"DRY WASTE" (formerly called "INERT SOLID WASTE") means wastes including, but not limited to, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"ENVIRONMENTAL ASSESSMENT" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"ENVIRONMENTALLY UNSOUND" means characterized by any condition, resulting from the methods of operation or design of a facility, which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated federal, state, county or municipal standard.

"EXISTING FACILITY" means a facility which was in operation or for which construction had commenced on or before the date of enactment of these regulations, provided that the facility was being constructed or operated pursuant to all permits and/or approvals required by the Department at the time of enactment. A facility has commenced construction if either:

(i) an on-site physical construction program has begun and is moving toward completion within a reasonable time; or

(ii) the owner or operator has entered into contractual obligations -- which cannot be cancelled or modified without substantial loss -- for physical construction to be completed within a reasonable time.

"EXPANSION" means the process of increasing the areal dimensions, vertical elevations, or slopes beyond the original

approved limits of the facility.

"FACILITY" means all contiguous land, and structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).

"FINAL COVER" means the material used to cover the top and sides of a dry waste disposal facility when fill operations cease.

"FLOOD PLAIN" means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-YEAR FLOOD.

"FLY ASH" means a powdery residue resulting from the combustion of fossil fuels and captured by air pollution control equipment prior to exiting the smokestack.

"FREE LIQUIDS" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure, using any or all of the following tests: EPA Paint Filter Test; EPA Plate Test; EPA Gravity Test.

"GARBAGE" means any putrescible solid and semi-solid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

"GENERATION" means the act or process of producing solid waste.

"GENERATOR" means the producer or the source of the solid waste.

"GEOMEMBRANE" means a prefabricated continuous sheet of flexible polymeric or geosynthetic material.

"GROUND WATER" means any water naturally found under the surface of the earth.

"HAZARDOUS WASTE" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mor-

tality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"HOUSEHOLD WASTE" means any solid waste derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"HYDRAULIC CONDUCTIVITY" means the capacity to transmit water. It is expressed as the volume of water that will move in a unit of time under a unit hydraulic gradient through a unit area.

"IMPERMEABLE" means having a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/sec as determined by field and laboratory permeability tests made according to standard test methods which may be correlated with soil densification as determined by compaction test.

"INDUSTRIAL LANDFILL" means a land site at which industrial waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"INDUSTRIAL WASTE" means any water-borne liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry (including the construction and demolition industry), manufacturing, trade or business, or from the development of any agricultural or natural resource and includes DRY WASTE.

~~"INERT SOLID WASTE": see "DRY WASTE".~~

"INFECTIOUS WASTE": see section 11, Part 1.B for definitions pertaining to infectious waste.

"INSTITUTIONAL WASTE" means solid waste that is generated by institutional enterprises such as social, charitable, educational, and government services and that is similar in



nature to household waste.

"INTERMEDIATE COVER" means a layer of compacted earth, or other suitable material as approved by the Department, applied to a partially completed landfill.

"LANDFILL" means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.

"LEACHATE" means liquid that has passed through, contacted, or emerged from solid waste and contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.

"LIFT" means a completed series of compacted layers within a cell.

"LIMITED TRANSPORTER" means a person who uses five (5) or fewer vehicles to transport solid waste (excluding infectious waste and asbestos), which vehicles have a manufacturers Gross Vehicle Weight Rating of 26,000 pounds or more.

"LINER" means a continuous layer of impermeable material beneath and on the sides of a landfill or landfill cell.

"LIQUID WASTE" means a waste that contains less than 20 percent solids or releases free liquids.

"LOCAL AGENCY" means any special district, authority, municipality, county, or any other political subdivision.

"MATERIALS RECOVERY FACILITY" means a facility at which materials, other than source separated materials, are recovered from solid waste for recycling or for use as an energy source.

"MUNICIPAL SOLID WASTE" means household waste and solid waste that is generated by commercial, institutional, and industrial sources and is similar in nature to household waste.

"MUNICIPAL SOLID WASTE ASH" means the ash resulting from the combustion of municipal solid waste in a ther-

mal recovery facility.

"MUNICIPALITY" means a city or town of the State of Delaware.

"NEW SANITARY LANDFILL CELL" means any municipal solid waste landfill unit which has not received waste prior to the effective date of these regulations. "SANITARY LANDFILL CELL" has the same meaning as "MUNICIPAL SOLID WASTE LANDFILL UNIT" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"NEW SOLID WASTE FACILITY" means a facility which was not in operation or for which construction had not commenced on or before the date of enactment of these regulations.

"ON-SITE" means on the same or geographically contiguous property which may be divided by public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access are also considered on-site property.

"OPEN BURNING" means the combustion of solid waste without:

- (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 residence time and mixing for complete combustion, and
- (3) Control of the emission of the combustion products.

"OPERATOR" means the person responsible for the overall operation of a solid waste facility.

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

"PERMITTEE" means a person holding a permit issued by the Department pursuant to this regulation.

"PERSON" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, any interstate body, company, society, or any organization of any

form.

"PERSONNEL" or "FACILITY PERSONNEL" means all persons who work at, or oversee the operations of, a solid waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the Delaware Solid Waste Regulations or other regulations under the jurisdiction of the State of Delaware.

"POST-CLOSURE CARE" means maintenance and long-term monitoring of, and financial responsibility for, a closed facility.

"RECHARGE AREA" means that portion of a drainage basin in which the net saturated flow of ground water is directed away from the water table.

"RECYCLABLE MATERIAL" means a solid waste that exhibits the potential to be used repeatedly in place of a virgin material.

"RECYCLING" means the process by which recyclable materials, which would otherwise be disposed of as solid waste, are returned to the economic mainstream in the form of raw materials or products.

"REFUSE" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

"REGULATED MEDICAL WASTE": see Section 11, Part I.B. for definitions pertaining to REGULATED MEDICAL / INFECTIOUS WASTE.

"RESOURCE RECOVERY" means the process by which materials, excluding those under control of the Nuclear Regulatory Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or another purpose, including use as an energy source.

"RESOURCE RECOVERY FACILITY" means a facility that is either a MATERIALS RECOVERY FACILITY or a THERMAL RECOVERY FACILITY.

"RUBBISH" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery, and other waste materials.

"RUN-OFF" means any precipitation that drains over land from any part of a facility.

"RUN-ON" means any precipitation that drains over land onto any part of a facility.

"SALVAGING" means the controlled removal of solid waste from any facility for reuse of the waste material.

"SANITARY LANDFILL" means a land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"SANITARY LANDFILL CELL BOUNDARY" means a vertical surface located at the hydraulically downgradient limit of the cell. This vertical surface extends down into the uppermost aquifer. "Sanitary Landfill Cell Boundary" has the same meaning as "Waste Management Unit Boundary" in the RCRA Subtitle D (40 CFR Part 258) Regulations. "Sanitary Landfill" has the same meaning as "MSWLF" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"SATURATED ZONE" means that part of the earth's crust in which all the voids are filled with water.

"SCAVENGING" means the uncontrolled and/or unauthorized removal of solid waste from any facility.

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

"SETBACK" means the area between the actual disposal area and the property line which can be used for construction of environmental control systems such as run-off diversion ditches, monitoring wells, or scales.

"SITE" means the area of land or water within the property boundaries of a facility where one or more solid waste treat-

ment, resource recovery, recycling, storage or disposal areas are located.

"SLUDGE" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"SOLID WASTE" means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 7 Del. Code, Chapter 60, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

"SOURCE SEPARATED" means divided into its separate recyclable components at the point of generation.

"SPECIAL SOLID WASTES" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

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

"SUBBASE" means the supporting soil layers beneath a liner.

"SURFACE WATER" means water occurring generally on the surface of the earth.

"THERMAL RECOVERY FACILITY" means a facility designed to thermally break down solid waste and to recover energy from the solid waste.

"TOPSOIL" means the friable dark upper portion of a soil profile that contains mineral substances and organic material

in varying degrees of decomposition and is capable of supporting vegetation.

"TRANSFER STATION" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling, or disposal.

"TRANSPORTATION" means the movement of solid waste by air, rail, water, over the roadway, or on the ground.

"TRANSPORTER" means any person engaged in the transportation of solid waste.

"TREATMENT" means the process of altering the physical, chemical, or biological condition of the waste to prevent pollution of water, air, or soil or to render the waste safe for transport, disposal, or reuse.

"UNCONFINED AQUIFER" means an aquifer in which the upper surface of the zone of saturation is at atmospheric pressure.

"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.

"VARIANCE" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure, as provided in 7 Del. Code, Chapter 60.

"VECTOR" means a carrier organism that is capable of transmitting a pathogen from one organism to another.

"VEHICLE" means a motorized means of transporting something. "Vehicle" includes both the motorized unit and all containerized units of a conveyance attached thereto. For purposes of determining whether a transporter qualifies as a "LIMITED TRANSPORTER", motorized units will be counted.

"WATER TABLE" means that surface in a ground water body at which the water pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the water body just far enough to hold standing water.

"WELL" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition or artificial recharge of underground water, and where the depth is greater than the diameter or width.

"WORKING FACE" means that portion of a landfill where waste is discharged, spread and compacted prior to placement of daily cover.

SECTION 2. SCOPE AND APPLICABILITY

SECTION 4: PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES

A. GENERAL PROVISIONS

1. Permit required

a. No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under Section 2.C, without first having obtained a permit from the Department.

b. No person that is subject to the requirements of Section 7.B or 7.C of these regulations shall transport solid waste in or through the State of Delaware without first having obtained an appropriate solid waste transporter's permit from the Department.

2. Public notice; hearing

Within 60 days after receipt of a completed application and all other required information, the Department will give public notice and the opportunity for a public hearing as provided in 7 Del. Code Ch. 60. The cost of the advertisement shall be borne by the applicant. A 15 day comment period will follow the publication date of each public notice. If no meritorious adverse public comments are received during this period, and the Secretary does not deem a public hearing to be in the best interest of the State, the Department will enter into the permit approval/denial phase. If a meritorious request for a hearing is received during the comment period, or if the Secretary deems a hearing to be in the best interest of the State, a public hearing will be held as provided in 7 Del. Code, Chapter 60, Sections 6004 and 6006.

3. Approval/denial

The Department shall act upon an application for a permit within 60 days after the close of the public notice comment period or upon receipt of the hearing officer's report if a hearing was required. When a final determination is made on an application, the Department shall issue a permit or send a letter of denial to the applicant explaining the reasons for the denial.

4. Suspension, revocation of permit

A permit may be revoked or suspended for violation of any condition of the permit or any requirement of this regulation, after notice and opportunity for hearing in accordance with 7 Del. Code, Chapter 60.

5. Duration of permit

A permit will be issued for a specific duration which will be determined by the Department. ~~In no case will a permit be valid for more than five years.~~

a. Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators) shall not be issued for periods greater than 10 years.

b. Post-closure permits shall be valid and enforceable throughout the entire post-closure period.

6. Permit renewal

Any person wishing to renew an existing permit shall, not less than 90 days prior to the expiration date of that permit, submit a written request for permit renewal. This request may be in the form of a letter but shall not be combined with correspondence relating to any matter other than the permit renewal.

In the event that the permittee submits a timely request for permit renewal, and the Department, through no fault of the permittee, is unable to make a final determination on the request before the expiration date of the current permit, the Department may, at its discretion, grant an extension of the permit. If the Department issues an extension, all conditions of the permit, and all modifications previously requested by the Department, will remain in effect, for a period of time which will be determined by the Department.

7. Modification of permit

a. A permittee may request modifications to a permit. All such requests must be submitted in writing to the Department.

b. The Department may initiate modification of a permit if it finds that the existing permit conditions either are not adequate or are not necessary to protect human health and the environment.

c. Public notice and opportunity for hearing in accordance with paragraph A.2. of this Section shall be accomplished for all major modifications proposed for the permit. In the event a hearing is requested or deemed necessary by the Secretary, only the permit conditions subject to the modification shall be reopened for public comment.

d. Public notice shall not be required for minor modifications to the permit. Minor modifications are those which if granted would not result in any increased impact or risk to the environment or to the public health. Minor modifications include but are not limited to:

1. Changes in operation or design which are

not related to pollution control devices or procedures.

2. Improvements to approved pollution control devices or procedures.

3. Administrative changes.

4. A change in monitoring or reporting frequency.

5. The correction of typographical errors.

8. Transfer of permit

A written request for the transfer of a permit must be submitted to the Department at least 15 days prior to the date of the proposed transfer. The actual transfer will be contingent upon the transferee's meeting all Department requirements; until such time, the original permittee will remain liable regardless of who owns the facility.

9. Enforcement

a. The Department reserves the right to inspect any site, or any vehicle intended for use in the transportation of solid waste, before issuing a solid waste permit for the site or the transporter.

b. The Department may, at any reasonable time, enter any permitted solid waste facility or inspect any vehicle being used in the transportation of solid waste in order to verify compliance with the permit and these regulations.

c. The Department may require such reports, interviews, tests or other information necessary for the evaluation of permit applications and the verification of compliance with the permit and these regulations.

d. Any person using land, or allowing the use of land, for the storage, processing, or disposal of solid waste who violates a requirement of this regulation shall be subject to the provisions of Sections 6005, 6013, 6018, and 6025(c) of 7 Del. Code, Chapter 60.

10. Replacement of Contaminated Water Supplies

If the Department determines, based on information obtained by or submitted to the Department or the Division of Public Health, that any drinking water supply well has become contaminated as a result of the construction or operation of a solid waste facility, the owner or operator of the facility will be required to construct and maintain, at his or her expense, a permanent alternative water supply of comparable quantity and quality to the source before it was contaminated. Such a determination will be subject to the review procedures contained in 7 Del. Code, Chapter 60.

11. Financial Assurance Criteria

a. Applicability and effective date

The requirements of this section apply to owners and operators of all solid waste facilities, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

~~(2) The requirements of this section are effective immediately upon adoption, except the requirements pertaining to sanitary landfills become effective April 9, 1995 (or on any alternate date that the Federal requirements pertaining to financial assurance for MSWLFs become effective).~~

b. Financial Assurance for Closure, Post-Closure Care, and Corrective Action

(1) The owner or operator of a solid waste facility must provide assurance that the financial costs associated with closure, post-closure care, and corrective action can be met throughout the life of the facility until released from these requirements by the Department after demonstrating successful completion of compliance with the requirements for each of these activities.

(2) The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from the options specified in paragraphs (a) through (i) of this section, and comply with any conditions noted therein.

(a) Trust Fund

Condition 1: The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The trust agreement shall be worded as prescribed by the Department.

Condition 3: The owner or operator shall submit the receipt from the trustee for the initial payment into the trust fund as well as the originally signed duplicate of the trust agreement for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 4: Pay-in periods and amounts for all solid waste facilities shall be in accordance with those specified in 40 CFR Part 258.74, subsections (a)(2),(a)(3), (a)(4) and (a)(6) or otherwise acceptable to the Department.

Condition 5: Schedule A, attached to the trust agreement, shall list the facility name and address and the current cost estimate. Schedule A must relate the trust agreement to the specific facility and obligation(s) being assured and shall be updated at least annually to account for inflation or other increases to the cost estimate. Costs reflected in Schedule A shall not be reduced without the written consent of the Department.

Condition 6: Schedule B, attached to the trust agreement, shall list the property or money that the fund

consists of initially. Property must consist of cash or securities acceptable to the trustee. Other property (e.g. real estate) is not an acceptable payment into the trust fund.

Condition 7: Exhibit A, attached to the trust agreement, shall list the persons designated by the Grantor to sign orders, requests, and instructions to the trustee.

Condition 8: Annual valuation. Annually, the trustee shall furnish to the Department and to the owner or operator, a statement confirming the value of the trust fund. Any securities in the trust fund shall be valued at market value as of no more than 60 days prior to the date the statement is submitted to the Department. If possible, the statement should be submitted during the month that Schedule A is adjusted annually.

Condition 9: The trustee shall make payments from the fund only as the Department directs to provide for the payment for the costs of corrective action, closure, and/or post-closure care.

Condition 10: After beginning closure, post-closure care, or corrective action, an owner or operator or other person authorized in accordance with Condition 7 may request reimbursements for partial expenditures by submitting itemized bills to the Secretary. The owner or operator may request reimbursements for partial closure, post-closure care, or corrective action only if sufficient funds are remaining in the trust fund to cover the maximum costs of completing the activities for which the trust agreement was established. Within 60 days after receiving bills for reimbursable closure, post-closure care, or corrective action activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing. Reimbursements will be allowed only if the Secretary determines that the partial or final expenditures are in accordance with the approved closure, post closure care, or corrective action plan or are otherwise justified. If the Secretary has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he/she may withhold reimbursements of such amounts as he/she deems prudent. If the Secretary does not instruct the trustee to make such reimbursements, he/she will provide the owner or operator with a detailed written statement of reasons.

Condition 11: Amendments. The trust agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

Condition 12: Irrevocability and termination. Subject to Condition 11, the trust agreement shall be irrevocable and shall continue until terminated at the written

agreement of the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

(b) Surety Bond for Payment or Performance

Condition 1: At a minimum, the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of Treasury as qualified in the state where the bond was executed.

Condition 2: The surety's underwriting limit must be at least as great as the amount of the surety bond.

Condition 3: The surety bond shall be worded as prescribed by the Department.

Condition 4: The owner or operator shall submit the bond and standby trust fund for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: Standby trust fund. The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 6: The payment surety bond may not be used for corrective actions.

Condition 7: Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner and operator at least 120 days in advance of cancellation. If the Surety cancels the bond, the owner or operator must obtain alternate financial assurance. The Department may draw on the surety bond if the owner or operator has not provided alternative financial assurance within 90 days after receipt by the Solid Waste Management Branch of a notice of cancellation from the surety.

Condition 8: The owner or operator may cancel the surety bond if the Department provides its written consent to do so. The Department will provide such written consent when the owner substitutes alternate financial assurance as specified in these regulations or the bonded activity has been completed in accordance with these regulations.

Condition 9: The surety shall become liable on the bond when the owner or operator has failed to fulfill the closure, post-closure care or corrective action

activities as required. Upon notification by the Department that the owner or operator has failed to perform closure or post-closure care guaranteed by a payment bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust fund. Upon notification that the owner or operator has failed to perform closure, post-closure care, or corrective action as guaranteed by a performance bond, the surety shall either perform the activities guaranteed by the bond or place funds in the amount guaranteed for the facility into the standby trust fund.

(c) Letter of Credit

Condition 1: The issuing financial institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The letter of credit shall be worded as prescribed by the Department.

Condition 3: Accompanying letter. The owner or operator shall also submit an accompanying letter referring to the letter of credit by number and listing the following information: complete name and address of facility, issuing institution and date, and amount and purpose of funds assured .

Condition 4: The owner or operator shall submit the letter of credit and accompanying letter for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies the Secretary of the Department, the Solid to extend the expiration date.Waste Management Branch, and the owner or operator of a decision not

Condition 6: Once the issuing financial institution notifies the Solid Waste Management Branch of its intent not to extend the Letter of Credit, the owner or operator must, within 90 days, provide alternate financial assurance. The Department may draw on the letter of credit if the owner or operator has not provided alternative financial assurance within 90 days.

Condition 7: Following a determination by the Secretary of the Department that the owner or operator has failed to perform closure, post-closure-care, or corrective action when required to do so, the Department may draw on the letter of credit.

(d) Insurance

Condition 1: The insurer must be licensed

to transact the business of insurance in one or more states or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Condition 2: Captive insurance companies and risk retention groups cannot be used to satisfy the requirements of this section.

Condition 3: Insurance is not an allowable mechanism for demonstrating financial responsibility for corrective action.

Condition 4: The policy must guarantee that the funds will be available whenever needed and that the insurer will be responsible for paying out funds to authorized persons.

Condition 5: The policy must allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the insurer provided that such consent is not unreasonably refused.

Condition 6: The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

Condition 7: If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator of the facility, at least 120 days in advance of the cancellation and date of expiration. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration, the Secretary of the Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Secretary of the Department, or a U.S. District Court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) USC; or the premium due is paid.

Condition 8: Prior to requesting reimbursement from the insurer, owners or operators shall submit justification and documentation of the reimbursable expenses to the Department for its consent.

Condition 9: A copy of the policy shall be submitted to the Department for its approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(e) ~~Corporate~~ or Local Government Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as specified by the Department.

Condition 3: A local government is not eligible to assure its obligations by this mechanism if it: is currently in default of any outstanding general obligation bonds; or has any general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement, and the Department deems the reason for the qualification as significant.

Condition 4: Bond Rating/Financial Ratio Alternatives. The local government must meet one of the following two financial tests: a) If the local government has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or b) Based upon the most recently audited annual financial statement, a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

Condition 5: The total costs being assured through a financial test must not exceed 43 percent of the local government's total annual revenue. If the local government assures other environmental obligations through financial tests; including those associated with UIC facilities under 40 CFR 144.62, underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; it must add those costs to the closure costs it seeks to assure under this mechanism.

Condition 6: Public Notice. The local government shall place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR).

Condition 7: Accountants Opinion. A Certified Public Accountant's opinion of the local government's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the

local government's fiscal year. The opinion must be unqualified and demonstrate that the local government has prepared its financial statements in accordance with the requirements of the General Accounting Standards Board Statement 18.

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the local government has complied with Conditions 3, 4, 5, and 6. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year.

Condition 9: If, at the end of any fiscal year, the local government fails to meet the financial test criteria required by conditions 3, 4, or 5, then the local government shall send, within 90 days, by certified mail, notice to the Secretary of the Department and to the Solid Waste Management Branch, that they intend to provide alternate financial assurance as required by these regulations. The local government shall, within 210 days following the close of the fiscal year, obtain alternative financial assurance that meets the requirements of these regulations.

Condition 10: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 11: The guarantee shall remain in force unless the local government sends notice of cancellation by certified mail to the Secretary of the Department and to the Solid Waste Management Branch. Such notice shall be given at least 120 days in advance of the cancellation. Within 90 days of receipt of this notice of cancellation by the Solid Waste Management Branch, the local government shall provide alternative financial assurance acceptable to the Department.

(f) ~~Corporate or Local Government~~ Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as prescribed by the Department.

Condition 3: A resolution agreeing to the terms and conditions of the guarantee and signed by the guarantor's board of directors shall be attached to the guarantee.

Condition 4: The guarantor must be the direct or higher tier parent company of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator.

Condition 5: Minimum size requirement.



The guarantor must have a tangible net worth equal to the sum of the costs they seek to assure through a financial test, plus \$10 million. The costs that the guarantor seeks to assure are equal to the current cost estimates for closure, post-closure care, corrective action, and any other environmental obligation assured by a financial test and/or corporate guarantee by the guarantor (including other landfills or solid waste facilities; PCB storage facilities; underground storage tanks; hazardous waste treatment, storage, disposal facilities; or underground injection control program facilities).

Condition 6: Bond Rating/Financial Ratio Alternatives. Guarantors must meet one of the following three financial tests: a) A most recent bond rating no lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's. b) A leverage ratio of less than 1.5 based on the ratio of total liabilities to tangible net worth. c) A profitability ratio of greater than 0.10 based on the sum of the net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

Condition 7: Domestic Assets Requirement. Guarantors must have assets in the United States at least equal to the costs they seek to assure through a financial test (costs include those reported for Condition 5).

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the guarantor has complied with Conditions 4, 5, 6, and 7. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the guarantors fiscal year.

Condition 9: Accountants Opinion. A Certified Public Accountant's opinion of the guarantors financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year. The opinion must be unqualified (not modified by conditions or reservations) and demonstrate that the firm has prepared its financial statements in accordance with generally accepted accounting principals for corporations.

Condition 10: Special Report. In the event that the CFO does not use financial test figures directly form the annual statements provided to the Securities and Exchange Commission, then a special report from an independent accountant shall be required. In the report, the Certified Public Accountant must confirm that the data used in the CFO letter was appropriately derived from the audited, year-end financial statements.

Condition 11: Incapacity. The guarantor shall notify the Secretary of the Department and the Solid Waste Management Branch by certified mail of the com-

mencement of a voluntary or involuntary proceeding under Title 11 Bankruptcy, USC, naming the guarantor, owner or operator of the facility as debtor, within 10 days after commencement of the proceeding.

Condition 12: If, at the end of any fiscal year, the guarantor fails to meet the financial test criteria required by conditions 5, 6, or 7, then the guarantor shall send, within 90 days, by certified mail, notice to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator, that guarantor intends to provide alternate financial assurance as required by these regulations. Within 120 days of such fiscal year, the guarantor shall establish such financial assurance unless the owner or operator has done so.

Condition 13: Within 30 days of being notified by the Department that a determination has been made that the guarantor no longer meets the requirements stated in Conditions 5, 6, or 7, the guarantor shall establish alternate financial assurance in accordance with these regulations.

Condition 14: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(g) State Department-Approved Mechanism.

(h) State Assumption of Responsibility.

(i) Use of Multiple Financial Mechanisms (any combination of the options listed above).

(3) The language of the financial assurance mechanisms listed in this section must satisfy the following criteria:

(a) They must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed.

(b) They must ensure that funds will be available in a timely fashion when needed.

(c) They must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

(d) They must be legally valid, binding, and enforceable under State law.

(4) The applicant or permittee shall reimburse the Department for its reasonable costs incurred in obtaining third-party review of financial assurance documents submit-

ted. Third parties may include Certified Public Accountants, Attorneys, or other professionals versed in the application of the particular financial assurance mechanism chosen. Reimbursement shall be made by the applicant or permittee within 30 days of receipt of an itemized statement of incurred costs submitted by the Department.

c. Cost Estimate for Closure

(1) The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility that is consistent with the closure plan developed in accordance with the closure requirements for that type of facility. The estimate must equal the maximum cost of closure at any time during the active life of the facility. The owner or operator shall also notify the Secretary in writing that the estimate has been placed in the records to be maintained at the facility.

(2) Until final closure of the facility, the owner or operator must annually adjust the closure cost estimate for inflation, facility expansions, and any other applicable requirements which impact the cost of closure.

(3) The owner or operator must increase the cost estimate and the amount of financial assurance provided for closure if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The Department may approve reduction in the amount of financial assurance provided for closure if the latest cost estimate is significantly less than the maximum cost of the current closure plan. The owner or operator must submit to the Secretary in writing the justification for the reduction of the closure cost estimate and the amount of financial assurance. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

d. Cost Estimate for Post-Closure Care

(1) The owner or operator of a solid waste facility for which post-closure care is required must demonstrate financial assurance for the cost of thirty (30) years of post-closure care. The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste facility in compliance with the post-closure plan. This estimate must be based on the most expensive costs of post-closure care during the post-closure care period. The owner or operator must also notify the Department in writing that the estimate has been placed in the records to be maintained at the facility.

(2) During the active life of the solid waste facility and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate

for inflation and other applicable factors.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or solid waste facility conditions increase the maximum costs of post-closure care.

(4) The Secretary may approve the reduction of the post-closure cost estimate and the amount of financial assurance provided if the latest cost estimate is significantly less than the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit to the Secretary in writing the justification for the reduction of the post-closure cost estimate. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

e. Cost Estimate for Corrective Action

(1) An owner or operator of a solid waste facility required to undertake a corrective action program must submit to the Secretary in writing a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must also notify the Secretary that the cost estimate has been placed in the records to be maintained at the facility.

(2) The owner or operator must annually adjust the estimate for inflation and any other applicable factors until the corrective action program is completed.

(3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(4) The Secretary may approve reduction of the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must submit to the Secretary in writing the justification for the reduction of the corrective action cost estimate. The owner or operator must also notify the Secretary in writing that the amended amount of financial assurance has been placed in the records to be maintained at the facility.

B. APPLICATION PROCEDURES FOR SANITARY AND INDUSTRIAL LANDFILLS

†. ~~New facilities~~

a. ~~Construction~~

**1. Application**

Any person desiring to ~~obtain a permit to~~ construct or operate a sanitary or industrial landfill ~~or cell~~ must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. ~~Application to Construct a Solid Waste Facility~~  
A Solid Waste Management Facility Application, form provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used,

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility,

(3) A description of the proposed monitoring methods,

(4) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents, and

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment).

d. An engineering report

~~This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:~~

(1) Descriptions and specifications of all proposed design features,

(2) A description of the proposed installation methods and procedures,

(3) A schedule of events for construction of the facility,

(4) Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility,

(5) A construction quality assurance plan.

~~This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include a description of the manner in which quality assurance will be carried out during the construction and installation of all design features.~~

e. A hydrogeological assessment

A hydrogeological investigation must be per-

formed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge,

(5) Approximate ground water flow rates and travel times from the facility to points of discharge (including wells and/or surface water).

In addition, delineation of the anticipated maximum elevation of the seasonal high water table shall be provided.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality

Water quality

Stream flow

Fish and wildlife

Plants

Threatened or endangered species

Water uses

Land use

Aesthetics

Traffic

Public health and safety

Cultural, recreational, and natural areas

Historic sites

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor;

the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate.

j. Proof of financial responsibility for closure and post-closure care, as described in Section 4.A.11. ~~-, b and d.~~

k. Proof that the facility meets the siting criteria required by Section 5.A. or 6.A.

l. Any other related reports, data, maps, or information that the Department requires.

~~b. Operation~~

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~(1) Notification of intent to commence operation.~~

~~(2) Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

~~2. Construction and Operation~~

~~a. The applicant shall not commence construction of the landfill or cell until the Department has issued the solid waste permit required by these regulations.~~

~~b. After construction has been completed and prior to the placement of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the landfill or cell was completed in accordance with the engineering report to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction~~

quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not place solid waste into the newly constructed landfill or cell until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

~~3. Closure~~

~~a. Any person wishing to obtain a closure permit modify their current permit to allow closure of a facility or part thereof must submit the following to the Department at least 180 days prior to the projected date when wastes will no longer be accepted:~~

~~(1) Notification of intent to close,~~

~~(2) Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate,~~

~~(3) Post-closure care plan describing how the requirements of Section 5.K or 6.K (as appropriate) will be met.~~

~~b. If the Department determines that the closure plan and supporting documents are sufficient to ensure closure, it will modify the permit to allow closure to be performed. The owner or operator of the landfill shall not commence closure of the landfill or cell without first obtaining the necessary permit modifications.~~

~~c. After closure has been completed, the permittee shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell shall not be considered closed until the Department has provided its written notification that the closure has been accomplished in accordance with the solid waste permit and these regulations.~~

~~d. Facilities entering the Post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).~~

~~2. Existing facilities~~

~~a. Any person desiring to continue construction or operation of a sanitary or industrial landfill, construction or operation of which was being conducted pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, must, within six months after the date of enactment of these regulations, submit to the Department a report explaining how the facility will be brought into compliance and a~~

timetable for attaining compliance. The proposed schedule and methods for attaining compliance will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on which the Department approves the compliance schedule.

b. Any person who, at the time of enactment of these regulations, is in the process of closing a solid waste facility pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, shall complete closure according to the conditions set forth in that permit.

C. THIS PARAGRAPH RESERVED

C. APPLICATION PROCEDURES FOR DRY WASTE DISPOSAL FACILITIES

- 1. New facilities
  - a. Construction

Any person desiring to obtain a permit to construct a dry waste disposal facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

- (1) Application to Construct a Solid Waste Facility, provided by the Department.
- (2) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must also be submitted.
- (3) A plan of operation.
  - This shall include the following:
    - (a) A description of the facility and of the solid waste handling and disposal procedures that will be used.
    - (b) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the facility.
    - (c) A description of the proposed ground water and gas monitoring methods.
    - (d) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents.
    - (e) A contingency plan to be implemented in case of emergency.
  - (4) A hydrogeological assessment.
    - A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

- (a) the occurrence and characteristics of the water table aquifer.
- (b) ground water flow directions.
- (c) ambient ground water quality.
- (d) potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

- (5) Topographical and site location maps.

This shall include topographical maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, and other maps as necessary, to show:

- (a) Elevations of the property, with reference to mean sea level, before commencement of waste disposal at the site (for all new facilities and where available for existing facilities).
- (b) Topographic elevations of the property at the time of permit application [if different from (a) above].
- (c) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the parcel number of the property; the names of the present owners of the proposed site and of all adjacent lands; a description of the current use of the land; and a description of all title, deed, or usage restrictions affecting the property.
- (d) The areas to be used in each sequence of disposal.
- (e) The locations of all buildings and structures on the property.
- (f) The location of the nearest perennial stream.
- (g) The proposed elevations of the site after closure of the facility.

(6) Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

(7) A conceptual closure plan. This shall address the items listed in Section 8.II.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the costs of closure and post closure care.

(8) Proof of financial responsibility for closure and post closure care, as described in Section 4.A.11, b and d.

(9) Any other related reports, data, maps or information that the Department requires.

- b. Operation

A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.

At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:

(1) Written notification of an intent to commence trial operation, and the date on which the trial operating period will begin.

(2) Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.

e. Closure

Any person wishing to obtain a closure permit must submit the following to the Department:

- (1) Notification of intent to close.
- (2) Closure plan as described in Section 8.H.3.
- (3) Closure schedule.

2. Existing facilities

a. Any person disposing of dry waste pursuant to an approval letter which is in effect at the time of enactment of these regulations must, within six months after enactment of Section 8, do one of the following:

(1) Submit all of the items listed in Section 4.C.1.a, a report explaining how the facility will be brought into compliance with these regulations, and a timetable for attaining compliance. The compliance report and timetable will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on which the Department approves the compliance report and timetable.

(2) Submit written notification of intent to close the facility, immediately cease accepting waste, and submit a closure plan consisting of the following:

(a) A description of the methods, procedures, and processes that will be used to close the facility in accordance with the closure performance standard in Sections 8.H.1 and 8.H.4, and a schedule for completion of closure.

(b) A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.

(c) A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non land-filled wastes located on site (e.g., wastes from landfill run-off collection ponds).

(d) A topographical map of the site showing the proposed post-closure elevations with reference to mean sea level.

(e) An estimate of the cost of closing the facility.

(f) A description of the maintenance that will be performed at the site after closure is completed.

(g) A description of the planned uses of the property.

The closure plan will be subject to Department approval. Closure must be carried out in accordance with the approved closure plan.

b. Any person who, at the time of enactment of Section 8 of these regulations, is in the process of closing a facility in accordance with a closure plan that has been approved by the Department, may complete closure in accordance with that plan.

## D. APPLICATION PROCEDURES FOR RESOURCE RECOVERY FACILITIES

### 1. New facilities

#### a. Construction and operation

#### 1. Application

Any person desiring to obtain a permit to construct and/or operate a resource recovery facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must also be submitted.

#### c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility. This shall include a description of the procedures for facility start up and for scheduled and unscheduled shut down operations.

(3) A description of the solid wastes that will be accepted at the facility, the manner in which recyclable components will be removed from the solid waste stream, the markets for these recyclable materials, and the proposed

disposition of the non-recyclable components and residuals.

(4) A description of the proposed monitoring methods.

(5) A description of the measures that will be used to ensure that unauthorized and unwanted solid wastes are prevented from entering the facility.

(6) A description of the personnel training program, including training that will be provided to ensure compliance with Sections 9.D.2.e and 9.D.2.g of these regulations.

(7) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, fires, and explosions.

(8) A detailed contingency plan to be implemented in case of an emergency such as a spill, accident, or explosion.

d. An engineering report

This shall include the following:

(1) A drawing or drawings showing the complete layout of the proposed facility.

(2) Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.

(3) Descriptions and specifications of all proposed design features that the engineer has provided to the owner of the facility.

(4) A description of the proposed installation methods and procedures.

(5) A plan for third-party quality assurance for the construction and installation of components of the facility that will be used in the processing, handling, and/or monitoring of solid waste.

(6) A schedule of events for construction of the facility.

(7) Proposed design capacity per day, and life expectancy of the facility.

(8) A description of potential safety hazards and methods of control.

(9) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.

(10) An identification of possible ground water and surface water discharges.

e. A recycling analysis

This analysis shall consist of the following:

(1) Identification of available and potential markets for recovered recyclables.

(2) An evaluation of the impact that alternative source separation/recyclables recovery programs could have on the facility. If a thermal recovery facility is the sub-

ject of the application, this shall include an engineering analysis of the BTU value of the solid waste before and after recyclables recovery for the proposed life of the project to determine if increases in recycling activities will necessitate changes in facility size and capacity.

f. A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

g. A hydrogeological assessment, if deemed necessary by the Department

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.

h. An environmental assessment

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include, but are not necessarily limited to:

Air quality

Water quality

Water uses

Land use

Soil quality

Traffic

Public health and safety

Cultural, recreational, and natural areas

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

i. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor;

the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the site boundaries.

j. Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

k. A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

l. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

m. Proof that the facility meets the siting criteria required by Section 9.B.

n. Any other related reports, data, maps, or information that the Department requires.

## 2. Construction and operation

a. The applicant shall not commence construction of a new resource recovery facility or operate an existing resource recovery facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new resource recovery facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the resource recovery facility was completed in accordance with the engineering report to include the quality assurance plan, construction and material specifications and design drawings. The final report shall be certified correct by the third-party quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

## 3. Closure

Any person desiring to close a resource recovery facility shall, at least 180 days before the date on which the facility will stop accepting solid waste, submit the following

to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule
- d. An evaluation of the impact that closing the facility will have on the flow of solid waste in the region serviced by the facility, and a plan for minimizing any disruption in the flow.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

## 2. Existing facilities

~~All existing resource recovery facilities must, within six months after enactment of Section 9 of these regulations, do one of the following:~~

~~a. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the closure procedures described in Section 9.E; or~~

~~b. Submit a Solid Waste Management Facility Application (provided by the Department) and all of the following:~~

~~(1) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the resource recovery activity on the property must also be submitted.~~

~~(2) A plan of operation, as described in Section 4.D.1.a (3).~~

~~(3) An engineering report~~

~~This shall include the following:~~

~~(a) A drawing or drawings showing the complete layout of the facility.~~

~~(b) Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.~~

~~(c) Descriptions and specifications of all design features that the engineer has provided to the owner of the facility.~~

~~(d) Design capacity and life expectancy of the facility.~~

~~(e) A description of potential safety hazards and methods of control.~~

~~(f) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.~~

~~(g) An identification of possible ground water and surface water discharges.~~

~~(4) A recycling analysis, as described in Section 4.D.1.a (5).~~

~~(5) A plan for sampling, analysis, and disposi-~~



tion of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

~~(6) A hydrogeological assessment, if deemed necessary by the Department~~

~~A hydrogeological investigation of the site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.~~

~~(7) An environmental assessment, as described in Section 4.D.1.a (8).~~

~~(8) Topographical and site location maps, as described in Section 4.D.1.a (9).~~

~~(9) Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.~~

~~(10) A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.~~

~~(11) Proof of financial responsibility for closure, as described in Section 4.A.11.b.~~

~~(12) A report explaining any requirements of Section 9 with which the facility is not in compliance, a description of how the facility will be brought into compliance, and a timetable for attaining compliance. This report and timetable will be subject to Department approval.~~

~~(13) Any other related reports, data, maps, or information that the Department requires.~~

~~The facility must be brought into compliance with these regulations in accordance with the timetable approved by the Department. Any extensions in time for attaining compliance must be approved in writing by the Department.~~

## E. APPLICATION PROCEDURES FOR TRANSFER STATIONS

### 1. New Facilities

#### a. Construction and operation

#### 1. Application

Any person desiring to obtain a permit to construct

and/or operate a transfer station must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. ~~Transfer Station~~ A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility.

(3) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, leachate, and facility washdown water.

(4) A description of the methods that will be used to prevent unauthorized wastes from entering the facility.

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment.)

d. An engineering report

This shall include the following:

(1) Descriptions, plans, and specifications of all proposed design features.

(2) A description of the proposed installation methods and procedures.

(3) A schedule of events for construction of the facility.

(4) Proposed design capacity in both tons and cubic yards per day.

This report shall be prepared and signed by a Professional Engineer registered in Delaware.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the water table aquifer.

(2) Ground water flow directions.

(3) Ambient ground water quality.

(4) Potential pathways of contaminants to points of ground water discharge.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment.

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

- Air quality
- Water quality
- Water uses
- Land use
- Soil quality
- Traffic
- Public health and safety
- Cultural, recreational, and natural areas
- Historic sites
- Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a surveyor registered in Delaware; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the handling site boundaries.

h. Proof that a state Coastal Zone Permit (if applicable) and all applicable zoning approvals have been obtained and that application has been made for all other appropriate federal, state, and local environmental permits.

i. A conceptual closure plan. This shall address the items listed in Section 10.F.3 to the extent possible at the time of initial permit application and shall be revised and

updated as necessary to reflect changes in plans that will affect the cost of closure.

j. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

k. Proof that the facility meets the siting criteria required by Section 10.B.

1. Any other related reports, data, maps, or information that the Department reasonably requires.

2. Construction and operation

a. The applicant shall not commence construction of a new transfer station or operate an existing transfer station until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new transfer station has been completed, and prior to the receipt of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the transfer station was completed in accordance with the permit requirements. The final report shall be certified correct by a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person desiring to close a transfer station shall, at least 60 days before the date on which the facility will stop accepting waste, submit the following to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

2. ~~Existing facilities~~

~~All existing transfer stations must, within six months after enactment of Section 10 of these regulations, do one of the following:~~

~~a. Submit the items listed in Section 4.E.1.a above and a report explaining how the facility will be brought into compliance and a timetable for attaining compliance. The proposed methods and schedule for attaining compliance will be subject to Department approval.~~

~~The facility must be in compliance with these regulations within six months after the date on which the Department approves the report and schedule.~~

~~b. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the closure procedures described in Section 10.F.~~

**F. APPLICATION PROCEDURES FOR FACILITY FOR INFECTIOUS WASTE MANAGEMENT**

- 1. ~~New facilities~~
- a. ~~Construction~~

- 1. Application

Any person desiring ~~to obtain a permit~~ to construct or operate an infectious waste management facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

- a. ~~Application to Construct a Solid Waste Facility~~ A Solid Waste Management Facility Application, provided by the Department.

- b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

- c. A plan of operation

This plan shall include the following:

- (1) The source(s) of the infectious waste (generator names and locations);

- (2) A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;

- (3) A description of the facility where the waste will ~~be sterilized or incinerated~~ be rendered non-infectious, including the name and the exact location of the facility;

- (4) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;

- (5) A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);

- (6) A description showing that the facility has developed a validation program which demonstrates the effectiveness of the treatment method by performing an Initial Efficacy Test and Periodic Verification Test(s).

- (7) A description of the measures that will be used to ensure that unauthorized and unwanted wastes are prevented from entering the facility;

- (8) A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of time of storage;

- (9) A description of the alternatives to be used if the processing equipment is inoperable, and the procedures to be used for the management of the waste if it cannot be promptly processed;

- (10) A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required;

- (11) A description of the proposed methods for controlling noise, litter, odors, vectors, dust, fires, and explosions;

- (12) A contingency plan to be implemented in case of emergency.

In addition, if the proposed facility is an incinerator, the Plan of Operation shall include a plan for sampling, analysis, and disposition of the ash generated in the incinerator. The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste. The plan also shall include a strategy for treating and/or disposing of the ash if it is found to exhibit hazardous waste characteristics. A sanitary landfill in Delaware will not be considered an acceptable disposal facility for ash that exhibits hazardous waste characteristics.

- d. An engineering report

This shall include the following:

- (1) Descriptions and specifications of all proposed design features.

- (2) A description of the proposed installation methods and construction procedures.

- (3) A schedule of events for construction of the facility, if deemed necessary by the Department.

- (4) Proposed design capacity in both tons and cubic yards per day, and life expectancy of the facility.

- (5) Materials and energy balance of the facility.

- e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation may be required at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

- (1) The occurrence and characteristics of the unconfined and first confined aquifers,

- (2) Ground water flow directions,

- (3) Ambient ground water quality,

- (4) Potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

- f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

- Air quality
- Water quality
- Stream flow
- Fish and wildlife
- Plants
- Threatened or endangered species
- Water uses
- Land use
- Aesthetics
- Traffic
- Public health and safety
- Cultural, recreational, and natural areas
- Historic sites
- Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm. g. Topographical and site location maps, if deemed necessary by the Department.

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan that conforms with Section 11.H., as appropriate.

j. Proof of financial responsibility for closure as described in Section 4.A.11,b and d.

k. Proof that the facility meets the siting criteria required by Section 11, Part 1.B.

1. Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~a. Notification of intent to commence operation.~~

~~b. Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

a. The applicant shall not commence construction of a new infectious waste facility or operate an existing infectious waste facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new infectious waste facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the facility was completed in accordance with the engineering report. The permittee shall not commence operations or store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

~~Any person wishing to obtain a closure permit close~~ an infectious waste facility must submit the following to the Department:

a. Notification of intent to close.

~~Closure requirements to be performed as described~~ A detailed plan for closing the facility so as to achieve the objectives described in Section 11 Part 1.J. 11.H. and as described in the individual permit.

If the Department approves the closure plan, it will modify the facility's permit to allow closure to take place.

2. Existing facilities

a. ~~Any person desiring to continue construction,~~

~~or continue operation, of an infectious waste facility must, within six months after the date of enactment of these regulations, submit to the Department either an Application to Construct an Infectious Waste Facility, or an Application to Operate an Infectious Waste Facility. Upon receipt of the application, the Department will determine whether any other information is required. While the Department is making a determination on the application, construction or operation may continue under the old permit unless the Department notifies the applicant in writing that construction must cease.~~

~~b. Any person desiring to begin operation of an infectious waste facility which was under construction prior to enactment of these regulations must immediately notify the Department by submission of a notification of intent to operate an infectious waste facility.~~

~~The applicant must also submit to the Department a report explaining how the facility will be brought into compliance and a timetable for attaining compliance.~~

#### G. APPLICATION PROCEDURES FOR SOLID WASTE TRANSPORTERS

Any person required to obtain a permit to transport solid waste must submit a completed application to the Department. The application shall be on a form prescribed by the Department and shall be accompanied by the appropriate application fee.

Prior to Public Notice of proposed changes to these Regulations which would affect holders of transporter permits, the Department shall attempt, by reasonable means, to individually notify transporter permit holders of such proposed changes and of the date of the upcoming Public Hearing.

~~All persons that are subject to Section 7.B of these regulations and that were engaged in the transportation of solid waste in Delaware before the enactment of Section 7 must submit a completed application and the appropriate application fee within 60 days after the enactment of Section 7.~~

#### SECTION 5: SANITARY LANDFILLS

(NOTE: This section applies only to landfills that accept household waste.)

##### A. SITING

1. Sanitary landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All sanitary landfill facilities shall be constructed to

at least minimum design requirements as contained in Section 5.B. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. The owner or operator of any proposed sanitary landfill within a 5-mile radius of any airport runway must notify the airport and the Federal Aviation Administration (and provide proof of notification to the Department).

4. No new cell of a new sanitary landfill shall be located:

a. Within the 100-year flood plain. ~~For the purposes of this section:~~

(1) ~~Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-year flood.~~

(2) ~~100-year flood means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.~~

b. ~~Within 200 feet of any state or federal wetland. In an area that causes or contributes to the degradation of wetlands unless the owner or operator can demonstrate that:~~

(1) ~~there is no practical alternative to the proposed cell;~~

(2) ~~the landfill has been designed to minimize impacts on any wetlands; and~~

(3) ~~mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded wetlands.~~

c. ~~Within 200 feet of any perennial stream. In an area that causes or contributes to the degradation of any perennial stream unless the owner or operator can demonstrate that:~~

(1) ~~there is no practical alternative to the proposed cell;~~

(2) ~~the landfill has been designed to minimize impacts on any perennial streams; and~~

(3) ~~mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded perennial streams.~~

d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

e. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

f. So as to be in conflict with any locally adopted land use plan or zoning requirement.

g. Within the wellhead protection area of a public

water supply well or well field or a formally designated aquifer resource protection area.

h. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)

~~i. Within a seismic impact zone (unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.~~

~~For the purposes of this section:~~

~~(1) Seismic impact zone means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull ( $g$ ), will exceed 0.10g in 250 years.~~

~~(2) Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.~~

~~(3) Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.~~

~~j. i. In unstable areas, unless engineering measures have been incorporated in the design to insure the integrity of the structural components of the waste facility (including liners, leachate collection systems, run-on /run-off control, capping and anything affecting the containment and/or possible release of contaminants.) Unstable areas include those of (1) poor foundation conditions (possible subsidence), (2) susceptibility to mass movement or (3) Karst terrane.~~

~~j. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.~~

~~k. Within 200 feet of the facility boundary unless otherwise approved by the Department.~~

## B. DESIGN

### 1. General

a. Sanitary landfills shall be planned and designed by a Professional Engineer registered in Delaware. Planning and design of these facilities shall be consistent with the declared purpose and intent and in accordance with the provisions of this regulation and based on empirically derived data and state of the art technology.

### 2. Minimum design requirements

a. All sanitary landfills shall be designed to minimize contaminant releases and to prevent significant adverse impacts on human health or the environment and to achieve the following performance standards:-

(1) ~~Ensure that the concentration values listed in Table 1 of this section will not be exceeded in contaminant concentrations do not prevent reasonable use of the ground water in the uppermost aquifer at the relevant point of compliance (examples are water supply, potability, stream flow maintenance, etc., as appropriate).~~

(a) The point of compliance shall be specified by the Department and shall be no more than 150 meters from the landfill cell boundary and shall be located on property owned by the owner of the landfill.

