

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 Del.C., Ch. 60 and 63)

7 DE Admin. Code 1302

FINAL

Secretary's Order No.: 2014-WH-0004

1302 Regulations Governing Hazardous Waste

Date of Issuance: March 14, 2014

Effective Date of the Amendment: April 21, 2014

I. Background:

A public hearing was held on Monday, January 27, 2014, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

In order to improve flexibility and service to the regulated community, the Department's Solid and Hazardous Waste Management Section ("SHWMS") proposes to add compliance self-certification provisions to Delaware's RGHW. Specifically, Delaware proposes to modify Section 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

To fully vet the Department's proposed amendments to the aforementioned RGHW to the regulated community throughout Delaware, the aforementioned proposed amendments were published in the State of Delaware *Register of Regulations* on January 1, 2014. Additionally, notices of the Department's proposed amendments and upcoming public hearing were published in both the *Delaware State News* and the *News Journal* on December 18, 2013, which encouraged the public to review the proposed amendments on the Department's web page, and to attend DNREC's upcoming public hearing. Accordingly, the Department then held a public hearing on Monday, January 27, 2014, at which time there were no members of the public in attendance, nor were any comments received from the public or the regulated community regarding these proposed amendments. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on February 11, 2014, no public comments had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on January 27, 2014, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated March 4, 2014, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's *Regulations Governing Hazardous Waste*, as reflected in the Hearing Officer's Memorandum of March 4, 2014, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of these proposed amendments would improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these

selected hazardous waste generators regulatory guidance that is specific to their business needs;

6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

7. The Department's proposed regulation, as published in the January 1, 2014 Delaware *Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the Delaware *Register of Regulations*;

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

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated March 4, 2014 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste* be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's *Regulations Governing Hazardous Waste* will improve flexibility and service to the regulated community with the addition of the compliance self-certification provisions to Delaware's existing RGHW. Furthermore, the proposed amendments will offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

It should be noted that the estimated cost to fill out the Checklist is minimal. If a business generates hazardous waste, then there must already be an employee who is responsible for managing that hazardous waste. This same individual would ideally be the person responsible for filling out the Self-Certification Checklist. Because the Department will provide any assistance necessary in filling out the form, there is no need for a business to hire an outside consultant to comply with this new regulation. It should also be noted that businesses would not be required to take any other measures or investments to comply with this new regulation.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C. Chapters 60 and 63.

Collin P. O'Mara, Secretary

1302 Regulations Governing Hazardous Waste

ID #	Description
1	Self-Certification provisions0

AMENDMENT: Self-Certification Provisions

Delaware is proposing to modify 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the Solid and Hazardous Waste Management Section SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

Section 262.43 Additional Reporting.

(a) The Secretary, as he deems necessary under 7 Del.C. §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261.

(b) Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.

(1) The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department.

(2) The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

"I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

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