

DELAWARE HAZARDOUS WASTE REGULATIONS

Part 263 - Standards Applicable to Transporters of Hazardous Waste Subpart A – General

Section 263.10 Scope.

(a) These regulations establish standards which apply to persons transporting hazardous waste within the United States if the transportation requires a manifest under Part 262, or transporters of Used Oil within the State of Delaware.

NOTE: The regulations set forth in Parts 262 and 263 establish the responsibilities of generators and transporters of hazardous waste in the handling, transportation, and management of that waste. In these regulations, DNREC has expressly adopted certain regulations of the Department of Transportation (DOT) governing the transportation of hazardous materials. These regulations concern, among other things, labeling, marking, placarding, using proper containers, and reporting discharges. DNREC adoption of these DOT regulations ensures consistency with the requirements of DOT and thus avoids the establishment of duplicative or conflicting requirements with respect to these matters. These DNREC Regulations which apply to intrastate transportation of hazardous waste are enforceable by DNREC. DOT has revised its hazardous materials transportation regulations in order to encompass the transportation of hazardous waste and to regulate intrastate, as well as interstate, transportation of hazardous waste. Transporters of hazardous waste are cautioned that DOT's regulations are fully applicable to their activities and enforceable by DOT. These DOT regulations are codified in Title 49, Code of Federal Regulations, Subchapter C. DOT regulations means the most current regulations as promulgated to date in Title 49, CFR, Subchapter C.

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste must also comply with Part 262, Standards Applicable to Generators of Hazardous Waste, if he:

(1) Transports hazardous waste into the United States from abroad; or

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or subject to the waste management standards of Part 273, that is being imported from or exported to any of the countries listed in §262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of Subpart H of Part 262, including, but not limited to, §262.84 for movement documents.

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with §264.1(g)(8)(i)(D) or (iv) or §265.1(c)(11)(i)(D) or (iv), and §122.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of these regulations identifies how the requirements of this part apply to military munitions classified as solid waste under §266.202.

(Amended August 10, 1990, August 1, 1995, January 1, 1999)

13 DE Reg. 852 (12/01/09)

14 DE Reg. 668 (01/01/11)

Section 263.11 EPA Identification Number.

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Secretary.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Secretary using **State of Delaware Notification of Regulated Waste Activity** form and EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the transporter.

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(c) A transporter must submit a subsequent State of Delaware Notification of Regulated Waste Activity Form (8700-12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).
(Amended June 19, 1992)

Section 263.12 Transfer Facility Requirements.

(a) A transporter consolidating and/or storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 for less than 10 days is an owner or operator of a transfer facility.

(b) A transporter commingling manifested shipments of hazardous waste in containers meeting the requirements of §262.30 is an owner or operator of a hazardous waste treatment and storage facility subject to the requirements of Parts 260-266, 268 and Parts 122 and 124 of these regulations.

(c) A transfer facility shall not be operated without prior written approval of the Secretary. No written approval shall be granted unless the owner or operator submits an application and fee, and demonstrates to the Secretary that the facility complies with §§ 264.16 and 264.112 and Part 264, Subparts C, D and I of these regulations.

(d) No written approval shall be granted unless the owner or operator demonstrates to the Secretary that the transfer facility location complies with the requirements of the Delaware Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities.

(e) Any hazardous waste transfer facility that ceases to operate or maintain approval status shall implement the approved closure plan within 30 days, unless an extension has been granted by the Secretary.

(f) Transfer of ownership of any hazardous waste transfer facility shall be consistent with the conditions of §122.40 of these regulations.

(g) A transfer facility owner or operator must maintain a log of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the number from its manifest. Completed log records must be maintained on-site for a period of at least three years.

(h) Storage of manifested shipments of hazardous waste in containers or vehicles by a transporter at its own terminal for a period of 72 hours or less, provided no consolidation or commingling occurs, is exempted from the requirements of §263.12(a) through (g), provided that the transporter:

(1) notifies the Solid and Hazardous Waste Management Section in writing prior to commencing the activity;

(2) maintains a log of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the number from its manifest. Completed log records must be maintained on-site for a period of at least three years;

(3) does not open any containers or transport vehicles for any purpose, including adding absorbent to, or sampling, transferring, or treating hazardous waste;

(4) stores the waste in containers or transport vehicles which meet the design requirements specified by US DOT for each type of waste stored. During storage and shipment, these containers or transport vehicles must be packaged, labeled and marked in accordance with Subpart C of Part 262;

(5) does not handle or store containers or transport vehicles in a manner which would cause them to leak; and

(6) complies with the standards for hazardous waste discharges specified in §263.30.