(b) In determining the relevant point of compliance, the Department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the landfill and surrounding land;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, availability and direction of flow of ground water;

(iv) The proximity and withdrawal rate of ground water users;

(v) The availability of alternate drinking water supplies;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impacts on ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(vii) Public health, safety and welfare effects; and

(viii) Practical capability of the landfill owner or operator.

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

(2) Ensure that surface water quality standards will not be violated (except within designated mixing zones) as a result of contaminant discharges from the landfill.

b. All sanitary landfills shall be designed to have:

(1) A liner and internal leachate collection system which meet the requirements of Sections 5.C. and 5.D. of these regulations respectively. ~~The liner must have a vertical hydraulic conductivity no greater than 10<sup>-7</sup> cm/sec and consist of either a composite liner system or double synthetic liner system, or natural materials of sufficient thickness to achieve the performance standard.~~

(2) A setback area, including a buffer zone with appropriate screening,

(3) A gas control system that meets the requirements of Section 5.E.,

(4) A surface water management system that meets the requirements of Section 5.F.,

(5) A ground water monitoring system that meets the requirements of Section 5.G., and

(6) A capping system that meets the requirements of Section 5.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at every sanitary landfill to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (or the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table as measured in the uppermost aquifer beneath the landfill. This requirement may be modified for a more rigorous liner system design which provides enhanced protection of ground water.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (COA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall meet the requirements of the approved Quality Assurance plan and be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite liner

A composite liner must have, as a minimum:

(1) ~~Have~~ A primary (upper) liner which meets the following:

(a) ~~Be Is~~ at least 45 mils thick.

(b) ~~Be Is~~ constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) ~~Be Is~~ made of synthetic material that meets minimum requirements of the most recent edition of

the National Sanitation Foundation's publication, "Standard Number 54, Flexible Membrane Liners".

(d) ~~Be~~ Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be~~ Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be~~ Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

~~(2) Have a secondary (lower) liner composed of compacted clay at least two feet thick with a hydraulic conductivity no greater than  $10^{-7}$  cm/sec.~~

(2) A secondary (lower) liner composed of:

(a) Compacted clay at least two feet thick with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec, or

(b) An equivalent material acceptable to the Department.

b. Natural liner

(1) Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

- Grain size
- Classification

Compaction

Specific gravity

Hydraulic conductivity

Porosity

pH

Cation exchange capacity

Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

(1) A double liner system shall meet the following requirements:

(a) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(b) The primary (upper) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 5.C.2.a(1)(b)-(f).

(c) The secondary (lower) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 5.C.2.a(1)(b)-(f). If natural, it must meet the requirements of Section 5.C.2.b.

(d) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than  ~~$1 \times 10^{-3}$~~   $1 \times 10^{-2}$  cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(e) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer



shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department as part of the application package. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(f) The ~~lower~~ upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2 feet of natural material with a permeability no greater than  $10^{-7}$  cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

(2) A double liner system will be required in the following cases:

(a) Where landfills are underlain by aquifers which are reasonably expected sources of water supply and/or capable of significant contaminant transport to adjacent surface waters, and

(b) If leachate recirculation will be performed.

### 3. Liner construction

a. Construction/installation of single synthetic liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall be two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of

areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the most recent edition of the National Sanitation Foundation's "Standard Number 54" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

#### b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural non-uniformities that can increase the saturated hydraulic conductivity above  $1 \times 10^{-7}$  cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

#### c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 5.C.3.b (if it is a natural liner) or Section 5.C.3.a.(1)-(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 5.C.3.a.(1) and (3)-(8).

#### D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

##### 1. General provisions

a. All sanitary landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with a Department-approved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the post-closure care period of the facility.

##### 2. Leachate collection

###### a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

###### b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than  $1 \times 10^{-3}$  cm/sec and a minimum controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods:

##### Classification

Porosity

Relative density or compaction

Specific gravity

Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

###### c. Operational procedures

(1) The leachate collection system shall operate automatically, whenever leachate is present in the sump, to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump.

The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

##### 3. Leachate treatment and disposal

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment on-site with or without direct discharge to surface water,

(2) Pretreatment on-site with discharge to an off-site treatment works for final treatment,

(3) Storage on-site with discharge to an off-site treatment works for complete treatment,

(4) Direct discharge to an off-site treatment works, or

(5) Pretreatment on site with discharge on site.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) The on-site treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with the Delaware Regulations Governing Hazardous Waste.

g. Recirculation of leachate may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. At new facilities and expansions of existing facilities, recirculation will be allowed only in areas constructed with a double liner and leak detection system. The method of recirculation at all facilities must be approved in advance and annually so long as the recirculation contin-

ues by the Department. Records of leachate collected and recirculated must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow, preventing the leachate head on the liner from exceeding a depth of 12 inches, and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly.

b. Leachate monitoring shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. In addition to the requirement in Section 5.D.4.b above, samples of leachate shall be collected and analyzed from each waste cell; as follows:

(1) monthly, during the active life of a cell, and at an interval specified by the Department after closure of the cell, for the following parameters:

- pH
- Alkalinity (Alk)
- Chemical Oxygen Demand (COD)
- Biochemical Oxygen Demand (BOD)
- Total Organic Carbon (TOC)
- Specific Conductance (SpC)
- Total Dissolved Solids (TDS)
- Total Iron (Fe)
- Total Manganese (Mn)
- Chloride (Cl)
- Nitrate (NO<sub>3</sub>-N), Nitrate (NO<sub>2</sub>-N), and Ammonia (NH<sub>3</sub>-N) ~~and Total Kjeldahl Nitrogen (TKN)~~
- Sulfate (SO<sub>4</sub>), and

(2) ~~at least semi-annually for parameters listed in Appendix II~~

(2) at an interval specified by the Department for additional parameters specified by the Department.

d. Leachate monitoring results shall be submitted to the Department as part of the annual monitoring report or more frequently as directed by the Department.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for the same parameters listed in Section 5.D.4.c.(1) and any additional parameters as required by the Department. if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within

~~five (5) working days of the discovery and test and record for the same parameters listed in Section 5.G.4.c. above.~~

#### E. GAS CONTROL

##### 1. General provisions

a. Gas control system shall be installed at all sanitary landfills.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site.

(2) Prevent and control damage to vegetation.

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. ~~Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary.~~

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the Lower Explosive Limit (LEL).

##### 2. Design and construction standards

a. The owner or operator of a sanitary landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

##### 3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill. b. The owner or operator shall sample the gas monitoring wells at least quarterly and provide analytical results [as required by conditions specified in the facility permit] as part of the annual report.

c. At sanitary landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

##### 4. Response Actions

a. If methane gas levels exceeding the limits specified in Section 5.E.1.c ~~paragraph E.1.c. of this section~~

are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the Department.

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health.

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

b. For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

#### F. SURFACE WATER MANAGEMENT

##### 1. General provision

An owner or operator of a sanitary landfill shall design, construct, and maintain a surface water management system to:

- a. Prevent erosion of the waste and cover,
- b. Prevent the collection of standing water, and
- c. Minimize surface water run-off onto and into the waste.

##### 2. Design requirements

An owner or operator of a sanitary landfill shall include:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm.

b. A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent run-off generated within the active areas from moving off site of the lined areas.

##### 3. Channeling of run-off

a. Run-off from the active areas within the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from the unused portion of the active

cell(s) that has not been in contact with waste shall be channeled to the detention basins or other approved sedimentation control devices.

c. Until vegetative cover has been established, run-off from closed cells will be directed to the detention basins or other approved sedimentation control devices.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

**G. GROUND WATER MONITORING AND CORRECTIVE ACTION**

1. General provision

Owners or operators of all sanitary landfill facilities shall install maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by, constructed under the direction of, and attested to by, a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality, both unaffected by (background) and potentially impacted by downgradient contaminant leakage from the facility. The downgradient monitor wells (which are points of compliance for ground water performance standards) must be no further than 150 meters from the edge of the sanitary landfill cell, and on the waste facility property.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

e. Monitoring of surface water, into which ground water flowing from beneath the landfill discharges, may also be required as part of the ground water monitoring program. Parameter analysis may include all those required for the ground water sampling plus any additional parameters or tests the Department deems necessary.

3. Ground water sampling and analyses

a. The owner or operator shall submit a ground water sampling plan to the Department at the time of permit

application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling. Samples will be field filtered only where turbidity cannot be controlled by careful well construction, development and sampling and Department approval is obtained.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control

b. Sample parameters

(1) Water levels will be measured prior to sample collection

(2) Ground water samples will be analyzed for the following list of parameters:

- pH
- Alkalinity (Alk)
- Chemical Oxygen Demand (COD)
- Total Organic Carbon (TOC)
- Specific Conductance (SpC)
- Total Dissolved Solids (TDS)
- ~~Total~~ Iron (Fe)
- ~~Total~~ Manganese (Mn)
- Chloride (Cl)
- Nitrate (NO<sub>3</sub>-N), ~~Nitrate (NO<sub>2</sub>-N)~~, and
- Ammonia (NH<sub>3</sub>-N) and ~~Total Kjeldahl Nitrogen (TKN)~~
- Sulfate (SO<sub>4</sub>)
- Dissolved Oxygen (DO)
- Oxidation-Reduction Potential (ORP) or

Eh

The parameters listed in Appendix I-Table I when requested by the Department.

Any additional parameters specified by the Department.

The Department may delete the requirement for any constituents (~~included in Appendix I~~) where appropriate. Such deletions will be based on:

(a) The results of leachate monitoring (constituent is not a significant constituent of the leachate),

(b) Local geochemical considerations (immobility in subsurface), and

(c) Other relevant factors.

Table 1

Antimony	trans-1,4-Dichloro-2-butene
Arsenic	1,1-Dichloroethane; Ethylidene chloride
Barium	1,2-Dichloroethane; Ethylene dichloride
Beryllium	1,1-Dichloroethylene; 1,1-Dichloroethene
Cadmium	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene
Chromium	trans-1,2-Dichloroethylene
Cobalt	1,2-Dichloropropane
Copper	cis-1,3-Dichloropropene
Lead	trans-1,3-Dichloropropene
Nickel	Ethylbenzene
Selenium	2-Hexanone; Methyl butyl ketone
Silver	Methyl bromide; Bromomethane
Thallium	Methyl chloride; Chloromethane
Vanadium	Methylene bromide; Dibromomethane
Zinc	Methylene chloride; Dichloromethane
Acetone	Methyl ethyl ketone; MEK
Acrylonitrile	Methyl iodide; Iodomethane
Benzene	4-Methyl-2-pentanone; Methyl isobutyl ketone
Bromochloromethane	Styrene
Bromodichloromethane	1,1,1,2-Tetrachloroethane
Bromoform; Tribromomethane	1,1,2,2-Tetrachloroethane
Carbon disulfide	Tetrachloroethylene; Tetrachloroethene
Carbon tetrachloride	Toluene
Chlorobenzene	1,1,1-Trichloroethane; Methylchloroform
Chloroethane; Ethyl chloride	1,1,2-Trichloroethane
Chloroform; Trichloromethane	Trichloroethylene
Dibromochloromethane; Chlorodibromomethane	Trichlorofluoromethane; CFC-11
1,2-Dibromo-3-chloropropane; DBCP	1,2,3-Trichloropropane
1,2-Dibromoethane; Ethylene dibromide; EDB	Vinyl acetate
o-Dichlorobenzene; 1,2-Dichlorobenzene	Vinyl chloride
p-Dichlorobenzene; 1,4-Dichlorobenzene	Xylenes

(3) Test methods used to determine the parameters of Section 5.G.3.b.(2) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

c. Monitoring frequency will be at least semi-annual. An alternate frequency may be specified by the Department based on consideration of the following conditions:

- (1) Lithology of the aquifer and unsaturated zone,
- (2) Hydraulic conductivity of the aquifer and unsaturated zone,
- (3) Ground water flow rates,

(4) Distance and travel time between the waste unit(s) and the downgradient monitor wells and possible points of exposure to any landfill-derived contaminants in wells or receiving surface waters, and

(5) Resource value of the aquifer.

d. The Department may observe the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

#### 4. Data evaluation

a. The owner or operator must establish the background quality for each sampling parameter or constituent. The background quality is that which would be expected with no impact by contaminant releases from the waste cells.

b. The owner or operator must specify in the operating record the methods to be used for statistical evaluation of the monitoring data. These may include:

(1) A tolerance or prediction interval procedure in which a range for each constituent is established from the distribution of the background data and the level of

each constituent in each compliance (downgradient) monitor well is compared to the upper tolerance or prediction limit,

(2) A control chart approach that plots concentrations of each constituent versus the background range, or

(3) Any other statistical method chosen to meet the following requirements and approved by the Department:

(a) Appropriate in distribution and number of available data to meet the requirements of the statistical test chosen;

(b) Capable of limiting individual constituent comparisons to Type I error levels less than 0.01 or multiple constituent comparisons to Type I error levels less than 0.05, for each testing period. (This requirement does not apply to tolerance intervals, prediction intervals, or control charts.)

c. If necessary, the statistical analysis method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

d. The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the monitoring program by comparisons using the chosen method of evaluation. This evaluation must be performed within a reasonable period of sampling and analysis - normally within 30 days of obtaining sampling results.

e. If any statistically significant increase occurs, the permittee must:

(1) notify the Department and place the result in the operating record within 14 days, and

(2) assess the probable accuracy and possible risk associated with the finding in the annual report.

f. Performance standards will be established at each site which are intended to provide adequate protection for human health and the environment. The performance standards may be proposed by the permittee, but must be approved by the Department, and shall be incorporated in the facility permit. In general, performance standards will be the maximum contaminant levels (MCLs) for public drinking water. However, the Department may specify performance levels which are more stringent to protect adjacent surface water (and prevent violation of surface water quality standards) or less stringent (where ground water at the site will not threaten existing or reasonably expected sources of drinking water or cause violation of surface water quality standards) as appropriate.

g. The points of compliance at which performance standards must be met must be no more than 150

meters from the edge of the furthest downgradient waste cell and must be on the waste management facility property.

h. If any release of contaminants from the landfill to the groundwater is detected, either by exceedance of background concentrations or violation of a performance standard in the downgradient wells (points of compliance), the owner or operator must:

(1) Notify the Department and place the result in the operating record within 14 days,

(2) Re-sample to confirm the result and/or demonstrate that the result was an error or that the increase was due to a source other than the permitted waste facility within 90 days,

(3) Notify the Department of the result of confirmation within 14 days of availability of the result, and

(4) If a release is confirmed, perform an assessment of corrective measure as described in Section 5.G.6.

#### 5. Reporting

a. The owner or operator will compile and evaluate all ground water data within a reasonable period of time following sampling and analysis. A tabulation of water elevations and quality will be submitted to the Department within 60 days of each sampling event. Reports of any statistically significant increases in downgradient wells or violation of performance standards in wells or streams must be reported to the Department within 14 days as noted above.

b. An annual monitoring report must be submitted by the permittee to the Department which includes the following:

(1) Maps showing the locations of sampling points, water elevations, and ground water flow directions and approximate rates for each sampling period;

(2) Tabulation of all ground water levels and elevations, leachate volumes collected and treated and leachate and water quality data;

(3) Presentation of statistical results and graphs depicting water quality parameter concentrations with time;

(4) Identification of any statistically significant increases in compliance wells and/or exceedances of performance standards;

(5) Confirmation results and conclusions related to the accuracy of these results and/or reasonable explanation for the results;

(6) Recommendations for any changes in the monitoring program including changes in the number, location of sampling points, sampling frequency, parameters or procedures;

(7) An evaluation of the significance of the

results including whether they indicate a contaminant release has occurred and any recommendations for corrective measures, if appropriate.

c. In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine readable media in a format mutually acceptable to the Department and the permittee. With the approval of the Department, reports submitted on machine readable media may be substituted for paper reports.

## 6. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, listed in Appendix II, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams); (3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases;

(c) Reduce, minimize or prevent the off-site migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives;

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

## 7. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable), further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance stan-

dards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards, (i.e. does not represent a significant threat to human health or the environment).

## 8. Implementation of Corrective Action

a. Based on the schedule established under Section 5.G.6.b. for initiation ~~and remediation~~ of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 5.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the



requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 5.G.3. and approved by the Department.

#### H. CAPPING SYSTEM

##### 1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas, promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity unless the Department approves a longer period of time.

c. The capping system shall extend beyond the edge of the lined area.

d. The proposed design of the capping system must be approved by the Department prior to installation.

##### 2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least ~~six~~ twelve inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. A low permeability layer to minimize infiltration, that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. This infiltration control layer must consist of at least the following: (1) A ~~20~~ 30 mil synthetic geomembrane underlain by a geotextile, or

(2) 24 inches of fine-textured soil with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

If the landfill has a synthetic liner system, it must have a synthetic infiltration control layer. Alternative materials that achieve an equivalent performance may be used for the infiltration control layer with prior written approval of the Department.

c. A final cover to provide plant rooting and prevent erosion consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth; and

(2) Six (6) inches of topsoil or other material

approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

##### 3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

#### I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

##### 1. General

a. Sanitary landfills shall be operated so as to create an aesthetically desirable environment and to prevent degradation of land, air, surface water, or ground water.

b. Sanitary landfills shall be maintained and operated to conform with the approved Plan of Operation.

##### 2. Details of operation and maintenance

###### a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

###### b. Lift depth

The lift depth shall not exceed the limit specified in the Solid Waste permit.

###### c. Cover

###### (1) Daily cover

A layer of suitable cover material shall be placed over all solid waste by the end of each working day. This layer shall be of such depth that when compacted it produces a cover layer at least six inches in depth.

(2) Intermediate cover

Any area that receives daily cover and is not expected to receive either additional solid waste or a capping system within six months shall receive intermediate cover consisting of at least six inches of suitable compacted cover material (in addition to the daily cover). Intermediate cover may be required more frequently if deemed necessary by the Department.

(3) Cover material

The soil used as daily and intermediate cover material shall be of such character that it can be compacted to minimize percolation of water through the cover, does not crack excessively when dry, and is free of putrescible materials and large objects.

(4) Alternate cover materials

The Department may approve the use of other materials as daily and intermediate cover if they can be shown to be at least as effective as the required depths of compacted soil at preventing migration of the waste and controlling flies, rodents, and fires.

d. Control of nuisances and hazards

(1) Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

(2) Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

(3) Vectors, dust, fires

The operation of the landfill shall be conducted in a manner which eliminates to the extent possible insect and rodent breeding, dust problems, and fires.

e. Bulky waste

Adequate provision shall be made for the handling and compaction of bulky wastes when such wastes are not excluded from the site. Tires in quantities greater than ten per truckload shall be sliced or shredded before being landfilled.

f. Special solid wastes

The permittee may make provision for the limited disposal of specified special solid wastes. Disposal of these wastes shall be conducted pursuant to a plan submitted to and approved by the Department.

g. Access

Access roads to the point of waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

h. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

i. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

j. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Substitute equipment shall be obtained when maintenance or breakdown renders normal operating equipment inoperative for more than 24 hours. All refuse moving equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

k. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

l. Procedures for excluding the receipt of hazardous waste

(a) Owners or operators of all sanitary landfill cells must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous

wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of the Department ~~under Subtitle C of RCRA~~ if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, regulated hazardous waste means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3 that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator.

### 3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing sanitary landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, gas control systems, capping systems, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 5, Subsections C, D, E, F, G, and H.

b. Monitoring, testing, or analytical data where required by Section 5, Subsections D, E, F, G, and H.

c. Volume and/or weight of wastes received quarterly.

d. Types of waste received quarterly (industrial waste, asbestos-containing waste, and other wastes which require Department approval prior to being landfilled).

e. Location of any monofilled waste.

f. Any additional records specified by the Department.

### 4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility;

b. The estimated remaining capacity of the facility, in both tonnage and years;

c. The volumes (or tonnages) and types of specified special solid wastes landfilled at the facility;

d. Leachate quantity and quality data as required in Section 5, ~~Subsection~~ D.4, and specified in the Solid Waste permit;

e. Gas monitoring data as required in Section 5, ~~Subsection~~ E.3, and specified in the Solid Waste permit;

f. An updated estimate of the cost of closure and post-closure care of the facility, as required in Section 5, ~~Subsection~~ J.3.d;

g. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year;

h. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

### 5. Prohibitions

a. The owner or operator of a sanitary landfill shall not knowingly accept for disposal any hazardous waste. See Section 5.I.2.1.

b. Open burning of any solid waste is prohibited within the active portion of the sanitary landfill.

c. Sanitary landfills are prohibited from accepting bulk or non-containerized liquid waste unless the waste is a household waste other than septic waste.

d. Scavenging is prohibited on any landfill site.

## J. CLOSURE

### 1. General

The owner or operator of a sanitary landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

### 2. Required submittals; notification

a. An owner or operator of a new sanitary landfill must submit a conceptual closure plan for the facility at the time of initial ~~(i.e., construction)~~ permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of a sanitary landfill must receive a closure permit before commencing closure of a completed landfill or cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

~~d.c.~~ If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in

accordance with the performance standards described in Section 5., ~~Subsection J.1, a and b~~, it will ~~issue a closure permit~~ modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

### 3. Closure plan contents

Closure plans for sanitary landfills must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 5., ~~Subsection J.1, a and b~~.

b. A description of the capping system required under Section 5.H. This shall include a description of the system design, the type of material to be used, and a discussion of how the capping system will achieve the objectives of Section 5., ~~Subsection J.1, a and b~~, above.

c. A description of other activities necessary to satisfy the closure performance standard including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 5., ~~Subsection I.4~~.

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in ~~Subsection Section 5.J.1~~ will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases.

g. A closure construction quality assurance plan.

### 4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activi-

ties. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 5.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. must submit to the Department certification by a professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan. The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the ~~closure~~ solid waste permit, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the ~~closure~~ solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

**K. POST-CLOSURE CARE**

**1. General**

a. The owner or operator of a sanitary landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 5.K.2 ~~Subsection K.2~~ below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

**2. Minimum post-closure care requirements**

Post-closure care shall be in accordance with the post-closure permit and must consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 5.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control and/or recovery system in accordance with Section 5.E and the closure plan. The permittee shall submit gas data as

specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 5.F.

**3. Prohibitions**

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended post-closure use of the site.

**4. Post-closure land use**

The owner or operator shall implement the post-closure land use plan approved by the Department.

**5. Notice in deed to property**

a. The owner of the property on which a sanitary landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as a solid waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

**SECTION 6: INDUSTRIAL LANDFILLS**

(NOTE: This section applies to those landfills that dispose of ~~only~~ industrial and dry waste.)

**A. SITING**

1. Industrial landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All industrial landfill facilities shall be constructed to at least minimum design requirements as contained in Section 6., ~~Subsection B.~~ More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. No new cell of an industrial landfill shall be located in an area such that solid waste would at any time be deposited:

a. Within the 100 year flood plain.

b. ~~Within 200 feet of any state or federal wetland.~~

In an area that causes or contributes to the degradation of wetlands unless the owner or operator can demonstrate that:

(1) there is no practical alternative to the proposed cell;

(2) the landfill has been designed to minimize impacts on any wetlands; and

(3) mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded wetlands.

c. Within 200 feet of any perennial stream. In an area that causes or contributes to the degradation of any perennial stream unless the owner or operator can demonstrate that:

(1) there is no practical alternative to the proposed cell;

(2) the landfill has been designed to minimize impacts on any perennial streams; and

(3) mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded perennial streams.

d. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

e. So as to be in conflict with any locally adopted land use plan or zoning requirement.

f. Within the wellhead protection area of a public water supply well or well field.

g. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

h. Within 200 feet of the facility boundary unless otherwise approved by the Department.

i. In an area that is environmentally unique or valuable.

## B. DESIGN

### 1. General

Industrial landfills shall be planned and designed by professional engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state of the art technology.

### 2. Minimum design requirements

All industrial landfills shall be designed to include at least the following:

a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Depart-

ment.

b. A liner that meets the requirements of Section 6.C.

~~c. A leachate collection and disposal~~ Leachate collection, treatment and disposal, and monitoring systems that meets the requirements of Section 6.D.

d. A gas control system, if deemed necessary by the Department. This system shall meet the requirements of Section 6.E.

e. A surface water management system that meets the requirements of Section 6.F.

f. A ground water monitoring system that meets the requirements of Section 6.G.

g. A capping system that meets the requirements of Section 6.H.

## C. LINER

### 1. General provisions

a. An impermeable liner shall be provided at all industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a ~~composite~~ single liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (of the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table, as measured in the uppermost aquifer beneath the landfill. This requirement may be reduced by the Department if a more stringent liner system is used.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [(Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (COA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by

the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. ~~Composite~~ Single synthetic liner

A ~~composite single synthetic~~ single synthetic liner must have, as a minimum:

(1) A primary (upper) liner which meets the following:

(a) ~~Be Is~~ Is at least 45 mils thick.

(b) ~~Be Is~~ Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) ~~Be Is~~ Is made of synthetic material that meets minimum requirements of the most recent edition of the National Sanitation Foundation's publication, "Standard Number 54, Flexible Membrane Liners".

(d) ~~Be Is~~ Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be Is~~ Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be Is~~ Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

(2) A secondary (lower) liner composed of:

(a) Compacted clay at least two feet thick with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec, or

(b) An equivalent material acceptable to the Department.

b. Natural liner

(1) Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

Grain size

Classification

Compaction

Specific gravity

Hydraulic conductivity

Porosity

pH

Cation exchange capacity

Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

A double liner system shall meet the following requirements:

(1) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(2) The primary (top) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 6.C.2.a.(1)(b) - (f).~~(2)-(6)~~.

(3) The secondary (bottom) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 6.C.2.a.(1)(b) - (f).~~(2)-(6)~~. If natural, it must meet the requirements

of Section 6.C.2.b.

(4) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than  $1 \times 10^{-2}$  to  $1 \times 10^{-3}$  cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(5) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department for approval before construction of the liner is permitted. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(6) The upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2-feet of natural material with a permeability no greater than  $10^{-7}$  cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

### 3. Liner construction

a. Construction/installation of single synthetic liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall be two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the most recent edition of the National Sanitation Foundation's "Standard Number 54" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

#### b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural nonuniformities that can increase the saturated hydraulic conductivity above  $1 \times 10^{-7}$  cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

#### c. Construction/installation of double liner

(1) The secondary liner shall be constructed in



accordance with Section 6.C.3.b (if it is a natural liner) or Section 6.C.3.a.(1)-(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 6.C.3.a.(1) and (3)-(8).

#### D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

##### 1. General provisions

a. All industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with the Department-approved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the post-closure care period of the facility.

##### 2. Leachate collection

###### a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

###### b. Construction standards

(1) The leachate collection system shall be

installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than  $1 \times 10^{-2}$   ~~$1 \times 10^{-3}$~~  cm/sec and a minimum post-loading controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer, with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods.

Classification

Porosity

Relative density or compaction

Specific gravity

Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

###### c. Operational procedures

(1) The leachate collection system shall operate automatically whenever leachate is present in the sump to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump. The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

##### 3. Leachate treatment and disposal

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment on-site with or without direct discharge to surface water

(2) Pretreatment on-site with discharge to an off-site treatment works for final treatment

(3) Storage on-site with discharge to an off-site treatment works for complete treatment

(4) Direct discharge to an off-site treatment works

(5) Pretreatment on site with discharge on site.

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) On-site treatment units shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with Delaware's Regulations Governing Hazardous Waste.

g. Recirculation of leachate will not be allowed at industrial landfills.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow, preventing the leachate head on the liner from exceeding a depth of 12 inches, and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly. The leachate monitoring system shall be capable of measuring the flow and sampling the leachate.

b. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. Samples of leachate effluent and influent shall be analyzed as specified by the Department. The parameters to be analyzed will depend on the characteristics of the waste.

d. Leachate monitoring results shall be submitted to the Department as required.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for parameters required by the Department, if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within five (5) working days of the discovery.

## E. GAS CONTROL

1. General provisions

a. Gas control systems shall be installed at industrial landfills where the materials landfilled would be expected to produce gas through biological activity or reaction.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site,

(2) Prevent and control damage to vegetation,

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at

the facility boundary shall not exceed 25% of the lower explosive limit.

2. Design and construction standards

a. The owner or operator of an industrial landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells and provide analytical results as required by conditions specified in the facility permit.

c. At landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

F. SURFACE WATER MANAGEMENT

1. General provision

An owner or operator of an industrial landfill shall design, construct, and maintain a surface water management system to:

- a. Prevent erosion of the waste and cover,
- b. Prevent the collection of standing water, and
- c. Minimize surface water run-off onto and into the waste.

2. Design requirements

a. The surface water management system shall be designed to control, at a minimum, the run-off from the discharge of a 2-hour, 10-year storm.

b. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent run-off generated within the active cells from moving off site of the lined areas.

3. Channeling of run-off

a. Run-off from the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from closed cells will be directed to the detention basins or other approved sedimentation control systems.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

G. GROUND WATER MONITORING AND CORRECTIVE ACTION

1. General provision

Owners or operators of all industrial landfill facilities shall maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport:

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control.

b. Sample constituents

(1) The parameters to be analyzed shall depend upon the characteristics of the waste and shall be specified by the Department.

(2) Test methods used to determine the parameters of Section 6.G.3.b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

c. The Department may observe, and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

4. Reporting

a. All ground water, leachate, and gas monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 60 45 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) Tabulation ~~and graphical presentation~~ of all leachate flow and quality and ground water quality data from current and preceding years,

(2) Graphical presentation of leachate flow and quality and ground water quality data from current and preceding years as required in the operating permit,

(3) Maps showing ground water flow patterns at each time of ground water sampling,

(4) A discussion of the ground water monitoring results, and

(5) Recommendations for future monitoring.

5. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of

the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);(3)

Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases; and

(c) Reduce, minimize or prevent the off-site migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives; and

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

6. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable) further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards (i.e. does not represent a significant threat to human health or the environment).

7. Implementation of Corrective Action

a. Based on the schedule established under Section 6.G.5.b. for initiation and remediation of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 6.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 6.G.3. and approved by the Department.

#### H. CAPPING SYSTEM

##### 1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas (if applicable), promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity.

c. The capping system shall extend beyond the edge of the lined area.

##### 2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least six (6) inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. An impermeable layer, consisting of at least:

(1) A ~~20~~ 30 mil geomembrane underlain by a geotextile, or

(2) 24 inches of clay at a hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec or depth of equivalent material having a hydraulic conductivity less than  $1 \times 10^{-7}$  cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec.

Alternative materials may be used for the impermeable layer with prior written approval of the Department.

c. A final cover consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

##### 3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

## I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

### 1. General

a. Industrial landfills shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Industrial landfills shall be maintained and operated to conform with the approved Plan of Operation.

### 2. Details of operation and maintenance

#### a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

#### b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

#### c. Control of nuisances and hazards

##### Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

##### Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

##### Dust, fires

The landfill shall be operated in a manner which eliminates, to the extent possible, dust problems and fires.

#### d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

#### e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

#### f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

#### g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

#### h. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

### 3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing industrial landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, cover, capping system, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 6, Subsections C, D, E, F, G, and H,

b. Monitoring, testing, or analytical data where required by Section 6, Subsections D, E, F, G, and H,

c. Volume and/or weight of wastes received,

d. A complete list of transporters utilizing the facility, and

e. Any additional records specified by the Department.

### 4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste land-filled at the facility,

b. The estimated remaining capacity of the facil-

ity, in both tonnage and years,

c. Leachate quantity and quality data as required in Section 6.D.4, and in the Solid Waste permit,

d. Gas monitoring data as required in Section 6.E.3, and in the Solid Waste permit,

e. An updated estimate of the cost of closure and post-closure care for the facility, as required in Section 6.J.3.d,

f. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year,

g. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations, and

h. A list of transporters utilizing the facility during the year covered by the report.

The permittee must also submit any additional reports specified in the Solid Waste permit.

In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine-readable media in a format acceptable to the Department. With approval of the Department reports submitted on machine-readable media may be substituted for paper reports.

5. Prohibitions

a. Open burning of any solid waste is prohibited within the active portion of the landfill.

b. Scavenging is prohibited on any landfill site.

c. No wastes other than those specified in the permit may be disposed of at the facility.

J. CLOSURE

1. General

The owner or operator of an industrial landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new industrial landfill must submit a conceptual closure plan for the facility at the time of initial (i.e., construction) permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of an industrial landfill must receive a closure permit before commencing closure of a completed landfill or landfill cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

d.c. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 6.J.1, it will ~~issue a closure permit~~ modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

3. Closure plan contents

The closure plan for an industrial landfill or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 6.J.1. ~~Subsection J.1, a and b.~~

b. A description of the capping system required under Section 6.H. This shall include a description of the system design, the type of cover to be used, and a discussion of how the capping system will achieve the objectives of Section 6.J.1. ~~Subsection J.1, a and b above.~~

c. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 6.I.4. ~~Subsection I.4.~~

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in Section J.1. ~~Subsection J.1~~ will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases, if appropriate.

g. A topographical map of the site showing the proposed post-closure elevation with reference to mean sea level.

h. A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 6.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure of the landfill or landfill cell is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. ~~must submit to the Department certification by a professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan.~~ The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the

site has been closed in accordance with the ~~closure~~ solid waste permit, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the ~~closure~~ solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance and corrective actions (if required).

K. POST-CLOSURE CARE

1. General

a. The owner or operator of an industrial landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 6, Subsection K.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum post-closure care requirements

Post-closure care shall be in accordance with the post-closure permit and shall ~~must~~ consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation



exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 6.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control system in accordance with Section 6.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 6.F.

### 3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill which will disturb the integrity of the capping system, liner, containment system, or monitoring systems.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended post-closure use of the site.

### 4. Post-closure land use

The owner or operator shall implement the post-closure land use plan approved by the Department.

### 5. Notice in deed to property

a. The owner of the property on which an industrial landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as an industrial waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

## SECTION 7: TRANSPORTERS

### A. GENERAL PROVISIONS (applicable to all persons

transporting solid waste in Delaware)

1. No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these regulations.

2. Any vehicle used to transport solid waste shall be so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, in accordance with Title 21, Section 4371, Delaware Code.

3. The transporter will be responsible for all costs of cleaning up a discharge of solid waste from the vehicle.

4. Compliance with these regulations does not release a transporter from the obligation of complying with any other applicable laws, regulations or ordinances.

5. Additional waste transporter regulations may apply to transporters of special wastes, e.g. infectious waste. Refer to Section 11 of these Regulations, SPECIAL WASTES MANAGEMENT.

6. Each vehicle ~~engaged in the~~ used to transport ~~of~~ solid waste and required to have a transporter's permit must carry a copy of the permit in the vehicle. The permit must be presented upon request to any law enforcement officer or any representative of the Department.

### B. PROVISIONS APPLICABLE TO TRANSPORTERS (EXCEPT FOR TRANSPORTERS OF ONLY DRY WASTE) REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

#### 1. Applicability

Section 7.B ~~This Subsection (7.B)~~ applies to all transportation activities in Delaware except the following:

a. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

b. Transportation of household waste generated in a Delaware residence and transported by the generator of the household waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11 Part 1).~~

c. On-site transportation of solid waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the solid waste will not at any time leave the site).

d. Transportation of solid waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste, petroleum-

hydrocarbon contaminated soils, or ~~of~~ waste containing asbestos.)

e. Transportation of dry waste only (this activity is subject to the provisions of Subsection 7.C).

f. Transportation of solid waste generated on a farm and transported by the generator of the waste (this exclusion shall not apply to the transportation of infectious waste, petroleum-hydrocarbon contaminated soils, or ~~of~~ waste containing asbestos).

#### 2. Instruction and Training

All drivers of solid waste transportation vehicles, and all of the transporter's employees who may handle solid waste subject to these regulations, shall receive instruction in how to perform transportation duties in a way that ensures compliance with all applicable regulations and requirements. The instruction shall include, but not necessarily be limited to, the following:

a. Knowledge of current DOT Motor Carrier Safety Regulations.

b. Safe vehicle operations to avoid creating hazards to human health, safety, welfare, or the environment.

c. Knowledge of proper handling procedures for the type of solid waste being transported.

d. Familiarity with the approved accidental discharge containment plan.

e. Familiarity with the conditions of the solid waste transporter's permit.

It shall be the responsibility of the transporter to ensure that all drivers and other employees that may handle solid waste receive instruction as described above as frequently as necessary to maintain a level of knowledge that will ensure safe operation of the vehicle during transportation of the solid waste and proper management of an accidental discharge. A description of the driver training program shall be included with the permit application.

#### 3. Vehicle Requirements

a. All vehicles used in the transportation of solid waste shall be operated and maintained so as to be in compliance with all state and federal regulations and not present a hazard to human health or the environment through unsafe vehicle conditions. The permittee is responsible for the operation and maintenance of all vehicles including leased vehicles operated under his/her permit.

b. All vehicles must carry safety and emergency equipment in accordance with applicable DOT regulations to ensure protection of the public and the environment.

c. All vehicles must carry spill containment materials appropriate to the type of solid waste being transported.

d. Each vehicle engaged in the transportation of solid waste must be fully enclosed or covered to prevent the

discharge or release of solid waste to the environment.

e. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

f. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

#### 4. Proof of Financial Responsibility

~~All persons that are subject to Section 7.B of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or 60 days after adoption of this requirement, whichever is later.~~

Proof of financial responsibility for sudden and accidental discharges shall be maintained by the transporter. This financial responsibility may be established by any one or a combination of the following:

##### a. Automobile liability insurance

(1) For-hire carriers in interstate commerce shall at all times maintain insurance coverage that is in compliance with 49 CFR Part 387 and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(2) Transporters who transport infectious waste, or who transport bulk liquid or bulk gaseous industrial waste, shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$750,000 with MCS-90 endorsement and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(3) All other carriers shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation.

b. Self insurance equal to or exceeding the above automobile liability insurance limits, and approved by the Department.

c. Other proof of financial responsibility approved by the Department.

#### 5. Management of Accidental Discharges

a. ~~All transporters of applicants for a permit to transport~~ solid waste shall submit to the Department a plan for the prevention, control, and cleanup of accidental discharges of the solid waste. No permit will be issued to a transporter until such a plan has been submitted to and approved by the Department.

b. A copy of the plan shall be maintained in each vehicle engaged in the transportation of solid waste.

c. All accidental discharges of solid waste from a vehicle shall be immediately and completely remediated. If the solid waste cannot be immediately and completely remediated, or if it has the potential to cause damage to the environment or to public health, the discharge shall be immediately reported to the Department. (Accidental discharges of infectious waste are regulated under Section 11, Part 1)

d. The transporter will be responsible for all costs of remediating a discharge of solid waste from the vehicle.

#### 6. Recordkeeping

The following records must be retained by the transporter for at least three years:

- a. The solid waste transporter's permit.
- b. Documentation of the training provided to drivers.
- c. Insurance documents sufficient to demonstrate compliance with Section 7.B.4 of these regulations.
- d. Records of spills or releases of solid waste that exceed five (5) pounds or one (1) cubic foot that occur during the transportation of solid waste in Delaware, and descriptions of the remedial actions taken.

#### 7. Reporting and Documentation

a. Each transporter that picks up and/or deposits solid waste in Delaware shall submit to the Department, on a form prescribed by the Department, an annual report indicating the following:

- (1) Types and weights or volumes of solid waste transported in, into, or out of the state.
- (2) Weight or volume of solid waste delivered to each destination.

b. Any vehicle transporting solid waste through Delaware shall carry documentation indicating the state in which the solid waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

#### 8. Sub-leases and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:

- a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.
- b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and

documentation.

c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor agreement in the vehicle and must present proof to any law enforcement officer or representative of the Department upon request.

### C. PROVISIONS APPLICABLE TO TRANSPORTERS OF ONLY DRY WASTE REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

#### 1. General

No transporter granted a permit to transport only dry waste under the requirements of this Subsection (7.C.) shall transport any solid waste other than dry waste, as defined in these Regulations, without meeting the additional requirements for transporting such other solid waste contained in these Regulations.

#### 2. Applicability

The remainder of this Subsection (7.C) applies to all transportation activities involving only dry waste in Delaware except the following:

a. Transportation of dry waste by a solid waste transporter permittee having a permit issued under Subsection 7.B of these Regulations.

b. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

c. Transportation of dry waste generated in a Delaware residence and transported by the generator of the dry waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11, Part 1).~~

d. On-site transportation of dry waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the dry waste will not at any time leave the site).

e. Transportation of dry waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste or of waste containing asbestos.)

#### 3. Vehicle Requirements

a. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

b. The transporter's permit number shall be prom-

inently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

c. All transporters shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation. All persons that are subject to Section 7.C.3. of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or 60 days after adoption of this requirement, whichever is later.

#### 4. Recordkeeping

The following records must be retained by the transporter for at least three years:

- a. The dry waste transporter's permit.
- b. The transporter's Annual Report required under Section 7.C.5.

#### 5. Reporting and Documentation

a. Each transporter that picks up and/or deposits dry waste in Delaware shall submit to the Department, on a form prescribed by the Department, an Annual Report indicating the following:

(1) The total estimated weights or volumes of dry waste transported in, into, or out of the state during the year.

(2) The total estimated weight or volume of dry waste delivered to each destination.

b. Any vehicle transporting dry waste through Delaware shall carry documentation indicating the state in which the dry waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

#### 6. Sub-lease and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions: a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.

b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.

c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor

agreement in the vehicle, and must present proof to any law enforcement officer or representative of the Department upon request.

## SECTION 8: ~~DRY WASTE DISPOSAL FACILITIES~~

### RESERVED

#### A. SITING

No new dry waste disposal facility shall be located in an area such that solid waste would at any time be deposited:

- ~~1. Within five (5) feet of the seasonal high water table.~~
- ~~2. Within the 100 year flood plain.~~
- ~~3. Within 200 feet of any state or federal wetland.~~
- ~~4. Within 200 feet of any perennial stream.~~
- ~~5. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.~~
- ~~6. So as to be in conflict with any locally adopted land use plan or zoning requirement.~~
- ~~7. Within the wellhead protection area of a public water supply well or well field.~~
- ~~8. In an area that is particularly susceptible to environmental degradation.~~

#### B. DESIGN

##### 1. General

~~a. Dry waste disposal facilities shall be planned and designed by Professional Engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state of the art technology.~~

~~b. All dry waste disposal facilities shall conform to the minimum design requirements listed in Section 8.B.2. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.~~

##### 2. Minimum design requirements

~~All dry waste disposal facilities shall be designed to include at least the following:~~

- ~~a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.~~
- ~~b. A gas monitoring system that meets the requirements of Section 8.C.~~
- ~~c. A surface water management system that meets the requirements of Section 8.D.~~
- ~~d. A ground water monitoring system that meets the requirements of Section 8.E.~~
- ~~e. Final cover that meets the requirements of Sec-~~

tion 8.F.

#### C. GAS CONTROL

1. The owner or operator of a dry waste disposal facility shall monitor the concentration of landfill gas emanating from the solid waste disposal area and shall sample and analyze the gas as required by conditions specified in the facility permit.

2. If at any time the concentration of landfill gas at the facility boundary or in facility structures is found to exceed 25% of the lower explosive limit, the permittee will be required to submit to the Department design plans for a gas control system capable of evacuating gas from within the waste and preventing the accumulation of gas on site or off site. The design of the system will be subject to Department approval. If the Department determines that the concentration of landfill gas at the site poses a risk to human health or the environment, the permittee will be required to install and operate the gas control system.

#### D. SURFACE WATER MANAGEMENT

1. An owner or operator of a dry waste disposal facility shall design, construct, and maintain a surface water management system to:

- a. prevent erosion of the waste and cover
- b. prevent the collection of standing water, and
- c. minimize surface water run-off onto and into

the waste.

2. The surface water management system shall include such detention basins, diversion structures, and/or other features as necessary to control, at a minimum, the run-off from the discharge of a 2 hour, 10 year storm.

#### E. GROUND WATER MONITORING

##### 1. General provision

Owners or operators of all dry waste disposal facilities shall maintain and operate a ground water monitoring system to evaluate facility impact upon ground water quality.

##### 2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and

screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

##### 3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

- (1) Sample collection, preservation, and transport
- (2) Analytical procedures and quality assurance, and
- (3) Chain of custody control

##### b. Sample constituents

(1) All facilities shall test for the following parameters:

- (a) Specific conductivity
- (b) Total dissolved solids
- (c) Total organic carbon
- (d) Chloride
- (e) pH
- (f) Chemical oxygen demand
- (g) Total iron
- (h) Any additional parameters specified

by the Department

(2) Test methods used to determine the parameters of b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste—Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

e. The Department may observe, and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

##### 4. Reporting

a. All ground water monitoring shall be conducted on a schedule to be determined by the Department

and the results submitted within 45 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) Tabulation and graphical presentation of all ground water quality data from current and preceding years;

(2) Maps showing ground water flow patterns at each time of ground water sampling;

(3) A discussion of the ground water monitoring results; and

(4) Recommendations for future monitoring.

#### F. FINAL COVER

##### 1. Requirement for final cover

a. Upon closure of the facility or a portion thereof, the permittee shall apply final cover consistent with the intended post-closure use of the facility and designed to control the emission of gas, promote the establishment of vegetative cover (if applicable), and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The final cover shall be in place 60 days following final waste disposal activity or 60 days after Department approval of the closure plan, whichever is later.

##### 2. Composition of final cover

The final cover shall consist of at least two feet of compacted soil and either:

a. At least six inches of topsoil (or other material approved by the Department) to support vegetation, followed by the application of suitable vegetation; or

b. Other material consistent with the intended use of the land and approved in advance by the Department.

##### 3. Final slopes

a. The grades of the final slopes shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the final cover.

#### G. OPERATION AND MAINTENANCE STANDARDS

##### 1. General

a. Dry waste disposal facilities shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground

water.

b. Dry waste disposal facilities shall be maintained and operated to conform with the approved plan of operation.

##### 2. Details of operation and maintenance

###### a. Spreading and compacting

The working face shall be confined to the smallest practical area as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment.

###### b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

###### e. Control of nuisances and hazards

###### Dust and Odors

The owner or operator shall undertake suitable measures to control dust and odors wherever and whenever necessary to conform with all applicable air quality regulations.

###### Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

###### Fires

The facility shall be operated in a manner which minimizes the risk of fires occurring on the site.

###### d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

###### e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

###### f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with

the permit requirements and operational procedures of the facility and is experienced in landfill development and operation.

g. ~~Equipment~~

~~Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the Plan of Operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.~~

h. ~~Employee health and safety~~

~~Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.~~

~~First aid equipment shall be available at the site.~~

3. ~~Recordkeeping~~

~~The following information must be recorded, as it becomes available, and retained by the owner or operator of the facility until the end of the post closure care period:~~

a. ~~Monitoring, testing, or analytical data where required by Section 8, Subsections C, E, or I.~~

b. ~~Types and volume or weight of wastes received.~~

c. ~~A complete list of haulers utilizing the facility.~~

d. ~~Any additional records specified by the Department.~~

4. ~~Reporting~~

~~The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form acceptable to the Department and shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include but not necessarily be limited to the following:~~

a. ~~The volume or tonnage of solid waste landfilled at the facility.~~

b. ~~The estimated remaining capacity of the facility, in both tonnage and years.~~

c. ~~A list of all haulers utilizing the facility during the year covered by the report.~~

d. ~~Gas monitoring data as required in Section 8.C, and in the Solid Waste permit~~

e. ~~An updated estimate of the cost of closure and post closure care for the facility, as required in Section 8.H.3.e.~~

f. ~~Any intentional or accidental deviations from the approved Plan of Operation.~~

g. ~~All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations~~

~~The permittee must also submit any additional reports specified in the Solid Waste permit.~~

5. ~~Prohibitions~~

a. ~~No wastes other than those specified in the permit may be disposed of at the facility.~~

b. ~~Open burning of any solid waste is prohibited within the active portion of the facility.~~

c. ~~Scavenging is prohibited on any dry waste disposal site.~~

H. ~~CLOSURE~~

1. ~~General~~

~~The owner or operator of a completed dry waste disposal facility or cell must close the facility or cell in a manner that:~~

a. ~~Minimizes the need for further maintenance, and~~

b. ~~Minimizes the post closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.~~

2. ~~Required submittals; notification~~

a. ~~An owner or operator of a dry waste disposal facility must submit a conceptual closure plan for the facility at the time of initial permit application, as required in Section 4.C.1.a (7).~~

b. ~~At least 180 days prior to the date when wastes will no longer be accepted, the owner or operator shall submit the following to the Department:~~

(1) ~~Written notification of intent to close.~~

(2) ~~Closure plan.~~

(3) ~~Closure schedule.~~

c. ~~If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the standards described in Section 8.H.1, it will issue a closure permit.~~

d. ~~A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post closure care period of the facility.~~

3. ~~Closure plan contents~~

~~The closure plan for a dry waste disposal facility or cell must include, as a minimum, the following:~~

a. ~~A description of the methods, procedures, and processes that will be used to close the facility or cell in accordance with the closure performance standard in Section 8.H.1.~~

b. A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.

e. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. A topographical map of the site showing the proposed post-closure elevations, with reference to mean sea level.

e. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 8.G.4.

f. A plan for post-closure care of the facility or cell sufficient to ensure that the standards described in Subsection I.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

g. A plan for control and/or recovery of landfill gases, if appropriate.

