

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

PROPOSED

REGISTER NOTICE

SAN # 2015-06

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware's *Regulations Governing Hazardous Waste* (DRGHW)

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To provide greater environmental protection and to reduce human health risks, the Solid and Hazardous Waste Management Section (SHWMS) proposes to modify the characteristics of ignitability to mirror the federal requirements. Additionally, the proposed modifications will correct typographical and reference errors.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed amendments to DRGHW will be held on Thursday, January 21, 2016 at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. The hearing record on the proposed modifications will be open January 1, 2016. Interested parties shall submit comments in writing by the end of the comment period, as designated by the hearing officer at this hearing and/or statements and testimony may be presented either orally or in writing at the January 21, 2016 public hearing. Written comments should be sent to: lisa.vest@state.de.us or Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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1302 Regulations Governing Hazardous Waste

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 DRGHW are not affected and are unchanged. Proposed additions are indicated with underlines, and deletions are indicated with ~~strikethroughs~~.

AMENDMENT 1:

Background:

Delaware proposes to modify DRGHW to mirror the federal provisions regarding characteristics of ignitability.

Section 261.21 Characteristics of Ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see §260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see §260.11).

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas ~~as defined in 49 CFR Part 173 and as determined by the test methods described in that regulation.~~

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70°F or, regardless of the pressure at 70°F, having an absolute pressure exceeding 104 p.s.i. at 130°F; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100°F as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer ~~as defined in 49 CFR Part 173. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).~~

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in §261.23(a)(8), in which case it must be classed as an explosive.

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21.

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in §173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

AMENDMENT 2:

Background:

Delaware proposes to modify DRGHW to correct an incorrect reference. DRGHW § 262.21 is reserved, as Delaware has elected not to issue manifest numbers or print hazardous waste manifests. Rather, the approval for this function remains at the federal level.

Section 262.20 General Requirements.

(a) (1) ...

(2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, ~~262.21~~, 262.27, 262.32, 262.34, 262.54, 262.60, ~~and~~ the appendix to part 262 of these regulations, and 40 CFR § 262.21 shall not apply until September 5, 2006. The manifest form and procedures in §§260.10, 261.7, 262.20, 262.21, 262.32, 262.34, 262.54, 262.60, and the Appendix to part 262, contained in parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

AMENDMENT 3:

Background:

Delaware proposes to modify DRGHW to correct an incomplete reference.

Section 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

(a) (1) ...

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under Subparts C through N of Part 266 of these regulations, Subpart E of Part 263, and all applicable provisions in Parts 268, 122 and 124 of these regulations:

- (i) Recyclable materials used in a manner constituting disposal (Part 266, Subpart C);
- (ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under Subpart O of Part 264 or 265 of these regulations (Part 266, Subpart H);
- (iii) Recyclable materials from which precious metals are reclaimed (Part 266, Subpart F);
- (iv) Spent lead-acid batteries that are being reclaimed (Part 266, Subpart G). Note: Spent lead-acid batteries destined for reclamation are not subject to the transporter permitting requirements of Part 263.

AMENDMENT 4:

Background:

Delaware proposes to modify DRGHW to change an incorrect preposition and mirror the federal regulations.

Section 264.151 Wording of Instruments.

...

(n)(1) ... STANDBY TRUST AGREEMENT

...

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund,... except that the Fund is not established for the benefit of third parties for the following:

...

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [insert Grantor];
- (2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;
- (3) Property loaned ~~to~~ by [insert Grantor];

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19 DE Reg. 584 (01/01/16) (Prop.)