(Amended August 10, 1990, August 1, 1995)

Subpart B - Compliance with the Manifest System and Recordkeeping

Section 263.20 The Manifest System.

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(a) (1) *Manifest requirement.* A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of §262.23.

(2) *Exports.* In the case of exports other than those subject to Subpart H of DRGHW part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of DRGHW part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by DRGHW 262.84.

(3) *Compliance Date for Form Revisions.* The revised Manifest form and procedures in §260.10, 261.7, 263.20, and 263.21, had an effective date of September 5, 2006. The Manifest form and procedures in 40 CFR §§260.10, 261.7, 263.20, and 263.21, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006.

(4) *Use of electronic manifest—legal equivalence to paper forms for participating transporters.* Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) *Special procedures when electronic manifest is not available.* If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii) of this section, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

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(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) *Special procedures for electronic signature methods undergoing tests.* If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii) of this section. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) *Imposition of user fee for electronic manifest use.* A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.

(Amended August 29, 1988, August 21, 2006)

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

Section 263.21 Compliance with the Manifest.

(a) The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

- (1) The designated facility listed on the manifest; or
- (2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or
- (3) The next designated transporter, or
- (4) The place outside the United States designated by the generator.

(b) (1) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with §263.22, and give the remaining copies of the original manifest to the

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rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in §264.72(e)(1) through (6) or (f)(1) through (6) or §265.72(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with §263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with §264.72(e)(1) through (6) or § 265.72(e)(1) through (6).

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

Section 263.22 Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in §263.20(e)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

(i) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in §263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(ii) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

Note: Intermediate rail transporters are not required to keep records pursuant to these regulations.

(d) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Secretary.

Section 263.25 Electronic manifest signatures.

(a) Electronic manifest signatures shall meet the criteria described in 40 CFR §262.25.

(b) [Reserved]

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

Subpart C - Hazardous Waste Discharges

Section 263.30 Immediate action.

(a) In the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

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(b) If a discharge of hazardous waste occurs during transportation and an official (state or local government or a Federal Agency) acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must:

(1) Give notice, if required by 49 CFR 171.15, to the National Response Center ((800) 424-8802 or (202) 426-2675), and give notice to the Department of Natural Resources and Environmental Control ((302) 739-9401 or (800) 662-8802) immediately; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR §153.203 for oil and hazardous substances.
(Amended August 10, 1990)

Section 263.31 Discharge clean-up.

A transporter must clean-up any hazardous waste discharge that occurs during transportation and restore the spill area to the original condition existing before the spill or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

Subpart D - Reserved

Subpart E - Hazardous Waste Transporter Permits

(Subpart E added by amendment May 17, 1989)

Section 263.100 Applicability.

Any person engaged in the managing of hazardous waste, toxic wastes or used/waste oil for transport in or through the State of Delaware is subject to the requirements of this subpart. No person shall transport the aforementioned wastes in or through the state without first obtaining a permit from this Department.

Section 263.101 Scope of permit.

(a) A transporter permit shall be issued for a specified period of time which will be determined by the Department. In no case, shall a permit be issued for a period greater than 5 years.

(b) A transporter may transport only those wastes for which he is specifically permitted to transport according to permit conditions;

(c) All vehicles covered by the permit shall carry at all times a copy of the approved permit and make it available for inspection upon request;

(d) A transporter shall at all times maintain insurance coverage that is in compliance with the requirements Federal DOT 49 CFR, Part 387.

(Amended June 19, 1992, August 1, 1995)

Section 263.102 Permit denial/revocation/termination, modifications.

(a) Permits may be amended or modified, upon application, for the following reasons;

(1) addition of a waste that will be transported by the permittee;

(2) addition or deletion in vehicle information, such as;

(3) changes in operation procedures;

(4) changes of address; or

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(5) change of ownership.

(b) Permits may be modified, denied, terminated or revoked by the Secretary for the following reasons:

(1) Noncompliance by the permittee with any conditions of the permit, or requirements of these regulations; failure to pay annual permit fees;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any facts at any time, or failure to comply with the requirements of the application;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation or termination;

(4) If a permit is modified, revoked or terminated, the applicant shall be given a written explanation for the action and an opportunity to a public hearing in accordance with 7 **Del.C.**, Chapter 60.

(5) A permit may be terminated at the written requested of the permittee for such reasons as, but not limited to: the company is no longer conducting the permitted activity in Delaware, or is no longer in business.

(c) If an application for a permit is denied, the applicant shall be given a written explanation for the denial and an opportunity to a public hearing in accordance with 7 **Del.C.**, Chapter 60.

(d) Change of ownership. Upon a change in ownership, the new owner shall successfully demonstrate compliance with the requirements of this subpart no more than ten (10) days after the change of ownership.