#### 4. Minimum closure requirements

a. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any deviations from the plan or the schedule must be approved by the Department prior to being initiated.

b. Upon closure of a facility, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

e. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan. The Department will inspect the facility and will either:

(1) Issue a letter indicating that the site has been closed in accordance with the closure plan and all applicable regulations; or

(2) Determine that the site is not in compliance with the closure plan or applicable regulations; identify

the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

### I. POST CLOSURE CARE

#### 1. General

a. The owner or operator of a dry waste disposal facility must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 8, Subsection I.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

e. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

#### 2. Minimum post-closure care requirements

Post-closure care must consist of at least the following:

a. Maintaining the integrity and effectiveness of the final cover, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cover.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

e. Maintaining and operating the ground-water monitoring system in accordance with Section 8.E. The permittee shall submit ground-water quality data as specified by the Department.

d. Maintaining and monitoring the gas control system in accordance with Sec. 8.C and the closure plan. The permittee shall submit gas data as specified by the Department.

e. Maintaining and monitoring the surface-water management system in accordance with Sec. 8.D.



~~3. Prohibitions~~

~~a. Standing water shall not be allowed on the closed facility or cell.~~

~~b. Open burning shall not be allowed on, or within 100 feet of, a closed disposal area.~~

~~e. Unless approved in advance by the Department, no activity shall be conducted on a closed dry waste disposal facility or cell which will disturb the integrity of the final cover or the monitoring systems.~~

~~d. Access to the closed facility shall be limited to those persons who are engaging in activities which are compatible with the approved post closure use of the site.~~

~~4. Post closure land use~~

~~The owner or operator shall implement the post closure land use plan included in the closure plan approved by the Department.~~

~~5. Notice in deed to property~~

~~The owner of the property on which a dry waste disposal facility is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:~~

~~a. the land has been used as a solid waste disposal site, and~~

~~b. the use of the land is restricted under this regulation.~~

~~Included with this notation shall be a map or description clearly specifying the area that was used for disposal.~~

**SECTION 9: RESOURCE RECOVERY FACILITIES**

**A. APPLICABILITY**

This section applies to:

1. Materials recovery facilities, and
2. Thermal recovery facilities.

**B. SITING**

1. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. No new resource recovery facility shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. Within 1000 feet of any state or federal wildlife refuge, wildlife area, or park.
- d. So as to be in conflict with any locally adopted

land use plan or zoning requirement.

In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

**C. DESIGN AND CONSTRUCTION**

1. Applicants wishing to construct and operate resource recovery facilities will be encouraged to design the facilities so that they are capable of removing and recycling those materials for which recycling is currently technically and economically feasible. The design should allow for future alteration or upgrading to accomplish removal of additional materials as recycling of these materials becomes feasible.

2. The plans and specifications for a proposed resource recovery facility, ~~or for any addition or alteration to an existing facility,~~ shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the Solid Waste Management Facility permit application.

3. Construction and installation activities for new facilities ~~and for expansions or alterations of existing facilities~~ shall be carried out in accordance with a third-party quality assurance plan approved by the Department. Expansions or alterations of existing facilities shall be carried out in accordance with an approved third-party quality assurance plan if deemed necessary by the Department.

**4. Minimum design requirements**

a. All new resource recovery facilities shall be designed to include the following features, as a minimum:

- (1) A setback area with appropriate screening.
- (2) A means to detect explosion potential and equipment designed to minimize the impact of explosion (if the solid waste to be handled and the equipment to be used have the potential of causing explosion).
- (3) A means for maintaining quality control of recovered materials.

(4) Storage capacity for a minimum of three days of storage (at maximum anticipated loading rates) of incoming solid waste, facility process solid waste residues and effluents, and recovered materials. The storage areas must be within enclosed structures if deemed necessary by the Department.

(5) Tipping floors, sorting pads, and solid waste storage areas constructed of material capable of withstanding heavy vehicle usage and of reducing and controlling runoff.

(6) A completely enclosed unloading area, if deemed necessary by the Department.

(7) Adequate floor drains graded to facilitate washdown and to prevent standing water. Drains shall discharge to a sanitary sewer system, holding tank, or appropriate treatment facility.

(8) Surface water and erosion controls.

(9) An auxiliary power system sized to enable emergency shut down of the facility to occur without causing irreparable damage to the equipment.

(10) Control mechanisms to minimize and contain accidental spillage of reagents, lubricants, or other liquids used as well as residues generated.

(11) A fire detection and protection system capable of detecting, controlling, and extinguishing any fires that may occur as a result of facility operation.

(12) A fence or other security system that will prevent access to the site by unauthorized persons.

(13) A means for weighing or measuring all incoming solid waste, all recyclable materials recovered from the waste, and all residues generated at the facility.

#### D. OPERATION AND MAINTENANCE STANDARDS

All new and existing resource recovery facilities shall comply with this section.

##### 1. General

a. Facilities shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. All facilities shall be operated and maintained to conform with the approved Plan of Operation submitted at the time of permit application and approved by the Department.

##### 2. Details of operation and maintenance

###### a. Unloading of solid waste

Unloading of solid waste shall take place only at clearly marked unloading areas.

###### b. Storage and handling

(1) External storage of solid waste containing garbage is prohibited. No solid waste shall be stored in such a manner that the storage area or the solid waste becomes a nuisance or endangers human health or the environment.

(2) All solid waste passing through the facility must ultimately be recycled or be disposed of at a solid waste facility authorized to accept that type of solid waste.

(3) Solid waste delivered to the facility shall be processed within the time limit specified by the Department.

(4) Non-putrescible recyclable materials may

be stored for up to 30 days. The storage period may be increased, with written approval of the Department, if all of the following conditions are met:

(a) there is a demonstrated need to do so (e.g., a market agreement with terms of receipt based on greater than 30 day intervals or volumes that may take longer than 30 days to acquire);

(b) there is sufficient Department-approved storage area;

(c) an inventory methodology is used to ensure that the recyclables do not remain on the site for longer than the specified time period; and

(d) the inventory methodology is provided to and approved by the Department before storage begins.

##### c. Control of nuisances and hazards

###### Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site.

###### Air Pollution

The operation of the facility shall comply with 7 Del. Code, Chapter 60, and with the Regulations Governing the Control of Air Pollution.

###### Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

###### Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

##### d. Access

Access roads to the point of solid waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to deliver solid waste to the site. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

e. Personnel

Sufficient types and numbers of trained personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the requirements and operational procedures of the facility and is experienced in matters of solid waste management.

All thermal recovery facilities shall be operated under the direct supervision of an individual who has successfully completed a training course on use of the specific equipment installed at the facility.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All solid waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

All processing equipment shall be operated by persons thoroughly trained in the proper operation of the equipment and shall be maintained in good working order.

h. Disposal of process residues and of solid waste that cannot be processed by the facility

(1) Unless specified otherwise in writing by the Department, all residues generated by the operation of a facility shall, within three days of generation, be disposed of, used, or treated in a manner that is consistent with state and federal regulations.

(2) Unless specified otherwise in writing by the Department, all solid waste that is delivered to the facility but that cannot be processed at the facility shall, within three days of receipt, be removed from the facility for disposal, use, or treatment in a manner that is consistent with state and federal regulations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. Types and weight or volume of solid waste received.

b. Weight or volume of each material recycled or marketed.

c. A record of the commercial solid waste haulers (company name, address, and telephone number) using the facility, and the type and weight or volume of solid waste delivered by each hauler to the facility each day.

d. Process monitoring data.

e. Characterization testing of recyclable materials.

f. Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

g. Characterization testing of process residues to determine the quality for possible marketing or BTU value.

h. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

i. Documentation of training provided to employees.

j. Fire and safety inspections.

k. Major equipment maintenance.

l. Any additional records specified by the Department.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form prescribed by the Department and shall describe and summarize all solid waste processing, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Types and weight or volume of solid waste received.

(2) Weight or volume of each material recycled or marketed, and identification of the markets.

(3) Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

(4) A complete list of commercial haulers that delivered solid waste to the facility during the year.

(5) A discussion of the feasibility of recycling materials that are currently being received at the facility but are not being recycled.

(6) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(7) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(8) Results of characterization testing of recyclable materials and process residues.

(9) Any additional information specified by the Department.

b. The permittee shall immediately notify the Department if any of the following occurs:

- (1) A shut down that results in solid waste being diverted from the facility.
- (2) A fire.
- (3) A spill or nonpermitted release.

#### E. CLOSURE

##### 1. General

When a resource recovery facility ceases accepting solid waste, all of the solid waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

##### 2. Required submittals; notification

a. An owner or operator of a resource recovery facility must submit a conceptual closure plan at the time of initial application for a Solid Waste Management Facility Permit.

b. At least 180 days prior to the projected date when solid waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.D.1.b. Closure activities shall not commence until the Department has approved the updated closure plan and the closure schedule and has modified the permit to allow closure activities to be carried out.

c. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

##### 3. Closure plan contents

The closure plan for a resource recovery facility must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper disposal of all solid waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 9.D.4.

c. A description of the planned post-closure use of the property.

##### 4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within one year after the date on which the Department issues a modified permit to allow closure.

c. When closure is completed, the owner or operator must submit to the Department certification by a Profes-

sional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan.

d. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

e. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

### SECTION 10: TRANSFER STATIONS

#### A. GENERAL PROVISIONS

##### 1. Applicability

a. This section applies to all solid waste transfer stations in Delaware. Additional requirements may apply to transfer stations handling special solid wastes, such as infectious waste.

b. Compliance with these regulations does not release the owner or operator of a transfer station from the obligation of complying with any other applicable laws, regulations, or ordinances.

##### 2. Exclusions

The following types of facilities are not considered to be transfer stations:

a. Facilities that accept only source separated materials for the purpose of recycling those materials.

b. Materials recovery facilities.

c. Small load collection areas located at permitted landfill sites.

d. Individual dumpsters used for waste generated on site (e.g., at shopping centers, apartment complexes or commercial establishments).

e. Compaction equipment being used exclusively for solid waste generated on site (e.g., in office or apartment complexes, industrial facilities, or shopping centers).

#### B. SITING

1. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Transfer stations shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new transfer station shall be located in an area such that solid waste would at any time be handled:

a. Within the 100-year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

### C. DESIGN

#### 1. General

The plans and specifications for a proposed transfer station shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the transfer station permit application.

#### 2. Minimum design requirements

All transfer stations shall be designed to include at least the following:

a. A leachate collection and disposal system as described in Section 10.D.

b. A means for weighing or measuring all solid waste handled at the facility.

c. Tipping and loading areas contained within structures capable of preventing the development of nuisance conditions (e.g., odors, litter, dust, rodents, insects) if these areas will be within 300 feet of a commercial, institutional, or residential structure that is designed for human occupancy and that is in existence at the time of initial permit application. If tipping and loading areas will not be within 300 feet of a structure designed for human occupancy, the permittee shall evaluate the impact to the surrounding area of handling the solid waste in a non-enclosed facility. In addition, the permittee shall evaluate the need for exhaust systems in enclosed areas and shall install such systems if necessary for the protection of human health.

d. A means to prevent vehicles from backing into the pit while unloading.

e. On-site roads designed to accommodate projected traffic flow in a safe and efficient manner.

f. Separate access for passenger vehicles, if both commercial and passenger vehicles are using the facility.

g. A fence or other security system that will prevent access to the site by unauthorized persons.

### D. LEACHATE COLLECTION AND DISPOSAL

1. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as wash-out and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

2. The leachate collection and disposal system must be approved in advance by the Department and shall consist of one, or a combination, of the following:

a. Tipping, loading, and unloading areas constructed of impervious material and equipped with drains

connected to either:

- (1) a sanitary sewer system, or
- (2) a corrosion-resistant holding tank.

If the tipping, loading, and unloading areas are not enclosed, the piping and drains to the sewer system or holding tank shall be sized to handle, at a minimum, the run-off that would result from a 2-hour 10-year storm.

b. Containers and compaction units constructed of durable impervious material and equipped with covers that will minimize the entrance of precipitation.

Alternate designs may be used with prior written approval of the Department if the applicant can show that they will prevent leachate from contaminating the soil, surface water, and ground water.

### E. OPERATION AND MAINTENANCE STANDARDS

#### 1. General

a. Transfer stations shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. Transfer stations shall be maintained and operated to conform with the Plan of Operation submitted at the time of permit application and approved by the Department.

#### 2. Details of operation and maintenance

##### a. Storage of solid waste

Solid waste shall not remain at the transfer station for more than 72 hours without the written approval of the Department. Any solid waste that is to be kept at the site overnight shall be stored in an impervious enclosed structure.

##### b. Disposition of solid waste leaving the facility

All solid waste accepted at the transfer station must, upon leaving the transfer station, be delivered to a processing or disposal facility authorized by the Department (or by the appropriate environmental agency, if outside of Delaware) to accept that type of waste.

##### c. Control of nuisances and hazards

###### Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site if accumulations of litter along the approach roads are clearly the result of the operation of the transfer station.

###### Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

###### Air Pollution

The operation of the transfer station shall comply with 7 Del. Code Chapter 60 and the Regulations Governing the Control of Air Pollution.

**Fire**

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

**d. Access**

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

**e. Personnel**

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

**f. Health and safety**

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

**g. Equipment**

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

**3. Recordkeeping**

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. A record of the solid waste commercial haulers (company name, address, and telephone number) using the facility and the type and weight or volume of solid waste delivered by each hauler to the transfer station each day.

b. A record of the type and weight or volume of solid waste delivered from the transfer station to its final destination each day.

c. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

d. Fire and safety inspections.

e. Major equipment maintenance.

f. Destination of the solid waste.

**4. Reporting**

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The due date for this annual report will be specified in the facility's permit. The report shall be on a form acceptable to the Department and shall describe and summarize all environmental monitoring and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Type and weight or volume of waste received.

(2) A complete list of commercial haulers that hauled waste to or from the facility during the year covered by the report.

(3) Destination of the solid waste and the type and weight or volume of waste delivered to the destination.

(4) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(5) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(6) An updated estimate of the cost of closing the facility.

(7) Any additional information specified by the Department.

b. The owner or operator shall notify the Department immediately if either of the following occurs:

(1) A fire that requires the services of a fire protection agency.

(2) A spill or uncontrolled release that may endanger human health or the environment.

**5. Prohibitions**

a. Solid waste generated outside of the State of Delaware shall not be combined, commingled or aggregated with solid waste that was generated in Delaware and that is required, pursuant to regulations promulgated by the Delaware Solid Waste Authority (DSWA), to be disposed of at a DSWA facility.

b. No liquids, other than those used to disinfect, to suppress dust, or to absorb or cover odors from the solid waste, shall be added to the solid waste.

c. Open burning is prohibited on any transfer station site.

d. Scavenging is prohibited at any transfer station.

**F. CESSATION AND CLOSURE****1. General**

When a transfer station ceases accepting solid waste, all of the waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

**2. Required submittals; notification**

a. An owner or operator of a new transfer station must submit a conceptual closure plan at the time of initial permit application.

b. At least 60 days prior to the date when waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.E.1.b. Closure activities shall not commence until the Department has approved the updated closure plan and the closure schedule and has modified the facility's permit to allow closure activities to be carried out.

c. A copy of the approved closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

**3. Closure plan contents**

The closure plan for a transfer station must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the transfer station, including provisions that will be made for the proper disposal of all waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 10.E.4.a (6).

c. A plan for post-closure care of the facility if such care would be necessary to protect human health and the environment.

d. A description of the planned post-closure use of the property.

**4. Minimum closure requirements**

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within six months after the date on which the Department issues a modified permit to allow closure.

c. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

d. After closure has been completed, the Depart-

ment may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

**SECTION 11: SPECIAL WASTES MANAGEMENT  
PART 1 - Infectious Waste****A. GENERAL PROVISIONS**

~~1. No generator shall engage in the treatment, storage or disposal of infectious waste without the proper permits from the Department.~~

2.1. No person shall engage in the construction, operation, material alteration, or closure of a facility(ies) to be used in the treatment, storage, or disposal operation connected with the management of infectious wastes, nor shall any person enter into the material alteration of a facility, or closure of a solid waste facility managing infectious wastes, unless specifically exempted from the regulations within Section 2.C., without first having obtained the proper permits from the Department.

~~3. Biological liquid wastes which can be directly discharged into a permitted wastewater treatment system are not subject to these regulations.~~

32. All infectious waste must be packaged in accordance with these regulations.

**B. SITING**

1. Infectious waste treatment facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Infectious waste treatment facilities shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new infectious waste treatment facility shall be located in an area such that solid waste would at any time be handled:

a. Within the 100 year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

**C. DEFINITIONS**

The following definitions are specific to the management of infectious waste as used in this part. For general definitions relating to other types of solid waste and the management of solid waste, refer to Section 3 of these regulations.

"6-LOG REDUCTION" means a 6 decade reduction or a millionth (.000001) survival probability in a microbial population, i.e., a 99.9999% reduction.

"ATCC" means American Type Culture Collection.

"AUTOCLAVE TAPE" means tape that demonstrates an evidentiary visible physical change when subjected to temperatures that will provide evidence of sterilization of materials during treatment in an autoclave or similar device.

"CFU" means colony forming unit.

"CHALLENGE LOADS" means an infectious waste load that has been constructed by composition (i.e., organic content, moisture content, or other physical or chemical composition).

"CLASS 4 ETIOLOGIC AGENTS" means a pathogenic agent that is extremely hazardous to laboratory personnel or that may cause serious epidemic disease. Class 4 etiologic agents include, but are not limited to, the agents listed in 47 CFR 72.3.2.(f).

~~Class 4 etiologic agents include the following viral agents:~~

~~Alastrim, Smallpox, Monkey pox, and Whitepox (when used for transmission or animal inoculation experiments). Hemorrhagic fever agents (including Crimean hemorrhagic fever (Congo), Junin, and Machupo viruses, and others not yet defined).~~

~~Herpesvirus simiae (Monkey B virus)~~

~~Lassa virus~~

~~Marburg virus~~

~~Tick borne encephalitis virus complex (including Absettarov, Hanzalova, HYPR, Kumlinge, Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever and Central European encephalitis viruses)~~

~~Venezuelan equine encephalitis virus (epidemic strains, when used for transmission or animal inoculation experiments)~~

~~Yellow fever virus (wild, when used for transmission or animal inoculation experiments)~~

"CONTAINER" means any portable enclosure in which a material is stored, managed or transported.

"CONTAMINATION" means the degradation of naturally occurring water, air or soil quality either directly or indi-

rectly as a result of the transfer of diseased organisms, blood or other matter that may contain disease organisms from one material or object to another.

"ETIOLOGIC AGENTS": see "INFECTIOUS SUBSTANCE" ~~means organisms defined to be etiologic agents (causative agent of a disease/s) in Title 49 of the U.S. Code of Federal Regulations at 173.386 (October 1, 1987 Edition).~~

"GENERATOR" means hospital, in or out patient clinics, laboratories, medical offices, dental offices, nursing homes, and in-patient residential facilities serving persons with diseases which may be transmitted through contact with infectious waste as well as veterinary facilities and research laboratories operating within the State of Delaware.

"INCINERATOR" means any enclosed device used to destroy waste material by using controlled flame combustion.

"INDICATOR MICROORGANISM SPORES" means those microorganism spores listed in Appendix A, Table B of Section 11, Part 1.

"INFECTIOUS SUBSTANCE" (formerly called "ETIOLOGIC AGENTS") is a material as defined in 49 CFR 173.134. An infectious substance means a viable microorganism, or its toxin, which causes or may cause disease in humans or animals, and includes those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services or any other agent that causes or may cause severe, disabling or fatal disease. The terms infectious substance and etiologic agent are synonymous.

"INFECTIOUS WASTE" means those solid wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Types of solid wastes designated as infectious include but are not necessarily limited to the following:

1. Biological wastes:

a. Biological liquid wastes means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including liquid wastes from renal dialysis.

b. Pathological wastes means all human tissues



and anatomical remains, including human fetal remains, which emanate from surgery, obstetrical procedures, autopsy, and laboratory procedures.

c. Cultures and stocks of etiologic agents and associated biological wastes means, but is not limited to, specimen cultures, cultures and stocks of infectious substances etiologic agents, and wastes from production of biologicals and serums.

d. Laboratory wastes means those wastes which have come in contact with pathogenic organisms or blood or body fluids. Such wastes include, but are not limited to, disposable materials, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures which have not been sterilized or rendered noninfectious; or laboratory wastes, including cultures of infectious substances etiologic agents, which pose a substantial threat to health due to their volume and virulence.

e. Animal tissue, bedding and other waste from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

f. Human dialysis waste materials including blood lines and dialysate membranes.

2. Sharps means any discarded article that may cause puncture or cuts. Such wastes include but are not limited to, needles, intravenous (IV) tubing with needles attached, scalpel blades, glassware and syringes that have been removed from their original sterile containers. For the purpose of these regulations, only sharps from human or animal health care facilities, human or animal research facilities or human or animal pharmaceutical manufacturing facilities shall be regulated as sharps.

3. Discarded Biologicals means serums and vaccines produced by pharmaceutical companies for human or veterinary use. These products may be discarded because of a bad manufacturing lot (i.e., off-specification material that does not pass quality control or that is recalled), out-dating or removal of the product from the market or other reasons. Because of the possible presence of infectious substances etiologic agents in these products, the discarded material constitutes infectious waste.

4. Isolation Wastes means discarded materials contaminated with blood, excretions, exudates and/or secretions from humans who that are isolated to protect others from highly communicable diseases (those diseases identified as caused by Class 4 etiologic agents).

5. Other infectious wastes means any residue or contaminated soil, water, or other debris resulting from the

cleanup of a spill of any infectious waste.

"LARGE INCINERATOR" means an incinerator which has a capacity of greater than 1000 pounds per hour.

"LOG KILL" (L) means the difference between the logarithms of viable test microorganisms or indicator microorganism spores before and after treatment.

"MANIFEST" means a tracking document designed to record the movement of solid waste from the generator through its trip with a transporter to an approved off-site treatment or disposal facility.

~~"MOTOR VEHICLE" means a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used in transportation or designed for such use.~~

"NONINFECTIOUS" means a state in which potentially harmful microorganisms are absent, free of pathogens.

"RED BAG" means an impermeable, 3-mil polyethylene bag or equivalent, red in color, for the collection, storage, and transport of infectious or regulated medical waste, which meets the following minimum performance requirements:

1. Appearance: opaque, red. Each bag must carry the words "INFECTIOUS WASTE" or "REGULATED MEDICAL WASTE" or "BIOHAZARD" in one-inch (minimum) letters and carry the Biological Hazard Symbol.

2. Dart Impact, F<sub>50</sub>: 100 grams minimum using ASTM D-1709(A).

3. Elmendorf Tear: 380 grams minimum (any direction) using ASTM D-1922.

4. Heavy metals: 100 ppm maximum combined total.

"REGULATED MEDICAL WASTE" means a waste material as defined in 49 CFR 173.134. For the purposes of transportation of infectious waste, the terms "REGULATED MEDICAL WASTE" and "INFECTIOUS WASTE" shall be synonymous.

"SHIPMENT" means that waste which is conveyed by a transporter between a generator and a designated facility or a subsequent transporter.

"SMALL INCINERATOR" means an incinerator which has a capacity equal to or less than 1000 pounds per hour.

"SMALL QUANTITY ~~INFECTIOUS WASTE~~ GENERATOR" means a private practice physician, dentist, veterinarian and any other generator of infectious waste in which three or fewer professionals are in the practice and generates less than 50 pounds per month; or a generator who can demonstrate that their facility generates less than 50 pounds per month of infectious waste.

"STORAGE AREA" means an area designated for the holding of waste for a temporary period, at the end of which time the waste is treated, disposed of, or stored elsewhere.

"TEST MICROORGANISMS" means those microorganisms listed in Appendix A, Table B of Section 11, Part 1.

~~"TRANSPORTATION" means the movement of waste by air, rail, highway, or water.~~

~~"VECTOR" means a living animal, insect or other arthropod which transmits an infectious disease from one host to another.~~

#### D. EXEMPTIONS

The following solid wastes are not to be managed as infectious wastes:

1. Soiled diapers and feminine hygiene items produced by a person not known to have an infectious disease;
2. Wastes contaminated only with organisms which are not pathogenic to humans, and which are managed in accordance with all applicable regulations of the U.S. Department of Agriculture and the Delaware Department of Agriculture and Consumer Services and all other regulations governing this type of waste stream;
3. Food wastes which are pathogenic to humans only through direct ingestion;
4. Any infectious waste contaminated by, co-incinerated with, or mixed with hazardous, radioactive or toxic waste becomes a hazardous, radioactive or toxic waste and shall then be managed under the appropriate regulations governing those waste types (7 Del. C. Chapter 63, 7 Del. C. Chapter 80 and any applicable federal regulations);
5. Waste consisting of human anatomical remains, including human fetal remains, managed by a licensed funeral director in accordance with 24 Del. C. Chapter 31;
6. Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This ~~part section~~ and these regulations apply only to wastes. The regulations do not include the sterilization for disinfection of items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they become wastes and subject to these regulations at that time and must be sterilized by steam, incinerated, or otherwise rendered non-infectious;

7. Waste generated by Delaware households;

8. Ash from incineration of infectious waste once the incineration process has been completed;

9. Residues from treatment and destruction processes of infectious waste once the waste has been both treated and destroyed;

10. Samples of infectious waste transported off-site by EPA or State-designated enforcement personnel for enforcement purposes are excepted from the requirements of this part during the enforcement proceeding; and

11. Biological liquid wastes which are directly discharged into a permitted wastewater treatment system.

#### E. SMALL QUANTITY GENERATOR REQUIREMENTS

##### 2. Small Quantity Generator Exemptions

1. During the annual renewal of a professional license, it is the responsibility of the generator to provide verification that the conditions of a small quantity generator are met.
2. Should the yearly certification show that a practice of three or fewer professionals produces greater than 50 pounds per month then all portions of this regulation apply.
3. It is the responsibility of the generator to secure a means of proper disposal. A small quantity generator shall contract the services of a permitted transporter of infectious waste, or render the waste non-infectious and non-recognizable, using a process or equipment approved by the Department, prior to disposal.
4. Small quantity generators are ~~not required to obtain a permit for storage of infectious waste, exempt from the storage time requirements in Section H.5.c. of this part as long as not more than 25 pounds of infectious waste are stored and so long as storage does not produce conditions that are offensive or harmful to facility personnel or the public welfare.~~
5. Small quantity generators are required to file an annual report with the Department which meets the requirements of Section P.6. of this Part or which provides the following information:
  - (1) Name, address, telephone and generator identi-

fication number;

(2) Total quantity in weight of infectious waste generated;

(3) A description of how the waste was rendered non-infectious and non-recognizable prior to disposal; and

(4) Signature of the person completing the report.

Requirements to submit manifest tracking documents shall apply to either the small quantity generator, or the transporter contracted by the generator for disposal of the infectious waste. ~~The transporter who consolidates and transports infectious waste may elect to complete a consolidated manifest for the small quantity generators that he or she services. In this event, the transporter assumes responsibility for the MANIFEST REQUIREMENTS, Section 11, Part 1, O, of these Regulations, which would otherwise apply to the generators of the wastes.~~

#### F. PERMIT REQUIREMENTS

1. All application permit requirements found in Section 4.A.2 through 4.A.11 shall be performed unless specifically exempted within this part of the regulations.

Permit requirements specific to all infectious waste are as follows:

2. Any person required to have a permit for activities that will occur in the management of infectious waste shall apply for a permit in accordance with Section 4.F. of these regulations and Regulations No. 2 and No. 29 of the Regulations Governing Air Pollution Control, Delaware Regulations Governing the Control of Air Pollution. No activity shall occur prior to receipt of a permit issued by the Department. ~~all permits required by the Department.~~ This application must include the following required information:

a. ~~The name and location of the generator of the waste;~~

b. ~~A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;~~

c. ~~A description of the facility where the waste will be rendered noninfectious prior to disposal, including its name and the exact location of the facility;~~

d. ~~A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);~~

e. ~~A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of storage;~~

f. ~~A description of the alternatives to be used should the processing equipment become inoperable, and the procedures should storage of the waste become necessary~~

~~resulting from the lack of prompt processing;~~

g. ~~A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required to meet the best available technology;~~

h. ~~A description of the monitoring and quality assurance program will be required for all methods used to render the waste noninfectious;~~

i. ~~A description of modifications to an existing processing facility that are required to process the waste, including schematic drawings.~~

2. ~~Within six months after the enactment of these regulations, owners/operators of existing facilities shall submit an application in accordance with these regulations to the Department requesting a permit to operate an infectious waste facility.~~

3. A new or revised operation plan for treatment, storage and/or disposal of infectious waste shall be submitted to the Department whenever there is an increase of more than 15 percent over a three calendar month average in the maximum quantity of infectious waste receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

4. ~~Within thirty days of the effective date of these regulations, all generators must register with the Department.~~

#### G. PROHIBITIONS

1. Infectious waste may not be disposed at a sanitary landfill unless the waste has been rendered noninfectious and non-recognizable. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).

2. Compactors, grinders or similar devices may not be used by a generator to reduce the volume of infectious waste until after the waste has been rendered noninfectious, or unless the device is part of an approved treatment process which renders the waste non-infectious.

3. Infectious wastes shall not be sent to a recycling facility.

4. Waste consisting of human anatomical remains, including human fetal remains, may not be disposed of at sanitary landfills. The remains must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31.

5. Trans-chutes shall not be used to transfer infectious waste between locations where it is contained.

#### H. PACKAGING, LABELING, AND STORAGE REQUIREMENTS FOR INFECTIOUS WASTE

1. Responsibility for packaging and labeling.

The generator of infectious waste shall not submit for transport, storage, treatment or disposal any waste which is not packaged in accord with ~~Sections 11 Part 1 G and 11 Part 1, K. this part. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part. and 11 Part 1, K.~~ Contractors or other agents may provide services to the generator, including packaging and labeling of infectious waste; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the infectious waste as required by these regulations.

~~b. Section 11 Part 1, G does not apply to infectious waste that has been incinerated or sterilized under this article if the waste or ash residue from the waste is stored separately from other waste.~~

2. Packaging Requirements ~~prior to storage, treatment, transport or disposal.~~

All infectious waste shall be packaged as follows before it is stored, treated, transported or disposed of:

a. Infectious wastes, other than sharps:

(1) Waste shall be contained in two (one bag inside the other) ~~impermeable, plastic bags each sealed separately. Each bag must have a minimum thickness of 3 mil. Each bag must also carry the word biohazard and the universal Biological Hazard Symbol, or the words infectious waste. RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.~~

(2) All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

(3) Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

(4) In addition to the plastic bag containers described in this section, all infectious wastes that are transported must be packaged as described in 49 CFR 173.197, even when that transport is wholly within the boundaries of the State. must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation. The box or container must meet the standards of 49 CFR 178.210, October 1, 1987 Edition, for a classified strength of at least a 200 pound test and be class DOT-12B60.

b. Sharps

Sharps shall be contained in leakproof, rigid, puncture-resistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the

Biological Hazard Symbol.

3. Labeling requirements.

All infectious waste shall be labeled immediately after packaging. ~~A~~ The labels shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size.

a. The following information shall be included on label one:

(1) The name, address and business telephone number of the generator,

(2) "Infectious" or "Regulated Medical Waste" in large print,

(3) "Pathological Waste," if pathological waste is included in the contents, and

(4) The name, address and business telephone number of ~~the~~ the haulers or other persons to whose control the infectious waste will be ~~was~~ transferred.

b. The following shall be included on label two: the Biological Hazard Symbol. The label shall be not less than three by five inches.

4. ~~Etiological agents. Infectious substances~~

All infectious substances that are transported must be packaged as described in 49 CFR 173.196, even when that transport is wholly within the boundaries of the State.

~~All etiological agents, as defined in 49CFR173.386, October 1, 1987, Edition, that are transported must be packaged as described in 49CFR173.387, October 1, 1987, Edition, and labeled as described in 49CFR173.388, October 1, 1987, Edition, even when that transport is wholly within the boundaries of the State.~~

5. Storage of infectious waste

a. Infectious waste shall be contained in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for insects or rodents, and

(4) Prevents the leakage of waste from the storage bag or container.

b. Infectious waste shall be placed in separate containers from other waste at the point of origin in the producing facility.

c. Infectious waste may not be stored at the waste producing facility for more than the following periods of time:

(1) Up to fourteen days at room temperature (18 to 28 degrees Celsius, 65 to 82 degrees Fahrenheit) or up

to 45 days in a refrigerator (2 to 7 degrees Celsius, 36 to 44 degrees Fahrenheit) for all types of infectious waste, so long as it does not produce conditions that are offensive or harmful to facility personnel or the public welfare.

(2) Ninety days in a freezer (-20 to -18 degrees Celsius, -4 to -1 degrees Fahrenheit) not used for food or patient related items.

(3) Exemption. Sharps which are disposed in a container specifically designed for sharps and which is sealed so as to prevent leaks when it is full, are exempt from the time limit on storage.

~~d. Infectious waste other than sharps shall be packaged in accord with Section 11 Part 1 G.2 and shall be contained in one of the following ways:~~

~~(1) Two disposable polyethylene bags, or equivalent material approved by the Department, both bags equaling a cumulative total of at least 6 mils for on-site storage. The bags shall be individually tied.~~

~~(2) Leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~e. Sharps shall be contained in leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~f. Bags used for containment of infectious waste shall be in compliance with Section 11 Part 1 G.2 and red in color and conspicuously labeled with one of the following:~~

~~(1) The words "infectious waste."~~

~~(2) The word "biohazard" and the universal biohazard symbol.~~

g. A container used for the storage of infectious waste may not be reused unless one of the following applies:

(1) It has been decontaminated utilizing a Department-approved decontamination procedure; or

(2) The surface of the container has been protected from direct contact with infectious waste.

h. Reusable containers for infectious waste shall be thoroughly washed and decontaminated by a method approved by the Department of Health and Social Services or the Department each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(1) All parts of the container shall come in contact with hot water of at least 82 degrees C (180 degrees F) for a minimum of 15 seconds.

(2) All parts of the container shall come in contact with chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes:

(a) Hypochlorite solution (500 ppm available chlorine),

(b) Phenolic solution (500 ppm active agent),

(c) Iodophor solution (100 ppm available iodine), or

(d) Quaternary ammonium solution (400 ppm active agent).

(3) Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated by procedures as described in Section 11 Part 1 G.5.h. this paragraph.

i. Containment of infectious waste shall be in an area separate from other wastes. Areas used for the containment of infectious waste shall be secured so as to deny access to unauthorized persons and shall be marked with prominent warning signs and the biohazard symbol on, or adjacent to, the exterior of entry doors, gates or lids. Wording of warning signs shall be in English, "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT". Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

#### **I. MANAGEMENT OF SPILLS OF INFECTIOUS WASTE**

Spill containment and cleanup kit. All infectious waste management facilities are required to keep a small containment and cleanup kit within one hundred feet of any area where infectious wastes are managed. The facility shall maintain and implement a plan that provides the means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.

#### **J. CLOSURE REQUIREMENT**

When a facility that has been used for infectious waste management is to cease operations involving infectious wastes, it shall be thoroughly cleaned and disinfected. All waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. (Note: Due to the variability in the type of infectious waste facilities, the Department will specify individual closure requirements in the permit issued to the facility.)

#### **K. METHODS OF TREATMENT AND DISPOSAL**

1. All treatment of infectious waste must utilize a method that will render the waste non-infectious.

2. All pathological waste must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31. Other disposal methods are not acceptable for this type of waste. This requirement does not prohibit the disposal of certain specified wastes in a permitted wastewater treatment system (see Section D.11 of this part). ~~(See General Provisions) in a sanitary sewer. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).~~

#### L. RECORDKEEPING AND REPORTING REQUIREMENTS

All ~~generators and~~ waste management or treatment facilities that manage infectious waste shall maintain, for a period of three years, the following records and assure that they are accurate and current:

1. A list containing the names of all individuals responsible for the management of infection control for the facility, their address, their phone numbers and the periods covering their assignment of this duty.

2. The date, persons involved and short description of events in each spill of infectious wastes.

3. A notebook or file containing the policies and procedures of the facilities for dealing with infectious wastes.

4. A log of all special training received by persons involved in the management of infectious waste.

5. A log of infectious waste generated at the site or received from off-site, including the amount, the date of generation, receipt dates, and the date of shipment.

6. Anyone that sterilizes or incinerates infectious waste shall maintain a log indicating the method of monitoring the waste as well as a verification that it has been rendered noninfectious.

7. The operator of a facility that incinerates infectious waste shall submit to the Department, at least annually during the life of the facility, a chemical analysis of composite samples of the ash residue. Parameters that are to be monitored will be specified in the permit.

#### M. EVIDENCE OF EFFECTIVENESS OF TREATMENT

1. Treatment of infectious waste must be conducted in a manner which:

a. Eliminates the infectious potential of the waste. A treatment process eliminates the infectious potential of infectious waste if the owner or operator of a treatment unit demonstrates that an Initial Efficacy Test and Periodic Verification Test(s) have been completed successfully.

(1) Successful completion of an Initial Efficacy Test is demonstrated by a 6-log reduction/kill of test microorganisms. For a thermal unit that maintains the integrity of container, a 6-log kill of indicator microorganism spores may be used as an alternative test.

(2) Successful completion of a Periodic Verification Test is demonstrated by:

(a) a 6-log kill of test microorganisms or indicator microorganism spores as provided in Subsection 11, Part 1, L.1.a; or

(b) a minimum 3-log kill of indicator microorganism spores that have been correlated with a 6-log kill of test microorganism; or

(c) an alternate method submitted to and approved by the Department.

b. Disposes treatment residues in accordance with these regulations.

c. Provides for quality assurance programs that must include, at a minimum, a written plan that:

(1) Designates responsibility to personnel.

(2) Describes parameters that must be monitored to insure effectiveness of the treatment process.

(3) Identifies monitoring devices.

(4) Ensures that monitoring devices are operating properly.

(5) Establishes appropriate ranges for operating parameters.

(6) Identifies Person(s) who shall collect and organize data for inclusion in operating records.

(7) Identifies Person(s) who shall evaluate any discrepancies or problems.

(8) Identifies Person(s) who shall propose actions to correct problems identified, and

(9) Identifies Person(s) who shall assess actions taken and document improvement.

d. Provides for periodic biological testing, where appropriate, that demonstrates proper treatment of the waste.

e. Provides for assurances that clearly demonstrate that infectious waste has been properly treated; and

f. Is in compliance with all federal, state and local laws and regulations pertaining to environmental protection.

2. Initial Efficacy Test.

a. The manufacturer, owner, or operator of a treatment unit shall conduct an Initial Efficacy Test, pursuant to Appendix A of this Section, for each model prior to its operation. If significant mechanical changes are made to a treatment unit, the Initial Efficacy Test must be repeated. The treatment units are considered to be the same model if they:

(1) Are manufactured by same company,

- (2) Have the same company name, and
- (3) Have no significant mechanical changes.

b. The Initial Efficacy Test shall be conducted using option 1, 2 or 3 as described in Appendix A of this Section, using the challenge loads listed in Table C of Appendix A, or by an equivalent procedure that meets the requirements of the Initial Efficacy Test and has been approved by the Department. If any of the challenge loads fails the Initial Efficacy Test, the operating conditions must be revised and the Initial Efficacy Test must be repeated for all challenge loads. The Initial Efficacy Test must also meet the requirements of this Section.

c. Composition of challenge loads

(1) For treatment units designed to treat all types of infectious wastes, all three types of challenge loads must be used in conducting the Initial Efficacy Test. The three (3) types of challenge loads represent infectious waste with a high moisture content, low moisture content and high organic content. The quantity of each challenge load must equal 100% of the maximum capacity of the treatment unit. Each challenge load must consist of a minimum 5% (by weight) of each of the following categories: blood/broth cultures, fibers, metals, sharps, plastics, pathological waste, glass, non-woven fibers, and bottles of liquids. Table C of Appendix A contains the moisture and organic content requirements that must be met in each type of challenge load.

(2) For treatment units designed to treat select categories of infectious waste (e. g., sharps treatment unit), modification in the composition of the challenge load(s) may be used if approved by the Department in writing.

d. The Initial Efficacy Test must be conducted under the same operating conditions under which the treatment unit operates on a day-to-day basis. The feed rate for the treatment unit must remain constant throughout the Initial Efficacy Test. This feed rate must never be exceeded during the operation of the treatment unit.

e. The Initial Efficacy Test must be performed so that:

(1) Each container of the test microorganisms and/or indicator microorganism spores is placed in the load to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container(s) of test microorganisms and/or indicator microorganism spores within a sharps container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the challenge loads.

(2) Test microorganisms and/or indicator microorganisms must be cultured and enumerated in accor-

dance with instructions provided by the supplier of microorganisms and Standard Methods for the Examination of Water and Wastewater.

f. A Document of Initial Efficacy Test must be retained in the treatment facility, and made available during normal business hours for inspection and photocopying by an authorized representative of the Department. The Document of Initial Efficacy Test must include at the minimum:

(1) A detailed description of the test procedures used, including all test data generated, with descriptions of data handling, and interpretation of final test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

3. Periodic Verification Test(s)

a. The effectiveness of the treatment unit shall be verified by conducting Periodic Verification Test(s) which must be carried out in accordance with this Subsection.

b. Periodic Verification Test(s) must be conducted quarterly or more frequently if required by the permit or recommended by the manufacturer.

c. The manufacturer, owner, or operator of a treatment unit must perform Periodic Verification Test(s) that satisfy at least one (1) of the following:

(1) Passing the Initial Efficacy Test by using option 1, 2 or 3 of appendix A of this part (whichever is applicable). The three challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganisms must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1). For example, an autoclave may use option 3 (e. g., demonstrate at a minimum the destruction of one million *Bacillus stearothermophilus* spores) to meet the Periodic Verification Test requirement. In the case of an incinerator a stainless steel pipe with threaded ends and removable caps lined with ceramic insulation may be used to contain a glass culture vial with a *Bacillus subtilis* spores strip. The pipe with the spore strips may be placed in the load of infectious waste for the Periodic Verification Test. After the treatment, the pipe with the spore strips may be recovered and the spores may be cultured to assess whether, at a minimum, one

million spores have been destroyed to meet the Periodic Verification Test(s) requirement.

(2) Correlating the log kill (L) of the test microorganisms in the Initial Efficacy Test to an equivalent log kill (T) of indicator microorganism spores in accordance with Appendix B. The equivalent log kill (T) of indicator microorganism spores must be used for all subsequent Periodic Verification Tests. The correlation must be done with three challenge loads identified in Table C of Appendix A (See Subsection 11, Part 1, L.3.d below for further requirements).

(3) Submitting to and obtaining written approval by the Department for a procedure that is equivalent to Subsection 11, Part 1, L.3.c.(1) and (2). Examples of alternatives include, but are not limited to, use of another indicator microorganism, or measurement of disinfectant concentrations in the treated residue. For incinerators only, an example of an alternative is visually inspecting the ash from each load of treated infectious waste to ensure that all infectious waste within the load is completely combusted. The approval of an alternative by the Department may require more frequent testing and/or monitoring of the treatment unit.

d. If correlation is being used for the Periodic Verification Test, (i. e., the correlation of log kill (L) of the test microorganisms with equivalent log kill (T) of the indicator microorganism spores) the following procedures apply:

(1) At a minimum, an initial population of one million indicator microorganism spores per gram of waste solids in each challenge load must be used.

(2) The fraction of surviving indicator microorganism spores that correlates to a log kill (L) of six (6) for each test microorganism must be used for future Periodic Verification Test(s). [For example, if a log kill (L) of four (4) for the indicator microorganism spores per gram of waste solids is achieved during this demonstration, then a population of 10,000 of indicator microorganism spores must be used in future Periodic Verification Test(s).] Challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganism spores must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1).

(3) An equivalent log kill (T) of at least three (3) for the indicator microorganism spores must be achieved to ensure that all test microorganisms are destroyed.

(4) Test microorganisms and/or indicator microorganism spores must be cultured and enumerated in accordance with instructions provided by the supplier of the microorganisms and Standard Methods for the Examination of Water and Wastewater.

(5) The Periodic Verification Test and Initial Efficacy Test may be run concurrently to verify the correlation.

e. If a load of infectious waste fails a Periodic Verification Test, the Periodic Verification Test(s) must be repeated. The operator shall implement the quality assurance program and contact the manufacturer. If applicable, identify and correct the exact problem(s) until the unit can eliminate the infectious potential of the infectious waste. If the operating parameters are altered another Initial Efficacy Test must be performed to demonstrate the effectiveness of the unit and, if applicable, another Periodic Verification Test correlation, pursuant to Subsection 11, Part 1, L.3.c must be repeated. Loads of infectious waste that were processed prior to receiving the results showing a failure of Periodic Verification Test are considered treated. A second Periodic Verification Test must be run immediately after the first Periodic Verification Test indicates failure. The second Periodic Verification Test is to determine whether or not the treatment unit is eliminating the infectious potential of the waste. After the second Periodic Verification Test shows a failure of the treatment unit, any waste processed after the first detection of failure is considered infectious waste and must be managed accordingly.

f. Results of the Periodic Verification Test(s) must be received, verified and made available for inspection by the Department within 2 weeks of when the test was conducted. When a Periodic Verification Test is used to confirm the failure of a treatment unit, the results of the Periodic Verification Test(s) must be made available in accordance with the requirements of subsection h below.

g. A Document of Correlating Periodic Verification Demonstration must be prepared by and retained for at least three (3) years at the treatment facility during normal business hours for inspection by the Department. The Document of Periodic Verification Demonstration must include, at a minimum:

(1) A detailed description of the test procedures used and the correlation between the log kill (L) of the test microorganisms and the equivalent log kill (T) of the indicator microorganism spores. An evaluation of the test results must include all test data generated, a description of data handling, and a presentation and interpretation of test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and



preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

h. Records of Periodic Verification Test(s) must be prepared and retained for at least three (3) years at the treatment facility, and made available at the treatment facility during normal business hours for inspection by the Department. These records will include, at the minimum:

- (1) The date(s) on which the Periodic Verification Test(s) were performed.
- (2) Operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose and feed rates).
- (3) Test protocols.
- (4) Evaluation of test results.
- (5) The name(s), date, signature(s) and title(s) of Person(s) conducting the Periodic Verification Test(s).

i. Periodic Verification Test(s) must be conducted under the same operating conditions under which the treatment unit operates on day-to-day basis. The feed rate for the treatment unit is the maximum feed rate at which the unit operates on day-to-day basis. The feed rate must remain constant throughout the Periodic Verification Test(s). This feed rate must never be exceeded during the operation of the treatment unit.

## N. TRANSPORTATION

All transporters of infectious waste must be in compliance with all applicable federal and state regulations and codes.

### 1. Temperature Control and Storage Period

The transporter must deliver infectious waste to a disposal facility within 15 days from collection from the generation facility.

a. Infectious waste shall be transported in a manner that:

- (1) Affords protection from vectors, rain and wind,
- (2) Prevents the spread of infectious agents,
- (3) Does not provide a breeding place or food source for vectors, and
- (4) Prevents leakage of waste from the storage bags or other containers.

b. Infectious waste shall be transported to off-site processing or disposal facilities in a manner consistent with ~~Section 11 Part 1-G~~ of these regulations.

c. Motor Vehicles for transporting infectious waste shall be: ~~(1)~~ noncompaction type vehicles.

~~(a)~~ Surfaces of vehicles that have been in direct physical contact with infectious waste, because of a leak in a container or because of some other reason, shall be decontaminated as soon as possible after unloading. Surfaces of vehicles that have not been in direct physical contact with infectious waste shall be decontaminated weekly.

### 2. Packaging, Labeling and Placards

a. No person shall transport or receive for transport any infectious waste that is not packaged and labeled in accord with these regulations.

b. Any vehicle holding infectious waste in transport shall have a warning sign in bold letters, a minimum of 4 inches in height and in a color that contrasts the color of the vehicle, that indicates the cargo is infectious waste.

c. Vehicle access door labeling:

(1) Transporters in interstate commerce must comply with one of the following labeling options:

(a) The access doors to the cargo area of the vehicle must meet the requirement for intrastate transporters of infectious waste, as described in ~~paragraph 11.M.2.c.(2)~~ Section N.2.c.(2) of this part; or

(b) The access doors to the cargo area of the vehicle must comply with the labeling requirements of the state of origin of the infectious waste or the labeling requirements of the state of destination of the infectious waste. Examples of the labeling must be submitted to and approved by the Department prior to transport of the infectious waste through Delaware.

(2) Transporters in intrastate commerce: The access doors to the cargo area of the vehicle must bear a sign with the words INFECTIOUS WASTE in bold, four inch letters. Such sign must be easily readable from a distance of 25 feet. The access doors to the cargo area of the vehicle must additionally bear a sign with the universal biological hazard symbol with minimum symbol dimension of six inches, and with the word BIOHAZARD in bold letters at least one inch in height. The symbol must be easily recognizable from a distance of 25 feet.

### 3. Management of Spills of Infectious Waste

a. Spill containment and cleanup kit.

All infectious waste transportation vehicles are required to keep within the vehicle the containment and cleanup kit specified in the permit. The vehicle shall be equipped with a written plan, approved by the Department, that provides the means of decontamination of a release of infectious waste while transporting the waste to the treatment or disposal site or while handling the waste at the site. The driver shall be trained by the employer to implement this

plan.

b. As required in 7 Del. C. Chapter 60, the Department is to be notified immediately of all spills.

4. Loading and Unloading

Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall ~~be required to~~ wear protective gloves or clothing, as appropriate.

