

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**Division of Air and Waste Management**

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

**7 DE Admin. Code 1302**

**FINAL**

**Secretary's Order No.: 2009-A-0043**

**Amendments to the Delaware Regulations Governing Hazardous Waste**

Date of Issuance: November 12, 2009

Effective Date of the Amendment: December 21, 2009

**I. Background:**

A public hearing was held on Thursday, October 22, 2009, 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. To accomplish this, the State is proposing to make miscellaneous changes to the RGHW that correct existing errors, add clarification, and/or otherwise enhance its current hazardous waste regulations.

The Department is proposing amendments to reflect changed federal regulations. Thus, Delaware is proposing very minor changes to the following sections of its existing Regulations Governing Hazardous Waste: (1) Transporter Permit Requirement; (2) Exception Report DNREC notification clarification; (3) Performance Track Program deletion; (4) Insurance for Used Oil Transporters; (5) Used Oil correction; (6) 24 hours vs. 1 day clarification; (7) Contingency Plan clarification; and (8) Permit Modification list.

Due to the fact that the proposed changes to RGHW are required by the EPA, are self explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter was sent to all interested persons (i.e., the regulated community throughout Delaware) on June 30, 2009, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing. No comments of any kind were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 9, 2009, 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 November 9, 2009, 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 considered all timely and relevant public comments in making its determination;
5. 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;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the October 1, 2009 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;
10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation 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 November 9, 2009 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 update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

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

### Amendments To Delaware Regulations Governing Hazardous Waste

ID #	Description
1a	Delaware Change: Transporter Permit Requirement
1b	Delaware Change: Exception Report DNREC notification clarification
1c	Delaware Change: Performance Track program
1d	Delaware Change: Insurance for Used Oil Transporters
1e	Delaware Change: Used Oil correction

1f	Delaware Change: 24 hours vs. 1 Day clarification
1g	Delaware Change: Contingency Plan clarification
1h	Delaware Change: Permit Modification List

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the *Delaware Regulations Governing Hazardous Waste* are not affected and are unchanged.

### **1302 Regulations Governing Hazardous Waste**

#### **AMENDMENT 1a:**

##### Transporter Permit Requirement

#### **Section 262.12 EPA Identification Numbers.**

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Secretary.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Secretary using "RCRA Subtitle C Site Identification Form", EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) A generator must submit a subsequent "RCRA Subtitle C Site Identification Form", EPA 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).

#### **AMENDMENT 1b:**

##### Exception Report DNREC notification clarification

#### **Section 262.42 Exception Reporting.**

(a) A generator who does not receive a copy of the manifest with the hand written signature of the owner or operator of the designated facility within thirty five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste, and if it has not been delivered the generator must identify the shipment and report it to the State in which the shipment originated.

(b) A generator must submit an Exception Report to the DNREC within 5 calendar days if he has not received a copy of the manifest/shipping paper with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter, ~~and the~~ The generator must also notify the State in which the manifest designated facility is located and the State to which the shipment may have been delivered. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

#### **AMENDMENT 1c:**

##### Deletion of Performance Track Program

#### **Section 262.34 Accumulation time.**

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(j) Reserved A member of the Performance Track Program who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days; and

(2) The generator first notifies the Regional Administrator and the DNREC Secretary in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A Statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) **Reserved**

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of Subparts I, AA, BB and CC of DRGHW Part 265 and DRGHW 264.175; or

(ii) Tanks, in accordance with the applicable requirements of Subparts J, AA, BB and CC of DRGHW Part 265, except for §§ 265.197(c) and 265.200; or

(iii) Drip pads, in accordance with Subpart W of DRGHW Part 265; or

(iv) Containment buildings, in accordance with Subpart DD of DRGHW Part 265; and

(4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains for a period of at least three years the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days, a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days; and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in Subparts C and D in DRGHW Part 265, with § 265.16, and with §268.7(a)(5). In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for. §§ 265.111 and 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

(9) The generator includes the following with its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the DNREC Secretary:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) **Reserved**

(k) Reserved If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days due to unforeseen, temporary, and uncontrollable circumstances, an extension to the extended

accumulation time period of up to 30 days may be granted at the discretion of the DNREC Secretary on a case-by-case basis.

(l) Reserved

(1) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, if the Regional Administrator terminates a generator's membership, or if use of the §262.34(j) provisions is terminated pursuant to §262.34(l)(2) the generator must return to compliance with all otherwise applicable hazardous waste regulations for those waste being managed pursuant to §262.34(j) as soon as possible, but no later than 90 days after the date of withdrawal or termination.

(2) The use of the §262.34(j) provisions for accumulating hazardous wastes for extended periods of time by Performance Track member facilities may be terminated by the DNREC Secretary for noncompliance with the requirements of these regulations.

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**AMENDMENT 1d:**  
Insurance for Used Oil Transporters

**Part 263 - Standards Applicable to Transporters of Hazardous Waste**

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**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.

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**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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**Part 279 - Standards for the Management of Used Oil**

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**Subpart E - Standards for Used Oil Transporter and Transfer Facilities**

**Section 279.40 Applicability.**

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(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) (6) of this section:

(1) Transporters who generate used oil must also comply with Subpart C of this part;

(2) Transporters who process or re-refine used oil, except as provided in §279.41, must also comply with Subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with Subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part; and

(5) Transporters who dispose of used oil must also comply with Subpart I of this part.

(6) Transporters of used oil must also comply with Part 263 of these regulations.

**AMENDMENT 1e:**  
Used Oil correction

**Section 279.22 Used oil storage.**

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the **Delaware Regulations Governing Underground Storage Tanks** (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

- (1) In good condition (no severe rusting, apparent structural defects or deterioration); and
- (2) Not leaking (no visible leaks); and
- (3) ~~Always be e~~Closed during storage, except when it is necessary to add or remove oil.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".

(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks** (UST) and which has occurred after the effective date of Delaware's recycled used oil management program, a generator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

**AMENDMENT 1f:**

24 hours vs. 1 day clarification

**Section 264.1086 Standards: Containers.**

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(c) Container Level 1 standards.

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(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

\* \* \* \* \*

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect within ~~one calendar day~~ 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

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**Section 265.1087 Standards: Containers.**

\* \* \* \* \*

(c) Container Level 1 standards.

\* \* \* \* \*

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

\* \* \* \* \*

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect within ~~one calendar day~~ 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be

completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

**AMENDMENT 1g:**  
Contingency Plan clarification (delete comma)

**Section 265.52 Content of Contingency Plan.**

(a) The contingency plan must describe the actions facility personnel must take to comply with §265.51 and §265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

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

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to §265.37.

(d) The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

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**Section 264.52 Content of contingency plan.**

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(c) The plan must list names, addresses (office and home), and telephone numbers (office and home) of all persons qualified to act as emergency coordinator (see §264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be provided to the Secretary at the time of certification, rather than at the time of permit application.

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**AMENDMENT 1h:**  
Permit Modification List

**Section 122.42 Permit modification at the request of the permittee.**

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(i) Reserved ~~Permit modification list.~~

~~The Secretary must maintain a list of all approved permit modifications and must publish a notice once a year in a Statewide newspaper that an updated list is available for review.~~

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