

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6305(a); (7 **Del.C.** §§6010(a) and 6305(a))

7 DE Admin. Code 1302

FINAL

Secretary's Order No.: 2019-WH-0001

1302 Regulations Governing Hazardous Waste

Date of Issuance: January 3, 2019

Effective Date: February 21, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("DNREC," "Department"), pursuant to 7 **Del.C.** §§6010(a) and 6305(a), and any other relevant statutory authority, the following findings of fact based on the record, reasons, and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History, and Findings of Fact

This Order relates to proposed Amendments ("Amendments") to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste*. This action is being taken by the Department to provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program.

The Department is required to adopt these federal regulatory amendments to maintain its Resource Conservation and Recovery Act ("RCRA") program delegation through the Environmental Protection Agency ("EPA"), and to remain current with the federal hazardous waste program. The Department's proposed Amendments are equivalent to the current federal regulations, and include revisions to the following: (1) Hazardous Air Pollutant Standards for Combustors; (2) Methods Innovation Rule; (3) Burden Reduction Initiative; (4) Organization of Economic Cooperation and Development Rule; (5) Technical Corrections; (6) Delisting of Saccharin; (7) Export Revisions for Cathode Ray Tubes; (8) Definition of Solid Waste; and (9) Comparable Fuels Vacatur.

In addition to the proposal of the above items, the Department also proposes to correct minor technical errors and to add clarification regarding container storage.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 **Del.C.** §§6010(a) and 6305(a). The Department published its proposed Amendments in the October 1, 2018 Delaware *Register of Regulations*. Thereafter, the public hearing regarding this matter was held on October 29, 2018.

No members of the public attended the aforementioned public hearing. Pursuant to Delaware law, the record remained open for fifteen additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on November 13, 2018, with no comments having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the initial proposed publication in the Delaware *Register of Regulations* on October 1, 2018, and prior the public hearing of October 29, 2018, responsible Department staff identified two citation errors in the proposed regulations. Department staff corrected this in their *revised* proposed Amendments. Since these revisions are not substantive in nature, no re-notice and re-publication by the Department of these *revised* Amendments is necessary.

Hearing Officer Bethany A. Fiske prepared a Hearing Officer's Report dated December 11, 2018. The report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed Amendments as attached to the report as Appendix A.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final. I further find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these *revised* proposed Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste*, pursuant to 7 **Del.C.** §§6010(a) and 6305(a);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on October 29, 2018, and during the 15 days subsequent to the hearing (through November 13, 2018), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* will provide greater environmental protection and to reduce human health risks by incorporating federal requirements into Delaware's Hazardous Waste Management Program;
5. The Department has reviewed the *revised* proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption B5, as this regulation is required by federal law;
6. The Department's Hearing Officer's Report, including its established record and the recommended *revised* proposed Amendments as set forth in Appendix A, are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed Amendments, as published in the October 1, 2018 Delaware *Register of Regulations*, and then as *revised*, as set forth in Appendix A, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the *revised* Amendments are approved as final, and shall go into effect 20 days after publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the *revised* proposed Amendments to 7 **DE Admin. Code** 1302: *Regulations Governing Hazardous Waste* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1302 Regulations Governing Hazardous Waste

***Please Note: Due to the size of the final regulation, it is not being published here. A PDF version is available at the following location:**

<http://regulations.delaware.gov/register/february2019/final/DRGHWFinalRegs.pdf>

Within the final regulation, selected tables are available in PDF format at the following locations:

Appendix IX to Part 264 - Groundwater Monitoring List

<http://regulations.delaware.gov/register/february2019/final/Groundwater Monitoring List.pdf>

DRGHW 268.40 - Treatment Standards For Hazardous Wastes Table

<http://regulations.delaware.gov/register/february2019/final/Treatment Standards For Hazardous Wastes.pdf>

DRGHW 268.42 - Table 1 - Technology Codes and Description of Technology Based Standards

<http://regulations.delaware.gov/register/february2019/final/Technology Codes and Description.pdf>

DRGHW 268.45 - Table 1 - Alternative Treatment Standards for Hazardous Debris

<http://regulations.delaware.gov/register/february2019/final/Alternative Treatment Standards.pdf>

DRGHW 268.48 - Table - Universal Treatment Standards

<http://regulations.delaware.gov/register/february2019/final/Universal Treatment Standards.pdf>

Appendix VII to Part 268 - Table 1 - LDR Effective Dates of Surface Disposed Prohibited Hazardous Wastes

<http://regulations.delaware.gov/register/february2019/final/LDR Effective Dates Surface Disposed.pdf>

Appendix VIII to Part 268 - LDR Effective Dates of Injected Prohibited Hazardous Wastes

<http://regulations.delaware.gov/register/february2019/final/LDR Effective Dates Injected.pdf>

Appendix XI to Part 268 - Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit

<http://regulations.delaware.gov/register/february2019/final/Metal Bearing Wastes.pdf>

22 DE Reg. 678 (02/01/19) (Final)