O. STERILIZATION

1. Application

The requirements of this part apply to all persons that steam sterilize infectious waste.

2. Performance Standards

All persons that steam sterilize infectious waste shall maintain the following level of operational performance at all times:

a. Operational temperature and detention.

Whenever infectious wastes are treated in a steam sterilizer, all the waste shall be subjected to a temperature of not less than 250 degrees Fahrenheit for 90 minutes at 15 pounds per square inch of gauge pressure or not less than 272 degrees Fahrenheit for 45 minutes at 27 pounds per square inch of gauge pressure. Other combinations of operational temperatures, pressure and time may be used if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in waste at capacity. Complete and thorough testing shall be fully documented, including tests of the capacity of kill *B. stearothermophilus*.

b. Operational controls and records.

(1) Each package of waste to be steam sterilized shall have autoclave tape attached that will indicate if the sterilization temperature has been reached and waste will not be considered satisfactorily sterilized if the indicator fails to indicate that the temperature was reached during the process.

(2) Steam sterilization units shall be evaluated for effectiveness with spores of *B. stearothermophilus* no less than once every 40 hours of operation or once per month, whichever is more often.

(3) A log shall be kept at each sterilization unit that is complete for the proceeding three year period. The log shall record the date, time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, operator of each usage; the type and approximate amount of waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effectiveness testing with *B. stearothermophilus*.

(4) Infectious waste shall not be compacted or subjected to violent mechanical stress before sterilization; however, after it is fully sterilized it may be compacted in a closed container.

3. Compliance with Other Parts of these Regulations

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and must comply with those regulations. Spills or the opening in an emergency of any infectious waste package, shall comply with the regulations pertaining to spills.

4. Off-Site Operations

Any person who operates off-site facilities for the sterilization of infectious waste shall operate those facilities in compliance with a plan approved by the Department. The plan shall address in detail practices, procedures and precautions in the unloading, preparation and sterilizer loading of the waste.

P. MANIFEST REQUIREMENTS

1. A generator of infectious waste shall complete a manifest before shipping, or causing the shipment of, infectious waste off site. The manifest shall consist of a multi-copy form provided by the Department or equivalent approved in writing by the Department.

2. No person shall accept custody of infectious waste unless the waste is packaged in accordance with the requirements of ~~Section 11, Part 1, G, Section H of this part~~ and is accompanied by a properly completed manifest which complies with the requirements of Section P of this part. ~~this subsection~~. Upon accepting custody of infectious waste, the transporter shall sign and date the manifest. After the manifest has been signed and dated by both the generator and the transporter, the generator shall retain one copy of the form. The transporter shall keep the remaining four copies until the waste is delivered to the infectious waste facility. ~~Upon accepting custody of the infectious waste, the infectious waste management facility shall sign and date the manifest. After the manifest has been signed and dated by the infectious waste management facility, the transporter shall retain a copy of the form and the infectious waste management facility shall send a copy of the form to the generator. Upon ultimate disposal the infectious waste management facility shall send a signed and dated copy of the form to the Department.~~

3. The operator of an infectious waste management facility may accept custody of infectious waste only if the waste is accompanied by a manifest which complies with the requirements of Section P of this part. ~~the subsection~~. Upon

accepting the waste, the operator of the infectious waste management facility shall sign and date the manifest, give one copy to the transporter, and keep the remaining three copies. ~~After the waste has been treated or disposed of in accordance with the requirements of the section, the~~ The operator shall:

a. Sign and date the remaining three copies of the manifest certifying that the waste ~~has been so treated or disposed of;~~ will be treated and/or handled in accordance with all applicable regulations and facility permits.

When multiple consignments are received and disposed as a batch, a cover letter with a list of manifest numbers, date received, date rendered non-infectious, certification of disposal, signature and date may be substituted for individual certification on each manifest. The cover letter must be mailed to the State with manifests attached. The generator copy of these manifests may use a date and signature stamp in lieu of original signature.

b. Send one copy of the manifest to the generator no later than fifteen calendar days from the date on which the waste was treated or disposed of;

c. Send one copy of the manifest to the Department; and

d. Keep the remaining copy.

4. Any generator of infectious waste who does not receive a copy of the manifest signed by the operator of the infectious waste management facility within fifteen calendar days of the date of shipment shall immediately contact the transporter and the facility to determine the status of the shipment. If, within twenty days of the date of shipment, the generator still has not received a signed copy of the manifest from the infectious waste management facility, the generator shall notify the Department in writing. The notification shall include a legible copy of the manifest as signed by the generator and transporter, a description of the efforts made by the generator to locate the shipment, and the results of those efforts.

5. Copies of the manifest shall be retained by all parties for at least three years.

6. Each generator of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to, the following:

a. A description of infectious waste generated and transported off site for treatment and disposal;

b. The total weight of infectious waste generated and transported off site for treatment and disposal;

c. The names and addresses of persons engaged by the generator to transport infectious waste off site;

d. The names and locations of the infectious waste management facilities with which the generator contracted for the treatment and/or disposal of infectious waste.

7. Each transporter of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to the following:

a. A description of infectious waste transported off site for treatment and disposal;

b. The total weight of infectious waste transported off site for treatment and disposal;

c. The names and addresses of generators contracting with the transporter to transport infectious waste off site.

d. The names and locations of the infectious waste management facilities where the transporter deposited the infectious waste for treatment and/or disposal.

#### SECTION 11, PART 1

#### APPENDIX A

#### Initial Efficacy Test Procedures

The manufacturer, owner, or operator of an infectious waste treatment unit must carry out an Initial Efficacy Test by using Option 1, 2, or, 3 below, as appropriate for the type of unit, or other procedures, if approved in advance by the Department.

##### 1. Option 1

This option consists of two (2) Phases:

a. Phase 1: Determining the dilution of each test microorganism from the treatment unit for each challenge load (Types A through C) identified in Table C of this Appendix.

(1) Prepare and sterilize by autoclaving two (2) challenge loads of Type A as identified in Table C. Reserve one challenge load for Phase 2.

(2) Process each test microorganism in separate runs through the treatment unit. Prior to each run, determine the number of viable test microorganisms in each container, in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(3) Process each challenge load within thirty (30)

minutes after introducing the container of test microorganism into the treatment unit. The container of test microorganisms and the challenge loads must be processed together without the physical and/or chemical agents designed to kill the test microorganisms. For example, in treatment units that use chemical disinfectant(s), an equal volume of liquid (e. g., sterile saline solution (0.9%, volume/volume), phosphate buffer solution, or tap water) must be substituted in place of the chemical disinfectant(s).

(4) Obtain at least five (5) representative grab samples from the processed residue of each challenge load in accordance with Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846). The number of viable test microorganisms in each grab sample must be determined in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(5) Calculate the effect of dilution for the treatment unit as follows:

$$SA = \text{Log } N_{0A} - \text{Log } N_{1A} \text{ where } \text{Log } N_{1A} \geq 6$$

where: SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A.

$N_{0A}$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit for challenge load Type A.

$N_{1A}$  is the number of viable test microorganisms (CFU/gram of waste solids) remaining in the processed residue for challenge load Type A.

If  $\text{Log } N_{1A}$  is less than 6, then the number of viable test microorganisms introduced into the treatment unit must be increased and steps (1) through (6) in Phase 1 must be repeated until  $\text{Log } N_{1A}$  is  $\geq 6$ .  $N_{0A}$  is the inoculum size for challenge load Type A in Phase 2 below.

(6) Repeat steps (1) through (5) in Phase 1 for challenge loads of infectious waste for Type B and C identified in Table C of this Appendix to determine the effect of dilution (SB and SC respectively).

b. Phase 2: Determining the log kill of each test microorganism in each challenge load (Type A through C) identified in Table C of this Appendix.

(1) Using the inoculum size ( $N_{0A}$ ) determined in Phase 1 above, repeat Phase 1 steps (1) through (5) under the same operating parameters, except that the physical and/or chemical agents designed to kill the test microorganisms must be used.

(2) Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after the treatment from the log of the viable cells introduced into the treatment

unit as inoculum, as follows:

$$LA = \text{Log } N_{0A} - SA - \text{Log } N_{2A} \geq 6$$

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_{0A}$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum for challenge load Type A as determined in Phase 1 above.

SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A in Phase 1 above.

$N_{2A}$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

(3) Repeat steps (1) and (2) in Phase 2 for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

## 2. Option 2:

a. Place one microbiological indicator assay containing one of the test microorganisms at numbers greater than one million in a sealed container that remains intact during the treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s). The vial(s) must contain the test microorganisms.

b. Place the container of test microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_{2A} \geq 6$$

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_0$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

$N_{2A}$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and

LC respectively).

3. Option 3:

a. Place one microbiological indicator assay containing at least one million spores of one of the indicator microorganisms listed in Table B of this Appendix, in a sealed container that remains intact during treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s).

b. Place the container of the indicator microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_{2A}^3$$

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in challenge load Type A.

$N_0$  is the number of viable indicator microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

$N_{2A}$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC, respectively).

APPENDIX A: TABLES

TABLE A: Test Microorganisms

- a. Staphylococcus aureus (ATCC 6538)
- b. Pseudomonas aeruginosa (ATCC 15442)
- c. Candida albicans (ATCC 18804)
- d. Trichophyton mentagrophytes (ATCC 9533)
- e. MS-2 Bacteriophage (ATCC 15597-B1)
- f. Mycobacterium smegmatis (ATCC 14468)

TABLE B: Indicator Microorganisms

- a. Bacillus subtilis (ATCC 19659)
- b. Bacillus stearothermophilus (ATCC 7953)
- c. Bacillus pumilus (ATCC 27142)

TABLE C: Challenge Loads

This Table identifies the three types of challenge loads of infectious waste that must be used as a part of Initial Efficacy Test and Periodic Verification Test(s).

Type	COMPOSITION OF CHALLENGE LOADS %			
	(w/w)	A	B	C
Moisture	£5	350	-----	
Organic	----	----		370

APPENDIX B

Correlating Periodic Verification Procedures

1. Use a certified microbiological indicator assay containing the test microorganisms and indicator microorganism spores.

2. Place the test microorganisms and indicator microorganism spores into sealed containers that remain intact during treatment.

3. Place a container of the test microorganisms and indicator microorganism spores in each challenge load (as described in Appendix A, Table C) to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container of test microorganisms and indicator microorganism spores within a sharp container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the treatment unit.

4. Determine the effectiveness of the treatment unit by calculating the log kill (L) of the test microorganisms in accordance with Option 2 of Appendix A. The equivalent kill (T) of the indicator microorganism spores is calculated by subtracting the log of viable cells after treatment from the log of viable cells introduced into the treatment unit as inoculum as follows:

$$TA = \text{Log } N_0 - \text{Log } N_{2A}^3$$

where: TA is the equivalent log kill of the viable indicator microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_0$  is the number of viable indicator microorganism spores (CFU/gram of waste solids) introduced into

the treatment unit as the inoculum (36).

N2A is the number of viable indicator microorganisms (CFU/gram of waste solids) remaining after treatment in challenge load Type A.

5. Repeat steps 1 through 4 for challenge loads Types B and C identified in Table C of Appendix A to determine the correlation between the log kill of the test microorganisms and equivalent kill of the indicator microorganism spores (LB and LC, respectively).

## SECTION 11: SPECIAL WASTES MANAGEMENT

### Part 2 - Municipal Solid Waste Ash

#### A. GENERAL PROVISIONS

1. Municipal solid waste (MSW) ash is considered a hazardous waste, as defined in the Delaware Regulations Governing Hazardous Waste (DRGHW), unless the generator of the ash can demonstrate that the ash is not a hazardous waste. In order to make such a demonstration, the owner or operator of the generating facility must show that the ash does not exhibit the Toxicity Characteristic (TC) as described in DRGHW, §261.24. Any person desiring to make such a demonstration shall develop and implement a sampling and analysis plan designed to provide reliable information on the chemical properties of the ash. The plan shall be submitted to the Solid Waste Management Branch as a part of the facility's application for a Solid Waste Facility permit. The facility will not be permitted to operate until the Department has approved the plan.

2. The sampling and analysis plan shall include the following:

a. A detailed description of the sampling protocol (how and where samples will be collected, how many samples will be collected, how samples will be composited, how samples will be handled and stored, etc.)

b. A description of the analyses that will be performed on the samples.

c. A description of the procedures that will be used to ensure the quality of the sampling and analysis data.

3. The owner or operator of a facility in Delaware desiring to process MSW ash generated in another state must first receive written approval from the Department to accept MSW ash from that generator. To receive such an approval a person must:

a. Demonstrate, to the Department's satisfaction, that the ash does not exceed the levels specified in the TC; and

b. Develop, and receive Department approval of,

a plan for sampling and analysis of the incoming MSW ash.

#### B. SAMPLING

1. This subsection describes the minimum amount of sampling that the Department deems appropriate for MSW ash generated by facilities that meet the following two assumptions:

a. The waste feed prior to incineration is not segregated by type of generator, and

b. The ash generated is not separated by size during storage or disposal.

If either of these two assumptions is not valid, then a facility-specific sampling and analysis program shall be designed by knowledgeable personnel and shall be implemented after receiving Department approval.

2. The sampling strategy shall be sufficient to enable the facility owner or operator to assess the properties of the ash and to ascertain its variability over time.

3. The sampling strategy shall provide for reassessment of the ash at least quarterly, in accordance with a Department-approved schedule. In determining how often to recharacterize the ash, the generator shall consider all facility-specific and external factors that could cause the ash properties to vary. These factors include:

a. Changes in the composition of the waste (e.g., new types of industries moving into the area, institution of recycling programs in the collection area, seasonal changes affecting population or waste composition).

b. Changes in plant design (e.g., addition of dry scrubber, addition of quench tank).

c. Significant changes in plant operating conditions (e.g., increase in combustion time or temperature, change in lime utilization rate).

4. The sampling strategy shall include the following steps:

a. Determine the most convenient location for sampling. In situations where the sampling can be conducted either from transport vehicles or from the waste conveyance device, the Department recommends sampling from the transport vehicle (i.e. dump truck, barge).

b. Construct a sampling device (trough, bucket, shovel, thief, etc.) to be used to gather a grab sample of the entire depth of the hopper, pile, or truck load, or the entire width of the belt conveyor, drag chain flight, or vibrating conveyor. ASTM standards for sampling unconsolidated waste materials from trucks may be used for guidance if the ash is to be sampled from trucks.

c. If a conveyor is to be the sample location, collect the entire width of the conveyor at a fixed point each

hour for eight (8) hours. If trucks are to be sampled, randomly select eight trucks to sample during the eight-hour period. In certain situations, where fewer than eight truckloads are generated, a different schedule may be necessary (e.g., less than one truck per hour). Composite all samples for the period into an eight-hour composite. Containerize, label, and set aside for further processing.

d. Collect a second eight-hour composite during the course of the work day. The second composite should be collected during a different shift from the first composite.

e. For an initial waste characterization, collect samples each day for a minimum of one week's operation (i.e., fourteen composite samples).

### C. ANALYSIS

1. Each composite sample shall be tested, using Method 1311 [Toxicity Characteristic Leaching Procedure (TCLP)], and the results analyzed, to determine whether the ash passes or fails the TC as defined in the DRGHW, § 261.24.

2. All testing shall be performed following the specific procedures described in "Test Methods for Evaluating Solid Waste" (SW-846).

3. The testing shall be performed by an independent laboratory.

4. In lieu of TCLP, testing for total concentration of constituents (i.e., the contaminants listed in DRGHW, §261.24, Table 1) may be performed. If no constituent is present at a concentration exceeding the TC regulatory limit, the waste may be considered non-hazardous. However, if the concentration of any constituent exceeds the TC regulatory limit, TCLP must be performed to determine whether the waste is hazardous.

5. If it has been demonstrated that none of the organic constituents listed in DRGHW, §261.24, Table 1, is present in the ash at a detectable level, the ash need not be routinely tested for the organics.

### D. QUALITY ASSURANCE AND QUALITY CONTROL

The sampling and analysis plan shall include:

1. A detailed description of the steps that will be taken to ensure quality control, and

2. A provision for appointing a knowledgeable person to oversee the sampling and analysis program to ensure that all procedures are followed.

### E. DATA EVALUATION

The following approach shall be used in evaluating the

data to determine whether the ash passes or fails the TC (see SW-846, Chapter Nine, Tables 9-1 and 9-2 for statistical formulas to use in making the calculations):

1. Determine the mean TC concentration (x) of the fourteen eight-hour composite samples for each regulated analyte (equation 2a of Table 9-1).

2. Determine the standard deviation(s) of the data employed to calculate the mean (i.e., the individual composite results) (equation 3a and 4 of Table 9-1).

3. Determine the upper bound of the 90 percent (one-sided) confidence interval for the mean for each analyte (equation 6 of Table 9-1).

4. If the upper bound of the interval is below the applicable regulatory threshold for all analytes listed in DRGHW, §261.24, then the waste passes the TC. If the upper bound of the interval is above the applicable regulatory threshold for any analyte listed in DRGHW, §261.24, then the waste fails the TC.

### SECTION 12: SEVERABILITY

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**Division of Air and Waste Management**  
Statutory Authority: 7 Delaware Code,  
Chapter 77 (7 Del.C. 77)

1. TITLE OF THE REGULATIONS:  
Accidental Release Prevention Regulation

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

On June 20, 1996, the Environmental Protection Agency promulgated a rule "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)". This rule is similar to the Delaware "Regulation for the Management of Extremely Hazardous Substances". The Delaware Regulation will be amended to be as stringent as the EPA rule. This will allow the State of Delaware, Accidental Release Prevention Group

to administer the rule rather than EPA, Region III and will eliminate overlap and potential conflicts between the federal and state rules.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 77

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

This Regulation amends the Delaware Regulation for the Management of Extremely Hazardous Substances by replacing it in its entirety.

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed regulation will be held on Thursday, October 29, 1998, beginning at 6:00 P.M. in the Richardson and Robbins building auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Robert A. Barrish Telephone: (302) 323-4542

Regulation History:

Regulation for the Management of Extremely Hazardous Substances (EHS Regulation) -- Adopted - September 25, 1989

EHS Regulation -- Revised - December 18, 1995

Accidental Release Prevention Regulation -- Proposed - August 18, 1998

**\*Please note that due to space constraints the table of contents is not being reprinted but is available from the Department of Natural Resources and Environmental Control.**

---

Accidental Release Prevention Regulation

Section 1. Statement of Authority

Pursuant to 7 Delaware Code, Chapter 77, the General Assembly of the State of Delaware has directed that regulations be prepared and adopted by the Department of Natural Resources and Environmental Control to require owners or operators of stationary sources having regulated

substances to take actions, subject to review by the Department, to control and minimize the chances of sudden, accidental releases and catastrophic releases of such substances. The Department adopted the "Regulation for the Management of Extremely Hazardous Substances" on September 25, 1989 and modified this regulation on December 18, 1995. The "Accidental Release Prevention Regulation" replaces the "Regulation for the Management of Extremely Hazardous Substances" in its entirety. The General Assembly of the State of Delaware has also directed the Department to seek full delegation from the United States Environmental Protection Agency to administer the sections of 40 Code of Federal Regulations (CFR) Part 68, "Chemical Accident Provisions" which can be delegated to the State.

Section 2. Purpose

The purpose of this regulation is to protect lives and the health of citizens of the state living and working in the vicinity of stationary sources having regulated substances on site. This regulation is concerned with the prevention of sudden releases of regulated substances and the generation of pressure waves and thermal exposure beyond the property boundaries of the stationary source where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases. This regulation has the goal of prevention of such catastrophic events by requiring owner or operator having regulated substances on-site to take all feasible actions needed to minimize the probability of catastrophic events. It is the intent of this regulation to complement and be enforced in conjunction with other laws.

It is also the secondary purpose of this regulation to adopt the necessary language to allow the Department to seek delegation of the United States Environmental Protection Agency authority for 40 CFR Part 68, "Chemical Accident Provisions" for the administration of the sections of this rule which can be delegated to the State.

This regulation has two parts. The first part (consisting of Section 5) deals with adopting the federal language to allow delegation of the federal program. The second part (consisting of Section 6) uses state authority to extend beyond 40 CFR Part 68 to continue to regulate substances that were previously regulated by the Delaware "Regulation for the Management of Extremely Hazardous Substances", as revised on December 18, 1995. The accidental release prevention activities (the prevention program or the risk management program) are the same for processes subject to either Section 5 or Section 6. Section 6 also contains reporting requirements for a process having regulated substances that are subject to the State criteria but not the federal criteria.



**Section 3. Policy and General Duty.**

It is the obligation of the owner or operator of stationary sources having regulated substances on-site to operate in a manner consistent with this regulation by developing and implementing a risk management program that anticipates and minimizes the chances of catastrophic events. The stationary source risk management program implementation shall be subject to review by the Department. It is the objective of this regulation and the programs established by this regulation to prevent accidental releases and to minimize the consequences of any such release of any substance listed in Section 5.130 or Sections 6.20, 6.30 and 6.40 or any other extremely hazardous substance.

Every person in control of or associated with any such substances (regulated or not regulated) that is produced, handled, or stored has a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

**Section 4. Definitions**

*Accidental release* means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

*Actual Distance to Stationary Source Boundary* means the distance from the nearest potential release point capable of generating a sufficient quantity to the nearest public receptor.

*Actual Quantity (AQ)* means the sum of all the physical quantities of a regulated substance listed in either Section 6.20, 6.30 or 6.40 in whatever form at the maximum design capacity of the process considering administrative controls.

*Administrative controls* mean written procedural mechanisms used for hazard control.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency.

*AICHE/CCPS* means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

*API* means the American Petroleum Institute.

*Article* means a manufactured item, as defined under 29 CFR 1910.1200(b), that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use,

and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

*Artificial Barricade* means an artificial mound or riveted wall of earth of a minimum thickness of three feet (NFPA-495, 1996 Edition, Explanatory Notes for Table 6-4.1 "American Table of Distances").

*ASME* means the American Society of Mechanical Engineers.

*Board* means the Environmental Appeals Board.

*CAS* means the Chemical Abstracts Service.

*Catastrophic Event* means a sudden release of a sufficient quantity of a regulated substance, a pressure wave or a thermal exposure beyond the property boundaries of a stationary source which will cause death or permanent disability to a person because of a single, short term exposure.

*Catastrophic release* means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

*Classified information* means "classified information" as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, Section 1(a) as "any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security."

*Combustible Liquid* means a liquid having a flash point at or above 100°F and below 140°F.

*Condensate* means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature, pressure, or both, and remains a liquid at standard conditions.

*Consequence Analysis* means a review of the potential effects of regulated substance release on surrounding populations.

*Consequence Assessment* means an evaluation of the results of a release of a regulated substance. A consequence assessment shall consist of:

- An estimate of the PRQ,
- Dispersion analysis (for toxics, flammables, and combustibles) showing downwind effects, and

° Consequence analysis involving potentially exposed population.

*Covered process* means a process that has a regulated substance present in more than a threshold quantity as determined in Section 5.115 or a regulated substance present in more than the sufficient quantity as determined in Sections 6.20, 6.30 or 6.40.

*Critical* means those elements such as equipment, piping, alarms, interlocks, or controls which are essential to preventing the occurrence of a catastrophic event.

*Crude oil* means any naturally occurring, unrefined petroleum liquid.

*Department* means the Department of Natural Resources and Environmental Control (DNREC).

*Dispersion Analysis* means the calculation, by means of a model of the ambient concentrations of a regulated substance after its release, taking into account, when appropriate, the physical and chemical state and properties of the regulated substance, the release scenario, and the geographical, topographical, geological and meteorological characteristics of the environment which will influence the migration, movement, dilution, or degradation of the regulated substance in the environment.

*DOT* means the United States Department of Transportation.

*Environmental receptor* means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in Section 5.22(a), as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

*Field gas* means gas extracted from a production well before the gas enters a natural gas processing plant.

*Flammable Gas* means a gas or vapor which when mixed with air or oxygen in certain concentrations will ignite and burn on contact with a source of ignition. Such gases have lower and upper explosive limits which are usually expressed in terms of percentage by volume of gas or vapor in air.

*Flammable Liquid* means a liquid having a flash point below 100°F.

*Hot work* means work involving electric or gas welding,

cutting, brazing, or similar flame or spark-producing operations.

*Implementing agency* means the Department.

*Injury* means any effect on a human that results either from direct exposure to toxic concentrations, radiant heat, or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

*Major change* means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or other alteration that introduces a new hazard.

*Mechanical integrity* means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

*Medical treatment* means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

*Mitigation or mitigation system* means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

*Natural Barricade* means natural features of the ground, such as hills, or standing timber of sufficient density that the surroundings which require protection cannot be seen from the regulated process when the trees are bare of leaves; see the Explanatory Notes for Table 6-4.1 of NFPA 495 "Explosive Materials Code, 1196 Edition".

*NAICS* means the North American Industrial Classification System. (Replaces SIC codes).

*Natural gas processing plant (gas plant)* means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

*NFPA* means the National Fire Protection Association.

*Offsite* means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

*OSHA* means the U.S. Occupational Safety and Health Administration.

*Owner or operator* means any person who owns, leases, operates, controls, or supervises a stationary source.

*Person or persons* means a natural person, partnership, limited partnership, trust, estate, corporation, custodian, association or any other individual entity in its own or any representative capacity.

*Petroleum refining process unit* means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; separating petroleum; or separating, cracking, reacting, or reforming intermediate petroleum products streams. Examples of such units include, but are not limited to, petroleum-based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

*Population* means the public.

*Produced water* means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

*Process* means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

*Process Hazard Review* means a systematic identification of the potential sources and conditions that may result in the release of a regulated substance and determination of the effects of the release on the surrounding environment using

generally accepted methods of risk assessment.

*Public* means any person except employees or contractors at the stationary source.

*Public receptor* means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.

*Regulated substance* is any substance listed pursuant to Section 5.130 or Sections 6.20, 6.30, or 6.40.

*Replacement in kind* means a replacement that satisfies the design specifications.

*Risk Management Program* means all the activities intended to reduce risk of a catastrophic event including, but not limited to, the consideration of technology, personnel and the equipment associated with the covered process.

*Risk Management Plan or RMP* means the risk management plan submission required under subpart G of Section 5. The Delaware RMP is called the Delaware Risk Management Plan.

*RMP Off-site Consequent Analysis Guidance* means guidance document published on May 24, 1996 by the EPA intended to assist sources to conduct worst-case consequence analyses and alternative scenarios involving regulated substances.

*Secretary* means the Secretary of the Department of Natural Resources and Environmental Control.

*Separate Containment Area* means an area which is separated from other areas by 100 meters or which is separated from adjoining areas by 4-hour fire rated walls resistant to blast pressures of 3 psig; in addition, such areas cannot have common piping containing a regulated substance.

*SIC* means Standard Industrial Classification.

*Stationary source* means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation,

of any regulated substance or any other extremely hazardous substance under the provisions of this regulation. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. Section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

*Substance Hazard Index (SHI)* means a calculated number which relates the relative danger of a substance considering toxicity and ability to disperse in the atmosphere.

*Sufficient Quantity (SQ)* means the amount of regulated substance sufficient to cause a catastrophic event. The sufficient quantity shall be calculated based on commonly recognized atmospheric modeling procedures and mortality/exposure probabilities calculated for an average individual. For flammable and combustible substances, the sufficient quantity is expressed as a release rate. For toxic and explosive substances it is expressed as a distinct quantity.

*Technically qualified individual* means a person or persons (1) who, because of education, training, or experience, or a combination of these factors, is capable of understanding the health and environmental risks associated with the chemical substance which is used under his or her supervision, (2) who is responsible for enforcing appropriate methods of conducting scientific experimentation, analysis, or chemical research to minimize such risks, and (3) who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting a research and development activity.

*Threshold quantity* means the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act as amended, listed in Section 5.130 and determined to be present at a stationary source as specified in Section 5.115.

*Typical meteorological conditions* means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

*Unit* means the nearest whole number resulting from the division of the actual quantity by the sufficient quantity at 100 meters as set forth in Sections 6.20, 6.30, or 6.40 of this

regulation and the nearest whole number resulting from the division of the actual quantity by the threshold quantity as set forth in Section 5.130 of this regulation. For stationary sources reporting propane or ammonium nitrate with a *potential release quantity* equal to or greater than the *sufficient*

*quantity* in their risk management plan, the units will equal one, regardless of the *actual quantity*.

*Vessel* means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

*Worst-case release* means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in Section 5.22(a).

## Section 5. Accidental Release Prevention Provisions Established to Seek Delegation of 40 CFR Part 68

### Subpart A--General

#### Section 5.10 Applicability

(a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under Section 5.115, shall comply with the requirements of this regulation no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed by EPA pursuant to 40 CFR 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(b) Program 1 eligibility requirements. A covered process is eligible for Program 1 requirements as provided in Section 5.12(b) if it meets all of the following requirements:

(1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following off-site:

(i) Death;

(ii) Injury; or

(iii) Response or restoration activities for an exposure of an environmental receptor;

(2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and Section 5.25 is less than the distance to any public receptor, as defined in Section 5.30; and

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(c) Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not

meet the eligibility requirements of either paragraph (b) or paragraph (d) of this section.

(d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the following conditions is met:

(1) The process is in NAICS code 325181, 325211, 325311, 32532, 32411, 32211, 325188, 32511, 325192, 325199; or

(2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

(e) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in Section 5.190.

### **Section 5.12 General Requirements**

(a) General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in Sections. 5.150 to 5.185. The RMP shall include a registration that reflects all covered processes.

(b) Program 1 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in Section 5.10(b), shall:

(1) Analyze the worst-case release scenario for the process(es), as provided in Section 5.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in Section 5.22(a); and submit in the RMP the worst-case release scenario as provided in Section 5.165;

(2) Complete the five-year accident history for the process as provided in Section 5.42 of this part and submit it in the RMP as provided in Section 5.168;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies; and

(4) Certify in the RMP the following: “Based on the criteria in Section 5.10 (40 CFR 68.10), the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused off-site impacts provided in the risk management program rule ( Section 5.10(b)(1)). No additional measures are necessary to prevent off-site impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP.

The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed.]”

(c) Program 2 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in Section 5.10(c), shall:

(1) Develop and implement a management system as provided in Section 5.15;

(2) Conduct a hazard assessment as provided in Sections. 5.20 through 5.42;

(3) Implement the Program 2 prevention steps provided in Sections. 5.48 through 5.60 or implement the Program 3 prevention steps provided in Sections. 5.65 through 5.87;

(4) Develop and implement an emergency response program as provided in Sections. 5.90 to 5.95; and

(5) Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in Section 5.170.

(d) Program 3 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in Section 5.10(d) shall:

(1) Develop and implement a management system as provided in Section 5.15;

(2) Conduct a hazard assessment as provided in Sections. 5.20 through 5.42;

(3) Implement the prevention requirements of Sections. 5.65 through 5.87;

(4) Develop and implement an emergency response program as provided in Sections. 5.90 to 5.95 of this part; and

(5) Submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in Section 5.175.

### **Section 5.15 Management**

(a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

**Subpart B--Hazard Assessment****Section 5.20 Applicability**

An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under Section 5.115, shall prepare a worst-case release scenario analysis as provided in Section 5.25 of this part and complete the five-year accident history as provided in Section 5.42. The owner or operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

**Section 5.22 Off-site Consequence Analysis Parameters**

(a) Endpoints. For analyses of off-site consequences, the following endpoints shall be used:

(1) Toxics. The toxic endpoints provided in Table 3 of this part.

(2) Flammables. The endpoints for flammables vary according to the scenarios studied:

(i) Explosion. An overpressure of 1 psi.

(ii) Radiant heat/exposure time. A radiant heat of 5 kw/m<sup>2</sup> for 40 seconds.

(iii) Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

(b) Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and atmospheric stability class of F. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

(c) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Off-site Consequence Analysis Guidance may use 25 deg.C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical temperature/humidity data gathered at the stationary source or at a local meteorological station.

(d) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

(e) Surface roughness. The owner or operator shall use

either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(f) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(g) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

**Section 5.25 Worst-Case Release Scenario Analysis**

(a) The owner or operator shall analyze and report in the RMP:

(1) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(2) For Program 2 and 3 processes:

(i) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in Table 3 of this regulation resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in Section 5.22;

(ii) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 5.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in Section 5.22; and

(iii) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (a)(2)(i) or (a)(2)(ii) of this section.

(b) Determination of worst-case release quantity. The worst-case release quantity shall be the greater of the following:

(1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

(2) For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

(c) Worst-case release scenario--toxic gases.

(1) For regulated toxic substances that are normally gases at ambient temperature and handled as a gas

or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

(2) For gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

(d) Worst-case release scenario--toxic liquids.

(1) For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool.

(i) The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

(ii) If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into account the actual surface characteristics.

(2) The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

(3) The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Off-site Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(e) Worst-case release scenario--flammables. The owner or operator shall assume that the quantity of the

substance, as determined under paragraph (b) of this section, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT-equivalent methods.

(f) Parameters to be applied. The owner or operator shall use the parameters defined in Section 5.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(g) Consideration of passive mitigation. Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

(h) Factors in selecting a worst-case scenario. Notwithstanding the provisions of paragraph (b) of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in Section 5.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:

(1) Smaller quantities handled at higher process temperature or pressure; and

(2) Proximity to the boundary of the stationary source.

### **Section 5.28 Alternative Release Scenario Analysis**

(a) The number of scenarios. The owner or operator of Program 2 and Program 3 processes shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes.

(b) Scenarios to consider.

(1) For each scenario required under paragraph (a) of this section, the owner or operator shall select a scenario:

(i) That is more likely to occur than the worst-case release scenario under Section 5.25; and (ii) That will reach an endpoint off-site, unless no such scenario exists.

(2) Release scenarios considered should include, but are not limited to, the following, where applicable: (i)

Transfer hose releases due to splits or sudden hose uncoupling;

(ii) Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

(iii) Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

(iv) Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and

(v) Shipping container mishandling and breakage or puncturing leading to a spill.

(c) Parameters to be applied. The owner or operator shall use the appropriate parameters defined in Section 5.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(d) Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

(e) Factors in selecting scenarios.

The owner or operator shall consider the following in selecting alternative release scenarios:

(1) The five-year accident history provided in Section 5.42; and

(2) Failure scenarios identified under Section 5.50 or Section 5.67.

### Section 5.30 Defining Off-site Impacts--Population

(a) The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 5.22(a).

(b) Population to be defined. Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(c) Data sources acceptable. The owner or operator may use the most recent census data, or other updated information, to estimate the population potentially affected.

(d) Level of accuracy. Population shall be estimated to two significant digits.

### Section 5.33 Defining Off-site Impacts--environment

(a) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 5.22(a) of this part.

(b) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

### Section 5.36 Review and Update

(a) The owner or operator shall review and update the off-site consequence analyses at least once every five years.

(b) If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change and submit a revised risk management plan as provided in Section 5.190.

### Section 5.39 Documentation

The owner or operator shall maintain the following records on the off-site consequence analyses:

(a) For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

(b) For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

(c) Documentation of estimated quantity released, release rate, and duration of release.

(d) Methodology used to determine distance to endpoints.

(e) Data used to estimate population and environmental receptors potentially affected.

### Section 5.42 Five-Year Accident History.

(a) The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known off-site deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.



(b) Data required. For each accidental release included, the owner or operator shall report the following information:

- (1) Date, time, and approximate duration of the release;
- (2) Chemical(s) released;
- (3) Estimated quantity released in pounds;
- (4) The type of release event and its source;
- (5) Weather conditions, if known;
- (6) On-site impacts;
- (7) Known off-site impacts;
- (8) Initiating event and contributing factors, if known;
- (9) Whether off-site responders were notified, if known; and
- (10) Operational or process changes that resulted from investigation of the release.

(c) Level of accuracy. Numerical estimates may be provided to two significant digits.

### **Subpart C--Program 2 Prevention Program**

#### **Section 5.48 Safety Information**

(a) The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

- (1) Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g);
- (2) Maximum intended inventory of equipment in which the regulated substances are stored or processed;
- (3) Safe upper and lower temperatures, pressures, flows, and compositions;
- (4) Equipment specifications; and
- (5) Codes and standards used to design, build, and operate the process.

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

(c) The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

#### **Section 5.50 Hazard Review**

(a) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

- (1) The hazards associated with the process and regulated substances;
- (2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;
- (3) The safeguards used or needed to control the

hazards or prevent equipment malfunction or human error; and

(4) Any steps used or needed to detect or monitor releases.

(b) The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

(c) The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

(d) The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

#### **Section 5.52 Operating Procedures**

(a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(b) The procedures shall address the following:

- (1) Initial startup;
- (2) Normal operations;
- (3) Temporary operations;
- (4) Emergency shutdown and operations;
- (5) Normal shutdown;
- (6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;
- (7) Consequences of deviations and steps required to correct or avoid deviations; and
- (8) Equipment inspections.

(c) The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

#### **Section 5.54 Training**

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in Section 5.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the

required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

(c) The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

#### **Section 5.56 Maintenance**

(a) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

(b) The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

(c) Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under paragraph (a) of this section.

(d) The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

#### **Section 5.58 Compliance Audits**

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are

being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) The owner or operator shall develop a report of the audit findings.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

#### **Section 5.60 Incident Investigation**

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

- (1) Date of incident;
- (2) Date investigation began;
- (3) Description of the incident;
- (4) The factors that contributed to the incident;

and,

(5) Any recommendations resulting from the investigation.

(d) The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective actions shall be documented.

(e) The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

(f) Investigation summaries shall be retained for five years.

#### **Subpart D--Program 3 Prevention Program**

##### **Section 5.65 Process Safety Information**

(a) In accordance with the schedule set forth in Section 5.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this subpart. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

- (1) Toxicity information;
- (2) Permissible exposure limits;
- (3) Physical data;
- (4) Reactivity data;
- (5) Corrosion data;
- (6) Thermal and chemical stability data; and
- (7) Hazardous effects of inadvertent mixing of

different materials that could foreseeably occur.

*Note to paragraph (b):* Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(c) Information pertaining to the technology of the process.

(1) Information concerning the technology of the process shall include at least the following:

- (i) A block flow diagram or simplified process flow diagram;
- (ii) Process chemistry;
- (iii) Maximum intended inventory;
- (iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and
- (v) An evaluation of the consequences of deviations.

(2) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

- (i) Materials of construction;
- (ii) Piping and instrument diagrams (P&ID's);
- (iii) Electrical classification;
- (iv) Relief system design and design basis;
- (v) Ventilation system design;
- (vi) Design codes and standards employed;
- (vii) Material and energy balances for processes built after June 21, 1999; and
- (viii) Safety systems (e.g. interlocks, detection or suppression systems).

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

### **Section 5.67 Process Hazard Analysis**

(a) The owner or operator shall perform an initial process hazard analysis on processes covered by Program Level 3. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

(b) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

- (1) What-If;
- (2) Checklist;
- (3) What-If/Checklist;
- (4) Hazard and Operability Study (HAZOP);
- (5) Failure Mode and Effects Analysis (FMEA);
- (6) Fault Tree Analysis; or
- (7) An appropriate equivalent methodology.

(c) The process hazard analysis shall address:

- (1) The hazards of the process;
- (2) The identification of any previous incident which had a likely potential for catastrophic consequences;
- (3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);
- (4) Consequences of failure of engineering and administrative controls;
- (5) Stationary source siting;
- (6) Human factors; and
- (7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

(d) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely

manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.

(g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

### Section 5.69 Operating Procedures

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(1) Steps for each operating phase:

- (i) Initial startup;
- (ii) Normal operations;
- (iii) Temporary operations;
- (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner;

- (v) Emergency operations;
- (vi) Normal shutdown; and,
- (vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

- (i) Consequences of deviation and
- (ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

- (i) Properties of, and hazards presented by, the chemicals used in the process;
- (ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;
- (iii) Control measures to be taken if physical contact or airborne exposure occurs;
- (iv) Quality control for raw materials and control of hazardous chemical inventory levels and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(b) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(d) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

### Section 5.71 Training.

(a) Initial training.

(1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in Section 5.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999, an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) Training documentation. The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

### Section 5.73 Mechanical Integrity

(a) Application. Paragraphs (b) through (f) of this

section apply to the following process equipment:

- (1) Pressure vessels and storage tanks;
- (2) Piping systems (including piping components such as valves);
- (3) Relief and vent systems and devices;
- (4) Emergency shutdown systems;
- (5) Controls (including monitoring devices and sensors, alarms, and interlocks); and
- (6) Pumps.

(b) Written procedures. The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(c) Training for process maintenance activities. The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(d) Inspection and testing.

(1) Inspections and tests shall be performed on process equipment.

(2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(e) Equipment deficiencies. The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in Section 5.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(f) Quality assurance.

(1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be

used.

### **Section 5.75 Management of Change**

(a) The owner or operator shall establish and implement written procedures to manage changes (except for 'replacements in kind') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

- (1) The technical basis for the proposed change;
- (2) Impact of change on safety and health;
- (3) Modifications to operating procedures;
- (4) Necessary time period for the change; and,
- (5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(d) If a change covered by this paragraph results in a change in the process safety information required by Section 5.65 of this part, such information shall be updated accordingly.

(e) If a change covered by this paragraph results in a change in the operating procedures or practices required by Section 5.69, such procedures or practices shall be updated accordingly.

### **Section 5.77 Pre-startup Review**

(a) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

- (1) Construction and equipment is in accordance with design specifications;
- (2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;
- (3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, Section 5.75; and
- (4) Training of each employee involved in operating a process has been completed.

### **Section 5.79 Compliance Audits**

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are

being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

### Section 5.81 Incident Investigation

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

- (1) Date of incident;
- (2) Date investigation began;
- (3) A description of the incident;
- (4) The factors that contributed to the incident;

and,

(5) Any recommendations resulting from the investigation.

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(f) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(g) Incident investigation reports shall be retained for five years.

### Section 5.83 Employee Participation

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this regulation.

(c) The owner or operator shall provide to employees

and their representatives access to process hazard analyses and to all other information required to be developed under this regulation.

### Section 5.85 Hot Work Permit

(a) The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

### Section 5.87 Contractors

(a) Application. This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(b) Owner or operator responsibilities.

(1) The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

(2) The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(3) The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this regulation.

(4) The owner or operator shall develop and implement safe work practices consistent with Section 5.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

(5) The owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

(c) Contract owner or operator responsibilities.

(1) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(2) The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(3) The contract owner or operator shall document

that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(4) The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by Section 5.69(d).

(5) The contract owner or operator shall advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

### **Subpart E--Emergency Response**

#### **Section 5.90 Applicability**

(a) Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of Section 5.95.

(b) The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with Section 5.95 of this part provided that they meet the following:

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003;

(2) For stationary sources with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

#### **Section 5.95 Emergency Response Program**

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

(b) A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance ("One Plan") and that, among other matters, includes the elements provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph (c) of this section.

(c) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

### **Subpart F--Regulated Substances for Accidental Release Prevention**

#### **Section 5.100 Purpose**

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended and identifies their threshold quantities.

#### **Section 5.115 Threshold Determination**

(a) A threshold quantity of a regulated substance listed in Section 5.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

(1) *Concentrations of a regulated toxic substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source. Except for oleum, toluene 2,4-diisocyanate, toluene 2,6-diisocyanate, and toluene diisocyanate (unspecified isomer), if the concentration of the regulated substance in the mixture is one percent or greater by weight, but the owner or operator can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of the process need

not be considered when determining whether more than a threshold quantity is present at the stationary source. The owner or operator shall document this partial pressure measurement or estimate.

(2) *Concentrations of a regulated flammable substance in a mixture.*

(i) *General provision.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b)(2)(ii) and (iii) of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. The owner or operator shall document the National Fire Protection Association flammability hazard rating.

(ii) *Gasoline.* Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

(iii) *Naturally occurring hydrocarbon mixtures.* Prior to entry into a natural gas processing plant or

a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in Section 5.3 of this part.

(3) *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(4) *Uses.* Regulated substances, when in use for the following purposes, need not be included in determining whether more than a threshold quantity is present at the stationary source:

(i) Use as a structural component of the stationary source;

(ii) Use of products for routine janitorial maintenance;

(iii) Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance; and

(iv) Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

(5) *Activities in laboratories.* If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

(i) Specialty chemical production;

(ii) Manufacture, processing, or use of substances in pilot plant scale operations; and

(iii) Activities conducted outside the laboratory.

#### **Section 5.125 Exemptions.**

*Agricultural nutrients.* Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this regulation.

#### **Section 5.130 List of Substances.**

(a) Regulated toxic and flammable substances under Section 112(r) of the Clean Air Act are the substances listed in Tables 1 and 2, Threshold quantities for listed toxic and flammable substances are specified in the tables.

(b) The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.



**Table 1: List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention**

Chemical Name	CAS #	Threshold Quantity (lbs)	Basis for Listing
Acrolein [2-Propenal]	107-02-8	5,000	b
Acrylonitrile [2-Propenenitrile]	107-13-1	20,000	b
Acrylyl chloride [2-Propenoyl chloride]	814-68-6	5,000	b
Allyl alcohol [2-Propen-1-ol]	107-18-61	15,000	b
Allylamine [2-Propen-1-amine]	107-11-9	10,000	b
Ammonia (anhydrous)	7664-41-7	10,000	a, b
Ammonia (conc 20% or greater)	7664-41-7	20,000	a, b
Arsenous trichloride	7784-34-1	15,000	b
Arsine	7784-42-1	1,000	b
Boron trichloride [Borane, trichloro-]	10294-34-5	5,000	b
Boron trifluoride [Borane, trifluoro-]	7637-07-2	5,000	b
Boron trifluoride with methyl ether (1:1) [Boron, trifluoro[oxybis(methane)]-, T-4-	353-42-4	15,000	b
Bromine	7726-95-6	10,000	a, b
Carbon Disulfide	75-15-0	20,000	b
Chlorine	7782-50-5	2,500	a, b
Chlorine Dioxide [Chlorine oxide (ClO <sub>2</sub> )]	10049-04-4	1,000	c
Chloroform [Methane, trichloro-]	67-66-3	20,000	b
Chloromethyl ether [Methane, oxybis[chloro]]	542-88-1	1,000	b
Chloromethyl methyl ether [Methane, chloromethoxy-]	107-30-2	5,000	b
Crotonaldehyde [2-Butenal]	4170-30-3	20,000	b
Crotonaldehyde, (E)-[2-Butenal, (E)-]	123-73-9	20,000	b
Cyanogen chloride	506-77-4	10,000	c
Cyclohexylamine [Cyclohexanamine]	108-91-8	15,000	b
Diborane	19287-45-7	2,500	b
Dimethyldichlorosilane [Silane, dichlorodimethyl-]	75-78-5	5,000	b
1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	57-14-7	15,000	b
Epichlorohydrin [Oxirane, (chloromethyl)-]	106-89-8	20,000	b
Ethylenediamine [1,2-Ethanediamine]	107-15-3	20,000	b
Ethyleneimine [Aziridine]	151-56-4	10,000	b
Ethylene Oxide [Oxirane]	75-21-8	10,000	a, b
Fluorine	7782-41-4	1,000	b
Formaldehyde (solution)	50-00-0	15,000	b
Furan	110-00-9	5,000	b
Hydrazine	302-01-2	15,000	b
Hydrochloric acid (conc 37% or greater)	7647-01-0	15,000	d
Hydrocyanic acid	74-90-8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid]	7647-01-0	5,000	a
Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	7664-39-3	1,000	a, b
Hydrogen selenide	7783-07-5	500	b
Hydrogen sulfide	7783-06-4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) <sub>5</sub> , (TB-5-11)-]	13463-40-6	2,500	b
Isobutyronitrile [Propanenitrile, 2-methyl-]	78-82-0	20,000	b
Isopropyl chloroformate [Carbonochloridic acid, methylester]	108-23-6	15,000	b
Methacrylonitrile [2-Propenenitrile, 2-methyl-]	126-98-7	10,000	b
Methyl chloride [Methane, chloro-]	74-87-3	10,000	a
Methyl chloroformate [Carbonochloridic acid, methylester]	79-22-1	5,000	b
Methyl hydrazine [Hydrazine, methyl-]	60-34-4	15,000	b
Methyl isocyanate [Methane, isocyanato-]	624-83-9	10,000	a, b
Methyl mercaptan [Methanethiol]	74-93-1	10,000	b
Methyl thiocyanate [Thiocyanic acid, methyl ester]	556-64-9	20,000	b
Methyltrichlorosilane [Silane, trichloromethyl-]	75-79-6	5,000	b
Nickel carbonyl	13463-39-3	1,000	b
Nitric acid (conc 80% or greater)	7697-37-2	15,000	b
Nitric oxide [Nitrogen oxide (NO)]	10102-43-9	10,000	b

# PROPOSED REGULATIONS

Oleum (Fuming sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	8014-95-7	10,000	e
Peracetic acid [Ethaneperoxoic acid]	79-21-0	10,000	b
Perchloromethylmercaptan [methanesulfonyl chloride, trichloro-]	594-42-3	10,000	b
Phosgene [Carbonic dichloride]	75-44-5	500	a, b
Phosphine	7803-51-2	5,000	b
Phosphorus oxychloride [Phosphoyl chloride]	10025-87-3	5,000	b
Phosphorus trichloride [Phosphorous trichloride]	7719-12-2	15,000	b
Piperdine	110-89-4	15,000	b
Propionitrile [Propanenitrile]	107-12-0	10,000	b
Propyl chloroformate [Cabanochloridic acid, propylester]	109-61-5	15,000	b
Propyleneimine [Aziridine, 2-methyl-]	75-55-8	10,000	b
Propylene oxide [Oxirane, methyl-]	75-56-9	10,000	b
Sulfur Dioxide (anhydrous)	7446-09-5	5,000	a, b
Sulfur tetrafluoride [Sulfur fluoride (SF <sub>4</sub> ), (T-4)-]	7783-60-0	2,500	b
Sulfur trioxide	7446-11-9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-]	75-74-1	10,000	b
Tetranitromethane [Methane, tetranitro-]	509-14-8	10,000	b
Titanium tetrachloride [Titanium chloride (TiCl <sub>4</sub> ), (T-4)]	7550-45-0	2,500	b
Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] <sup>1</sup>	584-84-9	10,000	a
Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] <sup>1</sup>	91-08-7	10,000	a
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] <sup>1</sup>	26471-62-5	10,000	a
Trimethylchlorosilane [Silane, chlorotrimethyl-]	75-77-4	10,000	b
Vinyl acetate monomer [Acetic acid ethenyl ester]	108-05-4	15,000	b

<sup>1</sup> The mixture exemption in Sec. 5.115(b)(1) does not apply to the substance.

