

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTIONS

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 261a, 271, 272 AND 283]

Household Hazardous Waste

The Environmental Quality Board (Board) by this order amends Chapters 261a, 271, 272 and 283.

The amendments include regulations governing household hazardous waste collection events, grants, and transportation and management. The changes clarify the regulations to make them consistent with the Small Business and Household Pollution Prevention Program Act (35 P. S. §§ 6029.201—6029.209) (Act 190), which was passed after most of the existing household hazardous waste regulations were written. The changes to Article VII (relating to hazardous waste management) correct the inadvertent 1999 incorporation by reference in Article VII of the Environmental Protection Agency's (EPA) regulatory exemption of household hazardous waste from regulation as hazardous waste. The changes to Article VIII (relating to municipal waste) are designed to ensure that waste collected as part of an organized household hazardous waste collection continues to be properly transported and managed as hazardous waste rather than as part of the municipal waste stream. This is true for household hazardous waste collected as part of an organized household hazardous waste collection in another state, once the waste enters this Commonwealth, if the waste is to be managed in this Commonwealth, and for household hazardous waste collected as part of a collection event in this Commonwealth. Household hazardous waste not collected as part of an organized collection will continue to be managed as municipal waste in this Commonwealth.

This order was adopted by the Board at its meeting of July 17, 2001.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information contact Tom Hyatt, Division of Waste Minimization and Planning, P. O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-7382, or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's website (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

The final rulemaking is being made under the authority of the following:

Section 207(a) of Act 190 (35 P. S. § 6029.207(a)), which grants the Board the authority to promulgate regulations as needed to implement the act.

The Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.101—6018.1003), which in section 105(a) of the

SWMA (35 P. S. § 6018.105(a)) grants the Board the power and the duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.

The Household Hazardous Waste Funding Act (HHWFA) (35 P. S. §§ 6025.1—6025.5), which in section 4(a) of the HHWFA (35 P. S. § 6025.4(a)) created a restricted revenue account in the Recycling Fund to be used to fund household hazardous waste collection programs.

The Clean Streams Law (CSL) (35 P. S. §§ 691.1—691.1001), which in section 5(b) of the CSL (35 P. S. § 691.5(b)) grants the Board the authority to formulate, adopt, promulgate and repeal the rules and regulations as are necessary to implement the provisions of the act. In section 304 of the CSL (35 P. S. § 691.304), the Board is granted the authority to adopt, prescribe and enforce rules and regulations consistent with the act as may be deemed necessary for the protection of the purity of the waters of this Commonwealth, or parts thereof, and to purify those now polluted. In section 402 of the CSL (35 P. S. § 691.402) the Board is granted the authority to adopt rules and regulations establishing conditions under which an activity shall be conducted for any activity that creates a danger of pollution of the waters of this Commonwealth or that regulation of the activity is necessary to avoid this pollution.

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P. S. §§ 4000.101—4000.1904), which in section 302 of Act 101 (53 P. S. § 4000.302) gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of Act 101.

The Administrative Code of 1929 (Administrative Code) (71 P. S. §§ 510-17 and 510-20) which in section 1917-A of the Administrative Code (71 P. S. § 510-17) authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances; and in section 1920-A of the Administrative Code (71 P. S. § 510-20) grants the Board the power and the duty to formulate, adopt and promulgate the rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

D. *Background of the Amendments*

The Commonwealth has operated a household hazardous waste program since 1992. Under this program, grants have been and continue to be available to eligible municipalities and other legal entities that register to conduct a household hazardous waste collection event. While household hazardous waste generated by an individual household and sent directly to a processing or disposal facility along with the household's municipal waste has not been regulated as hazardous waste, household hazardous waste collected at household hazardous waste collection events has been and continues to be managed as hazardous waste once it is collected. This ensures the proper level of environmental protection and is consistent with the EPA recommendations. Until 1996, the Commonwealth's program was operated largely under the authority of section 1512 of Act 101 and the HHWFA; relevant regulations were found in the hazardous and municipal waste regulations. However, in 1996, Act 190 repealed section 1512 of Act 101 and portions of the HHWFA and replaced them with newer provisions jointly addressing small business and household hazardous waste collection events. This rulemaking is designed to

update the hazardous and municipal waste regulations according to Act 190 as they apply to household hazardous waste collections.

The regulatory amendments cover the registration, review and approval of collection programs, the operation of collection programs and the requirements of collection contractors and transporters of household hazardous waste. The regulations specify entities that are eligible to bring waste to collection events. The regulations also cover grant requirements that apply to eligible collection sponsors.

The regulatory amendments serve a number of purposes. They will make it easier for collection sponsors, collection contractors and transporters to understand the requirements that apply to their activities, without making major changes to the existing regulations. The amendments also make the language in the regulations consistent with Act 190 and the way the household hazardous waste program is currently implemented. The amendments correct the inadvertent incorporation by reference of the EPA's regulatory exemption of household hazardous waste from regulation as hazardous waste. The Federal regulations exempt hazardous waste derived from households from being regulated as hazardous waste, even when collected as part of a household hazardous waste collection. The 1999 amendments to the hazardous waste regulations inadvertently incorporated this provision by reference in § 261a.1 (relating to incorporation by reference, purpose and scope). The changes clarify that once household hazardous waste is collected as part of a household hazardous waste collection, it must be managed as a hazardous waste. Finally, the amendments are intended to dispel confusion expressed by some contractors as to how household hazardous waste is to be managed after it is collected. The amendments will ensure that all household hazardous waste that is collected as part of a household hazardous waste collection, no matter in which state the waste originates, is to be managed as hazardous waste if managed in this Commonwealth.