(Amended August 1, 1995; February 12, 2004; August 21, 2006)

Section 263.103 Permit application procedures.

(a) Any person who is required to obtain a permit for the transportation of wastes shall apply for such a permit in accordance with this subpart.

(b) Applications shall be completed and submitted on forms prescribed by the Department. The application shall contain, but not be limited to the following information;

(1) Types of waste to be transported;

(2) List of all vehicles used for the transportation of the listed wastes (both motorized and container);

(3) Demonstration of compliance with Federal DOT 49 CFR, Part 387 insurance requirements;

(4) List of authorized TSD facilities that have agreed to accept the wastes;

(5) Description of driver/handler training program;

(6) Detailed spill containment procedures that includes a narrative description of the appropriateness of the plan.

(c) A fee, developed through regulation by the Department, must accompany each application. Applications received without the application fee will be returned to the applicant.

(d) Any person wishing to renew an existing permit that is to expire shall, not less than 90 days prior to the expiration date of the existing permit, submit to the Department, a permit renewal application with all supporting documentation and appropriate fees as required by these regulations.

Section 263.104 Instruction and training.

All vehicle drivers and employees of the transporter who may handle hazardous wastes subject to these regulations, shall successfully complete a program of instruction that teaches how to perform transportation duties in a way that ensures the safety of human health and the protection of the environment and that ensures compliance with all applicable DOT 49 CFR requirements. Such instruction program, at a minimum, shall include, but not be limited to the following:

(a) Basic knowledge of DOT's labeling, packing, placarding, and shipping requirements as set forth in 49 CFR and other applicable DOT requirements;

(b) Safe vehicle operations to avoid creating hazards to human health and environment;

(c) Knowledge of proper handling procedures for the wastes being transported;

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(d) Familiarity with use of the most recent edition of the Emergency Response Guidebook for Hazardous Waste Materials published by DOT;

(e) A method to assure that the instruction program has been successfully completed (e.g., written or oral tests).

Section 263.105 Operating requirements.

(a) All vehicles shall be operated and maintained so as to be in compliance with all state and federal regulations and not present a hazard through unsafe vehicle conditions. The permittee is responsible for all vehicles including leased vehicles and contractor vehicles operated under his permit;

(b) All vehicles must carry safety and emergency equipment in accordance with applicable DOT regulations to ensure public safety and protection to the environment;

(c) All vehicles shall be equipped and operated to prevent leakage of wastes to the environment;

(d) All vehicles shall carry on board spill containment equipment to ensure adequate containment in the event of a release of the waste from the vehicle;

(e) Open-bodied container vehicles carrying wastes that are subject to scattering or blowing must be fully covered by a tarpaulin or other such device so as to prevent any discharge or release of the waste to the environment;

(f) A permittee shall display the full name of the transporter on both sides of each vehicle and the transporter's permit number in figures at least three inches high and of a color which contrasts with the background, in a prominent position on each side and rear of each vehicle used for activities covered by this part;

(g) The operator of any vehicle used for activities covered by this part shall remain in attendance of such vehicle while the vehicle is being loaded and unloaded;

(h) The operator of a vehicle used for the transportation of hazardous waste shall not accept any hazardous waste from a generator or from another transporter if:

(1) the hazardous waste shipment does not match the waste description contained in the manifest;

(2) waste containers are leaking or are damaged in a way that will allow leakage or otherwise pose a potential for release of the waste while in transit. These drums must be overpacked prior to loading;

(3) waste containers have not been properly labeled or marked.

(i) The operator must utilize a checklist for each shipment to ensure:

(1) familiarization with the waste load to be transported for such things as proper DOT name; labeling; hazard class; UN/NA name; placarding;

(2) that the transport vehicle has been visually inspected for safety and road worthiness prior to leaving to pick up the waste and prior to leaving the facility for the TSD;

(3) that the waste shipment has been inspected for proper labeling, placarding and marking;

(4) that drums or containers are in good condition;

(5) that drums have been counted and verified against the manifest;

(6) that drums have been properly secured so as to prevent load shift while in transit;

(7) that the proper placarding has been used on the transport vehicle; and

(8) that the manifest has been checked for accuracy against the waste being transported.

(j) All negative findings on the checklist must be corrected before the waste can be accepted for transportation.

Section 263.106 Insurance requirements.

(a) All transporters must be in compliance with all motor carrier insurance requirements set by Federal DOT 49 CFR Part 387.

(b) Transporters who transport Used Oil shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$1,000,000 with MCS-90 endorsement. Used Oil waste transporters shall submit to DNREC a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

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13 DE Reg. 852 (12/01/09)