Note: Basis for Listing:

- a Mandated for listing by EPA by Congress in Section 112(r) of the 1990 Clean Air Act.
- b Listed on the 40 CFR Part 302 EHS list and has a vapor pressure of 10 mmHg or greater.

c Toxic gas.

d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

**Table 2: List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention**

Chemical Name	CAS #	Threshold Quantity (lbs)	Basis for Listing
Acetaldehyde	75-07-0	10,000	g
Acetylene [Ethyne]	74-86-2	10,000	f
Bromotrifluoroethylene [Ethene, bromotrifluoro-]	598-73-2	10,000	f
1,3-Butadiene	106-99-0	10,000	f
Butane	106-97-8	10,000	f
1-Butene	106-98-9	10,000	f
2-Butene	107-01-7	10,000	f
Butene	25167-67-3	10,000	f
2-Butene-cis	590-18-1	10,000	f
2-Butene-trans [2-Butene, (E)]	624-64-6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463-58-1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791-21-1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557-98-2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590-21-6	10,000	g
Cyanogen [Ethanedinitrile]	460-19-5	10,000	f
Cyclopropane	75-19-4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109-96-0	10,000	f
Difluoroethane [Ethane, 1,1-difluoro-]	75-37-6	10,000	f

# PROPOSED REGULATIONS

Dimethylamine [Methanamine, N-methyl-]	124-40-3	10,000	f
2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	10,000	f
Ethane	74-84-0	10,000	f
Ethyl acetylene [1-Butyne]	107-00-6	10,000	f
Ethylamine [Ethanamine]	75-04-7	10,000	f
Ethyl chloride [Ethane, chloro-]	75-00-3	10,000	f
Ethylene [Ethene]	74-85-1	10,000	f
Ethyl ether [Ethane, 1,1oxybis-]	60-29-7	10,000	g
Ethyl mercaptan [Ethanethiol]	75-08-1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109-95-5	10,000	f
Hydrogen	1333-74-0	10,000	f
Isobutane [Propane, 2-methyl]	75-28-5	10,000	f
Isopentane [Butane, 2-methyl]	78-78-4	10,000	g
Isoprene [1,3-Butadiene, 2-methyl-]	78-79-5	10,000	g
Isopropylamine [2-Propanamine]	75-31-0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75-29-6	10,000	g
Methane	74-82-8	10,000	f
Methylamine [Methanamine]	74-89-5	10,000	f
3-Methyl-1-butene	563-45-1	10,000	f
2-Methyl-1-butene	563-46-2	10,000	g
Methyl ether [Methane, oxybis-]	115-10-6	10,000	f
Methyl formate [Formic acid, methyl ester]	107-31-3	10,000	g
2 Methylpropene [1-Propene, 2-methyl-]	115-11-7	10,000	f
1,3-Pentadiene	504-60-9	10,000	f
Pentane	109-66-0	10,000	g
1-Pentene	109-67-1	10,000	g
2-Pentene, (E)-	646-04-8	10,000	g
2-Pentene, (Z)-	627-20-3	10,000	g
Propadiene [1,2-Propadiene]	463-49-0	10,000	f
Propane	74-98-6	10,000	f
Propylene [1-Propene]	115-07-1	10,000	f
Propyne [1-Propyne]	74-99-7	10,000	f
Silane	7803-62-5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116-14-3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75-76-3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025-78-2	10,000	g
Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79-38-9	10,000	f
Trimethylamine [Methylamine, N,N-dimethyl-]	75-50-3	10,000	f
Vinyl acetylene [1-Buten-3-yne]	689-97-4	10,000	f
Vinyl chloride [Ethene, chloro-]	75-01-4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109-92-2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75-02-5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75-35-4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75-38-7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107-25-5	10,000	f

7784-34-1 Arsenous trichloride 0.010

Note: Basis for Listing:

- a Mandated for listing by EPA by Congress in Section 112(r) of the 1990 Clean Air Act.
- f Flammable gas.
- g Volatile flammable liquid.

7784-42-1	Arsine	0.0019
10294-34-5	Boron trichloride [Borane, trichloro-]	0.010
7637-07-2	Boron trifluoride [Borane, trifluoro-]	0.028
353-42-4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis(methane)]-, T-4	0.023
7726-95-6	Bromine	0.0065
75-15-0	Carbon disulfide	0.16
7782-50-5	Chlorine	0.0087
10049-04-4	Chlorine dioxide [Chlorine oxide (ClO <sub>2</sub> )]	0.0028
67-66-3	Chloroform [Methane, trichloro-]	0.49
542-88-1	Chloromethyl ether [Methane, oxybis(chloro-)]	0.00025
107-30-2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170-30-3	Crotonaldehyde [2-Butenal]	0.029
123-73-9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506-77-4	Cyanogen chloride	0.030
108-91-8	Cyclohexylamine [Cyclohexanamine]	0.16
19287-45-7	Diborane	0.0011
75-78-5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	

Table 3: List of Toxic Endpoints

CAS No.	Chemical Name	Toxic Endpoint (mg/L)
107-02-8	Acrolein [2-Propenal]	0.0011
107-13-1	Acrylonitrile [2-Propenenitrile]	0.076
814-68-6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107-18-6	Allyl alcohol [2-Propen-1-ol]	0.036
107-11-9	Allylamine [2-Propen-1-amine]	0.0032
7664-41-7	Ammonia (anhydrous)	0.14
7664-41-7	Ammonia (conc 20% or greater)	0.14

		0.026
57-14-7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106-89-8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107-15-3	Ethylenediamine [1,2-Ethanediamine]	0.49
151-56-4	Ethyleneimine [Aziridine]	0.018
75-21-8	Ethylene oxide [Oxirane]	0.090
7782-41-4	Fluorine	0.0039
50-00-0	Formaldehyde (solution)	0.012
110-00-9	Furan	0.0012
302-01-2	Hydrazine	0.011
7647-01-0	Hydrochloric acid (conc 30% or greater)	0.030
74-90-8	Hydrocyanic acid	0.011
7647-01-0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664-39-3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	0.016
7783-07-5	Hydrogen selenide	0.00066
7783-06-4	Hydrogen sulfide	0.042
13463-40-6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO) <sub>5</sub> ), (TB-5-11)-]	0.00044
78-82-0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108-23-6	Isopropyl chloroformate [Carbonochloride acid, 1-methylethyl ester]	0.10
126-98-7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027
74-87-3	Methyl chloride [Methane, chloro-]	0.82
9-22-1	Methyl chloroformate [Carbonochloridic acid, methyl ester]	0.0019
60-34-4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624-83-9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74-93-1	Methyl mercaptan [Methanethiol]	0.049
556-64-9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75-79-6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463-39-3	Nickel carbonyl	0.00067
7697-37-2	Nitric acid (conc 80% or greater)	0.026
10102-43-9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014-95-7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79-21-0	Peracetic acid [Ethaneperoxoic acid]	0.0045
594-42-3	Perchloromethylmercaptan [Methanesulfonyl chloride, trichloro-]	0.0076
75-44-5	Phosgene [Carbonic dichloride]	0.00081
7803-51-2	Phosphine	0.0035
10025-87-3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719-12-2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110-89-4	Piperidine	0.022
107-12-0	Propionitrile [Propanenitrile]	0.0037
109-61-5	Propyl chloroformate [Carbonochloridic acid, propylester]	0.010
75-55-8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75-56-9	Propylene oxide [Oxirane, methyl-]	0.59
7446-09-5	Sulfur dioxide (anhydrous)	0.0078
7783-60-0	Sulfur tetrafluoride [Sulfur fluoride (SF <sub>4</sub> ), (T-4)-]	0.0092
7446-11-9	Sulfur trioxide	0.010
75-74-1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509-14-8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750-45-0	Titanium tetrachloride [Titanium chloride (TiCl <sub>4</sub> ), (T-4)-]	0.020
584-84-9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91-08-7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471-62-5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]	0.0070
75-77-4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108-05-4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

### Subpart G--Risk Management Plan

**Section 5.150 Submission Note:** The data elements of the

Plan are required to be submitted to the EPA. The data elements of the plan are based upon 40 CFR 68.150 through 68.190 reprinted here under Sections 5.150 through 5.190. It is the responsibility of the owner or operator to meet the existing EPA risk management plan data submittal requirements at the time of submission.

(a) The owner or operator shall submit a single RMP that includes the information required by Sections 5.155 through 5.185 for all covered processes. The RMP shall be submitted in a method and format to a central point as specified by EPA prior to June 21, 1999.

(b) The owner or operator shall submit the first RMP no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed by EPA pursuant to 5.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(c) Subsequent submissions of RMPs shall be in accordance with 5.190.

(d) Notwithstanding the provisions of 5.155 to 5.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

### Section 5.155 Executive Summary

The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

(a) The accidental release prevention and emergency response policies at the stationary source;

(b) The stationary source and regulated substances handled;

(c) The worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;

(d) The general accidental release prevention program and chemical-specific prevention steps;

(e) The five-year accident history;

(f) The emergency response program; and

(g) Planned changes to improve safety.

### Section 5.160 Registration

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude;

(2) The stationary source Dun and Bradstreet

number;

(3) Name and Dun and Bradstreet number of the corporate parent company;

(4) The name, telephone number, and mailing address of the owner or operator;

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation;

(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact;

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the NAICS code, and the Program level of the process;

(8) The stationary source EPA identifier;

(9) The number of full-time employees at the stationary source;

(10) Whether the stationary source is subject to 29 CFR 1910.119;

(11) Whether the stationary source is subject to 40 CFR part 355;

(12) Whether the stationary source has a CAA Title V operating permit; and

(13) The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

#### **Section 5.165 Off-site Consequence Analysis**

(a) The owner or operator shall submit in the RMP information:

(1) One worst-case release scenario for each Program 1 process; and

(2) For Program 2 and 3 processes, one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. If additional worst-case scenarios for toxics or flammables are required by Section 5.25(a)(2)(iii), the owner or operator shall submit the same information on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Physical state (toxics only);

(3) Basis of results (give model name if used);

(4) Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);

(5) Quantity released in pounds;

(6) Release rate;

(7) Release duration;

(8) Wind speed and atmospheric stability class (toxics only);

(9) Topography (toxics only);

(10) Distance to endpoint;

(11) Public and environmental receptors within the distance;

(12) Passive mitigation considered; and

(13) Active mitigation considered (alternative releases only);

#### **Section 5.168 Five-year Accident History**

The owner or operator shall submit in the RMP the information provided in Section 5.42(b) on each accident covered by Section 5.42(a).

#### **Section 5.170 Prevention Program/Program 2**

(a) For each Program 2 process, the owner or operator shall provide in the RMP the information indicated in paragraphs (b) through (k) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The NAICS code for the process.

(c) The name(s) of the chemical(s) covered.

(d) The date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.

(e) The date of completion of the most recent hazard review or update.

(1) The expected date of completion of any changes resulting from the hazard review;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided--classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent compliance audit and the expected date of completion of any changes resulting from

the compliance audit.

(j) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

(k) The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

### Section 5.175 Prevention Program/Program 3

(a) For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The NAICS code for the process.

(c) The name(s) of the substance(s) covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided--classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

(j) The date of the most recent pre-startup review.

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

(l) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

(m) The date of the most recent review or revision of employee participation plans;

(n) The date of the most recent review or revision of hot work permit procedures;

(o) The date of the most recent review or revision of contractor safety procedures; and

(p) The date of the most recent evaluation of contractor safety performance.

### Section 5.180 Emergency Response Program

(a) The owner or operator shall provide in the RMP the following information:

(1) Do you have a written emergency response plan?

(2) Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

(3) Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

(4) Does the plan include information on emergency health care?

(5) The date of the most recent review or update of the emergency response plan;

(6) The date of the most recent emergency response training for employees.

(b) The owner or operator shall provide the name and telephone number of the local agency with which the plan is coordinated.

(c) The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

### Section 5.185 Certification

(a) For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in Section 5.12(b)(4).

(b) For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

### Section 5.190 Updates

(a) The owner or operator shall review and update the RMP submitted under 40 CFR 68.150 (Section 5.150) as specified in paragraph 5.190(b) and submit it in a method and format to a central point specified by EPA prior to June 21, 1999.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under 5.150 as follows:

(1) Within five years of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later;

(2) No later than three years after a newly regulated substance is first listed by EPA;

(3) No later than the date on which a new regulated

substance is first present in an already covered process above a threshold quantity;

(4) No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

(5) Within six months of a change that requires a revised PHA or hazard review;

(6) Within six months of a change that requires a revised off-site consequence analysis as provided in 5.36; and

(7) Within six months of a change that alters the Program level that applied to any covered process.

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a revised registration to EPA within six months indicating that the stationary source is no longer covered.

## **Subpart H--Other Requirements**

### **Section 5.200 Record Keeping**

The owner or operator shall maintain records supporting the implementation of this regulation for five years unless otherwise provided in subpart D.

### **Section 5.210 Availability of Information to the Public**

(a) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c).

(b) The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

### **Section 5.215 Permit Content and Designated Agency Requirements**

(a) These requirements apply to any stationary source subject to Section 5.130 and State of Delaware "Regulations Governing the Control of Air Pollution", Regulation No. 30.

The Regulation No. 30 permit for the stationary source shall contain:

(1) A statement listing this part as an applicable requirement;

(2) Conditions that require the source owner or operator to submit:

(i) A compliance schedule for meeting the requirements of this regulation by the date provided in Section 5.10(a) or;

(ii) As part of the compliance certification submitted under Regulation 30 Section 6(c)(5), a certification statement that the source is in compliance with all requirements of this regulation, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the Department.

(c) The Department shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or stationary source inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (c)(1) and (c)(2) of this section as appropriate.

## **Section 6. Additional Delaware Accidental Release Prevention Provisions**

This section is not federally enforceable.

### **Section 6.10 Applicability**

(a) Processes at the stationary source with regulated substances present in more than the threshold quantity as defined by Section 5.130 Table 1 or 2 of this regulation are not subject to Sections 6.10(b), 6.50 or 6.60.

(b) Processes with the regulated substance having any potential release quantity equal to or greater than the sufficient quantities as defined in either Section 6.20 Table 4, Section 6.30 Table 5 or Section 6.40 Table 6 and not subject to Section 5.130 [see 6.10(a)], shall:

(1) Implement the Risk Management Programs described in Section 5 for the appropriate program level;

(2) Perform a hazard assessment for the Delaware worst-case as required in 6.50;

(3) Submit a Risk Management Plan to the Department that complies with 6.60;

(4) Implement Section 5 Subpart E Emergency Response;

(5) Implement Section 5.200 Record Keeping; and

(6) Implement Section 5.15 Management.

(c) Processes in which ammonia is used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this regulation.

### **Section 6.20 Additional Delaware Regulated Toxic Substances**

Table 4 lists the extremely toxic substances and the sufficient quantities at a distance of 100 meters in pounds per hour that are regulated by the State of Delaware only.

(a) Regulated Delaware Toxic Substances and their Sufficient Quantities in pounds per hour at 100 meters.

Note: T=EPA listed toxic F= EPA listed flammable

**Table 4: Regulated Delaware Toxic Substances and Sufficient Quantities**

Chemical Name	CAS #	Sufficient Quantity (lbs/hr)	EPA Listed
Acrolein	107-02-8	150	T
Acrylyl chloride	814-68-6	200	T
Allylamine	107-11-9	1500	T
Arsine	7784-42-1	70	T
BIS (chloromethyl ether)	542-88-1	70	T
Boron trichloride	10294-34-5	2100	T
Boron trifluoride	7637-07-2	250	T
Bromine pentafluoride	7789-38-2	1600	
Bromine	7726-95-6	700	T
Bromine chloride	13863-41-7	1000	
Carbonyl fluoride	353-58-4	2100	
Chlorine	7782-50-5	1300	T
Chlorine dioxide	10049-04-4	600	T
Chlorine pentafluoride	13637-63-3	700	
Chlorine trifluoride	7790-91-2	1700	
Chloromethyl methyl ether	107-30-2	400	T
Chloropicrin	76-06-2	450	
Cyanogen	460-19-5	1600	F
Cyanogen chloride	506-77-4	300	T
Cyanuric fluoride	675-14-9	40	
Diazomethane	334-88-3	400	
Diborane	19287-45-7	80	T
Dichloroacetylene	7572-29-4	200	
Dichlorosilane	4189-96-8	2500	F
Ethylene fluorohydrin	371-62-8	20	
Ethyleneimine	151-56-4	1000	T
Ethylene oxide	75-21-8	3500	T
Fluorine	7782-41-4	600	T
Formaldehyde	50-00-0	700	T
Furan	110-00-9	300	T
Hexafluoroacetone	684-16-2	7500	
Hydrogen bromide	10035-10-6	3700	
Hydrogen chloride	7647-01-0	3300	T
Hydrogen cyanide	74-90-8	600	T
Hydrogen fluoride	7664-39-3	900	T
Hydrogen selenide	7783-07-5	150	T
Hydrogen sulfide	7783-06-4	3100	T
Iron pentacarbonyl	13463-40-6	200	T
Isopropyl formate	625-55-8	300	
Isopropylamine	75-35-1	4000	
Ketene	463-51-4	70	
Methacryloyl chloride	920-46-7	150	
Methacryloyloxethyl isocyanate	30674-00-7	60	
Methyl acrylonitrile	126-98-7	200	T
Methyl bromide	74-83-9	17000	
Methyl chloroformate	75-22-1	400	T
Methyl disulfide	624-92-0	25	
Methyl fluoroacetate	453-18-9	60	
Methyl fluorosulfate	421-20-5	50	
Methyl hydrazine	60-34-4	90	T
Methyl isocyanate	624-83-9	260	T
Methyl mercaptan	74-93-1	4300	T
Methyl vinyl ketone	78-94-4	15	
Methyltrichlorosilane	75-79-6	2000	T



Nickel carbonyl	13463-39-3	150	
Nitric acid (94.5 wt% or greater)	7697-37-2	300	
Nitric oxide	10102-43-9	200 as NO <sub>2</sub>	
Nitrogen oxides	10102-44-0	200 as NO <sub>2</sub>	
Oleum (65 wt% or greater)	8014-95-7	700 as SO <sub>3</sub>	
Osmium tetroxide	20816-12-0	20	
Oxygen difluoride	7783-41-7	10	
Ozone	10028-15-6	20	
Pentaborane	19624-22-7	20	
Perchloromethyl mercaptan	594-42-3	150	T
Perchloryl fluoride	7616-94-6	3600	
Phosgene	75-44-5	90	T
Phosphine	7803-51-2	30	T
Phosphorous trichloride	7719-12-2	600	T
Propargyl bromide	106-96-7	10	
Sarin	107-44-8	15	
Selenium hexafluoride	7783-79-1	900	
Stibine	7803-52-3	350	
Sulfur dioxide (liquid)	7446-09-5	900	T
Sulfur pentafluoride	5714-22-7	250	
Sulfur tetrafluoride	7783-60-0	200	T
Sulfur trioxide	7446-11-9	700	T
Tellurium hexafluoride	7783-80-4	200	
Tetrafluorohydrazine	10086-47-2	4700	
Thionyl chloride	7719-09-7	200	
Trichloro (chloromethyl) silane	1558-25-4	70	
Trichloro (dichlorophenyl) silane	27137-85-5	1800	
Trichlorosilane	10025-78-2	3300	F
Trimethoxysilane	2487-98-3	600	

(b) Calculation of Sufficient Quantity for Toxic Mixtures.

(1) To determine whether a mixture containing a regulated substance is to be regulated, the owner or operator shall calculate the substance hazard index (SHI) as follows:

$$SHI_{\text{mixture}} = SHI_{\text{pure regulated substance}} \times \text{Mole fraction of regulated substance in mixture}$$

As an alternative, the owner or operator may calculate the SHI of the mixture using equilibrium vapor pressure for the pure regulated substance above the mixture at 20°C.

(2) If the SHI calculated for the mixture is  $\geq 8000$  then the mixture shall be subject to the provision of this regulation.

(3) The sufficient quantity for the mixture shall be calculated as follows:

$$SQ_{\text{regulated substance}} \times \text{Weight fraction of regulated substance in mixture} = SQ_{\text{mixture}}$$

(c) Calculation of Potential Release Quantity (PRQ). Owners or operators with a regulated toxic substance present

in a process that is equal to or greater than the sufficient quantity shall calculate the maximum PRQ in accordance with the provisions of paragraph 6.50(b)(8).

(d) Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.10(b).

**Section 6.30 Additional Delaware Regulated Flammable and Combustible Substances**

(a) Flammable and Combustible liquids. The following flammable and combustible liquids and gases that are handled, used, produced, or stored equal to or greater than their sufficient quantities shall be regulated.

(1) All flammable gases (a regulated flammable substance that exists as a gas at standard pressure and temperature).

(2) Flammable and combustible liquids that are held at or above their atmospheric boiling point (benzene, gasoline and hexane have been included in Table 5 as examples of these higher boiling combustible substances which can be regulated if enough is present to form a vapor cloud greater than the sufficient quantity); and

(3) Flammable and combustible liquids which are

# PROPOSED REGULATIONS

held below ambient temperatures through refrigeration, but whose vapor pressure at 86°F is greater than one atmosphere.

(b) Flammable and combustible liquid exemption. Flammable and combustible liquids handled, used, produced or stored in atmospheric tanks below their atmospheric boiling point without the benefit of chilling or refrigeration are not regulated herein.

(c) Partial list of flammable and combustible liquids. Table 5 lists some of the most common flammable and combustible substances and their sufficient quantity release rates at a distance of 100 meters in pounds per minute.

**Table 5: Partial List of Delaware Regulated Flammable Substances**

Chemical Name	CAS #	Boiling Point (°F)	Sufficient Quantity (lbs/min)	EPA Listed
Acetaldehyde	75-07-0	69	4100	F
Acetylene	74-86-2	-118	1900	F
Ammonia	7664-41-7	-28	6700	T
Benzene	71-43-2	176	2600	
1,3 Butadiene	106-99-0	24	2800	F
Butane	106-97-8	31	3000	F
Butene	25167-67-3	21	2800	F
1-Butene	106-98-9	37.8	2700	F
2-Butene	107-01-7	37.8	2700	F
2-Butene trans	624-64-6	34	2800	F
2-Butene cis	590-18-1	38.7	2700	F
Carbon monoxide	7791-21-1	-314	10000	
2-Chloropropylene [1-Propene, 2-chloro]	557-98-2	73	8000	F
Cyclopropane	75-19-4	-29	2800	F
Difluoroethane [Ethane, 1,1-difluoro-]	75-37-6	-61	7300	F
Dimethylamine	124-40-3	45	3000	F
Dimethylpropane [Propane, 2,2-dimethyl-]	463-82-1	49	2900	F
Ethane	74-84-0	-128	2800	F
Ethyl acetylene	107-00-6	47	3000	F
Ethyamine	75-04-7	62	4000	F
Ethylene	74-85-1	-155	2300	F
Ethyl chloride	75-00-3	54	4600	F
Gasoline	8006-61-9	100-400	3300	
Hexane	100-64-3	156	2800	
Hydrogen	1333-74-0	-422	300	F
Isobutane [Propane, 2-methyl]	75-28-5	11	2900	F
Isopentane [Butane, 2-methyl]	78-78-4	82	2900	F
Methane	74-82-8	-259	2500	F
Methylamine	74-89-5	21	3900	F
3-Methyl-1-butene	563-45-1	68	3000	F
Methyl Ether	115-10-6	-11	4200	F
2-Methylpropene [1-Propene, 2-methyl-]	115-11-7	20	2900	F
1,3 Pentadinene	504-60-9	-45	2900	F
Propane	74-98-6	-44	2700	F
Propylene	115-07-1	-53	2600	F
1-Propyne	74-99-7	-10	2200	F
Silane	7803-62-5	-169	2200	F
Tetramethylsilane	75-76-3	80	3600	F
Trimethylamine	75-50-3	38	3000	F
Vinyl chloride	75-35-4	7	5300	F
Vinyl fluoride	75-38-7	-97.5	6000	F
Vinyl methyl ether	107-25-5	43	4100	F

(d) Calculation of the sufficient quantity. The sufficient quantity release rate for all flammable and combustible substances at a distance of 100 meters from the stationary source boundary shall be calculated using the following formula and by using propane as the release rate reference substance:

$$SQR_{R_x} = SQR_{R_p} MW_x^{0.81} LFL_x^{0.72} BP_p + 294$$

$$^{0.33} HC_p^{0.20} - MW_p - LFL_p - BP_x + 294 - HC_x -$$

where:

$SQR_{R_x}$  = Sufficient Quantity Release Rate for

Substance x in lbs vapor/min

$SQRR_p$  = Sufficient Quantity Release Rate for Propane

in lbs vapor/min

$MW_x$  = Molecular weight of Substance X

$MW_p$  = Molecular weight of Propane = 44

$LFL_x$  = Lower Flammable Limit of Substance X

$LFL_p$  = Lower Flammable Limit of Substance

Propane = 2.1%

$BP_x$  = Boiling Point of Substance X in °K

$BP_p$  = Boiling Point of Propane in °K = 229°K

$HC_p$  = Heat of Combustion of Propane in Btu/lb =

19,944 Btu/lb

$HC_x$  = Heat of Combustion of Substance X in Btu/lb

or operators with a regulated flammable or combustible substance present in a process that is equal to or greater than the sufficient quantity shall calculate the maximum PRQ in accordance with the provisions of paragraph 6.50(b)(8).

(f) Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.10(b).

### Section 6.40 Delaware Regulated Explosive Substances

(a) Delaware regulated explosive substances are listed in Table 6 with their sufficient quantities in pounds at 100 meters.

**Table 6: Delaware Regulated Explosive Substances**

(e) Calculation of Potential Release Quantity. Owners

Chemical Name	CAS #	Sufficient Quantity (lbs)	EPA Listed
Alkylaluminums (as tri-n-butylaluminum)	1116-70-7	4700	
Ammonium perchlorate	7790-98-9	6900	
Ammonium nitrate	6484-52-2	6200	
Ammonium permanganate	13446-10-1	6900	
Bromine trifluoride	7787-71-5	15000	
3-Bromopropyne	106-96-7	6100	
Butyl Hydroperoxide (tertiary)	75-91-2	3600	
Butyl Perbenzoate (tertiary)	614-45-9	6300	
Butyl Peroxyacetate (tertiary)	107-71-1	4300	
Butyl Peroxypivalate (tertiary)	927-07-1	8600	
Cellulose nitrate (not explosive grade)	9004-70-0	2300	
Chlorodiethylaluminum	96-10-6	4100	
1-Chloro-2,4-dinitrobenzene	97-00-7	3000	
Cumene hydroperoxide	80-15-9	4400	
Diacetyl peroxide (55% solution)	110-22-5	4200	
Dibenzoyl peroxide	94-36-0	6100	
Dibutyl peroxide (Tertiary)	110-05-4	4700	
Diethylzinc	557-20-0	7700	
Diisopropyl peroxydicarbonate	105-64-6	5200	
Dilauroyl peroxide	105-74-8	5800	
2, 4-Dinitroaniline	97-02-9	3000	
1,2-Dinitrobenzene, ortho	528-29-0	2700	
1,3-Dinitrobenzene, meta	99-65-0	2700	
1,4-Dinitrobenzene, para	100-25-4	2700	
2,3-Dinitrotoluene	602-01-7	3100	
2,4-Dinitrotoluene	121-14-2	3100	
2,5-Dinitrotoluene	619-15-8	3100	
2,6-Dinitrotoluene	606-20-2	3100	
3,4-Dinitrotoluene	610-39-9	3100	
3,5-Dinitrotoluene	618-85-8	3100	
Ethyl methyl ketone peroxide	19393-67-0	2700	
Ethyl nitrite	109-95-5	2800	F
Hydrogen peroxide (52% by weight or greater)	7722-84-1	5700	
Hydroxylamine	7803-49-8	2500	
2-Nitroaniline, ortho	88-74-4	3800	

3-Nitroaniline, meta	90-09-2	3800	
4-Nitroaniline, para	100-01-6	3800	
Nitroethane	79-24-3	2800	
Nitromethane	75-52-5	2300	
Perchloric acid	7601-90-3	12000	
Peroxyacetic Acid (60% acetic acid solution)	79-21-0	3200	T
Picric acid	88-89-1	2500	
Propyl Nitrate (normal)	627-13-4	2700	
Tetrafluoroethylene monomer	116-14-3	7500	F
1,2,4-Trinitrobenzene		2300	
2,3,4-Trinitrotoluene	602-29-3	2600	
2,3,5-Trinitrotoluene		2600	
2,3,6-Trinitrotoluene		2600	
2,4,5-Trinitrotoluene	610-25-3	2600	
2,4,6-Trinitrotoluene	118-96-7	2600	
3,4,5-Trinitrotoluene		2600	

\* When data was not available, TNT equivalents assumed to be 1:1. Processes subject to this section may use actual data in calculating sufficient quantity.

(b) Calculation of Potential Release Quantity. The potential release quantity for explosive substances is the sum of all physical quantities which are used, handled, produced, or stored in the process and which are neither separated by a distance of 100 meters nor are barricaded as defined in the explanatory notes for NFPA 495, Table 6-4.1.

(c) Applicability. If any potential release quantity equals or exceeds the sufficient quantity, then the owner or operator shall develop and implement a risk management program in accordance with Section 6.10(b).

### Section 6.50 Delaware Hazard Assessment

(a) The Delaware Hazard Assessment. The owner or operator of a stationary source subject to Section 6.10(b) shall prepare a Delaware worst-case release scenario analysis as provided in Section 6.50(b) of this section and complete the five-year accident history as provided in Section 5.42. The owner or operator of a Program 2 process must comply with Section 5 Subpart C and the owner or operator of a Program 3 process must comply with Section 5 Subpart D. The Delaware hazard assessment shall include:

- (1) An estimate of the potential release quantity;
- (2) A dispersion analysis in the case the scenario is for a regulated toxic, flammable or combustible substance;
- (3) An overpressure grid in the case the scenario is for a regulated explosive substance; and
- (4) A consequence analysis of the effects on surrounding populations.

(b) Off-site consequence analysis parameters.

(1) Endpoints. For analyses of off-site consequences, the following endpoints shall be used:

(i) Toxic substances. The toxic endpoints that shall be used in determining the distance to endpoint are as follows and the order that follows shall determine which

endpoint should be used if a substance is listed on several of the lists named below:

(A) AIHA 1997, ERPG-3 will be considered before;

(B) Acute Toxicities from New Jersey "Toxic Catastrophe Prevention Act" (TCPA) which will be considered before;

(C) Levels of concern from EPA's "Technical Guidance for Hazard Analysis: Emergency Planning for Extremely Hazardous Substances, December 1987" also known as the *Green Book*.

(ii) Flammable substances. The endpoint for regulated flammable and combustible substances shall be the radiant heat necessary to create second degree burns from a vapor cloud fire 100 meters from the source of the release or 1020.48 kJ/sec m<sup>2</sup>. The dispersion analysis shall account for movement of the vapor cloud under average Delaware weather conditions prior to ignition.

(iii) Explosive substances. The endpoint shall be the amount of overpressure necessary to cause eardrum rupture 100 meters from the release or 2.3 psi.

(2) Wind speed/atmospheric stability class. For the Delaware worst-case release analysis, the owner or operator shall use average Delaware weather conditions consisting of a wind speed of 4.3 meters per second and atmospheric stability class of D.

(3) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use 86 °F. An owner or operator may use 25 °C when using the RMP Off-site Consequence Analysis Guidance.

(4) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release.

(5) Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there

are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(6) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(7) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher.

(8) Maximum potential release rates for the Delaware worst-case scenario shall be calculated considering the following:

- (i) Catastrophic line failure (flow from both ends);
- (ii) Catastrophic hose failure (flow from both ends);
- (iii) Exposure of vessels and equipment to fire;
- (iv) Venting of pressure relief valve at relief system design basis; and
- (v) Failure of mitigating systems such as flares, scrubbers, isolation valves, excess flow valves, and cooling systems.
- (vi) Graphs and calculations were developed and were included in the "Background Document, September 25, 1989". These calculation and graphs (reproduced below) provide one method of calculating the maximum potential release quantity. The method of calculation must be approved by the Department and submitted with Delaware RMP, if different from the approach described below.

(A) To calculate the potential release quantity of a gas (not a flashing liquid), the following equation may be used to determine the release rate:

$$RR = (RR_R)(OED)^2 (MW)(P)(528) \_ 0.5$$

$$(OED_R)^2 (16)(P_R)(T+460) \_$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR<sub>R</sub> = a the release rate for methane estimated in lbs/min from Graph 1 or 2;

OED = the opening equivalent diameter in inches;

MW = the molecular weight of the actual substance released;

P = the pressure inside the vessel or pipe prior to the release in psig;

OED<sub>R</sub> = the size of reference opening equivalent diameter from Graph 1 or 2;

P<sub>R</sub> = the pressure of methane curve from Graph 1 or

2 nearest the pressure of the pressure of the actual substance; and

T = temperature of the substance prior to the release in °F;

(aa) For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;

(bb) For regulated flammable and combustible substances the maximum potential release quantity is equal to RR if the release is sustainable for a minimum of 35 seconds. Otherwise it is the actual quantity; and

(cc) A process becomes a covered process and is subject to Section 6.10(b) when the maximum potential release quantity is greater than or equal to the sufficient quantity.

(B) To calculate the potential release quantity for a flashing liquid release, the following equation may be used to determine the release rate:

$$RR = (RR_R)(OED)^2 (DEN)(P) \_ 0.5$$

$$(OED_R)^2 (39.32)(P_R) \_$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR<sub>R</sub> = the release rate for propane estimated in lbs/min from Graph 3 or 4;

OED = the opening equivalent diameter in inches;

DEN = the liquid density of the actual substance released prior to the release in lb/ft<sup>3</sup>;

P = the pressure inside the vessel prior to the release in psig;

OED<sub>R</sub> = the size of reference opening equivalent diameter from Graph 3 or 4; and

P<sub>R</sub> = the pressure of propane curve from Graph 3 or 4 nearest the pressure of the pressure of the actual substance.

(aa) For flashing liquids whose boiling points are greater than 5 °C, a pool of cold liquid can form when the storage area is diked. The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Graph 5. For situations when there is no dike or for flashing liquids whose boiling points are less than or equal to 5 °C, assume that the liquid volatilizes immediately upon release and that RR is the maximum potential release quantity.

(bb) For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;

(cc) For regulated flammable and combustible substances the maximum potential release quantity is equal to RR if the release is sustainable for a

minimum of 35 seconds. Otherwise it is the actual quantity; and

(dd) A process becomes a covered process and is subject to Section 6.10(b) when the maximum potential release quantity is greater than or equal to the sufficient quantity.

(C) To calculate the potential release quantity for a liquid release (not a flashing liquid), the equation below may be used to determine the release rate:

$$RR = (RR_R)(OED)^2 (DEN)(P)^{0.5} (OED_R)^2 (39.32)(P_R) -$$

where:

RR = the release rate of the actual regulated substance in pounds/min.

RR<sub>R</sub> = the release rate for gasoline estimated in lbs/min from Graph 6 or 7;

OED = the opening equivalent diameter in inches;

DEN = the liquid density of the actual substance released prior to the release;

P = the pressure inside the vessel prior to the release in psig;

OED<sub>R</sub> = the size of reference opening equivalent diameter from Graph 6 or 7; and

P<sub>R</sub> = the pressure of gasoline curve from Graph 6 or 7 nearest the pressure of the pressure of the actual substance.

The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Graph 5.

(D) To determine the potential release quantity, RR calculated above must be doubled if the release is from a pipe or hose where it is possible to get flow from both ends of the breakage; otherwise the PRQ = RR.

(aa) For combustible liquids, a pool of liquid can form when the storage area is diked. The release rate is used to calculate the size of the pool that is formed by the substance being released. The potential release quantity is calculated based on the surface area of the pool in square feet multiplied by the pool vaporization factor from Graph 5. For situations when there is no dike, assume that the pool depth is 1 centimeter.

(bb) For regulated toxic substances the maximum potential release quantity is equal to RR X 60 minutes;

(cc) For regulated flammable and combustible substances the maximum potential release quantity is equal to the vapor release rate if the release is sustainable for a minimum of 35 seconds. Otherwise it is the actual quantity; and

(dd) A process becomes a covered process and is subject to Section 6.10(b) when the maximum potential release quantity is greater than or equal to the

sufficient quantity.

(9) For explosive substances, the potential release quantity is the sum of all physical quantities which are used, handled, produced, or stored in the process. Processes separated by a distance of 100 meters or barricaded as defined in NFPA 495, Explanatory notes for Table 6-4.1 "American Table of Distances", shall be considered multiple processes. One method for determining the distance to endpoint for an explosive substance that may be used is the TNT equivalent method such as:

$$D = K W^{1/3}$$

where:

D is the distance to endpoint for a given overpressure;

W is the mass of TNT detonated, and

K is the scaled distance or 24 for 2.3 psi overpressure.

To approximate W, the weight of regulated substance is multiplied by a yield factor (3% to 10%) and is multiplied by the ratio of the heat of combustion of the regulated substance to the heat of combustion of TNT.

(c) Delaware Worst-case release scenario analysis.

(1) The owner or operator shall analyze and report in the Delaware Risk Management Plan:

(i) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(ii) For Program 2 and 3 processes:

(A) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in Section 6.50(b); and

(B) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 6.50(b) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in Section 6.50(b).

(C) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in Section 6.50(b) resulting from the detonation of the regulated explosive substance from covered processes under worst-case conditions defined in Section 6.50(b).

(D) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (A) or (B) of this section.

(2) Parameters to be applied. The owner or operator shall use the parameters defined in Section 6.50(b) to determine distance to the endpoints. The owner or

operator may use the methodology provided in the RMP Off-site Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the Department access to the model and describes model features and differences from publicly available models to local emergency planners upon request. The owner or operator may also use the following look-up

tables to determine the distance to endpoint (where AQ/SQ represents the ratio of the actual quantity of a regulated substance contained in a process to the sufficient quantity for that substance):

**(i) Table 7: Distance to Endpoint for Delaware Regulated Toxic Substances<sup>1</sup>**

<sup>1</sup>This Table was developed from Section 5.2.2.2 the

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	143.10	0.09
2.5	161.11	0.10
3.0	177.45	0.11
4.0	208.29	0.13
5.0	235.03	0.15
7.5	294.91	0.18
10.0	346.72	0.22
25.0	590.66	0.37
50.0	905.11	0.56

toxic Distance Multipliers Table II from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

**(ii) Table 8: Distance to Endpoint for Delaware Regulated Flammable Substances<sup>2</sup>**

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	146.29	0.09
2.5	165.89	0.10
3.0	182.62	0.11
4.0	214.83	0.13
5.0	243.90	0.15
7.5	305.90	0.19
10.0	359.30	0.22
25.0	589.41	0.37
50.0	870.80	0.54

<sup>2</sup>This Table was developed from Section 5.3.3.3 the flammable Distance Multipliers Table IV from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

**(iii) Table 9: Distance to Endpoint for Delaware Regulated Explosive Substances<sup>3</sup>**

AQ/SQ	Distance to Endpoint (meters)	Distance to Endpoint (miles)
1.0	100	0.06
2.0	121.01	0.08
2.5	131.51	0.08
3.0	142.02	0.09
4.0	156.71	0.10
5.0	167.53	0.10
7.5	194.59	0.12
10.0	213.11	0.13
25.0	291.20	0.18
50.0	366.86	0.22

<sup>3</sup>This Table was adapted from Section 5.4.3.2 the explosive Distance Multipliers Table VI from the “Regulation for the Management of Extremely Hazardous Substances, September 25, 1989.

(3) Consideration of passive mitigation. Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and

would still function as intended.

(4) Factors in selecting a worst-case scenario. Notwithstanding the provisions of paragraph (2) of this section, the owner or operator shall select as the worst-case for flammable regulated substances or the worst-case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in Section 6.50(b) beyond the stationary source boundary than the scenario provided under paragraph (2) of this section:

(i) Smaller quantities handled at higher process temperature or pressure; and

(ii) Proximity to the boundary of the stationary source.

(d) Defining off-site impacts--population.

(1) The owner or operator shall estimate in the Delaware Risk Management Plan the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 6.50(b).

(2) Population to be defined. Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(3) Data sources acceptable. The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

(4) Level of accuracy. Population shall be estimated to two significant digits or one significant digit if the population is less than 1000.

(e) Defining off-site impacts--environment.

(1) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in Section 6.50(b) of this part.

(2) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

## 6.60 Delaware Risk Management Plan

(a) Submission.

(1) The owner or operator subject to 6.10(b) shall submit a single Delaware Risk Management Plan that includes the information required by 6.60(b) through (j) for all covered processes. The Delaware Risk Management Plan shall be submitted on a form provided by the Department to a location specified by the Department prior to June 21, 1999. The Department may establish procedures for the submission of information under this section on magnetic media. The submission of information in accordance with such procedures by owners or operators of covered processes

shall satisfy the associated requirement to submit the information in a paper format.

(2) The owner or operator shall submit the first Delaware Risk Management Plan no later than the latest of the following dates:

(i) June 21, 1999;

(ii) Six months after the date on which a newly regulated substance is first listed in Section 6; or

(iii) The date on which a regulated substance is first present above a threshold quantity in a process.

(3) Subsequent submissions of Delaware Risk Management Plans shall be in accordance with Section 6.60(j).

(4) Notwithstanding the provisions of Sections 6.60(b) through (j), the Delaware Risk Management Plan shall be consistent with 7 Delaware Code, Chapter 77, Section 7710(b).

(b) Executive summary. The owner or operator shall provide in the Delaware Risk Management Plan an executive summary that includes a brief description of the same elements given in Section 5.155(a) through (g).

(c) Registration.

(1) The owner or operator shall complete a single registration form and include it in the Delaware Risk Management Plan. The form shall cover all regulated substances handled in covered processes.

(2) The registration shall include the same data that is described in Section 5.160(b).

(d) Off-site consequence analysis.

(1) The owner or operator shall submit in the Delaware Risk Management Plan information:

(i) One Delaware worst-case release scenario for each Program 1 process; and

(ii) For Program 2 and 3 processes, one Delaware worst-case release scenario to represent

(A) All regulated toxic substances with any potential release quantity that is greater than the sufficient quantity;

(B) All regulated flammable substances with any potential release quantity that is greater than the sufficient quantity; and

(C) All regulated explosive substance with any potential release quantity that is greater than the sufficient quantity.

(iii) If additional Delaware worst-case scenarios for toxics, flammables, or explosives are required by Section 6.50(c)(1)(ii)(D), the owner or operator shall submit the same information on the additional scenario(s).

(2) The owner or operator shall submit in the Delaware Risk Management Plan the following data:

(i) Chemical name;

(ii) Physical state (toxics and flammables only);

(iii) Basis of results (give model name if used);



(iv) Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);

(v) Quantity released in pounds;

(vi) Release rate (toxics and flammables only);

(vii) Release duration (toxics and flammables only);

(viii) Wind speed and atmospheric stability class (toxics and flammables only);

(ix) Topography (toxics and flammables only);

(x) Distance to endpoint;

(xi) Public and environmental receptors within the distance; and

(xii) Passive mitigation considered.

(e) Five-year accident history. The owner or operator shall submit in the Delaware Risk Management Plan the information provided in Section 5.42(b) on each accident covered by Section 5.42(a).

(f) Prevention program/Program 2. For each Program 2 process, the owner or operator shall provide in the Delaware Risk Management Plan the information indicated in Section 5.170(b) through (k). If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(g) Prevention program/Program 3. For each Program 3 process, the owner or operator shall provide the information indicated in Section 5.175(b) through (p). If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(h) Emergency response program.

(1) The owner or operator shall provide in the Delaware Risk Management Plan the same information that is described in Section 5.180.

(i) Certification.

(1) For Program 1 processes, the owner or operator shall submit in the Delaware Risk Management Plan the certification statement provided in Section 5.12(b)(4).

(2) For all other covered processes, the owner or operator shall submit in the Delaware Risk Management Plan a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

(j) Updates.

(1) The owner or operator shall review and update the Delaware Risk Management Plan as specified in paragraph 6.60(j)(2) of this section and submit it on a form provided by the Department prior to June 21, 1999.

(2) The owner or operator of a covered process shall revise and update the Delaware Risk Management Plan submitted under Section 6.60 as follows:

(i) Within five years of the initial submission

or the most recent update required paragraphs 6.60(j)(2)(ii) through (vii), whichever is later;

(ii) No later than six months after a newly regulated substance is first listed by the Department;

(iii) No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

(iv) No later than the date on which a regulated substance is present above a threshold quantity in a new process;

(v) Within six months of a change that requires a revised process hazard assessment or hazard review;

(vi) Within six months of a change that requires a revised off-site consequence analysis as provided in Section 5.36; and

(vii) Within six months of a change that alters the program level that applied to any covered process.

(3) If a covered process is no longer subject to this part, the owner or operator shall submit a revised registration to the Department within six months indicating that the process is no longer covered.

### **Section 7. Inspections**

(a) Minimum Inspection Components. All documentation required by this regulation shall be maintained by the Owner or operator of the stationary source and shall be available on site for review by the Department. At a minimum, inspections of stationary source risk management programs include:

(1) Review of selected risk management program documentation including evidence of the application of engineering and maintenance standards associated with regulated substance;

(2) A physical onsite inspection of equipment associated with regulated substance; and

(3) Interviews of selected stationary source personnel involved with regulated substance.

(b) Inspection Protocol. The inspection protocol shall consist of:

(1) Appendix A "PSM Audit Guidelines" from the OSHA Compliance Directive CPL 2-2.45A (change-1) dated September 1994,

(2) EPA audit guidance and protocol, and

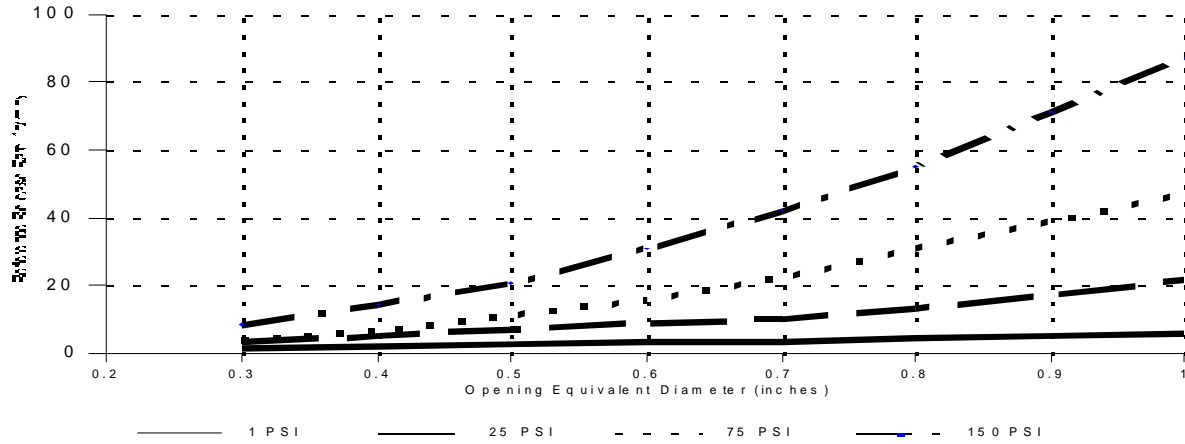
(3) The compliance of a covered process shall be determined by physical inspections conducted:

(i) By trained and tested state personnel or their designated trained and qualified representatives, and

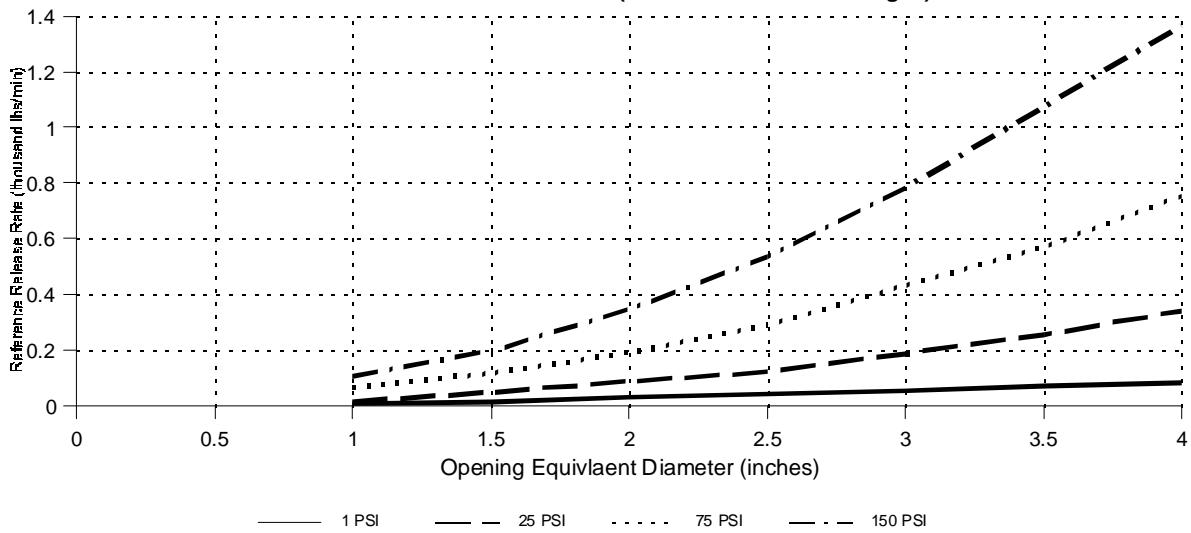
(ii) By interviews with stationary source personnel.

