

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.: 2020-WH-0034

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste (DRGHW)*

Date of Issuance: December 14, 2020

Effective Date of the Amendment: January 21, 2021

1302 Regulations Governing Hazardous Waste

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all 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 regulation amendments ("Amendments") to 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste*. Specifically, the Department proposes to amend 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste* ("DRGHW") to incorporate federal hazardous waste regulatory amendments promulgated by the United States Environmental Protection Agency ("EPA") into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its Resource Conservation and Recovery Act ("RCRA") program delegation and remain current with the federal hazardous waste program.

In accordance with the RCRA program, the Department is required to implement state regulations that are no less stringent than those at the federal level. The Department evaluated the most recent EPA rules related to the aforementioned DRGHW regulation and determined that the following federal rules are appropriate and necessary to be adopted by Delaware to add consistency and clarification to the Department's DRGHW regulation: (1) Imports and Exports of Hazardous Waste, (2) Hazardous Waste Generator Improvement Rule, (3) Confidentiality Determinations on Hazardous Waste Import/Export documents, (4) Hazardous Waste Electronic Manifest Fee Rule, (5) Safe Management of Recalled Airbags, (6) Management Standards for Hazardous Waste Pharmaceuticals, and Amendment to P075 Listing for Nicotine, and (7) Increasing Recycling: Adding Aerosol Cans to Universal Waste Rule. The Department believes the Amendments will provide greater environmental protection and reduce human health risks.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 Del.C. §§6010(a) and 6305(a). The Department published its initial proposed regulation Amendments in the August 1, 2020 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on August 27, 2020. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that, subsequent to publication in the August 1, 2020 *Delaware Register of Regulations*, the Department identified two errors in the initial proposed Amendments (Department's Exhibit 7). The two identified errors were corrected, as set forth in the *revised* proposed Amendments, and then properly vetted by the Department at the time of the virtual hearing.

There were six (6) members of the public in attendance at the virtual public hearing. Pursuant to 29 Del.C. §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on September 11, 2020, with two (2) written comments having been received by the Department.

Subsequent to the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's expert staff in the Division of Waste and Hazardous Substances. The Department's TRM fully addresses the comments provided by EPA, and also sets forth additional revisions made following the virtual public hearing in response to the same.

The additional revisions to the proposed Amendments: (1) provide corrections to clerical errors in the proposed regulatory language found subsequent to the hearing; (2) better mirror the language found in the federal regulations; and (3) provide greater clarity and understanding of the revised proposed Amendments for the benefit of the regulated community. It should be noted that none of the additional revisions as proposed in the Department's TRM are substantive in nature, nor do they constitute any new requirements of the regulated community that were not previously vetted at the time of the public hearing. Thus, no additional noticing or hearings were necessary to be held by the Department in this matter.

Hearing Officer Theresa Newman prepared her report dated October 22, 2020 ("Report"), which expressly incorporated the Department's *revised* proposed Amendments into the hearing record generated in this matter. 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 in the Division of Waste and Hazardous Substances, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste*, are well-supported. I further find that the Department's Waste and Hazardous Substances experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, 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 August 27, 2020 and during the 15 days subsequent to the hearing (through September 11, 2020), before making any final decision;
4. Promulgation of the *revised* proposed amendments to 7 DE Admin. Code 1302, *Delaware's Regulations Governing Hazardous Waste*, will enable the Department to incorporate the above referenced federal amendments promulgated by EPA into Delaware's hazardous waste management program. Additionally, this promulgation will allow Delaware to maintain its RCRA program delegation and remain current with the federal hazardous waste program;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 Del.C. Ch. 104, and has selected Exemption "B5," as the *revised* proposed Amendments are based on federal regulations that comply with, and address the Regulatory Flexibility Act;
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 regulatory Amendments, as initially published in the August 1, 2020 *Delaware Register of Regulations*, and then subsequently *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving the *revised* proposed Amendments as final regulatory to the *Delaware Register of Regulations* 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

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

http://regulations.delaware.gov/register/january2021/final/DRGHW_Final_Regs.pdf

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

24 DE Reg. 711 (01/01/21) (Final)