

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., Ch. 60 & 63)
7 DE Admin. Code 1302

FINAL

Secretary's Order No.: 2009-A-0012

1302 Regulations Governing Hazardous Waste

Part 261 - Identification and Listing of Hazardous Waste, Section 261.4

Part 261 - Identification and Listing of Hazardous Waste, Section 261.39

Part 262 - Standards Applicable to Generators of Hazardous Waste, Section 262.21, Appendix and Manifest 8700-22

Part 264 - Standards for Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities, Section 264.151

Date of Issuance: April 14, 2009

Effective Date of the Amendment: May 21, 2009

I. Background:

A public hearing was held on Tuesday, March 24, 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 its own 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 must periodically seek authorization from the EPA to administer the program, and Delaware is preparing the 7th such program reauthorization. For Delaware's Hazardous Waste program to be authorized, the EPA has requested minor, miscellaneous corrections to align the State's program with the Federal program.

The changes the Department is proposing to make are already in effect at the federal level. Delaware is proposing the following changes to the *Regulations Governing Hazardous Waste*: (1) Cathode Ray Tubes: correction for export notification, §261.39(a)(5)(iii) and (iv); (2) Cathode Ray Tubes: correction for broken CRT storage time limit, §261.4(b)(16)(i)(B)(3); (3) Manifest Printing: reserve all of §262.21; (4) Typographical correction for "Depository", §264.151(a)(1) Section 8c; and (5) Manifest Instructions corrections, §262 Appendix.

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 February 25, 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 of March 24, 2009. No comments 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 February 10, 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 April 13, 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:

The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;

The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

The Department held a public hearing in a manner required by the law and regulations;

The Department considered all timely and relevant public comments in making its determination;

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;

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;

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;

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

The Department's proposed regulation, as published in the March 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*;

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 April 13, 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.

David S. Small, Acting Secretary

**2008A
Final Amendments
Start Action Notice 2008-30**

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**PROPOSED AMENDMENTS TO
DELAWARE 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 *Delaware Regulations Governing Hazardous Waste* are not affected and are unchanged.

**AMENDMENT 1:
Cathode Ray Tubes – Correction for export notification**

Subpart E—Exclusions/Exemptions

§ 261.39 Conditional Exclusion from Hazardous Waste for Used, Intact or Broken Cathode Ray Tubes and CRT Glass (CRTs) Managed by CRT Collectors and CRT Processors and Processed CRT Glass Undergoing Recycling.

* * * * *

(a) * * * * *

(5) *Exports.* In addition to the applicable conditions specified in paragraphs (a) (1)–(4) of this section, exporters of used, intact or broken CRTs must comply with the following requirements:

* * * * *

(iii) Upon request by EPA or DNREC, the exporter shall furnish to EPA/DNREC any additional information which a receiving country requests in order to respond to a notification.

(iv) ~~EPA will provide a complete notification to the receiving country.~~ Reserved

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AMENDMENT 2
Cathode Ray Tubes – Correction for broken CRT storage time limit

§ 261.4(b)

* * * * *

(16) Used, intact or broken cathode ray tubes and CRT glass (CRTs)

(i) Used, intact or broken CRTs while at the site of the CRT Generator as defined in § 260.10 of this chapter are not hazardous waste, provided the CRT's are not disposed and provided they are managed as follows:

* * * * *

B. Used, Broken CRT's, including CRT Glass

* * * * *

(3) A CRT generator may accumulate used, broken CRT's for not longer than one year from the date the CRT is first taken out of service. The CRT generator must be able to demonstrate the length of time that each used, broken CRT is accumulated from the date it is first taken out of service. [Note: The out of service date for a used, broken CRT resulting from breakage of an out of service used, intact CRT, is that of the original out of service date.]

* * * * *

AMENDMENT 3
reserve all of §262.21

Section 262.21 Manifests tracking numbers, manifest printing, and obtaining manifests. Reserved

~~(a)~~

~~(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of 40 CFR 262.21.~~

~~(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.~~

~~(b) Reserved~~

~~(c) Reserved~~

~~(d) Reserved~~

~~(e) Reserved~~

~~(f) Reserved~~

~~(g)~~

~~(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of 40 CFR 262.21. A registered source may be a:~~

~~(i) State agency;~~

~~(ii) Commercial printer;~~

~~(iii) Hazardous waste generator, transporter or TSD; or~~

~~(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.~~

~~(2) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires~~

the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

- (h) Reserved
- (i) Reserved
- (j) Reserved
- (k) Reserved
- (l) Reserved
- (m) Reserved

AMENDMENT 4

reverse DepositARY back to DepositORY in 264.151(a)(1) Section "8c"

Section 264.151 Wording of Instruments.

(a) (1) * * * * *

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central ~~depository~~ ~~depository~~ even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such ~~depository~~ ~~depository~~ with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

AMENDMENT 5

§262 Appendix

- §262 Appendix, add first two instruction notes
- Strike clause from Manifest Instructions Item 5 for Generators regarding emergency phone number

Appendix to Part 262

Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)
U.S. EPA Form 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used – press down hard.
2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

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I. Instructions for Generators

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Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

12 DE Reg. 1428 (05/01/09) (Final)