(c) Access to Facilities and Records. The Department has the right to enter any stationary source at any time to verify compliance with this regulation. Inspections for the purpose of document review shall be scheduled with owner

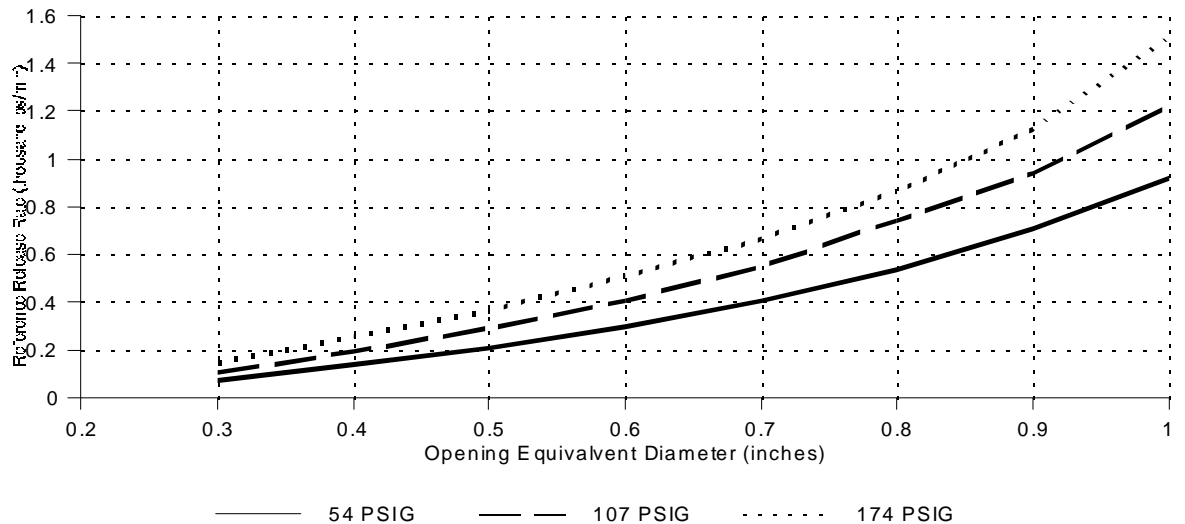
GRAPH 1: Gas Release Rate Estimate (Basis: Methane at 68 deg. F)



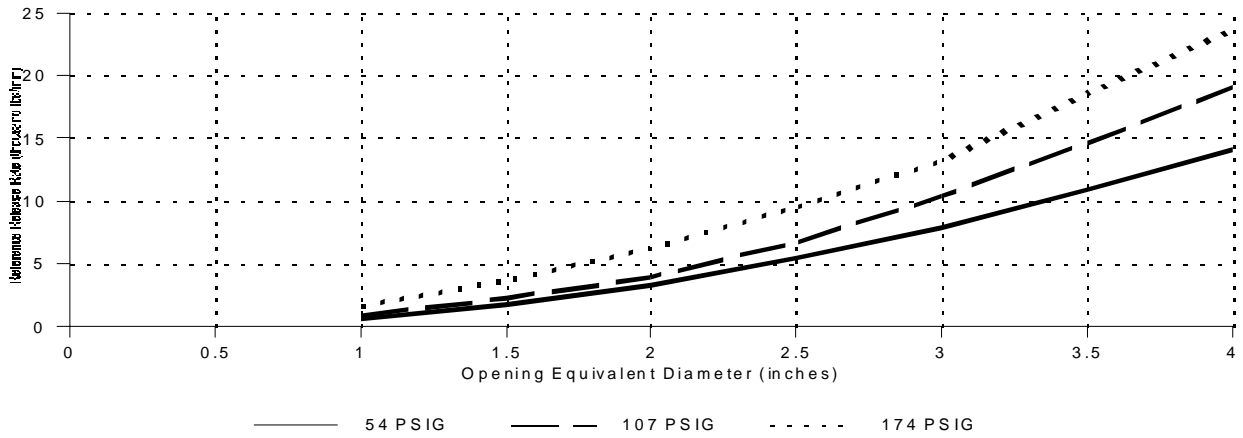
GRAPH 2: Gas Release Estimate (Basis: Methane at 68 deg. F)



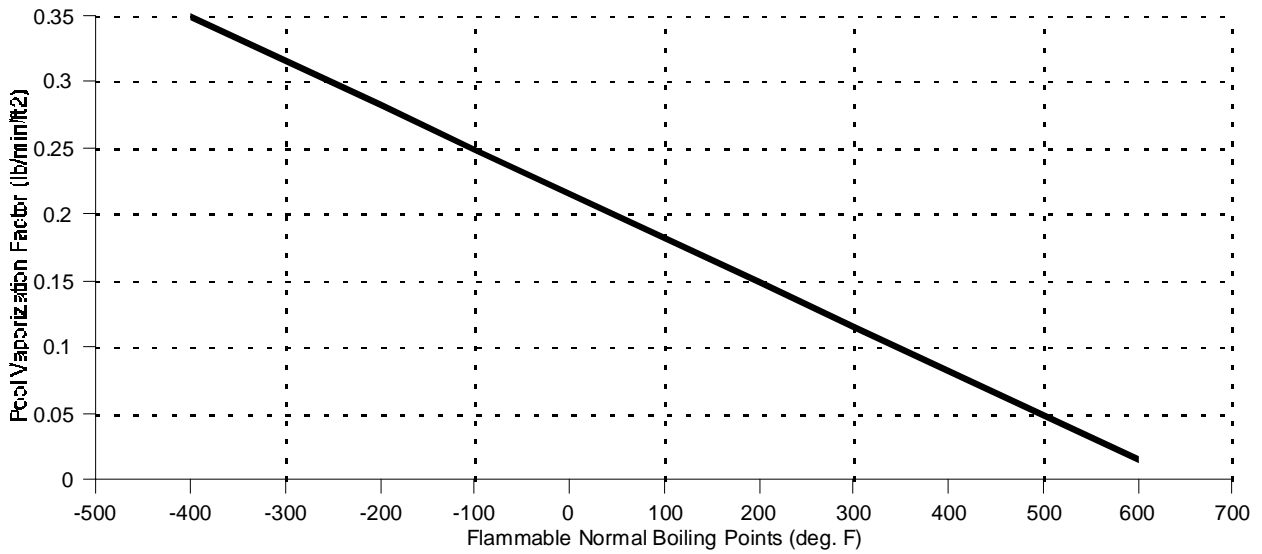
GRAPH 3: Flashing Liquid Release Rate Estimate (Basis: Propane)



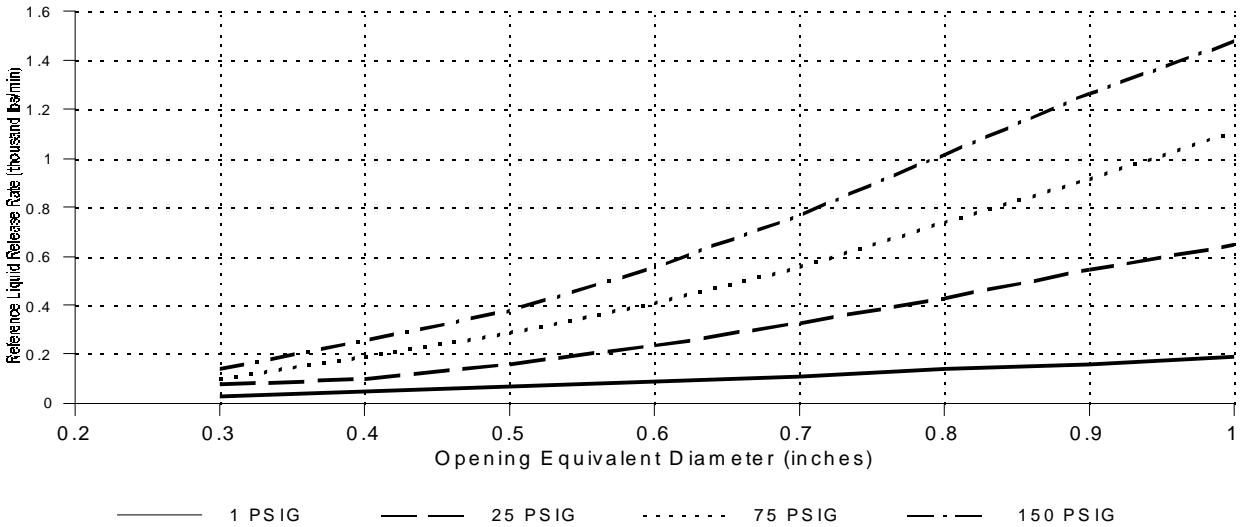
GRAPH 4: Flashing Liquid Release Rate Estimate (Basis: Propane)

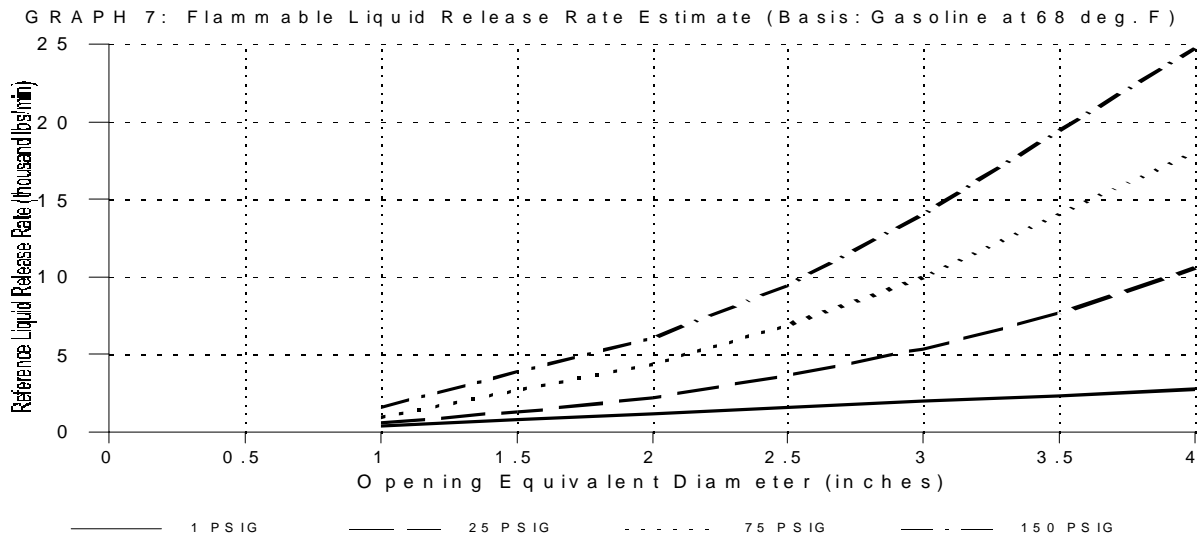


GRAPH 5: Pool Vaporization Factor (Basis: Gasoline @ 68 deg. F, 4.3 m/sec)



GRAPH 6: Flammable Liquid Release Rate Estimate (Basis: Gasoline at 68 deg. F)





or operator of the stationary source management with reasonable advance notice, and when possible, mutual agreement.

(d) Findings of Compliance or Noncompliance. Department findings of compliance or noncompliance with risk management program requirements shall be provided in writing to the stationary source management no later than forty-five (45) days following completion of the inspection. Significant items of noncompliance shall be communicated directly to the stationary source management by the Department during an exit interview. If deficiencies or omissions in the risk management program are identified, the Department shall issue a written notice of noncompliance and recommend program improvements. Within sixty (60) days after receiving the Department's recommendations, the owner or operator of the stationary source shall notify the Department of changes and additions to improve the risk management program or shall present a remediation plan and schedule for the Department's approval.

(e) Resolution of Findings of Noncompliance.

(1) If the owner or operator of the stationary source and the Department agree on measures to correct risk management program deficiencies or omissions, the parties may enter into a written agreement.

(2) If the Department and owner or operator of the stationary source fail to agree on improvements to the risk management program following Department notice of noncompliance as provided above and following an administrative hearing with written findings, as provided for in 7 Delaware Code, Chapter 77, Section 7716 and Section 11 of this regulation, the Department shall issue an administrative order requiring correction of risk management program deficiencies including a schedule for corrections as provided for in 7 Delaware Code, Chapter 77, Section 7715.

(3) If a functioning risk management program is

lacking and a situation exists which threatens real and imminent jeopardy to the lives and health of persons in the vicinity of the stationary source, the Department shall promptly seek Chancery Court injunctive relief as provided for in 7 Delaware Code, Chapter 77, Section 7715.

#### Section 8. Audits

(a) RMP Audit. In addition to inspections for the purpose of regulatory development and enforcement, the Department shall audit all RMPs submitted pursuant to Section 5, Subpart G and the Delaware risk management plans submitted under Section 6.60 within six months of the date that they are received by the Department or posted by EPA.

(b) Access to Information. The Department shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(c) Preliminary Audit Determination. Based on the audit, the Department may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of Section 5 Subpart G. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(d) Written response to a preliminary determination.

(1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (c) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole

or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (d)(1) of this section shall be received by the Department within 60 days of the issue of the preliminary determination or a shorter period of time as the Department specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the Department may provide in writing additional time for the response to be received.

(e) Final Audit Determination. After providing the owner or operator an opportunity to respond under paragraph (d) of this section, the Department may issue the owner or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (c) of this section or may adopt or modify the substitute revisions provided in the response under paragraph (d) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (d) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(f) Determination of Violations. Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph (e) of this section, the owner or operator shall be in violation of Section 5 Subpart G, 7 Delaware Code, Chapter 77, Section 7714(b)(1) and this section unless the owner or operator revises the RMP prepared under Section 6 Subpart G as required by the final determination, and submits the revised RMP as required under Section 5.150.

(g) Public Access to Determinations. The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with Section 14 (a) of this Regulation.

(h) Nothing in this section shall preclude, limit, or interfere in any way with the authority of Department to exercise its enforcement, investigation, and information gathering authorities concerning this regulation. Nothing in this section shall preclude, limit or interfere in any way with the authority granted to EPA under the Clean Air Act of 1990 and codified at 40 U.S.C. 7401 *et seq.*

### **Section 9. Violations and Penalties**

Any person who fails to comply with this regulation shall be subject to the enforcement and penalty provisions set forth in 7 Delaware Code, Chapter 77, Section 7714. A substantially complete risk management program is in compliance with all applicable parts of either Section 5 or

Section 6. Failure to meet these provisions is considered to be substantial non-compliance.

### **Section 10. Hearings**

Any public hearing held by the Secretary pursuant to this regulation shall be held in accordance with 7 Delaware Code, Chapter 60, Section 6006, as well as any additional notice and hearing requirements adopted by the Department by regulation.

### **Section 11. Appeals**

(a) Any person(s) whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with 7 Delaware Code, Chapter 60, Section 6008.

(b) Any person(s), jointly or severally, or any taxpayer, or any officer, department board or bureau of the State, aggrieved by any decision of the Environmental Appeals Board, may appeal to the Superior Court in accordance with 7 Delaware Code, Chapter 60, Section 6009.

### **Section 12. State Agency Notification**

Every State agency having authority to grant construction or operating permits to covered processes having regulated substances on-site shall notify the Department in writing prior to granting any permits and shall confirm that the owner or operator has been informed of the Regulatory requirements of this regulation.

### **Section 13. Annual Fees**

(a) Fee Structure. For each process containing a regulated substance with a *potential release quantity* equal to or greater than the *sufficient quantity* or with an *actual quantity* equal to or greater than the *threshold quantity* for that regulated substance, the fee shall be a minimum of five hundred dollars (\$500) per year for the first unit and twenty-five dollars (\$25) for each additional unit up to a maximum of 300 units per stationary source.

(b) Calculation of units.

(1) For stationary sources subject to Section 5.130, the fee will be \$500 for the first unit and \$25 for each unit thereafter. A unit is determined by the nearest whole number resulting from the division of the actual quantity by the threshold quantity from Section 5.130 Table 1 or Table 2.

(2) For stationary sources subject to Section 6.20, 6.30 or 6.40, the fee will be \$500 for the first unit and \$25 for each unit thereafter. A unit is determined by the nearest whole number resulting from the division of the actual quantity by the sufficient quantity from either Section 6.20 Table 4, Section 6.30 Table 5, or Section 6.40 Table 6 whichever is greater.

(3) There is a 300 unit cap for each stationary source.

(4) Propane storage tanks and ammonia nitrate

storage facilities will be considered as having one unit regardless of the actual quantity.

(b) Additional Fees.

(1) In addition to the annual registration fees, the Department shall assess a fee to cover additional Department costs incurred for risk management plan audits or risk management program inspections which cannot be accomplished in a timely way due to inaccurate or incomplete risk management program documentation or records required for inspection.

(2) When an additional fee is assessed, the Department shall document its findings justifying the fee assessment, and shall provide a copy to the owner or operator of the stationary source.

#### **Section 14. Miscellaneous**

(a) Confidential Information. All documents (such as, but not limited to: inspection reports, responses to inspection reports, notices of violation, Administrative Orders and Penalties, correspondences, RMPs and Delaware risk management plans) submitted to the Department or developed by the Department pursuant to this regulation shall be handled consistent with the Freedom of Information Act (29 Delaware Code, Chapter 100) with the exception of the following which shall be maintained as confidential by the Department:

(1) Sections of Inspection Notes containing or relating to trade secrets, and/or commercial or financial information observed, viewed or obtained orally during an inspection that may result in substantial harm to a business' competitive edge.

(2) Sections of Inspection Notes containing the identity of persons interviewed during an inspection.

(b) Severability. If any part of this regulation, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of this regulation shall not be affected and shall be deemed valid and effective.

(c) Transfer of Registration. Registration under this regulation may be transferred to a new owner provided that an intention to transfer accompanied by a copy of the registration, signed by both the transferor and the transferee, is provided to the Department at least 10 days prior to the transfer. A complete RMP or the Delaware risk management plan must be submitted in accordance with either Section 5.190(b)(3) or Section 6.60(j)(2)(iii) whichever is applicable.

(d) Scope of Regulations. This regulation shall apply to all covered processes located in whole or in part within the State of Delaware containing one or more regulated substances.

## **DEPARTMENT OF STATE**

### **OFFICE OF THE STATE BANKING COMMISSION**

Statutory Authority: 5 Delaware Code,  
Chapter 7 (5 **Del.C.** Ch.7)

#### **NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER**

##### Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009. Proposed revised Regulation 5.121.0002 ("Procedures Governing the Creation and Existence of an Interim Bank") is amended to conform the public notice procedures to those provided in Section 724 of Title 5 of the Delaware Code, as revised by Senate Bill 255, signed by the Governor on March 30, 1998 ("SB 255"), and to make other technical and conforming changes in accordance with SB 255. Proposed revised Regulation 5.701/774.0001 ("Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code") is amended to conform the public notice procedures to those provided in Sections 724 and 725 of Title 5 of the Delaware Code, as revised by SB 255. Proposed revised Regulations 5.833.0004 ("Application by an Out-of-State Savings Institution, Out-of-State Savings and Loan Holding Company or Out-of-State Bank Holding Company to Acquire a Delaware Savings Bank or Delaware Savings and Loan Holding Company") and 5.844.0009 ("Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company") are amended so that the public notice procedures for acquisitions pursuant to those regulations parallel the public notice procedures for the formation of new banks pursuant to Section 724 of Title 5 of the Delaware Code, as revised by SB 255. Proposed amended Regulation Nos. 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 would be adopted by the State Bank Commissioner on or after November 5, 1998. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

##### Comments:

Copies of the proposed revised regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by November 5, 1998.

**Public Hearing:**

A public hearing on the proposed revised regulations will be held in Room 112, Tatnall Building, William Penn Street, Dover, Delaware 19901, on Thursday, November 5, 1998 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

---

Regulation No.: 5.121.0002  
Proposed

**PROCEDURES GOVERNING THE CREATION AND  
EXISTENCE OF AN INTERIM BANK**

This regulation establishes procedures governing the creation and existence of an Interim Bank, which shall have no authority to conduct a banking business until merged with an Insured Bank.

**1. Definitions**

(a) "Articles of Association" means the articles of association described in Section 723 of Title 5 of the Delaware Code.

(b) "Articles of Organization" means the articles of organization described in Section 728 of Title 5 of the Delaware Code.

(c) "Bank" means a Delaware State Bank, Out-of-State State Bank, Delaware National Bank or Out-of-State National Bank.

(d) "Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(e) "Certificate Authorizing the Transaction of Business" means the certificate described in Section 733 of Title 5 of the Delaware Code.

(f) "Delaware Bank" means a Delaware National Bank or a Delaware State Bank.

(g) "Delaware National Bank" means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

(h) "Delaware State Bank" means a bank (as defined in § 101 of Title 5 of the Delaware Code) chartered under the laws of this State.

(i) "Insured Bank" means a bank that is an insured

depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c).

(j) "Interim Bank" means a bank established exclusively for the temporary purposes set forth in this regulation.

(k) "Interim Bank Agreement" means an agreement that expressly provides, among other things, for the creation of an Interim Bank and its merger with an Insured Delaware Bank.

(l) "Located in this State" means, with respect to a state-chartered bank, a bank created under the laws of this State and, with respect to a national banking association, a bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

(m) "Notice of Intent" means a notice of the intention of the incorporators to form an Interim Bank, as provided in Section 5 of this regulation.

(n) "Out-of-State Bank" means an Out-of-State State Bank or an Out-of-State National Bank.

(o) "Out-of-State Bank Holding Company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(p) "Out-of-State National Bank" means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

(q) "Out-of-State State Bank" means a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under the laws of this State.

(r) "Public Notice" means a public notice, as provided in Section 5 of this regulation.

**2. Scope**

An Interim Bank may only be formed to facilitate:

(a) The establishment of a Bank Holding Company by an Insured Delaware Bank's stockholders. The proposed Bank Holding Company, once incorporated, applies in the manner set forth at Section 5 of this regulation for an Interim Bank charter for a subsidiary to be newly formed. An agreement is executed between the proposed Bank Holding Company and the Insured Delaware Bank that provides, among other things, that the Insured Delaware Bank will be merged or consolidated with the Interim Bank and become a subsidiary of the Bank Holding Company upon the receipt of all necessary federal and state approvals for the proposed Bank Holding Company so to act; or

(b) The acquisition of an Insured Delaware Bank by another Insured Delaware Bank or Bank Holding Company (e.g., pursuant to Subchapter VI of Chapter 7 or Subchapters IV or V of Chapter 8 of Title 5 of the Delaware Code). In such instances, the Interim Bank is used to assure that the to-be-acquired Insured Delaware Bank will become wholly-owned through a merger or consolidation pursuant to an

agreement between the Insured Delaware Banks or between an Insured Delaware Bank and a Bank Holding Company that provides, among other things, for an Insured Delaware Bank to merge or consolidate with the Interim Bank.

(c) The merger of one or more Out-of-State Banks with or into one or more Delaware Banks to result in a Delaware State Bank, in accordance with Section 795D or Section 795G of Title 5 of the Delaware Code.

### 3. Interim Bank Agreement Required

An Interim Bank may not be chartered unless there is an Interim Bank Agreement.

### 4. Who May Incorporate

An Interim Bank may be incorporated, in accordance with Section 722 of Title 5 of the Delaware Code, by three or more individual persons, at least two of whom must be citizens and residents of Delaware.

### 5. Application Procedures

An application to form an Interim Bank shall be submitted as follows, except as otherwise provided in connection with a contemporaneous application in accordance with another regulation (e.g., Regulation 5.844.0009, "Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company"):

(a) The Notice of Intent shall be filed in duplicate in the Office of the Commissioner and shall state:

- (i) the purpose for forming an Interim Bank;
- (ii) the proposed name of the Interim Bank;
- (iii) the name and address of the incorporators; and
- (iv) the amount of the capital stock of the Interim Bank.

Bank.

(b) The Notice of Intent shall attach as exhibits:

- (i) the Interim Bank Agreement;
- (ii) a copy of the proposed Articles of Association of the Interim Bank;
- (iii) a copy either of the certificate of public convenience and advantage or the legislative and/or corporate instruments of banking authority for the Insured Bank which is to be merged with the Interim Bank pursuant to the Interim Bank Agreement.

(c) Upon notification by the Commissioner that the Notice of Intent to form an Interim Bank is complete, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a Public Notice of its intention to form an Interim Bank. The Public Notice shall include the proposed name of the Interim Bank, the names of the incorporators, the amount of the capital stock of the Interim Bank, and a brief summary of the purpose of the Interim Bank, shall identify this regulation under which the Interim Bank is to be formed, and shall inform interested persons of their right to comment on the application before

the Commissioner decides whether to approve the Interim Bank.

### 6. Decision of Commissioner; Incorporation

Within two weeks of the last publication of the Public Notice, the Commissioner shall issue a decision as to whether to charter the Interim Bank. This two week period may be extended by two additional weeks if the Commissioner requires more time or information.

Upon the Commissioner's approval, the Incorporator shall take the necessary steps to form the Articles of Organization and the Commissioner shall endorse the Articles. The Incorporator shall then incorporate the Interim Bank and file the necessary documents with the Secretary of State.

A Certificate Authorizing the Transaction of Business shall not be issued until the Interim Bank has been merged with the Insured Bank.

### 7. Powers of Interim Bank Before Merger

An Interim Bank may not engage in any banking activity or operate as a bank until it has merged with an Insured Bank. An Interim Bank may take only those corporate and fiduciary steps and actions reasonably incidental and necessary to facilitate and complete the merger. Such limitation shall not preclude the Commissioner from granting a certificate of public convenience and advantage, and to otherwise facilitate and authorize the formation and incorporation of the Interim Bank, provided that no Certificate Authorizing the Transaction of Business pursuant to § 733 of Title 5 of the Delaware Code shall be issued prior to the consummation of the merger of the Interim Bank with an Insured Bank.

The receipt by the Commissioner of an Interim Bank Agreement and a copy of either the certificate of public convenience and advantage or the legislative and/or corporate instruments pursuant to which the Insured Bank with which the Interim Bank will merge derives its banking powers shall constitute sufficient authority for the Commissioner to issue a certificate of public convenience and advantage to the Interim Bank.

### 8. Proof of Merger; Revocation of Certificate

From the date an Interim Bank is authorized pursuant to this regulation, the parties to the Interim Bank Agreement shall have six (6) months in which to effect the merger with the Insured Bank. Proof of the merger must be timely supplied to the Commissioner.

Upon proof of the consummation of the merger of the Interim Bank with the Insured Bank, a Certificate Authorizing the Transaction of Business, as required by § 733 of Title 5 of the Delaware Code shall be issued immediately by the Commissioner to the surviving entity if the Interim Bank is the survivor.

Extensions may be granted by the Commissioner if the



parties to the Interim Bank Agreement can show good cause as to why an extension is needed to complete the merger.

The Commissioner may revoke the certificate of public convenience and advantage of the Interim Bank (and may take such other steps he deems appropriate at any time) if proof of the merger between the Interim Bank and the Insured Bank has not been provided to the Commissioner at the end of the authorized time, if the Interim Bank actually conducts any banking business prior to its proposed merger, or if any related merger or acquisition application is denied or withdrawn.

### 9. Fees

A non-refundable investigation fee of \$1,150 to offset the administrative expense of the Commissioner's office shall be included with the Notice of Intent; provided, however, that such fee shall be considered as part of and not in addition to any fee being paid at the same time to the Commissioner's office in connection with a contemporaneous application for a merger or acquisition. In addition, depending on the structure of the transaction, other fees may be required in accordance with applicable statutes or regulations (e.g., Section 735 of Title 5 of the Delaware Code).

Document Control No.:

---

Regulation No.: 5.701/774.0001  
Proposed

**PROCEDURES FOR APPLICATIONS TO FORM A BANK, BANK AND TRUST COMPANY OR LIMITED PURPOSE TRUST COMPANY PURSUANT TO CHAPTER 7 OF TITLE 5 OF THE DELAWARE CODE**

### 1. Scope

This Regulation establishes procedures for filing an application to organize a bank or bank and trust company (hereinafter collectively referred to as a "Bank") or limited purpose trust company pursuant to Chapter 7 of Title 5 of the Delaware Code and the manner in which determinations will be made by the State Bank Commissioner (the "Commissioner") respecting such applications.

### 2. Notice of Intent

(a) Notice of the intention ("Notice of Intent") of the incorporators (the "Incorporators") to form a Bank or limited purpose trust company shall be filed with the Commissioner. All filings must be in duplicate.

(b) A \$1,150 non-refundable investigation fee shall be submitted with the Notice of Intent, payable to "Office of the State Bank Commissioner."

(c) The Notice of Intent shall specify: (i) the names of all Incorporators; (ii) the name of the proposed Bank or limited purpose trust company (note: the word "trust" may be used only if a limited purpose trust company or a bank with trust powers is being formed); (iii) the city or town in which the Bank or limited purpose trust company will be located; and (iv) the amount of capital stock of the proposed Bank or limited purpose trust company.

(d) The Notice of Intent shall have attached as exhibits: (i) a copy of the application for a Certificate of Public Convenience and Advantage (the "Application") in the form the Incorporators intend to file pursuant to Section 4 of this Regulation; (ii) a copy of the proposed form of written agreement in which the subscribers thereto associate themselves with the intent of forming a Bank or limited purpose trust company (the "Articles of Association"); (iii) a proposed form of public notice as provided for in Section 3 of this Regulation (the "Public Notice"); and, (iv) where the Incorporators are acting on behalf of a corporate entity in the application process, a copy of the corporate resolution, sworn to and subscribed by a president or vice-president and certified by the secretary or an assistant secretary, authorizing the Incorporators to execute and file the Notice of Intent and Application on behalf of the corporation.

### 3. Public Notice

(a) If the Notice of Intent and the attached exhibits filed with the Commissioner are in the form required by this Regulation, conform to applicable provisions of law and are approved by the Commissioner, the Commissioner shall schedule a formal, public evidentiary hearing to receive testimony and documentary evidence relevant to determining whether the public convenience and advantage would be promoted by the establishment of the Bank or limited purpose trust company and whether the Articles of Association are in compliance with applicable provisions of law (such hearing to be held within 60 days following the second publication of Public Notice in accordance with Section 3(b) of this Regulation, but not prior to the expiration of twenty days following the date of the second publication).

(b) The Incorporators shall cause a Public Notice in such form as the Commissioner shall have approved to be published at least once a week, for two successive weeks, in at least two Delaware newspapers of general circulation designated by the Commissioner, at least one of which newspapers shall be published in the county where it is proposed to establish the Bank.

(c) The Public Notice shall (i) specify the names of all Incorporators; (ii) set forth the name of the proposed Bank or limited purpose trust company; (iii) identify the city or town where the Bank or limited purpose trust company is to be located; (iv) specify the amount of the Bank's capital stock; (v) describe the subject matter of the proceedings; (vi) give

the date, time and place fixed for a hearing on the Application; (vii) cite the law (5 Del. C. § 726 for a Bank, and 5 Del. C. § 777 for a limited purpose trust company) and regulations (State Bank Commissioner Regulations 5.701/774.0001 and 5.725/726.0003.P/A for a Bank, and 5.701/774.0001 and 5.777.0002 for a limited purpose trust company) giving the Commissioner authority to act; (viii) inform interested parties of their right to present evidence, to be represented by counsel and to appear personally or by other representatives; and (ix) state the Commissioner's obligation to reach his decision based upon the evidence received.

#### 4. Application For A Determination of Public Convenience and Advantage

(a) Within sixty days following the second publication of Public Notice, and prior to or on the date of the public hearing, but not prior to the expiration of twenty days following the date of the second publication, the Incorporators shall file the definitive fully executed Application in the form prescribed by the Commissioner. See Commissioner's Regulation No. 5.725/726.0003.P/A for a Bank, and 5.777.0002 for a limited purpose trust company.

(b) The Application shall include the information specifically requested in the form of application supplied by the Commissioner and any supplemental information requested by the Commissioner.

#### 5. Public Hearing

(a) The public hearing provided for in this Regulation may be conducted by the Commissioner or his designee. At such hearing, the Commissioner or his designee shall accept all relevant, non-cumulative evidence offered by or on behalf of the Incorporators or by any interested person. Interested parties may appear at the public hearing, in person or by counsel or by other representative. Anyone wishing to present testimony is requested to register with the Commissioner in advance of the hearing.

(b) A record from which a verbatim transcript can be prepared shall be made. The Incorporators shall be responsible for arranging for a certified court reporter to be present at the public hearing and shall bear the expense of an original written transcript for the Commissioner's use (which shall be supplied to the Commissioner as promptly as practical following the public hearing). Additional transcripts provided to any interested person shall be at the expense of the person requesting the transcript.

(c) The Commissioner or his designee may request the Incorporators or any other party or parties who appear at the public hearing to submit proposed findings of fact and conclusions of law.

#### 6. Record

(a) With respect to each Application, all notices,

correspondence between the Commissioner and the Incorporators or other interested parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings, and all interlocutory and final orders shall be included in the Commissioner's record of the matter and shall be retained for a period of at least five (5) years following final action on the Application.

(b) A copy of the proposed order shall be mailed or hand delivered to the Incorporators (or their agent) and to each person who presented data, views or argument at the public hearing, each of whom shall thereafter have twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the proposed order.

(c) If the decision on the Application is not adverse to the Incorporators, the Commissioner may waive the entry of a proposed order and may instead proceed directly to the entry of a final order under Section 7 of this Regulation.

#### 7. Decision and Final Order

(a) Every decision on an Application shall be incorporated in a final order which shall include: (i) a brief summary of the evidence; (ii) findings of fact based upon the evidence; (iii) conclusions of law; (iv) any other conclusions or findings required by law; and (v) a concise statement of the determination or action on the case.

(b) Every final order shall be authenticated by the signature of the Commissioner and shall be mailed or delivered to (i) the Incorporators (or their agent); (ii) each person that presented data, views or argument at the hearing; and (iii) any other person requesting a copy of the final order.

#### 8. Organization Meeting of Incorporators

(a) The first meeting of the Incorporators shall be called by a notice signed by the Incorporator designated in the Articles of Association for that purpose or by a majority of Incorporators (see 5 Del. C. § 727). The statutory purpose of the first meeting is to organize by: (i) choosing by ballot a temporary secretary; (ii) adopting bylaws; and (iii) electing in such manner as the bylaws may determine directors, a president, a secretary, and such other officers as the bylaws may prescribe. All of the officers elected shall be sworn to the faithful performance of their duties. Action permitted to be taken at the organization meeting may be taken without a meeting if each Incorporator signs a written consent in lieu of meeting which states the action so taken.

(b) The President and a majority of directors elected at the organization meeting of the Incorporators shall make, sign and make oath to a certificate (hereinafter the "Articles of Organization") setting forth: (i) a true copy of the Articles of Association; (ii) the names of the subscribers thereto; (iii) the name, residence, and mailing address of each officer; and

(iv) the date of the first meeting of the Incorporators (see 5 Del. C. § 728).

(c) The Articles of Organization and attachments shall be submitted to the Commissioner. The Commissioner may require such amendments or additional information as he may consider proper or necessary. The Commissioner shall endorse approval upon the Articles of Organization at such time as he has determined that the applicable provisions of law have been complied with (see 5 Del. C. § 729).

#### 9. Incorporation and Commencement of Business

(a) The Articles of Organization shall be filed with the Secretary of State within 30 days after the date of the Commissioner's endorsement (see 5 Del. C. § 730).

(b) Upon issuance of a Certificate of Incorporation by the Secretary of State and compliance with all provisions of law, a certified copy of the Certificate of Incorporation together with the endorsed Articles of Organization shall be recorded in the Office of the Recorder of Deeds for the county in which the place of business of the Bank or limited purpose trust company is to be located (see 5 Del. C. § 731).

(c) A certified copy of the Bank's or limited purpose trust company's Certificate of Incorporation together with its bylaws and its Articles of Organization shall be filed with the Commissioner together with the \$5,750 fee for the certificate to transact business. No transaction of business can begin until authorized by the Commissioner by the issuance of a certificate to transact business (see 5 Del. C. §§ 733, 735, 902, 903).

(d) An application for a certificate to transact business shall include a certification as to the issuance of the whole capital stock of the Bank or limited purpose trust company (unless the Articles of Organization otherwise specifically provide) and receipt of payment therefor in cash; a list of stockholders (including the number of shares held by each and the residence and post office address of each stockholder), which list shall be certified by the president and the cashier or treasurer of the Bank; evidence of the deposit of the proceeds of the sale of capital stock in an account for the benefit of the Bank or limited purpose trust company; and, for a Bank, evidence satisfactory to the Commissioner demonstrating that FDIC deposit insurance for the Bank has been approved by the FDIC.

(e) The Commissioner shall review the application and, in the case of a Bank, the status of the applicant's FDIC insurance. If the above referenced \$5,750 fee has been paid and it appears that all requirements of this Regulation and applicable law have been complied with, the Commissioner shall issue a certificate authorizing the Bank or limited purpose trust company to begin the transaction of business.

Document Control No.:

---

Regulation No.: 5.833.0004

Proposed

**APPLICATION BY AN OUT-OF-STATE SAVINGS INSTITUTION, OUT-OF-STATE SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY**  
**5 DEL. C. §833**

#### INSTRUCTIONS

This Application is to be filed by an "out-of-state savings institution", "out-of-state savings and loan holding company" or an "out-of-state bank holding company" (as defined in Section 831 of Title 5 of the Delaware Code), or subsidiary thereof, for the purpose of acquiring a Delaware savings bank or Delaware savings and loan holding company pursuant to the Savings Bank Acquisition Act (5 Del. C. §831 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state savings institution, savings and loan holding company or bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware, in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00) made payable to the Office of the State Bank Commissioner. **THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN PAID.**

#### Application Process

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware savings bank or Delaware savings and loan holding company, and, if applicable, to form an interim savings bank in connection therewith. Such notice shall include the date, time and location of the public hearing on

the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or the Commissioner's designee in accordance with Chapter 101 of Title 29, Delaware Code, to review the Application and to take such testimony and to gather such evidence as the Commissioner or the Commissioner's designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim savings bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del. C. §833 (b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. §832(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or the Commissioner's designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or the Commissioner's designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties shall have thereafter twenty (20) days to submit in writing to the Commissioner or the Commissioner's designee exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or the Commissioner's designee presides at a hearing conducted pursuant to this regulation and if the decision on the applicant is not adverse to the applicant, the Commissioner or the Commissioner's designee has the right to waive the preliminary findings of fact and law and proceed directly to the entry of a final order.

**CONFIDENTIAL INFORMATION**

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, will determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for

confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of this Application which the Commissioner does not designate as "confidential" will be made available for public inspection and copying.

**APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE SAVINGS INSTITUTION OUT-OF-STATE SAVINGS AND LOAN HOLDING COMPANY OR OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE SAVINGS BANK OR DELAWARE SAVINGS AND LOAN HOLDING COMPANY**

**I. Certification**

The undersigned, \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name of out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company) having first been duly authorized, does hereby make application on behalf of \_\_\_\_\_  
to acquire \_\_\_\_\_

(Name of Delaware Savings Bank  
or Delaware Savings and Loan Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Savings Bank Acquisition Act of 1987 and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Sworn to and subscribed before me, a Notary Public of the State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**II. Identification of Applicant**

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter III, Chapter 8, Title 5, Delaware Code.

**III. Acquisition**

A. Identify the Delaware savings bank or Delaware savings and loan holding company to be acquired (if a

savings and loan holding company, further identify the savings bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware savings bank or Delaware savings and loan holding company (enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware savings bank or Delaware savings and loan holding company).

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or savings bank or Delaware bank holding company or savings and loan holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the Delaware savings bank or Delaware savings and loan holding company is not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each savings bank subsidiary of the Delaware savings and loan holding company to be acquired filed with the Office of the State Bank Commissioner or, if a federal savings bank, the Office of Thrift Supervision.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company and the Delaware savings and loan holding company or Delaware savings bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

#### IV. Information regarding formation of interim savings bank (OPTIONAL).

If applicant has applied for a certificate of public convenience and advantage for an interim savings bank from the Office of Thrift Supervision, attach the certificate of public convenience and advantage issued with respect to such interim savings bank. If such certificate has not been issued, provide a copy of the application to form such interim savings bank without exhibits other than the transmittal letter and any responses received from the Office of Thrift Supervision.

V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del. C.

§833(b).

##### A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank, savings bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the out-of-state savings institution operates or where the out-of-state bank holding company or out-of-state savings and loan holding company maintains a bank or savings bank subsidiary, or with the Office of the Comptroller of the Currency or the Office of Thrift Supervision; provided, that such filings shall not be required with respect to any bank or savings bank under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del. C. §834(4) or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the out-of-state savings institution, out-of-state bank holding company or out-of-state savings and loan holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc., relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities and Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Bank Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of the applicant for the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, or the Delaware savings bank to be acquired. Such plan should include but is not limited to a description of:

1. In detail, any proposed change during the first year of operation in the products or services offered by the Delaware savings bank or the subsidiary or subsidiaries of the Delaware savings and loan holding company;

2. In detail, any contemplated or proposed change during the first year after the effective date of the acquisition in the executive officers of the Delaware savings bank or the Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, with specific reference to the termination, transfer, or reduction of authority or

responsibilities of any such executive officers;

3. Using the current table of organization of the Delaware savings bank or Delaware savings and loan holding company and its savings bank and non-bank subsidiaries, describe proposed changes in levels of employment among non-management personnel;

4. Any change in the geographic market to be served by the Delaware savings bank or the subsidiary of the Delaware savings and loan holding company (with specific reference to the opening, closing or expansion of branches);

5. Additional products or services which the Delaware savings bank or subsidiary of the Delaware savings and loan holding company will provide after the acquisition;

6. For the next three (3) years, proposed changes in the capitalization of the Delaware savings bank or the Delaware savings and loan holding company and any subsidiary thereof;

With respect to each of the above subject areas, include specific references, if any, to any relevant sections of the acquisition agreement, merger agreement with an interim savings bank, any other agreement or understanding (with any person or party) not incorporated in such acquisition or merger agreements or any exhibits or supplements as to any of such items.

C. State whether the applicant, or any subsidiary thereof, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. §1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State after the proposed acquisition. If so, explain why the Application should be approved in accordance with the convenience and needs of the public of this State.

D. If applicant has acquired or has made application to acquire any other Delaware bank holding company, Delaware savings and loan holding company, Delaware bank, or Delaware savings bank describe in detail the extent to which the acquisition which is the subject of this Application will affect present competition between the savings bank or savings bank subsidiaries of a Delaware savings and loan holding company to be acquired under this Application and the Delaware bank or Delaware savings bank or subsidiary of a Delaware bank holding company or Delaware savings and loan holding company previously acquired or pending acquisition approval.

E. Describe in detail the activities which applicant proposes for fostering economic development and employment within the State of Delaware. By way of historical background, and as part of such description, include the following information:

1. With respect to the commercial loan activity of the applicant and the Delaware savings bank or subsidiary of the Delaware savings and loan holding company to be

acquired, the total dollar value, and the percentage of total commercial loans outstanding, of the following categories of commercial loans:

- a. Small business loans (SBA);
- b. Other small business loans;
- c. Industrial authority development loans;
- d. Financing of ESOP's and leveraged

buy-outs;

e. Financing directly or indirectly of non-profit, community development projects;

f. Loans in other categories designed to stimulate industrial growth and employment.

2. Enclose for both the applicant and/or its subsidiaries and the Delaware savings bank or subsidiaries of the Delaware savings and loan holding company to be acquired copies of the most recent report filed pursuant to the Home Mortgage Disclosure Act, 12 U.S.C. §§2801-9.

Document Control No.:

Regulation No.: 5.844.0009

Proposed

**APPLICATION BY AN OUT-OF-STATE BANK  
HOLDING COMPANY TO ACQUIRE A DELAWARE  
BANK OR BANK HOLDING COMPANY 5 DEL. C. §844**

### INSTRUCTIONS

This Application is to be filed by an "out-of-state bank holding company" (as defined in Section 801 of Title 5 of the Delaware Code) for the purpose of acquiring a Delaware bank or bank holding company pursuant to the Delaware Interstate Banking Act (5 Del.C. §841 et seq.).

This Application is to be completed, executed and acknowledged by a lawfully empowered officer of the out-of-state bank holding company. The completed Application and required exhibits should be filed with the Office of the State Bank Commissioner, Dover, Delaware in duplicate, accompanied by a non-refundable filing fee made payable to the State of Delaware in the amount of five thousand seven hundred and fifty dollars (\$5,750.00), together with a non-refundable processing fee made payable to the Office of the State Bank Commissioner in the amount of one thousand one hundred and fifty dollars (\$1,150.00). THE COMMISSIONER WILL NOT DEEM ANY APPLICATION AS FILED UNTIL THE COMMISSIONER HAS DETERMINED THAT ALL OF THE INFORMATION REQUESTED IN THE APPLICATION HAS BEEN PROVIDED; THAT THE CERTIFICATE HAS BEEN PROPERLY SIGNED AND ACKNOWLEDGED; THAT ALL REQUIRED EXHIBITS ARE ATTACHED; AND THAT ALL FEES HAVE BEEN

PAID.

APPLICATION PROCESS

Upon notification by the Commissioner that this Application is deemed as filed, the applicant shall cause to be published in a newspaper of general circulation throughout the State of Delaware, once a week for two (2) consecutive weeks, a notice of its intention to acquire a Delaware bank holding company or bank, and, if applicable, to form an interim bank in connection therewith. Such notice shall include the date, time and location of the public hearing on the application as established by the Commissioner. Such notice shall expressly invite members of the public to examine the Application on file with the Office of the State Bank Commissioner and to submit comments regarding the Application to the Office of the State Bank Commissioner. A public hearing will be conducted by the Commissioner or his designee in accordance with Chapter 101 of Title 29, Delaware Code to review the Application and to take such testimony and to gather such evidence as the Commissioner or his designee deems necessary to determine whether the proposed acquisition (and, where applicable, the formation of the proposed interim bank) will serve the public convenience and advantage pursuant to the criteria set forth in 5 Del.C. §844(b). When applicable, the Commissioner or his designee will also consider whether a proposed acquisition should be approved even though the acquiring out-of-state bank holding company, or any subsidiary thereof, would control, together with any affiliated insured depository institution, 30 percent or more of the total amount of deposits of insured depository institutions in this State, as provided in 5 Del. C. § 843(b). A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of any transcription of the proceedings requested by the Commissioner or his designee shall be borne by the applicant; in all other instances, the expense of such transcription shall be borne by the person requesting it. The Commissioner or his designee will issue preliminary findings of fact and law and make the same available for comment to the applicant and all parties having presented data, views or argument at the hearing. Said parties shall have thereafter twenty (20) days to submit in writing to the Commissioner exceptions, comments and arguments respecting the preliminary findings. If the Commissioner or his designee presides at a hearing conducted pursuant to this regulation and if the decision on the Application is not adverse to the applicant, the Commissioner or his designee has the right to waive the preliminary findings of fact and law and may instead proceed directly to the entry of a final order.

CONFIDENTIAL INFORMATION

An applicant may request that specific information included in this Application be treated as confidential. Any information or exhibits for which the applicant claims the designation of confidential shall be segregated at the end of the Application as a separate exhibit which the applicant shall designate as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of this Application which the Commissioner shall not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law.

APPLICATION FOR AUTHORITY OF AN OUT-OF-STATE BANK HOLDING COMPANY TO ACQUIRE A DELAWARE BANK OR BANK HOLDING COMPANY

I. Certification

The undersigned, \_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Name of Bank Holding Company)

having first been duly authorized, does hereby make application on behalf of \_\_\_\_\_  
to \_\_\_\_\_  
acquire \_\_\_\_\_  
(Name of Delaware Bank or Bank Holding Company)

The undersigned acknowledges that he/she has read and is familiar with the provisions of the Delaware Interstate Banking Act and all rules and regulations issued in connection therewith; that all of the information provided as part of this Application is, to the best of the knowledge and belief of the undersigned, true and accurate; and that he/she is duly authorized to execute this certification on behalf of the applicant.

WITNESS

\_\_\_\_\_  
Sworn to and subscribed before me, a Notary Public of the State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_.

II. Identification of Applicant

A. State formal name and state of incorporation of applicant.

B. Identify the name and address of a resident of the State of Delaware who is designated as agent of the applicant

for the service of any paper, notice or legal process upon applicant in connection with any matter arising out of Subchapter IV, Chapter 8, Title 5, Delaware Code.

### III. Acquisition

A. Identify the Delaware bank or bank holding company to be acquired (if a bank holding company, further identify the bank subsidiary or subsidiaries of such holding company).

B. Describe the method of acquisition of the Delaware bank holding company or bank (if not otherwise included as part of the Application for Formation of an Interim Bank, enclose as an exhibit to this Application a copy of the acquisition agreement between the applicant and the Delaware bank or bank holding company).

C. Indicate whether this Application is the only pending application for the acquisition of a Delaware bank or bank holding company. If not, identify and attach a copy of any other application pending.

D. Attach as an exhibit a statement of counsel that the Delaware bank holding company and/or Delaware bank are not prohibited by its articles of incorporation, charter, or legislative act from being acquired.

E. If not previously filed, attach as exhibits the most recent statement of income and condition, together with the three most recent annual statements of income and condition of each bank subsidiary of the Delaware bank holding company to be acquired filed with the Office of the State Bank Commissioner or, if a national bank, the Comptroller of the Currency.

F. State whether the proposed acquisition has received: (1) the necessary approval of the stockholders of the out-of-state bank holding company and the Delaware bank holding company or bank (if so, attach certified copies of the resolutions of such approval; if not, describe the status of such approval processes); and (2) whether all necessary federal regulatory approvals have been obtained (if so, provide copies of such approvals; if not, describe the status of the application process for such approvals and attach actual or pro forma applications without exhibits except for transmittal correspondence, and any responses from the federal regulatory authorities).

### IV. Information regarding formation of interim bank (OPTIONAL).

A. If applicant is seeking a certificate of public convenience and advantage from the Commissioner for an interim bank as part of this Application, then applicant should comply with the provisions of Regulation No. 5.121.0002 with respect to the formation of such interim bank as part of this Application; provided, however, that an application for authorization to form an interim bank which is filed as part of this Application by an out-of-state bank holding company shall be governed by the notice,

publication and hearing requirements of this Application as described in the section captioned "Application Process", rather than the notice and publication requirements of Regulation No. 5.121.0002.

B. If applicant has previously applied for a certificate of public convenience and advantage for an interim bank from the Comptroller of the Currency, attach the certificate of public convenience and advantage issued with respect to such interim bank. If such certificate has not been issued, provide a copy of the application to form such interim bank without exhibits other than the transmittal letter and any responses received from the Office of the Comptroller of the Currency.

### V. Information addressing the criteria for approving or disapproving an acquisition provided for at 5 Del.C. §844(b).

#### A. Financial history of the applicant.

1. Describe in narrative fashion the financial history of the applicant, its affiliates, and its bank and non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided, that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of a bank regulatory authority with whom the State Bank Commissioner shall have entered into a cooperative agreement for the provision of such reports pursuant to the provisions of 5 Del.C. §845 or any other provision of Title 5.

2. Provide for the past three calendar years, copies of all Form 10-K's and quarterly reports filed on Form 10-Q (or their state equivalents) (if required) with respect to the bank holding company, together with all proxy statements, tender offer materials, other disclosure documents, etc. relating to the proposed application (if required), or any other acquisition undertaken by applicant.

If an applicant is not required to file any report under the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq. as amended), or an equivalent state filing, the applicant shall file information substantially equivalent to the information which would otherwise be contained in such reports in a form reasonably satisfactory to the Commissioner, including the previous three years' statements of condition and a three year income statement, statements of changes in shareholders' equity, all as prepared in accordance with generally accepted accounting principles.

B. Provide a statement in narrative form of a three (3) year business plan of applicant for the Delaware bank holding company and its bank and non-bank subsidiaries, or the Delaware bank to be acquired. Such plan should include but is not limited to a description of:





Hearing Examiner to compile a record, conduct hearings, and make recommendations concerning the content of the notice required by § 4915(a). After the Hearing Examiner filed his report on August 12, 1996, the Commission determined to adopt rules advanced by the Commission Staff to govern the content of the notice. In so doing, the Commission chose not to endorse an abbreviated regulation and form of notice proposed by the Hearing Examiner. PSC Order No. 4397 (Jan. 21, 1997).

3. Subsequently, the Superior Court overturned the rules adopted by the Commission, determining that those rules required information beyond the mere "notification" required by § 4915(a). See American Automobile Manufacturers Assoc. v. PSC, Del. Super., K.C., 97A-02-004HDR, Ridgely, P. J. (March 31, 1998) (Order).

4. In light of the Superior Court's decision, and upon Staff's motion, the Commission, at its meeting on August 11, 1998, proposed to adopt the form of notice recommended by the Hearing Examiner in his report dated August 12, 1996. The Commission believes that such form of notice is consistent with the Superior Court's view of the parameters of "notice" under § 4915(a).

5. Since the adoption of the initial rules here, the General Assembly has made modifications to the rule-making provisions of the Administrative Procedures Act and the provisions governing the Register of Regulations. Portions of those amendments require an agency to provide notice and opportunity for further comment when it intends to make substantive changes to previously proposed rules as a result of public comment or additional evidence and information. 29 Del. C. § 10118(c). Another similar amendment requires notice in the Register when an agency seeks to withdraw previously prepared regulation. 29 Del. C. § 10118(d).

6. Although the above provisions do not speak directly to a change in rules necessitated by court review, the Commission believes that it would be prudent, in this instance, to provide for notice and opportunity for comment under 29 Del. C. § 10115(a) concerning the Commission's decision to now adopt the form of notice recommended by the Hearing Examiner.

7. The record in this matter shall include the comments and evidence presented during the prior proceedings, as well as any comments or information received hereafter in response to the notice or during the public hearing. In addition, the record shall contain the Commission Staff's motion dated July 31, 1998, requesting adoption of the Hearing Examiner's proposed form of notice and the response filed by the American Automobile Manufacturers Association on August 6, 1998;

Now, therefore, **IT IS ORDERED:**

1. That the Commission proposes to adopt the

regulation and the form of notice as set forth in Attachment 1 to Exhibit "A" as the form of notification to be provided, under 6 Del. C. § 4915(a), when a manufacturer of new motor vehicles seeks to establish or relocate a franchised new motor vehicle dealership into the relevant market area of another franchised new motor vehicle dealer. The Acting Secretary shall forward the Notice of Proposed Further Rule-Making (attached as Exhibit "A") with the proposed Regulation and Form of Notice (Attachment 1) to the Registrar of Regulations for publication in the Delaware Register of Regulations. In addition, the Acting Secretary shall send by United States mail, a copy of such Notice of Proposed Further Rule-Making to the Division of Public Advocate, the participants in this docket, and any other person who has made a written request for advance notice of the Commission's regulation-making proceedings.

2. That the Acting Secretary shall cause the Notice of Proposed Further Rule-Making (attached as Exhibit "A"), but without the Attachment 1, and reference thereto, to be published in The News Journal and Delaware State News newspapers on dates at least thirty (30) days prior to the Commission's scheduled meeting of November 17, 1998. The Acting Secretary shall file proof of such publication prior to November 17, 1998.

3. That the Commission shall conduct a public hearing on the proposed form of notice under 6 Del. C. § 4915(a) at the Commission's regularly scheduled meeting on November 17, 1998.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:  
Acting Secretary

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF DELAWARE

IN THE MATTER OF A	
REGULATION TO SPECIFY	
THE INFORMATION REQUIRED	PSC
TO BE FILED BY A	Regulation
MANUFACTURER TO ESTABLISH	Docket No. 44
AN ADDITIONAL DEALER OR TO	
RELOCATE AN EXISTING	
DEALERSHIP PURSUANT TO	
6 <u>DEL. C.</u> § 4915(a)	

**NOTICE OF PROPOSED FURTHER RULE-MAKING**

TO: ALL MANUFACTURERS OF NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE DEALERS

The Public Service Commission ("the Commission") is the agency charged with administering the protest procedure under 6 Del. C. § 4915(a) applicable when a manufacturer of new motor vehicles seeks to establish or to relocate a franchised new motor vehicle dealership into the relevant market area of an existing franchised motor vehicle dealership. Pursuant to the suggestion in Future Ford Sales, Inc., v. PSC, Del. Supr., 654 A.2d 837, 846 (1995) and 26 Del. C. § 106, the Commission proposes to adopt a regulation governing the Form of Notice which a manufacturer must give to the Commission and each new motor vehicle dealer in the relevant area when it intends to establish or relocate such an additional dealership. The text of the proposed regulation and proposed Form of Notice is attached as Attachment 1 to this notice. The regulation and Form of Notice now proposed by the Commission would supersede the regulations previously adopted by the Commission in PSC Order No. 4397 (Jan. 21, 1997). Those previous rules were vacated by the Superior Court. See American Automobile Manufacturers Assoc. v. PSC, Del. Super., K.C., 97A-02-004HDR, Ridgely, P. J. (March 31, 1998) (Order).

Persons may present their views on the proposed regulation and Form of Notice by filing comments with the Commission on or before November 2, 1998. Twelve (12) copies of such comments should be submitted to the Commission:

Delaware Public Service Commission, Attn: PSC Regulation Docket No. 44, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904

Only persons who submit written comments, or who have previously participated in this docket, will receive notice of any further proceedings.

In addition, the Commission will conduct a public hearing on the proposed regulation and Form of Notice during the course of its regularly scheduled meeting on November 17, 1998 beginning at 1:00 PM. Such hearing will be held at the Commission's office at the address located above. At such hearing, persons may submit their views orally and present relevant evidence. The record in this matter shall also include the comments received and evidence presented during the course of prior hearings held in this docket.

The proposed regulation and proposed form of notice can be inspected and copied during normal business hours at the Commission's office at the address set out above. In addition, the proposed regulation and Form of Notice can be reviewed at the Commission's website by reviewing PSC

Order No. 4397 at "<http://www.state.de.us/govern/agencies/pubserv/delpsc.htm>." The fee for copies of the proposed regulation and Form of Notices is \$0.25 per page.

Individuals with disabilities who wish to participate in these proceedings, or to review this application, should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free number is (800) 282-8574. Persons with questions concerning this application may contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 739-4247.

#### ATTACHMENT 1

#### RULE GOVERNING NOTICE PROVIDED BY MOTOR VEHICLE MANUFACTURERS PURSUANT TO SECTION 4915 (a) OF THE MOTOR VEHICLE FRANCHISING PRACTICES ACT

Motor vehicle manufacturers notifying the Public Service Commission and affected new motor vehicle dealers of their intent to establish an additional new motor vehicle dealership or to relocate an existing new motor vehicle dealership pursuant to 6 Del. C. § 4915(a) shall use the following form of notice:

#### NOTICE OF THE ESTABLISHMENT OF AN ADDITIONAL NEW MOTOR VEHICLE DEALERSHIP OR THE RELOCATION OF AN EXISTING NEW MOTOR VEHICLE DEALERSHIP

TO: **[Insert name and address of new motor vehicle dealer selling new motor vehicles in the same line-make in the "relevant market area" as defined by 6 Del. C. § 4902(10).]**

You are hereby notified that **[insert name of manufacturer]** intends to establish a **[insert line-make of vehicle]** dealership at **[specify the street address or, if none exists, the geographic boundaries of the proposed new dealership]** on or after **[insert earliest date on which manufacturer intends to establish the additional or relocated dealership]**.

The manufacturer is required to provide this notice to you and to the Public Service Commission pursuant to 6 Del. C. § 4915.

[signature]  
On behalf of **[insert name of manufacturer]**

[signature]  
On behalf of **[insert name of proposed dealership]**

cc: Public Service Commission

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF NURSING**

STATUTORY AUTHORITY: 24 Delaware Code,  
Section 1906(1) (24 Del. C. 1906(1))

BEFORE THE DELAWARE BOARD OF NURSING

IN RE: |  
MODIFICATION AND |  
ADOPTION | ORDER  
OF REGULATIONS |

Pursuant to due notice of time and place of hearing published in the News Journal and in the Delaware State News (Exhibit No. 1) and in compliance with the requirements of 29 Del C. § 10 1 15, the Delaware Board of Nursing ("Board") under its authority to enact rules and regulations specified in 24 Del C. § 1906(1), conducted a public hearing concerning proposed modifications and additions to the Rules and Regulations of the Board. The proposed modifications and additions were tentatively approved by the Board on May 12, 1998 and were published in the Delaware Register of Regulations Volume 1, Issue 12, Monday, June 1, 1998, beginning at Page 18 78. (Exhibit No. 2).

The public hearing was held on July 8, 1998, beginning at 11:30 A.M., in Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present for the hearing.

## SUMMARY OF THE EVIDENCE

The following is a summary of the evidence and information submitted as required by 29 Del. C. § 10118. Iva J. Boardman, R.N., M.S.N., Executive Director of the Board of Nursing, was sworn and testified concerning the development of the proposed modifications and additions to the Rules and Regulations of the Board. Ms. Boardman noted that Article 11, concerning Nursing Education Programs, in Section 1. 5 and 5. 1 0 were modified to allow the Board to recognize national accrediting agencies for nursing education in addition to the National League for Nursing. Article VII, relating to Standards of Nursing Practice, contains changes to Section 7.2:4 and 7.4 to address the redundancy in those sections and to exclude Advanced Practice Nurses from the delegation restrictions in place for registered nurses, since the role of an APN is expanded over that of the RN. Article VII, governing the practice of nursing as an advanced practice nurse, is changed in Section 7 to differentiate the authority of delegation afforded APNs from that afforded to RNs. In Article IX, which concerns mandatory continuing education, changes

were made to arrange information in a more systematic sequence, to update and standardize certain definitions using national guidelines, and to offer additional methods to obtain continuing education as well as to make it clear that the Board will audit compliance with the continuing education requirements.

The final Article to be modified is Article X in Section 4 to establish the violation of the terms and conditions of a Board disciplinary action as in itself constituting unprofessional conduct and to clearly place all licensees on notice that non-compliance with the terms and conditions of a Board disciplinary order or action constitutes unprofessional conduct.

There were no written comments received by the Board of Nursing concerning the proposed changes and additions to the Rules and Regulations; no members of the public appeared at the public hearing; and there were no oral comments made at the public hearing.

#### FINDINGS OF FACT AND CONCLUSIONS

The Board finds that the procedures required for the modification and adoption of Rules and Regulations have been accomplished as required and that the proposed changes and additions further the public purposes of the Board of Nursing, are reasonable and appropriate, and are proper for formal adoption by the Board.

#### DECISION AND ORDER

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware Board of Nursing, adopt the proposed modification and changes to the Rules and Regulations published in the Register of Regulations in Volume 1, Issue 12, Monday, June 1, 1998, beginning at Page 1878 as Rules and Regulations of the Board, effective October 10, 1998 after publication of this Order and the final Rules and Regulations in the Register of Regulations. The final modifications and additions to the Rules and Regulations are set forth in the hereto attached Exhibit "A".

SO ORDERED this 9th day of September, 1998.

Judy Schanel, R.N.  
Sarah Seger, L.P.N.  
Deanna Scudo, L.P.N.  
Gwelliam Hines, L.P.N.  
Helen Perkins, L.P.N.  
Til Purnell  
June Turansky, R.N., M.S.N.

DorisDayton  
Jan Monihan, R.N., M. Ed.  
Pamela Andrade, R.N., M.S.  
Judy Hendricks, R.N., M.S.

<sup>1</sup> The quorum of the Board for the public hearing consisted of Judith Hendricks, President; Pamela Andrade, Vice-President; and the following Board members: Judy Schanel, Sarah Seger, Deanna Scudo, Gwelliam Hines, Helen Perkins, Til Purnell, June Turnansky, Doris Dayton, and Jan Monihan.

**\* Please note that no changes were made to the regulation as originally proposed and published in the June 1998 issue of the Register at page 1878 (1:12 Del. R. 1878). Therefore, the final regulation is not being republished. Please refer to the June 1998 issue of the Register or contact the Delaware Board of Nursing.**

---

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE STATE BOARD OF PHARMACY**  
Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del. C. 2509)

IN RE: |  
REGULATIONS I AND III |

Order

Nature of the Proceedings

Pursuant to due notice a hearing was held on August 12, 1998 to receive public comment on revisions to Regulations I and III. A quorum of the Board was present.

Summary of the Evidence

No written comments were received nor was there any public comment at the hearing.

Findings of Fact

1. Changes to Regulations I and III are necessary to promote the goal of protecting the public and ensuring that practitioners in the profession are qualified.

2. The 60-day grace period for continuing education submission is eliminated as unnecessary.

3. It is necessary to limit and monitor hardship relief for continuing education.

4. Change in the practice and industry lead to the deletion of the independent pharmacist designation on the Advisory Council on Continuing Education.

#### Text

The text of Regulations I and III is attached as Exhibit "A" and incorporated herein.

#### Effective Date

These regulations are effective ten (10) days following publication in the Register of Regulations.

#### Decision and Order

It is the decision and order of the Board this 12<sup>th</sup> day of August 1998 that the proposed amendments to Regulations I and III are hereby adopted.

#### DELAWARE STATE BOARD OF PHARMACY

Stuart Levine, R.Ph.

Herbert Von Goerres, R. Ph.

Roosevelt Rowsey, R.Ph.

Claude Massey

Mary Lou Hurd

Carl June

Ruth Melvin

**\* Please note that no changes were made to the regulation as originally proposed and published in the July 1998 issue of the Register at page 6 (2:1 Del. R. 6). Therefore, the final regulation is not being republished. Please refer to the July 1998 issue of the Register or contact the Delaware Board of Pharmacy.**

## DEPARTMENT OF AGRICULTURE

### DELAWARE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 Del. C. 10027)

#### BEFORE THE DELAWARE HARNESS RACING COMMISSION

IN RE: PROPOSED RULES AND REGULATIONS

#### ORDER

Pursuant to 29 Del. C. section 10118, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating the proposed amendment to the Commission's Rules. Following notice and request for

written submissions, the Commission makes the following findings and conclusions:

#### SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed rule amendment in the Register of Regulations and in the News-Journal and Delaware State News. The Commission received no written comments from the public concerning the proposed regulations during the month of June, 1998.

2. The public was given notice and an opportunity to provide the Commission with written comments on the proposed amendments to the Commission's Rules. The Commission received no comments or opposition to the other proposed amendments.

3. As to the proposed amendment to amend Chapter VII, Rule VI.M.14, this amendment would specify the basis for whipping violations. The Commission finds the proposed rule will clarify the illegal use of a whip by a driver and will adopt this rule in its proposed form.

4. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. section 10027.

5. The Commission deems these rules as amended necessary for the effective enforcement of 3 Del. C. Chapter 100 and for the full and efficient performance of its duties thereunder.

6. The Commission concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to insure the integrity and security of the conduct of harness racing in the State of Delaware. The Commission finds all of the proposed rules to be necessary and proper for the purpose of regulating and overseeing the sport of harness racing.

7. The Commission, therefore, adopts these rules as proposed pursuant to 3 Del. C. section 10113. The rules as proposed and now adopted provide as follows:

i) Amend Chapter VII, Rule VI. M.14, to now provide as follows:

"Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length. Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply."

8. This rule amendment will replace in its entirety the former version of Chapter VII, Rule VI-M-14 of the Delaware State Harness Racing Commission Rules and Regulations and any subsequent amendments.

9. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on October 1, 1998.

IT IS HEREBY ORDERED THIS 17TH DAY OF AUGUST, 1998

Anthony G. Flynn, Chairman  
H. Terry Johnson, Commissioner  
Beth Steele, Commissioner  
Mary Ann Lambertson, Commissioner  
Fred Sears, Commissioner

**\* Please note that no changes were made to the regulation as originally proposed and published in the June 1998 issue of the Register at page 1848 (1:12 Del. R. 1848). Therefore, the final regulation is not being republished. Please refer to the June 1998 issue of the Register or contact the Delaware Harness Racing Commission.**

---

## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(d)  
(14 Del. C. 122(d))

### REGULATORY IMPLEMENTING ORDER SCHOOL ATTENDANCE

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to amend the Regulation School Attendance found on page A-8, 4.a., b., c., and d. in the Handbook for K-12 Education. The content of the regulation is found in the Del. C., Chapter 27, and was included in the Handbook for technical assistance purposes. The amendment would remove the present language and substitute the following new language: "Every school district shall have an attendance policy which defines and describes the district's rules concerning attendance for students K-12 and the district shall distribute and explain these policies to every student at the beginning of each school year."

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 14, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend these regulations because the present language, which is in the Del. C., Chapter 27, needs to be replaced with language that requires all districts to have attendance policies. The new language also requires the districts to distribute and explain the policies to all students at the beginning of each year.

#### III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulations hereby shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled Regulations of the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on September 17, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 17th day of September, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 17th day of September, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.  
 Dr. Joseph A. Pika  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

EXHIBIT B  
 AS AMENDED

4. SCHOOL ATTENDANCE

~~Additional information concerning school attendance— laws, regulations, reasons for necessary and legal absences, the role of the visiting teacher, and recommended forms are found in the publication, Resource Materials for Developing Procedures of Administering School Attendance, Revised January 1990. (See Appendix A)~~

~~a. Every parent, guardian or other person in the State having legal control of a child between the ages of 5 and 16 is required to, and shall, send such child to a free public school each day of the minimum school term of 180 days.~~

~~(1) Students in special education who attain age 21 after September 30 (except July 1 for Complex or Rare), may continue their school placement until the end of that fiscal year.~~

~~b. After a child has once been enrolled in school, the school shall require an excuse from the parent or guardian for every absence, and such excuse shall contain the reason for the absence.~~

~~e. The school principal is responsible for recommending to the local board of education guidelines relating to classroom attendance and the establishment of acceptable standards of performance in the subject areas required for graduation or promoting along with acceptable attendance standards for all subject areas.~~

~~d. The chief school officer is the attendance officer of the district. A visiting teacher is assigned to each school district or a combination of districts to investigate attendance problems. It is always the first goal of attendance personnel to ascertain the reason for absence and then seek a way to return the child to school. The visiting teacher should be an enforcement officer only as a last resort. However, if the investigation warrants, a school attendance violation notice may be sent to the parents by the chief school officer.~~

SCHOOL ATTENDANCE

1. Each school district shall have an attendance policy **[in accordance with Del. C.]** which defines and describes the district's rules concerning attendance for students K-12. ~~[and the]~~ **[Each]** district shall distribute and explain these

policies to every student at the beginning of each school year.

REGULATORY IMPLEMENTING ORDER  
 STUDENT PROGRESS GRADING AND REPORTING

I. SUMMARY OF THE EVIDENCE AND  
 INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to repeal the regulations, Student Progress, Grading and Reporting, J.1.A.-D. and J.2.A.-C., pages A-25 to A-27 in the Handbook for K-12 Education. These regulations are really technical assistance suggestions for student grading and reporting. The terms are defined and the role and purpose of grading and reporting is explained and the methodology is discussed. Grading and reporting on student progress (as on report cards) has always been a local prerogative. Although the Del. C. requires school profiles, reporting directly to parents/guardians has always been left to each local school district. The Department's guidelines may be helpful but they should not be regulatory.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 14, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary finds that it is necessary to repeal these regulations because they are essentially technical assistance and the process of grading and reporting, other than the Profiles required by the Del. C., are defined through local school district policy.

III. DECISION TO REPEAL THE REGULATIONS

For the foregoing reasons, the Secretary concludes that it is necessary to repeal the regulations. Therefore, pursuant to 14 Del. C., Sec. 122, the regulations attached hereto as Exhibit B are hereby repealed.

IV. TEXT AND CITATION

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook for K-12 Education.



**V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on September 17, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 17th day of September, 1998.  
DEPARTMENT OF EDUCATION  
Dr. Iris T. Metts, Secretary of Education

Approved this 17th day of September, 1998.  
STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**\* Please note that no changes were made to the regulation as originally proposed and published in the August 1998 issue of the Register at page 171 (2:2 Del. R. 171). Therefore, the final regulation is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Education.**

---

**REGULATORY IMPLEMENTING ORDER**  
**SUMMER SCHOOL PROGRAMS****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary seeks the approval of the State Board of Education to repeal the regulation Summer School Programs, E.3.a. and b., pages A-13 to A-14, in the Handbook for K-12 Education. The regulations, as they are written, are in the form of technical assistance and do not use the terms must or shall. The regulations list the types of summer school experiences that may be offered for students and present guidelines for districts to use when establishing a summer school course for credit. Since it is the local school districts who operate summer school programs, they should establish the policies with the exception of the extended year programs which are defined in the Del. C.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 14, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. FINDINGS OF FACT**

The Secretary finds that it is necessary to repeal these regulations because they are written in the form of technical assistance. Since the local school districts operate the summer school programs, they should establish the policies with the exception of extended year programs which are defined in the Del. C.

**III. DECISION TO REPEAL THE REGULATIONS**

For the foregoing reasons, the Secretary concludes that it is necessary to repeal these regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby repealed.

**IV. TEXT AND CITATION**

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook for K-12 Education.

**V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on September 17, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 17th day of September, 1998.  
DEPARTMENT OF EDUCATION  
Dr. Iris T. Metts, Secretary of Education

Approved this 17th day of September, 1998.  
STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

\* Please note that no changes were made to the regulation as originally proposed and published in the August 1998 issue of the Register at page 172 (2:2 Del. R. 172). Therefore, the final regulation is not being republished. Please refer to the August 1998 issue of the Register or contact the Department of Education.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section  
512 (31 Del.C. 512)

### DIVISION OF SOCIAL SERVICES

#### TANF PROGRAM

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program proposed, in the July 1 edition of the Delaware Register of Regulations (pages 60-64), policy changes to the Division of Social Services' Manual Sections 3000 and 11000. The changes arose from the federal Balanced Budget Act of 1997, which exempted from employment and training sanctions a Temporary Assistance for Needy Families (TANF) client with a child under 6 years of age if an inability to obtain child care could be demonstrated.

#### ACTION

Having received no written materials or suggestions for modification of the proposal from any individual or the public by the advertised deadline for same, the Division hereby adopts the proposed changes as written. The final regulations shall become effective ten days after their publication in the Delaware Register.

Gregg C. Sylvester, MD  
Secretary, Delaware Health and Social Services  
August 1998

\* Please note that no changes were made to the regulation as originally proposed and published in the July 1998 issue of the Register at page 60 (2:1 Del. R. 60). Therefore, the final regulation is not being republished. Please refer to the July 1998 issue of the Register or contact the Department of Health and Social Services.

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 314 & 2533 (18 Del. C. 314, 2533)

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF DELAWARE

IN THE MATTER OF:

THE AMENDMENT OF  
DEPARTMENT OF INSURANCE  
DEPARTMENT REGULATION  
NUMBER 65

Docket No. 98-27

### ORDER

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

NOW THEREFORE, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

FURTHER, I Order that Regulation No.65 be revised as referenced herein, effective July 1, 1999.

SO ORDERED this 31st day of August, 1998.

DONNA LEE WILLIAMS

Insurance Commissioner State of Delaware

### REGULATION NO. 65

#### DELAWARE WORKPLACE SAFETY REGULATION

Sec.

1. Authority
2. Purpose
3. Scope
4. Eligibility and premium credit
5. Notice of employer eligibility
6. Eligibility period
7. Inspections and cost
8. Renewals and eligibility
9. Premium size ranges and corresponding credits
10. Effect upon manual rates and schedule rating credits
11. Effective date

\* Please note the above page numbers refer to pages in the original document not to pages in the Register.

**SECTION 1. AUTHORITY.**

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to Title 18 Del. C. Section 314, Section 2533 and promulgated under 29 Del. C. Chapter 101.

**SECTION 2. PURPOSE.**

The purpose of this regulation is to:

- A. Enhance the health and safety of workers in the State of Delaware.
- B. Provide lower insurance premiums for qualifying employers who currently pay ~~between \$3,161 and \$60,000~~ **[\$3,161 or more]** of annual Delaware Workers' Compensation premiums.
- C. Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

**SECTION 3. SCOPE.**

All employers who comply with the criteria set forth in this regulation are eligible for participation in the Workplace Safety Program. Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware premiums in multi-state policies.

**SECTION 4. ELIGIBILITY AND PREMIUM CREDIT.**

An employer is eligible for the Safety Program if its annual premium is \$3,161 or more. Workplace Safety credit eligibility is based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau will test each employer by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size.

**SECTION 5. NOTICE OF EMPLOYER ELIGIBILITY.**

~~[A.]~~ Employers meeting the premium requirement will be notified by the Delaware Department of Insurance seven months in advance of their policy renewal date. This notification will include[(s)] ~~[a questionnaire]~~ **[instructions for qualifying]** ~~[on how to proceed to ascertain whether the employer may qualify]~~ for a safe workplace credit.

~~[B. In a form acceptable by the Delaware Department of Insurance, the Delaware Compensation Rating Bureau will mail to each carrier's home office a list of its policyholders who have met the premium requirements and who have been notified by the Department.]~~

**SECTION 6. ELIGIBILITY PERIOD.**

The Department will notify the employer of eligibility, and inform the employer that he must elect at least five (5) months in advance of the date of policy renewal to participate in the Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

**SECTION 7. INSPECTIONS AND COST.**

A. All inspections shall be made by a representative from an independent safety expert company under contract to the Insurance Department. The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes ~~[both the]~~ **[each]** scheduled and~~[or]~~ nonscheduled inspection. Failure to pass ~~[the first]~~ **[a]** scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However, the employer, after failing ~~[an]~~ **[its first]** inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

B. The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

**SECTION 8. RENEWALS AND ELIGIBILITY.**

An employer must apply for the Workplace Safety Program each year. For each year after the initial qualification, the inspection requirement will consist of one unannounced inspection. The Department will maintain a list of inspection charges which will be sent to interested parties upon request.

**SECTION 9. PREMIUM SIZE RANGES AND CORRESPONDING CREDITS.**

Safety credits will be granted according to the following formula:

$$20\% \times [1.0000 - C]$$

where "C" is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, "C" will be set at ~~0.500~~ [0.050] Safety credit packages will be rounded to the nearest whole percent.

**SECTION 10. EFFECT UPON MUTUAL RATES AND SCHEDULE RATING CREDITS.**

A. Workers' Compensation manual rates shall ~~not~~ be adjusted because of implementation of this program. [A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.]

B. Schedule rating plan credits given to policyholders for "competitive" reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.

[C. A Merit Rating Plan shall be implemented which will provide incentives for employers paying less than \$3,161 of annual Delaware Workers' Compensation premiums to maintain safe workplaces.]

~~[C. A Delaware Workplace Safety Program Correction Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the Workplace~~

~~Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.]~~

**SECTION 11. EFFECTIVE DATE.**

The [amended portions] of this regulation shall become effective [on July 1, 1999].~~[30 days after the Commissioner's signature.]~~

Donna Lee H. Williams  
Insurance Commissioner

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT**

**AIR QUALITY MANAGEMENT SSECTION**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del. C. Ch. 60)

Secretary's Order No. 98-A-0034

Date of Issuance: September 1, 1998

Re: Proposal to Amend Regulation Nos. 1 and 24 of the  
*Regulations Governing the Control of Air Pollution*

Effective Date of Regulatory Amendment: \_\_, 1998

I. Background

On Thursday, July 30, 1998, at 7:00 p.m. a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The public hearing concerned amending the *Regulations Governing the Control of Air Pollution*. The proposed changes would revise the definition of volatile organic compounds in Regulation No. 1, Section 2 and the definition of exempt compounds in Regulation No. 24, Section 2.

A public workshop concerning the proposed regulatory change was held on April 30, 1998. Proper notice of the hearing was provided as required by law.

This proposal would revise the definition of the term "volatile organic compounds" in Regulation No. 1, Section 2 and the definition of the term "exempt compounds" in Regulation No. 24, Section 2. The effect of this amendment is to add 24 volatile organic compounds to Delaware's definitions of "exempt volatile organic compounds." The U.S. Environmental Protection Agency has determined that

these 24 compounds have negligible photochemical reactivity and therefore do not participate in chemical reactions that contribute to the formation of ground level ozone. The amendment would make Delaware's regulatory definitions consistent with the federal definition of "exempt volatile organic compounds" published at 40 C.F.R. Part 51.100(s)(1).

**II. Findings**

1. The Department provided proper notice of the hearing as required by law.
2. An informal public workshop concerning the regulatory proposal was held on April 30, 1998.
3. The proposed amendment would add 24 volatile organic compounds that EPA has found do not participate in chemical reactions that contribute to the formation of ground level ozone to Delaware's definition of "exempt volatile organic compounds."
4. The proposed amendment will make Delaware's definition of "exempt volatile organic compounds" consistent with the federal definition published at 40 C.F.R. Part 51.100(s)(1).
5. The typographical errors noted in the publishing of the proposed regulation in the *Register of Regulations* do not constitute changes to the proposal and are not significant with respect to republishing this regulatory action.
6. The record supports promulgation of the amendment to the *Regulations Governing the Control of Air Pollution* and contains no evidence to the contrary.

**III. Order**

In view of the above findings, it is hereby ordered that Regulations Nos. 1 and 24 of the *Regulations Governing the Control of Air Pollution* be amended in the manner and form provided in the Delaware Administrative Procedures Act.

**IV. Reasons**

The proposed amendment to the *Regulations Governing the Control of Air Pollution* will further the policies and purposes of 7 Del. C. Chapter 60, in that it will address air pollutants that have been found not to participate in chemical reactions that contribute to the formation of ground level ozone. This amendment was not opposed in any way by the public or the regulated community. In addition, this amendment will make Delaware's definitions consistent with the federal definition of "exempt volatile organic compounds."

Christophe A. G. Tulou, Secretary

REGULATION NO. 1

DEFINITIONS AND ADMINISTRATIVE PRINCIPALS

Section 2 - Definitions

**VOLATILE ORGANIC COMPOUNDS:** (Also denoted as VOCs) Any carbon-containing compound, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

- methane;
- ethane;
- methyl chloroform (1,1,1-trichloroethane);
- CFC-113 (1,1,1,2-trichloro-2,2,2-trifluoromethane);
- methylene chloride (dichloromethane);
- CFC-11 (trichlorofluoromethane);
- CFC-12 (dichlorodifluoromethane);
- HCFC-22 (chlorodifluoromethane);
- HFC-23 (trifluoromethane);
- CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);
- CFC-115 (chloropentafluoroethane);
- HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);
- HFC-134a (1,1,1,2-tetrafluoroethane);
- HCFC-141b (1,1-dichloro-1-fluoroethane);
- HCFC-142b (1-chloro-1,1-difluoroethane);
- HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
- HFC-125 (pentafluoroethane);
- HFC-134 (1,1,2,2-tetrafluoroethane);
- HFC-143a (1,1,1-trifluoroethane);
- HFC-152a (1,1-difluoroethane); ~~and~~
- parachlorobenzotrifluoride (PCBTF);
- cyclic, branched, or linear completely methylated siloxanes;
- acetone;
- perchloroethylene (tetrachloroethylene);
- HCFC-225ca(3,3-dichloro-1,1,1,2,2-pentafluoropropane);
- HCFC-225cb(1,3-dichloro-1,1,2,2,3-pentafluoropropane);
- HFC-43-10mee (1,1,1,2,3,4,4,4,5,5,5-decafluoropentane);
- HFC-32 (difluoromethane);
- HFC-161 (ethylfluoride);
- HFC-236fa (1,1,1,3,3,3-hexafluoropropane);
- HFC-245ca (1,1,2,2,3-pentafluoropropane);
- HFC-245ea (1,1,2,3,3-pentafluoropropane);
- HFC-245eb (1,1,1,2,3-pentafluoropropane);
- HFC-245fa (1,1,1,3,3-pentafluoropropane);

HFC-236ea (1,1,1,2,3,3-hexafluoropropane);  
HFC-365mfc (1,1,1,3,3-pentafluorobutane);  
HCFC-31 (chlorofluoromethane);  
HCFC-151a (1-chloro-1-fluoroethane);  
HCFC-123a (1,2-dichloro-1,1,2-trifluoroethane);  
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane  
(C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);  
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-  
heptafluoropropane  
((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);  
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane  
(C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);  
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-  
heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);  
methyl acetate; and  
 perfluorocarbon compounds which fall into these  
 classes:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes.
- (2) Cyclic, branched, or linear completely fluorinated ethers with no unsaturated bonds.
- (3) Cyclic, branched, or linear, completely tertiary amines with no unsaturated bonds.
- (4) Sulfur containing perfluorocarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.

REGULATION NO. 24  
 CONTROL OF VOLATILE ORGANIC  
 COMPOUND EMISSIONS

Section 2 - Definitions

s. "Exempt compounds" means any of the compounds listed in Regulation 1, Section 2 - Definitions, "Volatile Organic Compounds" which have been determined to have negligible photochemical reactivity:

methane;  
 ethane;  
 methyl chloroform (1,1,1 trichloroethane);  
 CFC-113 (1,1,1 trichloro-2,2,2-trifluoromethane);  
 methylene chloride (dichloromethane);  
 CFC-11 (trichlorofluoromethane);  
 CFC-12 (dichlorodifluoromethane);  
 HCFC-22 (chlorodifluoromethane);  
 HFC-23 (trifluoromethane);  
 CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);  
 CFC-115 (chloropentafluoroethane);

HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);  
 HFC-134a (1,1,1,2-tetrafluoroethane);  
 HCFC-141b (1,1-dichloro-1-fluoroethane);  
 HCFC-142b (1-chloro-1,1-difluoroethane);  
 HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);  
 HFC-125 (pentafluoroethane);  
 HFC-134 (1,1,2,2-tetrafluoroethane);  
 HFC-143a (1,1,1-trifluoroethane);  
 HFC-152a (1,1-difluoroethane)

~~Perfluorocarbon compounds which fall into these classes:~~

- ~~(1) Cyclic, branched, or linear, completely fluorinated alkanes;~~
- ~~(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturated bonds;~~
- ~~(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturated bonds; and~~
- ~~(4) Sulfur containing perfluorocarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.~~

For determining compliance with emission limits, VOCs will be measured according to the procedures in Methods 25 and 25A of Appendix A of 40 CFR, Part 60, and the procedures and equations in §60.755. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly-reactive compounds when determining compliance with an emission standard. However, the Department may require such owner or operator, as a precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

In addition to the procedures for requesting a satisfactory compliance determination, where the Department proposes to allow the use of a test method for excluding negligibly-reactive compounds that is different or not specified in the approved SIP, such change shall be submitted to the U.S. EPA for approval as part of a SIP revision.

**DEPARTMENT OF  
TRANSPORTATION**

Statutory Authority: 17 Delaware Code,  
Section 131(i) (17 Del.C. 131(i))

**SUBDIVISION PLAN REVIEW FEE PROCEDURES**  
EFFECTIVE OCTOBER 13, 1998

17 Delaware Code, Section 131(i) as amended provides for the Department of Transportation to collect fees for the costs of administering the subdivision approval process.

**Order Adopting the Regulations.**

In the Delaware Register of Regulations dated August 1, 1998, a draft of these procedural regulations was published for written comment. Written comments were received regarding response times for plan submissions.

Upon review of the draft and the written comments, the Department made technical, non-substantive changes in the regulations. These changes were as follows:

1. A clarification of how to handle land developments that do not clearly fit into the established categories was added to the policy. These developments, which include golf courses, borrow pits and mobile home parks, are covered in the category "Non Conforming Submissions".
2. Certified checks are not required. Personal checks will be accepted.
3. A performance measure of 30 days to provide a response to a plan submission was included in the policy.

The internal reviews by the Department lead to a recommendation for the adoption of these procedures. There were no substantive changes in the draft regulations after the citizens were given the opportunity to comment. Therefore, the Department hereby adopts the following Subdivision Plan Review Fee Procedures as final regulations, to be effective 12 days after the publications of these regulations in the Delaware Register.

These fees will be assessed for both residential and non-residential development proposals at two different stages: (1) the Initial Stage and (2) the Construction Stage.

**Definitions**

1. Gross floor area: The sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed by applying the following criteria:
  - a. The horizontal square footage is measured from the face of all exterior walls.

- b. Enclosed storage, mechanical areas, mezzanines and similar structures shall be included as gross floor area wherever at least seven feet are provided between the finished floor and the ceiling.

- c. No deduction shall apply for horizontal areas void of actual floor space, for example, elevator shafts and stairwells.

2. Lot: A parcel of land whose boundaries are established by legal instrument such as recorded deed, court order or a recorded plot which is recognized as a separate legal entity for the purposes of transfer of title.

3. Major residential subdivision: A subdivision of five or more residential lots.

4. Minor residential subdivision: A subdivision of four or less residential lots.

5. Record plan: A complete plan which defines property lines, proposed street and other improvements, and easements; or a plan of private streets to be dedicated to public use.

6. Subdivision:
  - a. The division or redivision of a lot, or a parcel of land, by any means, including a plan or a description of metes and bounds, into two or more lots, tracts, parcels, or other divisions of land for the purpose of, whether immediate or future, of lease, of the transfer of ownership or of building development.

- b. The division or allocation of land for the opening, widening, or extension of any street or streets, or other public facilities.

**Policy/Guideline**

- (1) All fees are non-refundable. Fees to be assessed are as follows:

- (a) Initial Stage. Fees are collected at the time of submission of the Record Plan for the Department's review. The fees associated with this stage reimburse the Department for all plan review activities prior to plan recordation by the county. An "Initial Stage Fee Calculation Form" must be submitted with the fee.

- (1) Minor residential subdivision: \$100
    - (2) Major residential subdivision: \$400 plus \$10 per lot.

- (3) Non-residential development: \$500 plus \$20 per lot or \$500 plus \$20 per 1,000 square feet of gross floor area, whichever is greater.

- (b) Construction Stage. Fees are collected at the time of submission of the Construction Plans for the Department's review. The fees associated with this review reimburse the Department for the technical review of subdivision street plans and highway access plans. A "Construction Stage Fee Calculation Form" must be submitted with the fee.

- (1) Minor residential subdivision: N/A

(2) Major residential subdivision: 125% of the Initial Stage fee for a major residential subdivision as identified in item 1(a).

(3) Non-residential development: 150% of the Initial Stage fee for non-residential development as identified in item 1(a).

**[(c) Non-Conforming Submissions. Some plan submissions will not fit into the previously described categories. Plans for developments such as subdivisions with private streets; mobile home parks; golf courses; borrow pits shall be considered as one lot non-residential development. Therefore the Initial Stage fee for these developments will be \$520.]**

(2) The person responsible for implementing this procedure within the Subdivision Office will be the Subdivision/Utilities Engineer. Collection and recording of fees will take place in the Division of Preconstruction's financial management unit. All fees shall be submitted to the Subdivision/Utilities Engineer or designee with the appropriate fee calculation form and plan submission. The Subdivision/Utilities Engineer or a Subdivision Manager shall review for accuracy the fee calculation form with respect to the plan and fee submitted. Once reviewed and approved for accuracy, the reviewer will give the check/money order to the Division of Preconstruction's financial management unit. The financial management unit will record the payment, assign an internal control number and initiate the process to deposit the fee through the Office of Finance.

(3) The Department's Cash Receipt Policy must be followed in order to be in compliance with 29 Delaware Code, Section 6103 (all receipts in excess of \$100 per day must be deposited daily). The date that applications/fees are received in the Division of Preconstruction's financial management unit in the Department's administration building in Dover will be recorded for this purpose.

(4) Separate spreadsheets have been developed which will record fees received by the Division of Preconstruction's financial management unit for Initial Stage fees and Construction Stage fees. These spreadsheets are to be utilized to record the payment, verify fees received and perform monthly reconciliation of revenues.

(5) The following program code has been established for the revenues generated in accordance with this policy.

1898203-2N-8405-87-05000000 Plan Review Fees

(6) The following revenue codes have been established for recording the revenue on both the DFMS and BACIS accounting systems.

Initial Stage fee - 3717 01

Construction Stage fee - 3717 02

(7) Monthly Remittance to Trust Fund Administrator  
Each month the Department's Finance Office shall process a payment voucher if the Subdivision Review Fee account balance exceeds \$1,000. This check will be forwarded with a cover letter to the Trust Fund Administrator for deposit.

(8) The Division of Preconstruction's financial management unit must maintain a ledger of all receipts. Monthly revenue reports shall be generated by the Department's Finance office and forwarded to the Division of Preconstruction's financial management unit in order to reconcile monthly receipts. A report of reconciliation, including any discrepancies with explanation thereof, will be forwarded to the Department's Finance Office, Trust Fund Administrator, and the Subdivision Section on or before the 15<sup>th</sup> day of the next following month. The Finance Office will retain a copy of the reconciliation for one full year after successful audit.

(9) The Department will not accept a Record Plan or Construction Plan submission without a respective fee calculation form and payment. Should any payment received be deemed insufficient, one of the following two options are available at the discretion of the Department:

(a) Funds will be accepted and deposited in accordance with the Department's Cash Receipts Policy. The Department shall notify the applicant that no action on paperwork submitted will take place until the balance of required fees is received.

(b) All documents subject to review by the Subdivision Office will be returned to the applicant. Documents can be resubmitted with correct fees at a later date.

(10) Only ~~certified~~ checks or money orders will be accepted and shall be made out to the Delaware Department of Transportation.

**[(11) Assuming a submission is complete and any issues involving Traffic Impact Studies ("TIS") and Zoning have been resolved, a response will be received from DelDOT within 30 days.]**

~~[(11)]~~ (12) Any requests for changes in this policy/guideline must be forwarded in writing for approval of the following:

- (a) Subdivision/Utilities Engineer
- (b) Assistant Director for Design Support
- (c) Office of Administration, Finance Administrator.
- (d) Deputy Attorney General (representing DelDOT)

Upon approval of modifications, written approval will be forwarded.



APPROVED: David B. DuPlessis /s/  
SUBDIVISION/UTILITIES ENGINEER  
DATE  
APPROVED: Michael A. Angelo /s/  
ASSISTANT DIRECTOR FOR DESIGN SUPPORT  
DATE  
APPROVED: Wayne J. Hartnett /s/  
FINANCE ADMINISTRATOR  
DATE  
APPROVED: Frederick H. Schranck /s/  
DEPUTY ATTORNEY GENERAL  
DATE

---

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del. C. 122(d))

BEFORE THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF DELAWARE

IN THE MATTER OF THE |  
INVESTIGATION AND ADOPTION | PSC  
OF RULES TO GOVERN PAYPHONE | REGULATION  
SERVICES WITHIN THE STATE | DOCKET 12  
DELAWARE | (TRACK III)

**ORDER NO. 4885**

AND NOW, to wit, this 25<sup>th</sup> day of August, A.D. 1998;  
WHEREAS, in the Telecommunications Act of 1996,  
Congress directed the Federal Communications Commission  
("FCC") to promulgate regulations to ensure fair  
compensation for pay phone service providers ("PSPs") and  
to ensure competitive parity between independent PSPs and  
pay phone services provided by Bell operating companies.  
47 U.S.C. 276;

AND WHEREAS, pursuant to the federal enactment ,  
the FCC has issued two Orders (FCC 96-388 and FCC 96-  
439) directing a two-phase restructuring and deregulation of  
pay phone services;

AND WHEREAS, in light of the enactment of 47  
U.S.C. 276 and the entry of the FCC's implementing orders,  
the Commission decided, pursuant to 26 Del. C. Sections  
210, 209, to investigate the repeal or revision of the Rules  
governing pay phone services and the possible adoption of  
new rules to govern such services within Delaware;

AND WHEREAS, by Order No. 4525, dated June 17,  
1997, the Commission adopted a two-track approach for its  
investigation and rule-making concerning pay phone  
services in Delaware.

AND WHEREAS, having concluded Track I, the  
Commission's designated Hearing Examiner, on July 22,  
1998, filed his Track II Report with the Commission with the  
findings and recommendations concerning the issue of  
whether or not the Commission should adopt a state plan to  
implement, administer, and fund public interest pay phones  
("PIPs");

AND, the Commission having considered the  
recommendation in the Report of the Hearing Examiner,  
which is incorporated herein by this reference, and, by the  
affirmative vote of a majority of its members, approved that  
recommendation; now therefore,

**IT IS ORDERED:**

1. That the Commission hereby adopts in its entirety the  
July 22, 1998 Report of the Hearing Examiner, attached to  
the original hereof as Exhibit "A".

2. That by so doing, the Commission finds and  
concludes that there is no identifiable need for a PIP program  
in Delaware at this time, thus adoption of PIP rules is  
unnecessary.

3. The Commission reserves the jurisdiction and  
authority to enter such other or further Orders in this matter  
as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:  
Acting Secretary

---

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Authority on Radiation Protection	Dr. Robert N. Arm	09/15/01
	Ms. Robin L. Elliott	09/15/01
	Dr. Ehsan M. Helmy	09/15/01
	Mr. Norman W. Henry, III	09/15/01
	Dr. Dale M. Hiller	09/15/01
	Mr. David H. Irwin	09/15/01
	Dr. Stephen J. Lawless	09/15/01
Board of Landscape Architects	Mr. Thomas Ford	09/15/01
Board of Nursing	Ms. Sarah H. Seger	09/18/01
Board of Pharmacy	Mr. Belasco J. Bossard	09/15/01
	Ms. Ruth B. Melvin	09/15/01
Board of Podiatry Examiners	Dr. Elizabeth A. Reilly	09/18/01
Commission on State Surplus Real Property	Hon. Darrell J. Minott	Pleasure of the Governor
	Hon. Thomas B. Sharp	Pleasure of the Governor
Council on Aging and Adults with Physical Disabilities	Mr. Ed Cahill	09/18/01
	Mr. Keith Campbell	09/18/01
	Mr. Wayne Carter	09/18/01
	Ms. Lucien Ferguson	09/18/01
	Mr. John E. Jefferson	09/18/01
	Ms. Laura Lee C. Morris	09/18/01
	Ms. Lelia D. Perkins	09/18/01
	Ms. Mary A. Teller	09/18/01
	Ms. Marilyn Van Savage	09/18/01
Council on Libraries	Mr. James P. Neal	09/26/01
Council on Social Services	Ms. Beverly Miles	09/18/01
Council on Transportation	Ms. Mary W. Davis	09/18/01
	Mr. Joseph DeMul	09/18/01
Delaware Center for Educational Technology Board	Mr. Paul R. Fine	08/21/01
Delaware Private Industry Council	Hon. Lisa Blunt-Bradley	09/15/01

---

---

**GOVERNOR'S APPOINTMENTS**

---

697

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Education Salary Schedule Improvement Committee	Dr. Joseph A. Pika, Chairperson	Pleasure of the Governor
	Ms. Peg Bradley	Pleasure of the Governor
	Mr. Paul R. Fine	Pleasure of the Governor
	Mr. Charles Moses	Pleasure of the Governor
	Ms. Margaret Tansley	Pleasure of the Governor
Governor's Cabinet Committee on Planning	Hon. Brian J. Bushweller	Pleasure of the Governor
	Hon. Darrell J. Minott	Pleasure of the Governor
Greater Wilmington Convention and Visitors Bureau	Mr. Peter C. Morrow	08/10/00
Human Relations Commission	Ms. Nicole Cunningham	10/27/98
Industrial Accident Board	Mr. Lowell J. Groundland, Chairperson	07/08/04
Local Records Commission	Ms. Janice C. Green	Pleasure of the Governor
Parental Involvement in Education Committee	Hon. Ruth Ann Minner, Chairperson	Pleasure of the Governor
	Ms. Lena V. Cocciolone	Pleasure of the Governor
	Mr. Bert Freeman	Pleasure of the Governor
	Dr. James E. Hammond	Pleasure of the Governor
	Ms. Teresa L. Schooley	Pleasure of the Governor
	Ms. Margaret Tansley	Pleasure of the Governor
Pesticide Advisory Committee	Ms. Valerie A. Woodrull	Pleasure of the Governor
	Mr. Daniel C. Bryan	09/15/01
	Mr. Donald A. Eggen	09/15/01

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Pesticide Advisory Committee	Mr. Robert Fugitt	09/15/01
	Mr. Charles A. Lesser	09/15/01
	Mr. Joseph J. Reardon	09/15/01
	Mr. John G. Townsend IV	09/15/01
	Ms. Susan Whitney	09/15/01
Public School Transportation Task Force	Mr. Charles W. Hudson	Pleasure of the Governor
	Ms. Lynn B. Lester	Pleasure of the Governor
Public School Transportation Task Force	Mr. Gregory C. Weer	Pleasure of the Governor
Purchase of Products and Services of the Blind	Mr. Harry O. Kline	09/15/02
	Ms. Mary Ann Kwiatkowski	09/15/02
	Mr. Roger M. Levy	09/15/02
	Mr. Dominic E. Scatasti, Sr.	09/15/02
Real Estate Commission	Ms. Mary Catherine Biondi	05/02/99
State Emergency Response Commission	Hon. Brian J. Bushweller, Chairperson	Pleasure of the Governor
Vocational Rehabilitation Advisory Council for the Div. for the Visually Impaired	Ms. Donna R. Frost	09/18/01
	Ms. Teresa Gallagher	09/18/01
	Mr. August F. Hazeur	09/18/01
	Mr. Steven P. Justice	09/18/01
	Mrs. Lynette Scott	09/18/01
	Ms. Nancy Smith	09/18/01
Wastewater Facilities Advisory Council	Mr. Joseph J. Corrado, Chairperson	05/27/01
WILMAPCO Council	Mr. Darrell J. Minott	
Workforce Development Council	Hon. Lisa Blunt-Bradley	Pleasure of the Governor
	Hon. Thomas Eichler	Pleasure of the Governor
	Mr. William J. McCloskey	Pleasure of the Governor
	Hon. Gregg C. Sylvester, M.D.	Pleasure of the Governor
	Hon. Charles W. Welch	Pleasure of the Governor

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OPINION  
NO. 98-IB05

July 6, 1998

Mr. Donald R. Wood  
330 Union Church Road  
Townsend, DE 19734

RE: **Freedom of Information Act Complaint Against  
Appoquinimink School District**

Dear Mr. Wood:

By letter dated June 4, 1998 (received by this Office on June 8, 1998), you alleged that the Appoquinimink School District ("the School District") had violated the Delaware Freedom of Information Act, 29 Del. C. Sections 1000 1-10005 ("FOIA"), by failing to post notice of a meeting held on June 2, 1998 at least seven days in advance.

By letter dated June 12, 1998, we asked the School District for its response to your complaint. By letter dated June 16, 1998 (received by our Office on June 24), Superintendent Marchio responded. According to the School District, the meeting on June 2, 1998 was a "special meeting," for which only 24 hours' notice is required. The School District states that notice of that meeting was "posted in every one of our schools, including the school in which our meetings are normally held." In addition, a copy of the notice was faxed to the Middletown Transcript. A reporter attended the meeting, and an article about the new teachers' contract appeared in the newspaper on June 4, 1998.

The School District contends that it had to call a special meeting with less than seven-days of notice because "the purpose of the meeting was to take action on a contract settlement between the district and the teacher's union. Agreement was reached with the union late on Friday, May 29, 1998, which changed the dental benefits of the teachers from the present self-insured system to a dental plan offered by the state of Delaware." The deadline "for enrolling employees in the state dental plan was Friday, June 5, 1998. As it turned out, the district was rushed to enroll all employees into the plan in three days and could not wait until the June 9th [regularly scheduled] meeting."

**STATUTORY PROVISIONS**

Section 10004(c)(2) of FOIA requires all public bodies to "give public notice of their regular meetings and of their

intent to hold an executive session closed to the public, at least 7 days in advance thereof " Subsection (3) allows public bodies to give notice of a special meeting "no later than 24 hours before such meeting." A "special" meeting is defined "as one held less than 7 days after the scheduling decision is made." Notice of a special meeting "shall include an explanation" as to why the normal seven-day notice "could not be given."

"Public notice" includes, but is not limited to, "conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available." 29 Del. C. Section 10004(e)(4).

**OPINION**

Your complaint suggests that the School District should have given notice to The News Journal rather than the Middletown Transcript, which is not a daily newspaper and would not have published notice in time to inform the public of the meeting on June 2, 1998. FOIA only requires a public body to post official notice of any meeting at its principal office or where its meetings are regularly held. However, in the interest of wider public dissemination, a public body is not restricted in the manner it chooses to provide additional notice beyond the statutory minimum. The School District has confirmed that notice of the June 2, 1998 meeting was posted at "the school in which our meetings are normally held." The School District's attempt to provide notice through the local newspaper goes beyond the statutory minimum and is commendable for that reason.

The notice states that the School District would hold a meeting on June 2, 1998 at Middletown High School in "Closed Executive Session" for the purpose of discussing "personnel and legal matters." We are satisfied that the need to consider the new teachers' contract warranted the School District's calling a special meeting with only 24 hours' notice. As the School District has explained, it had only a matter of days to enroll employees in a state dental plan.

More troubling is the failure to explain in the notice why the normal seven days' notice could not be given, as required by Section 10004(e)(3) of FOIA. In Opinion 94-IB37 (July 26, 1994), this Office observed that FOIA "requires only a reason, not a specific detailed factual basis, why the seven-day requirement could not be met." But we have consistently found a FOIA violation where the notice failed "to provide any explanation whatsoever concerning the reason why the normal seven day notice could not be given." *Id.* Accord Opinion 96-IB 1 5 (May 10, 1996); Opinion 97IB18 (Sept. 2,

1997). We find therefore that the School District violated the public notice requirements of FOIA by failing to provide some explanation in the notice posted why the normal seven-day notice could not be given. The question then is the proper remedy. We bear in mind that in a recent opinion our Office also found that the School District had violated the requirements of the open meeting law, and put the School District "on notice that the requirements of the open meeting law must be strictly followed in the future." Opinion 98-IB04 (May 20, 1998).

In addition to the notice issue, we find that the School District violated the public meeting requirements of the Act by conducting its discussion of the new teachers' contract in executive session. While the complaint did not raise this issue directly, the complaint questioned why the contract issue was not publicly discussed. At the June 2, 1998 meeting, the School District discussed the matter in executive session in the apparent belief that it was a "personnel" matter, 29 Del. C. Section 10004(b)(9). The personnel exception for executive session was intended to protect the personal privacy of individual employees, and applies only when the discussion reflects on an individual's "competence or ability." Opinion 93-IB03 (Feb. 10, 1993). The discussion of the contract was an item of general business and the public is entitled to have the general business of the School District conducted in an open forum. While there is no reason to believe that the School District intended to violate FOIA by regarding general contract issues as personnel matters, the distinction is an important legal one and the School District that it should, in the future, consult with its legal counsel when such issues arise.

#### Conclusion

For the foregoing reasons, we determine that the School District violated FOIA in two respects: (a) by failing to explain in the notice of the June 2, 1998 meeting why the normal seven days' notice could not be given and (b) by the improper use of an executive session for a purpose not permitted by 29 Del. C. § 10004(b). Under the circumstances, no purpose would be served to void the action taken by the School District at that meeting. However, to the extent the School District took action in executive session on June 2, 1998, the School District must provide a public summary of its discussion and vote as an agenda item at a regular meeting or at a special meeting properly noticed according to law and conducted for that purpose. The remedial action must be taken within thirty days of receipt of this letter. The district shall notify this

Office promptly when the FOIA violation has been remedied.

Very Truly Yours,  
W.. Michael Tupman  
Deputy Attorney General

APPROVED  
Michael J. Rich  
State Solicitor

---

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OPINION

NO. 98-IB06

July 10, 1998

William G. Burke, Sr.  
Administrative Director  
Howard G. Sholl, Jr.  
Deputy Administrative Director  
Department of Elections for  
New Castle County  
820 N. French Street, 4th Floor  
Wilmington, DE 19801

Re: **Candidacy of Richard L. Abbott**

Dear Messrs Burke and Sholl:

By memorandum dated June 22, 1998, you informed this office that Richard L. Abbott had filed as the Republican candidate for the Third New Castle County Councilmanic District. You also advised this office that you believed Mr. Abbott failed to meet a one year residency requirement, citing 9 Del.C. § 1142.<sup>1</sup> By accompanying letter to Mr. Abbott dated June 22, 1998, you directed him to provide proof of his one year residency.<sup>2</sup> Mr. Abbott responded by letter dated June 24, 1998. In his letter, Mr. Abbott acknowledges that he has not resided within the Third District for one year; however, he argues that 9 Del.C. § 1142 does not require a one year residency in the case of his candidacy. In your letter of June 25, 1998, you acknowledged receipt of Mr. Abbott's letter and informed him that you were seeking advice from this office.<sup>3</sup> Because New Castle County government has an obvious interest in this controversy, the New Castle County Attorney has provided this office with a legal opinion by letter dated July

1, 1998. For the reasons stated herein, we believe that 9 Del. C. § 1142 does not require that Mr. Abbott have established residency in the Third Councilmanic District for one year prior to the November 3, 1998 election.

As stated, we understand you to read 9 Del. C. § II 42 as imposing a one year residency requirement in the district for all candidates, including Mr. Abbott. On the other hand, Mr. Abbott and the New Castle County Attorney assert that the one year residency requirement only applies "in the event of redistricting." Principles of statutory construction militate in favor of the latter interpretation. In analyzing the proper construction to be given to a statute, we recognize that an agency's interpretation of a statute should be given the "highest respect" especially if based on "long-standing uniform administrative practice over a period of years." State v. General Chemical Corporation, Del. Super., 559 A.2d 292, 298 (1988). You have advised that this is the first time that this issue has arisen with respect to a specific case. Thus, the Department of Election's interpretation in this case amounts to an *ad hoc* decision to which no deference need be given. As the Court held in James Julian, Inc. v. Department of Transportation and Department of Labor, Del. Ch., C.A. No. 12293, 1991 WL 224575, Jacobs, V. C. (Oct. 29, 1991):

accordingly, at issue before the Court is not a garden-variety agency action taken pursuant to an administrative regulation having the force of law. Rather, under challenge is an *ad hoc* agency determination whose validity the Court must determine on the basis of the statutory language itself. Determinations of that kind are not entitled to the deference normally accorded the administrative determinations in the former category.

*Id.* at 7.<sup>4</sup>

The interpretation of the statute is purely a legal issue. King v. Board of Pension Trustees, Del Super., C.A. No. 96A-07-001-WCC, 1997 WL 718682, Carpenter, J. (Aug. 29, 1997). That Court stated:

"Ultimately, the Courts are responsible for "the true interpretation or construction of a particular statute or regulation." (Citations omitted) ... Thus, "[T]he question of the appropriate interpretation or application of [the pension statute] is a legal issue, which is subject to *de novo* review by this Court." (Citations omitted).

*Id.* At 4.

Since no deference to the Department of Election's interpretation of 9 Del.C. § 1142 is required, we turn to other applicable principles of statutory construction.

First, we consider rules of composition, which are relevant in determining legislative intent. 2A Sutherland, Statutory Construction, Section 47.01 at 136 (4th Ed. rev. 1992). One recognized rule of composition is that "the position of words in a sentence is the principal means of showing their relationship." W. Strunk & E. B. White, The Elements of Style 28 (1979). Specifically, "referential and qualifying words and phrases ... refer to the last antecedent." 2A Sutherland, Statutory Construction, 47.33 at 270 (4th Ed. rev. 1992). "Modifiers should come, if possible, next to the word they modify." W. Strunk & E. B. White, The Elements of Style 30 (1979). Applying these rules, in 9 Del. § 1142, the prepositional phrase "for at least one year prior to their election" modifies the antecedent words "in the event of redistricting, of the district as adjusted." It does not modify the whole sentence. That is, the one year residency requirement applies only upon redistricting.<sup>5</sup> Other rules of statutory construction support this interpretation as well.

It is a general principle of statutory construction that a statute should be construed, if possible, to give effect to every word within it and one section should not be interpreted so as to destroy another. 2A Sutherland, Statutory Construction, Section 46.06 at 119-120 (4th Ed. rev. 1992). To interpret the one year requirement as referring to the entire sentence, and therefore applicable to all candidates regardless of redistricting, would be to make the words "in the event of redistricting" superfluous. Such a construction would violate this general principle of statutory interpretation. In our view, therefore, the correct interpretation of § 1142 is that the one year residency requirement applies only when redistricting occurs. As a result, we find the statute to be unambiguous.

A statute is ambiguous if: (1) it "is reasonably susceptible of different conclusions or interpretations." Coastal Barge Corp. v. Coastal Zone Indus. Control Bd., Del.Supr., 492 A.2d 1242, 1246 (1985); or (2) a literal interpretation of the words would lead to an unreasonable or absurd result that could not have been intended. DiStefano v. Watson, Del.Supr., 566 A2d. 1,4 (1989). As the Supreme Court recently reiterated in Jackson v. Multi-Purpose Criminal Justice Facility, Del. Supr., 700 A.2d 1203,1205 (1997):

Only if a statute is found to be ambiguous may a court then attempt to resolve the ambiguity by reconciling the statutory language with the legislative intent. (Citations omitted). If there is no

reasonable doubt as to the meaning of the words used, a statute is unambiguous and the Court's role is limited to an application of the literal meaning of the words.

As we discussed above, in order to give meaning to all the words contained in 9 Del. C. 1142, the words must be read literally so that the one year requirement applies only in the event of redistricting. Any other reading would make part of the statute superfluous. This result is neither unreasonable nor absurd. While we do not opine on the General Assembly's intent in enacting the one year residency requirement in § 1142, one possible intended purpose would be to prevent gerrymandering of councilmanic district lines to benefit an incumbent standing for reelection. This possible purpose alone is sufficient to rebut the argument that the interpretation we adopt would lead to an unreasonable or absurd result.

Our interpretation is also consistent with the admonition of the Superior Court in the most recent ballot access case. The Court held :

The right of a person to be a candidate for public office is a fundamental one that should be restricted only by clear constitutional or statutory language. "[Any] question or doubts of eligibility of a candidate should be resolved in favor of the candidate. " (Citations omitted) (Emphasis added).

Democratic Party of the State of Delaware v. Department of Elections for New Castle County, et al., Del. Super., C.A. No. 94C-08-227, 1994 WL 555405, Ridgely, P. J. (Sept. 6, 1994) at 6, *aff'd* Del. Supr., 650 A.2d. 1305 (1994) (table).

Therefore, we advise you to place Mr. Abbott's name, if he is otherwise qualified, on the ballot for the Republican nomination for the Third Councilmanic District. We do not believe the one year residency provision of 9 Del. C. & 1 142 gives the Department of Elections for New Castle County the "clear constitutional or statutory language" required by Democratic Party to bar Mr. Abbott from the ballot if he is otherwise qualified.<sup>6</sup>

Should you have any questions, please do not hesitate to contact us.

Very truly yours,  
Malcolm S. Cobin  
Assistant State Solicitor

A. Ann Wool  
Deputy Attorney General

Approved  
Michael J. Rich  
State Solicitor

<sup>1</sup> Section 1142 Qualifications - Elected officials of the county governing body shall be citizens of the United States and qualified electors of the County. They shall be residents of the district from which they are elected or, in the event of redistricting, of the district as adjusted for at least one year prior to their election. Such officials must not be less than 24 years old when elected to office. The county government shall be the judge of the qualifications of its members.

<sup>2</sup> The June 22, 1998 letter to Mr. Abbott contained a typographical error relating to the date by which his residency must be established. That was corrected by letter to Mr. Abbott dated June 23, 1998.

<sup>3</sup> As you have informed us since that letter that you wished an opinion that would be public, we have rendered the advice in the form of an opinion, including copying it to Mr. Abbott and the County Attorney.

<sup>4</sup> You have brought to our attention a 1981 Memorandum from the Deputy Attorney General then representing your Department, which dealt with a hypothetical situation under 9 Del. C. § 1142. That Memorandum specifically states "[t]he validity of the durational residency requirement itself, and whether the candidate must present evidence of his residence, and what would constitute valid evidence are questions which are not addressed at this time." Further, that Memorandum presupposes the existence of a requirement and does not analyze the applicability of that requirement to any particular candidate's situation. It is therefore not helpful in resolving the present controversy.

<sup>5</sup> We express no opinion as to the validity of imposing the one year residency requirement on candidates in adjusted districts after the decennial census.

<sup>6</sup> Obviously, in the event of a challenge in court to Mr. Abbott's candidacy, Mr. Abbott would have an interest in defending such action. In addition the New Castle County Attorney has advised us that New Castle County, as an interested party, would seek to defend the action as well. We finally emphasize again that we do not decide any issues not specifically mentioned herein including any raised by either Mr. Abbott or the New Castle County Attorney.



STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OPINION

NO. 98-IB07

July 28, 1998

The Honorable Lisa Blunt-Bradley  
Office of The Secretary  
Department of Labor  
4425 North Market Street  
Wilmington, DE 19802

Re: **Sworn Payroll Information 29 Del. C. § 10002**

Dear Secretary Blunt-Bradley:

In Attorney General Opinion No. 95-IB03 (Jan. 25, 1995), this Office opined that sworn payroll statements filed by contractors with the Delaware Department of Labor ("DOL") pursuant to 29 Del. C. 6912(c) were public records under the Delaware Freedom of Information Act, 29 Del. C. ch. 100 ("DFOIA"), with the exception of employee social security numbers.<sup>1</sup> That Opinion relied heavily on the holding in I.B.E.W. v. United States Dep't of Housing. & Urban Dev., 852 F.2d 87 (3rd Cir. 1988) ("IBEW"), which permitted the disclosure of employee names and addresses, but not social security numbers, under the Federal Freedom of Information Act, 5 U.S.C. § 552 ("FFOIA"). The union in IBEW requested contractor payroll records submitted to the United States Department of Labor pursuant to the Davis-Bacon Act.<sup>2</sup>

Recently, the Third Circuit in Sheet Metal Workers Int'l Ass'n v. United States Dep't of Veterans Affairs, 135 F.3d 891 (3rd Cir. 1998) ("Sheet Metal Workers") modified its earlier decision in IBEW. The Court in Sheet Metal Workers found that the disclosure of employees' names and addresses is no longer required as a consequence of heightened personal privacy concerns raised by decisions in other Circuits and the United States Supreme Court.<sup>3</sup>

#### I. THE ISSUES

In light of the Sheet Metal Workers decision, your predecessor asked this Office for legal advice on two questions. First, whether the DOL should discontinue the practice of releasing the names and addresses of employees listed in sworn payroll reports. Second, whether the DOL is required to release the names and addresses of apprentices registered with the Apprenticeship and Training Program.

For the reasons explained below, we conclude that the DOL should discontinue the practice of releasing the names and addresses of employees listed in sworn payroll reports. We further conclude that the DOL is not required to release the names and addresses of apprentices registered in the Department's Apprenticeship and Training Program. As a result of our conclusions, Attorney General Opinion No. 95-IB03 (Jan. 25, 1995) is hereby rescinded and superseded by this Opinion.

#### II. SWORN PAYROLL REPORTS

In Sheet Metal Workers, the Court balanced the employee's personal privacy interest, recognized by 5 U.S.C. § 552(b)(6), against a labor union's interest in obtaining the names, addresses and social security numbers of employees submitted in sworn payroll information reports submitted by contractors to the federal government to ensure compliance with prevailing wage laws. 135 F.3d at 896. The Court reasoned that employees have a significant personal privacy interest in not receiving solicitations through the mail at home. *Id.* at 900. The Court noted that there are other less intrusive methods of obtaining the information. Namely, the union could distribute fliers as employees arrive and leave work, post signs or use existing information to compare job classifications with pay rates. *Id.* at 904.

The Third Circuit took heed of more recent FOIA decisions in which the United States Supreme Court analyzed the right to access public records by reference to the "core function" of FOIA: to allow citizens to know what their government was doing. In a modern, highly regulated society, the government has in its possession vast data banks of highly personal information, which citizens are required to provide as a condition of receiving a license or other government benefit. The core function of FOIA is not served by making that information available to third parties to use for their own commercial or other purposes. Any public policy in favor of open government may have to give way to the greater right of personal privacy. Accordingly, the Court modified its prior holding in IBEW by permitting the federal government to withhold the names, addresses and social security numbers of employees from FFOIA requests by labor unions for sworn payroll information required under the Davis-Bacon Act. *Id.* at 905.

Similarly, the purpose of Delaware's FOIA is to provide the public with access to public records which will "enable citizens to observe and monitor state government." 29 Del.C. § 10001 (emphasis supplied). Public records are defined in 29 Del.C. § 10002(d) as information of any kind relating to public business which is stored, recorded or reproduced.

Further, public records must be open to inspection and copying by any citizen of the State." 29 Del. C. § 10003(a). However, there are statutory exemptions to public disclosure under Delaware's FOIA:

Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy.

29 Del. C. § 10002(d)(1). The purpose of this exception is to protect personal privacy. See Delaware Solid Waste Auth. v. News-Journal, Del. Supr., 480 A.2d 628, 631 (1984).

When the Delaware prevailing wage law is silent on an issue, it is appropriate to consult the federal law interpreting its purposes and policy. Att'y Gen. Op. No. 80-IO23 (July 9, 1980). The Davis-Bacon Act, 29 Del. C. § 6960 requires that laborers and mechanics be paid prevailing wages on state public construction projects. Further, "[e]very contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly" to verify compliance with the state prevailing wage law. 29 Del. C. § 6960(c).

The Delaware FOIA, like its federal counterpart, recognizes a strong personal privacy interest in 29 Del. C. § 10002(d)(1). The purpose of making public records accessible is to enable citizens to monitor state government. 29 Del. C. § 10001. This equates to the "core purpose" that contributes to public understanding of the government, articulated in Sheet Metal Workers. We have previously issued an opinion to the Division of Revenue that the DFOIA does not require the disclosure of the names and addresses of business license holders. Such information is within the realm of traditional privacy, and disclosure does not "appear to further the purpose of FOIA to assure that the public processes and records of government are open." Att'y Gen. Op., 96-IB33 (Dec. 11, 1996).

The request for names, addresses and social security numbers of employees submitted in sworn payroll information to the DOL is not a "core purpose" of the regulation of state prevailing wage laws that would outweigh the employee's personal privacy interest in Section 10002(d)(1). Therefore, we conclude that a Delaware court facing this issue would uphold the non-disclosure of names, addresses and social security numbers of employees contained in sworn payroll information submitted to the DOL on the basis of the overwhelming persuasive authority in Sheet Metal Workers as well as case decisions in other Federal Circuits and the United States Supreme Court.<sup>4</sup>

### III. APPRENTICESHIP AND TRAINING PROGRAMS

The DOL keeps on file apprenticeship agreements with approved contractors that contain the names and addresses of apprentices registered in the Apprenticeship and Training Program. As with prevailing wage requirements, various organizations request these agreements from the DOL under the DFOIA to obtain the names and addresses of registered apprentices for the purpose of ensuring compliance with program regulations.

The purpose of the Apprenticeship and Training Program is to encourage the development of a training system to maintain a skilled labor force and specifically to protect and safeguard the welfare of apprentices and trainees. 19 Del. C. § 201. Training and Apprenticeship Programs are subject to approval by the DOL. 19 Del. C. § 204. The DOL is charged with maintaining records of apprenticeship agreements and programs and reviewing such agreements and programs for compliance with the DOL rules and regulations. 19 Del. C. § 202.

While not specifically addressed in Sheet Metal Workers, the names and addresses of apprentices registered with the DOL Apprenticeship and Training Program are subject to the same significant personal privacy interests as employees listed in sworn payroll reports. Although this is an issue of first impression in Delaware, it is very likely that a reviewing court would weigh the personal privacy interest of apprentices and trainees against the regulatory effect of the request for information in the same manner as sworn payroll information. It is our view that a request for the names and addresses of registered apprentices and trainees is not a regulatory "core purpose" sufficient to outweigh the personal privacy interests of registered apprentices and trainees. Consequently, we predict that the DOL would be permitted to withhold the names and addresses of registered apprentices and trainees.

### IV. SUMMARY

For the reasons explained above, we advise the DOL to discontinue the practice of releasing the names and addresses of employees listed in sworn payroll reports. We further conclude that the DOL is not required to release the names and addresses of apprentices and trainees registered with the Apprenticeship and Training Program. As a result of our legal conclusions on these issues, Attorney General Opinion No. 95-IB03 (Jan. 25, 1995) is rescinded and superseded by this Opinion.

If you have further questions, please feel free to contact our office. Thank you for this opportunity to revise our prior Opinion in light of recent changes in the case law.

Very truly yours,  
Lawrence W. Lewis  
Deputy Attorney General

APPROVED  
Michael J. Rich  
State Solicitor

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
ATTORNEY GENERAL OPINION  
NO. 98-IB08

September 1, 1998

Clifford B. Hearn, Jr., Esquire  
Clifford B. Hearn, Jr., P.A.  
P.O. Box 1205  
Wilmington, DE 19899-1205

RE: **Freedom of Information Act Complaint  
Against Town of Townsend**

<sup>1</sup> The sworn payroll information requirement was re-codified from 29 Del. C. § 6912(c) to 29 Del. C. 6960(c) by 70 Del. Laws c. 601, effective September 16, 1996. The purpose of the requirement is to verify that prevailing wages are paid on State public construction projects.

<sup>2</sup> The Davis-Bacon Act, 40 U.S.C.A. § 276-a *et seq.*, is a federal measure, similar to 29 Del. C. § 6960(c) which requires the submission of payroll records on federal public construction projects to ensure compliance with federal prevailing wage requirements.

<sup>3</sup> See United States Dep't of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749 (1989); United States Dep't of Defense v. Federal Labor Relations Auth., 510 U.S. 487 (1994). See also Painting Indus. of Haw. Market Recovery Fund v. United States Dep't of Air Force, 26 F.3d 1479 (9th Cir. 1994) (Court ruled that the release of a list containing names, addresses and wage information of construction workers would violate significant privacy interests); Painting and Drywall Work Preservation Fund, Inc. v. Department of Housing. and Urban Dev., 936 F.2d 1300 (D.C. Cir. 1991) (HUD supplied payroll records but withheld names, Social Security numbers and home addresses. Court ruled that the possibility of an intrusion upon privacy by releasing this information outweighed any public interest); Hopkins v. United States Dep't of Housing. and Urban Dev., 929 F.2d 81 (2nd Cir. 1991) (HUD deleted all employee names, addresses and Social Security numbers from requested payroll records. Court ruled that had this information been released it would have caused a great intrusion on the employees' privacy)

<sup>4</sup> See footnote 3, *supra*.

Dear Mr. Hearn:

By letter August 11, 1998, Ellen H. Cole alleged that the Town of Townsend ("the Town" held a meeting on August 5, 1998 in violation of the Freedom of Information Act, 29 Del. C. Chapter 100 ("FOIA"). Specifically, she contended that the Town did not publish adequate notice of its intent to elect a new member for a vacant seat on the Council. She also contended that the procedure by which the vote was taken to elect R. Charles Murray as Councilperson *pro tempore* violated the Town Charter.

The Attorney General's Office does not have jurisdiction to determine whether the Town may have violated its own Charter. Accordingly, we only address the allegation that the Town violated the notice requirements of FOIA. At the request of the Town of Townsend, we have agreed to expedite our consideration of this complaint because there are significant items included on the agenda for a Council meeting scheduled for September 2, 1998 which may be affected by the outcome of this complaint.

Section 10004(e)(2) of FOIA provides: "All public bodies shall give public notice of their regular meetings . . . at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; . . ." Section 10004(e)(4) further requires that notice be made by "conspicuous posting of said notice at the principal place of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, . . ."

The facts are not in dispute here. In your letter responding to Ms. Cole's complaint, the Town confirmed that notices were posted on July 30, 1988 at the United States Post Office in Townsend and at the Ratledge Achievement Center, the Town Commission's normal meeting place. The notice was posted six days in advance of

the August 5, 1998 meeting instead of the seven days required by FOIA. In Ianni v. Department of Elections of New Castle County, Del. Ch., 1986 WL 9610 (Aug. 10, 1986) (Allen, C.), the Board of Elections posted the notice six days in advance of the meeting. The Chancellor found that to be a violation which, taken in context with the rest of the issues raised in that case, resulted in a reversal of the Board's actions. In this case, the question of timely notice must be considered together with the sufficiency of the notice.

The agenda for the August 5, 1998 included the following item of "New Business," "d) Nominations For Vacant Town Council Seat." Ms. Cole contend that the agenda was deficient or misleading because "[i]t was not advertised that Mr. Murray's appointment was going to be voted on at the meeting."

FOIA defines an agenda to be a "general statement of the major issues expected to be discussed at a public meeting." 29 Del.C. Section 10002(f). In Ianni v. Department of Elections of New Castle County, Del. Ch., 1986 WL 9610 (Aug. 10, 1986) (Allen, C.), the Board of Elections posted a notice of a meeting and listed on the agenda, "Primary Election." When the Board met, it voted to open fewer polling stations in New Castle County in the primary elections. Chancellor Allen held that this notice was insufficient

"to alert the public to the fact that the Board would consider and act upon a proposal to consolidate election districts for the purpose of the primary election. While the statute requires only a 'general statement' of the subject to be addressed by the public body, when an agency knows that an important specific aspect of a general subject is to be dealt with, it satisfies neither the spirit nor the letter of [FOIA] to state the subject in such broad generalities as to fail to draw the public's attention to the fact that specific important subject will be treated. In this instance, all that would have been required to satisfy this element of the statute would have been a statement that election district consolidation; or 'location of polling places' was to be treated."

1986 WL 9610, at p. 5 (emphasis added).

In Ianni, Chancellor Allen was concerned with the overall question of whether, as a factual matter, the notice given by the Board was "ineffective to alert members of the public with an intense interest in this matter of the Board's consideration of it." *Id.* at p. 4. In addition to the ambiguous agenda, the notice was published on a door outside the

Board's offices on the third floor of the Carvel State Building. The Board made no effort to post the notice and agenda elsewhere, or to take other steps to make the notice publicly available." *Id.* at p. 5. As a result, only four or five members of the public knew about the meeting, and they left before the Board addressed the issue whether to consolidate election districts. Ianni dealt with the electoral process in that the Board was making decisions which would affect the voting process for elective offices. This complaint questions the election process for selecting a town councilperson to fill a vacancy. Borrowing from the language in Ianni:

While the decision involves the electoral process, these rights of the public take on an enhanced importance. It is not only important that the mechanism for exercising the vote be in fact fair, it is also fundamentally important that it be perceived as fair.

*Id.* at 6.

The issue of whether the public was misled by the agenda's use of the term "nomination" is more troubling. In Chemical Industry Council of Delaware, Inc. v. State Coastal Zone Industrial Control Board, Del. Ch., 1994 WL 274295 (May 19, 1994), the Board held a series of meeting to discuss proposed regulations. For the June 9, 1993 meeting, the agenda stated that the Board would "continue deliberation upon the proposed new Regulations" in "continuation" of its May 10, 1993 meeting. The notice, however, did not disclose what turned out to be the sole purpose for the public session -- to vote on, and possibly adopt, the Regulations. The significance of that omission is underscored by the fact that at the May 10, 1993 workshop, the Board had told the public (incorrectly, in retrospect) that another public meeting would be held. Thus, the public had been given reasonable cause to believe that the Board would hold another public hearing at some later time before adopting any regulations. 1994 WL 274295, at p. 9.

The statutory definition of the term "agenda" "shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting" of the body." 29 Del. C. § 10002(f) (emphasis added). FOIA requires that the notice be reasonably calculated to provide adequate notice of the issues to be considered by the public body. We believe that the notice in this case fails to meet that standard. There is a fundamental difference between the act of nominating a person for an office and electing a person to an office. The Council, like the Board in Ianni, knew that there was a significant amount of public interest in this

particular vacancy. The spirit of FOIA is not met by indicating nominations would occur, when, in fact, an election was conducted.

In sum, we find that the Town violated FOIA in two respects: (1) by failing to post notice of its August 5, 1998 meeting at least seven days in advance of the meeting and (2) by failing to provide adequate notice that there would be an election, rather than just nominations, for the Council vacancy. The question then turns to whether the violations were merely technical and not involving substantial public rights or whether the cumulative effect of the violations leads to a conclusion that substantial public rights have been affected. As in *Ianni*, we must conclude that the issue of electing public officials is such an important fundamental public right that violations which might be excusable under another set of circumstances are not excusable in this context. The overriding issue is whether the public's rights have been protected. Analogizing from *Ianni*, interested members of the public have a right to be heard on issues which substantially affect their right to determine the method and manner in which they will be governed. As the Court noted in *Ianni*:

When public participation is afforded, it is reasonable to hope, and the drafters of the [FOIA] clearly did hope, that two kinds of benefits would result. The public body might be put in a position to make a better decision ultimately and, secondly, a citizen or organization of citizens that understands the decision may feel, if not pleased with the ultimate outcome, at least content that its views have been considered and the decision has been reached in an impartial and fair way.

1986 WL 9610 at 6.

We conclude that the Council's violations have adversely affected substantial public rights. Therefore, we direct the remaining four regularly elected members of Council to either notice a special meeting for the purpose of nominating and/or electing a Councilperson *pro tempore* or to include that item on the agenda for the next regularly scheduled Council meeting. We also direct the Council to confirm the sufficiency and timeliness of such notice by sending copies of the same to this office at the time it is publicly posted. This opinion does not address the validity of any acts or orders of the Council which resulted from the participation of Mr. Murray subsequent to August 5, 1998.

Sincerely,  
Michael J. Rich  
State Solicitor

---

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF COSMETOLOGY AND BARBERING**

The Delaware Board of Cosmetology and Barbering propose to revise current Rules and Regulations in accordance with 29 Del.C. 10111 et. seq. And 24 Del.C. 5106. The purposes of the proposed changes are to: (1) add time frames for completing apprenticeships; (2) require licensees to ensure their employees are appropriately licensed; (3) clarify the documents which must be submitted when applying for licensure; (4) adopt Division of Public Health and National Interstate Council (NIC) standards concerning health, safety and infection controls; (5) limit the use of electric nail files and drills and prohibit the use of laser technology for hair removal; and (6) renumber and reformat the Rules to make them easier to use.

A public hearing will be held Monday, October 26, 1998 at 9:00 a.m. in the Cannon Bldg., Conference Room A, 861 Silver Lake Blvd., Dover, Delaware.

Anyone desiring a copy of the proposed rules and regulation may obtain some from the Board office, Division of Professional Regulations, Cannon Bldg., Suite 203, 861 Silver Lake Blvd., Dover DE, 19904. Written comments should be submitted to the Board office at the above address on or before October 30, 1998. Those individuals wishing to make oral comments at the public hearing are requested to notify the Board office at (302) 739-4522, extension 204.

---

**DIVISION OF PROFESSIONAL REGULATION  
DELAWARE GAMING CONTROL BOARD**

The Delaware Gaming Board propose the reorganization of existing regulations, corrections of technical errors, and substantive amendments. The Board proposes these regulations pursuant to 28 Del.C. §1122 and 29 Del. C. § 10111.

The public may obtain copies of the existing regulations and proposed regulations from the Board's Office, Division of Professional Regulation, c/o Lynn Houska, Cannon Building, Suite #203, 861 Silver Lake Boulevard, Dover, DE 19904, phone - (302) 739-4522. The Board will accept written comments from November 1, 1998 to November 30, 1998. A public hearing will be held at the Board's monthly meeting on November 5, 1998 at 1:00 p.m. at the Cannon Building, Second Floor Conference Room.

---

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

The Delaware Harness Racing Commission is proposing regulations that are amendments to the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. § 10027.

The Commission proposes nineteen rule amendments which are summarized below:

1. Amend chapter 111, rule I-G-3 to clarify the Commission's powers to appoint officials in compliance with 3 Del.C. § 10007.
2. Amend chapter 111, rule XIV to replace the existing definition of Investigator and replace it with the definition of Investigator in 3 Del. C. § 10007(c).
3. Amend chapter 111, rule XV to add a definition for the position of Administrator of Racing as specified in 3 Del. C. § 10007(e).
4. Amend chapter III by renumbering the sections to include the definition of Administrator of Racing.
5. Amend chapter 111, rule I-A to add Administrator of Racing to the list of Commission officials.
6. Amend chapter 11 by enacting a new section X to state the Commission's powers for regulating drug testing as specified in 3 Del. C. § 10029.
7. Amend chapter IV, rule 1-5 to add Delaware-owned or bred races as specified under 3 Del. C. § 10032 as permitted races.
8. Amend chapter VI, rule 11-B-1 to add Delaware-owned or bred conditions for races.
9. Amend chapter IV, to enact a new rule VI to define Delaware-owned or bred races as specified under 3 Del. C. § 10032.
10. Amend chapter VI, rule III-A- I to require the filing of a claiming authorization at the time of declaration.
11. Amend chapter VI, rule III-C- 1 7 to revise the procedures for the claiming of a horse that tests positive for an illegal substance or is ineligible.
12. Amend chapter VI, rule II-B-c to prohibit the racing of horses 15 years or older except in matinee races.
13. Amend chapter VI, rule II-A-5 to revise the procedure for selection of races in divisions.
14. Amend chapter VI, rule II-B-5 to clarify the conditions for non-winners and winners of over \$ 100.
15. Amend chapter X, rule II-1-2 to clarify the payment of court reporter costs by licensees filing appeals before the Commission.
16. Amend chapter III, rule 11-H-2-3 to revise the procedure for horses placed on the Stewards' List.
17. Amend chapter VII, rule I- (F) to revise the procedure for determination of preference dates.
18. Amend chapter VII, rule 11-13-9 to revise the conditions for number of horses in a field.

19. Amend chapter IV, rule 111-M to add a new rule for calculation of time allowance based on weather conditions.

The public may obtain copies of the proposed regulations from the Commission's Office, 2320 S. DuPont Highway, Dover, DE 19901, phone - (302) 739-481 1. The Commission will accept written public comments from October 1, 1998 to October 31, 1998. A public hearing will also be conducted at Harrington Raceway, Harrington, DE, on October 22, 1998 at 1:00 p.m.

---

## **DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, October 15, 1998 at 10:00 a.m. in the Townsend Building, Dover, Delaware.

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF SOCIAL SERVICES**

The Delaware Health and Social Services, Division of Social Services, is proposing to change policy governing the Child Care and First Step programs to the Division of Social Services' Manual Sections 11000 and 12000. The policy changes arise from the Personal Responsibility and Work Opportunity Act, the new Child Care and Development Block Grant and *A Better Chance* provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 30, 1998.

---

### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medical Assistance Program is publishing a summary of the State

Plan for Title XXI – the Delaware Healthy Children Program (DHCP) and changes to its Medical Assistance Provider Manuals (General Policy section), and the Division of Social Services Manual (DSSM) for eligibility.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

---

### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should

contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

---

### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its eligibility manual.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

---

### **DIVISION OF SOCIAL SERVICES**

#### **PUBLIC NOTICE**

#### **DIVISION OF SOCIAL SERVICES TANF PROGRAM**

The Delaware Health and Social Services / Division of Social Services / Temporary Assistance for Needy Families Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3005. The change would transfer to the Division of Child Support Enforcement (DCSE) the responsibility for determining

good cause for a client's failure to cooperate with DCSE in establishment of paternity and in securing child support. The option to do so was presented with passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

#### **COMMENT PERIOD**

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 30, 1998.

---

### **DIVISION OF SOCIAL SERVICES**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medical Assistance Program is amending its ambulatory surgical center, practitioner, inpatient hospital, outpatient hospital and general policy provider manual(s).

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than November 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.



**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DELAWARE COASTAL MANAGEMENT PROGRAM**

## REGISTER NOTICE

## 1. TITLE OF THE REGULATIONS:

The Delaware Coastal Management Program – Federal Consistency Policies

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

Delaware has a federally approved Coastal Management Program. One of the core duties of the Delaware Coastal Management Program (DCMP) is to review certain federal activities in the coastal management area (the entire state) for consistency with the program. The types of activities subject to review are: 1) those requiring a Federal permit or license (e.g. US Army Corps of Engineers 404 permits); 2) Direct Federal Actions (e.g. Main Channel Deepening project); 3) those receiving federal assistance; and 4) Outer Continental Shelf exploration/projects.

The proposed changes to the existing Federal Consistency Policies reflect new and updated existing regulations (DNREC, Dept. of Agriculture, State Historic Preservation Office, etc.) as well as new or revised Executive Orders signed by the Governor of Delaware. The policies added or revised in this Federal Consistency Policy Document were selected for their ability to protect, preserve, restore, and develop Delaware's coastal resources in the most environmentally sensitive manner. All of the policies contained within the Federal Consistency Policy document have been promulgated and adopted (i.e. they are existing regulations and/or Executive Orders). There are no new regulations being introduced through this process.

The update and changes to the Delaware Federal Consistency Policies are considered a Routine Program Change under the NOAA Statute (15 CFR 923.84(a)).

3. POSSIBLE TERMS OF THE AGENCY ACTION:  
N/A

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

15 CFR Part 930 – Federal Consistency with Approved Coastal Management Programs and 15 CFR 923.84(a) – Routine Program Changes to the Coastal Management Program

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

None

## 6. NOTICE OF PUBLIC COMMENT:

The public hearing will be held on October 14, 1998 at 7:00 p.m. in the Secretary's Conference Room at the DNREC office building located at 89 Kings Highway in Dover. Written comments must be received by 4:30 p.m. on October 30, 1998. Comments may be mailed to the attention of Miriam A. Lynam, Sr. Resources Planner, Delaware Coastal Management Program, 89 Kings Highway, Dover, DE 19901 or E-Mailed to [mlynam@dnrec.state.de.us](mailto:mlynam@dnrec.state.de.us).

## 7. PREPARED BY:

Miriam A. Lynam ([mlynam@dnrec.state.de.us](mailto:mlynam@dnrec.state.de.us)) 302-739-3451 September 10, 1998

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**  
**WASTE MANAGEMENT SECTION**

1. TITLE OF THE REGULATIONS:  
Regulations Governing Solid Waste

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

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the substantive changes.

3. POSSIBLE TERMS OF THE AGENCY ACTION:  
None

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Title 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:  
None

## 6. NOTICE OF PUBLIC COMMENT:

A public workshop will be held on Thursday, October 22, 1998, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

## 7. PREPARED BY:

Janet T. Manchester (302) 739-3820, Sept. 11, 1998

---

**DEPARTMENT OF STATE**
**OFFICE OF THE STATE BANKING COMMISSION**
**NOTICE OF PROPOSED AMENDMENT OF  
REGULATIONS OF THE STATE BANK  
COMMISSIONER**
Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009. Proposed revised Regulation 5.121.0002 ("Procedures Governing the Creation and Existence of an Interim Bank") is amended to conform to the public notice procedures to those provided in Section 724 of Title 5 of the Delaware Code, as revised by Senate Bill 255, signed by the Governor on March 30, 1998 ("SB 255"), and to make other technical and conforming changes in accordance with SB 255. Proposed revised Regulation 5.701/774.0001 ("Procedures for Applications to Form a Bank, Bank and Trust Company or Limited Purpose Trust Company Pursuant to Chapter 7 of Title 5 of the Delaware Code") is amended to conform to the public notice procedures to those provided in Sections 724 and 725 of Title 5 of the Delaware Code, as revised by SB 255. Proposed revised Regulations 5.833.0004 ("Application by an Out-of-State Savings Institution, Out-of-State Savings and Loan Holding Company or Out-of-State Bank Holding Company to Acquire a Delaware Savings Bank or Delaware Savings and Loan Holding Company") and 5.844.0009 ("Application by an Out-of-State Bank Holding Company to Acquire a Delaware Bank or Bank Holding Company") are amended so that the public notice procedures for acquisitions pursuant to those regulations parallel the public notice procedures for the formation of new banks pursuant to Section 724 of Title 5 of the Delaware Code, as revised by SB 255. Proposed amended Regulation Nos. 5.121.0002, 5.701/774.0001, 5.833.0004 and 5.844.0009 would be adopted by the State Bank Commissioner on or after November 5, 1998. Other regulations issued by the State Bank Commissioner are not affected by these proposed amendments. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed revised regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these

proposed regulations should be adopted, rejected or modified. Written material submitted will be available for public inspection at the above address. Comments must be received by November 5, 1998.

Public Hearing:

A public hearing on the proposed revised regulations will be held in Room 112, Tatnall Building, William Penn Street, Dover, Delaware 19901, on Thursday, November 5, 1998 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

---

**PUBLIC SERVICE COMMISSION**

The Public Service Commission ("the Commission") is the agency charged with administering the protest procedure under 6 Del. C. § 4915(a) applicable when a manufacturer of new motor vehicles seeks to establish or to relocate a franchised new motor vehicle dealership into the relevant market area of an existing franchised motor vehicle dealership. Pursuant to the suggestion in Future Ford Sales, Inc., v. PSC, Del. Supr., 654 A.2d 837, 846 (1995) and 26 Del. C. § 106, the Commission proposes to adopt a regulation governing the Form of Notice which a manufacturer must give to the Commission and each new motor vehicle dealer in the relevant area when it intends to establish or relocate such an additional dealership. The text of the proposed regulation and proposed Form of Notice is attached as Attachment 1 to this notice. The regulation and Form of Notice now proposed by the Commission would supersede the regulations previously adopted by the Commission in PSC Order No. 4397 (Jan. 21, 1997). Those previous rules were vacated by the Superior Court. See American Automobile Manufacturers Assoc. v. PSC, Del. Super., K.C., 97A-02-004HDR, Ridgely, P. J. (March 31, 1998) (Order).

Persons may present their views on the proposed regulation and Form of Notice by filing comments with the Commission on or before November 2, 1998. Twelve (12) copies of such comments should be submitted to the Commission:

Delaware Public Service Commission, Attn: PSC  
Regulation Docket No. 44, 861 Silver Lake Boulevard,  
Cannon Building, Suite 100, Dover, Delaware 19904

Only persons who submit written comments, or who have previously participated in this docket, will receive notice of any further proceedings.

In addition, the Commission will conduct a public hearing on the proposed regulation and Form of Notice during the course of its regularly scheduled meeting on November 17, 1998 beginning at 1:00 PM. Such hearing will be held at the Commission's office at the address located above. At such hearing, persons may submit their views orally and present relevant evidence. The record in this matter shall also include the comments received and evidence presented during the course of prior hearings held in this docket.

The proposed regulation and proposed form of notice can be inspected and copied during normal business hours at the Commission's office at the address set out above. In addition, the proposed regulation and Form of Notice can be reviewed at the Commission's website by reviewing PSC Order No. 4397 at "<http://www.state.de.us/govern/agencies/pubserv/delpsc.htm>." The fee for copies of the proposed regulation and Form of Notices is \$0.25 per page.

Individuals with disabilities who wish to participate in these proceedings, or to review this application, should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free number is (800) 282-8574. Persons with questions concerning this application may contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 739-4247.

---

## **DELAWARE RIVER BASIN COMMISSION**

The Delaware River Basin Commission will meet on Wednesday, October 7, 1998, in Harrisburg, Pennsylvania. For more information contact Susan M. Weisman at (609) 883-9500 extension 203.

---