Because the amendments clarify existing regulations and make the regulations consistent with the way the household hazardous waste program is currently implemented under Act 190, no controversy was expected over the proposed rulemaking. The Board provided a 30-day public comment period on the proposed rulemaking. No public comments were received. Comments were received, however, from the Independent Regulatory Review Commission (IRRC). A summary of IRRC's comments and the Board's responses and the changes made in the final rulemaking follow in Section E of this preamble.

The final-form regulations were reviewed and unanimously approved by the Solid Waste Advisory Committee (Committee) on May 10, 2001, for submittal to the Board.

E. *Summary of Comments and Responses and Changes Made in the Final-Form Rulemaking*

The following changes were made to the proposed rulemaking:

As a result of a comment concerning § 261a.4(1) (relating to exclusions), the word "of" was changed to "in" to clarify that the exclusions are contained in that section. To further clarify the exclusion, the phrase "if the waste is" was added to the exclusion and the word "and" was substituted for the term "which is."

As a result of a comment on § 271.1 (relating to definitions), the terms "collection contractor," "collection event," "eligible entity" and "sponsor" were added to the

definitions, and subparagraphs (i) and (ii) under the proposed definition of "household hazardous waste" were moved to § 272.501 (relating to scope) to better explain when household hazardous waste is to be managed as hazardous waste.

The term "and disposal" was replaced by the term "events" in the descriptive heading prior to § 272.381 (relating to scope of grant) to be consistent with the language in Act 190.

The term "household hazardous" was added to § 272.512(b)(4) (relating to general application requirements) and the term "management" substituted for "treatment or disposal" to clarify that the Department would prefer to have household hazardous waste recycled rather than disposed.

The term "management" was substituted for "treatment or disposal" in § 272.513(1) (relating to contract) to clarify that the Department would prefer to have household hazardous waste recycled rather than disposed.

The last sentence of proposed § 272.533(b) (relating to fees) was deleted. This sentence was redundant with respect to § 272.382(c) (relating to eligible costs). In addition, the word "event" was substituted for "program" in § 272.533 to be consistent with the language in Act 190.

The phrase "collected at the collection event" was added to § 272.541(a)(2) (relating to collection contractor) to clarify that the requirement applies to waste collected at a household hazardous waste collection event.

The term "event" was substituted for "program" in § 272.541(b) to be consistent with the language in Act 190. Language in § 272.541(b) was changed from "manage, transport and dispose of the waste" to "ensure that transportation and management of the waste, including treatment, storage and disposal, are" to clarify that waste collected at household hazardous waste collections does not have to be disposed. Subsection (b) was also expanded to clarify that household hazardous waste is required to be removed from a collection site within 48 hours, unless a longer time has been authorized by the Department under § 272.535 (relating to cleanup of site).

In § 272.541(c)(1), the phrase "manage, transport and dispose" was replaced with "transport and manage" to clarify that waste collected at a household hazardous waste collection does not have to be disposed and because the definition of "management" in § 271.1 encompasses disposal.

The proposed new language in § 272.541(d) was deleted because it is repetitive of § 272.541(b). This change resulted in the deletion of subsection (d) in its entirety.

Section 283.123(a)(1) (relating to plan for removal of hazardous materials) was updated to reflect a reference to a title that was changed in Chapter 272, Subchapter F (relating to household hazardous waste collection, transportation and management).

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

The final-form regulations clarify the registration and operational requirements of conducting a household hazardous waste program. The final-form regulations also clarify that household hazardous waste collected as part of a household hazardous waste collection is to be managed under Article VII. No new requirements for house-

hold hazardous waste collection sponsors, collection contractors or transporters are added to the regulations.

Compliance Costs

Household hazardous waste program sponsors and collection sponsors are required to comply with the regulations. The Commonwealth has always regulated household hazardous waste that is collected as part of a household hazardous waste collection program as hazardous waste. However, because the final-form regulations clarify existing regulations, they should not have any impact on direct or indirect costs.

Compliance Assistance Plan

The final-form regulations should not require any educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and website information consistent with the proposed amendments. In the event that assistance is required, central office staff will be able to provide it.

Paperwork Requirements

The final-form regulations do not create any new paperwork requirements. All paperwork requirements are presently consistent with the proposed rulemaking.

G. Pollution Prevention

Pollution prevention efforts will not be required by the Department as a result of this regulatory change. The Department already provides pollution prevention educational material as part of its household hazardous waste program. In addition, Act 190, which provides the basis for the regulations, requires collection events to include an education program as part of the collection event and requires that waste materials collected from households as part of a household hazardous waste collection event be reclaimed to the greatest extent possible.

H. Sunset Review

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 29, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa. B. 796 (February 10, 2001), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

There were no public comments to submit to IRRC and the Committees under section 5(c) of the Regulatory Review Act.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on September 10, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 20, 2001 and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law. No public comments were received, although comments were received from IRRC.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 31 Pa. B. 796.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 261a, 271, 272 and 283, are amended by amending §§ 272.301, 272.313, 272.314, 272.317, 272.381—272.383, 272.514, 272.531, 272.532, 272.535, 272.537 and 272.542; deleting §§ 272.523 and 272.543 and adding §§ 272.384 and 272.551 to read as set forth at 31 Pa.B. 769; and by amending §§ 261a.4, 271.1, 272.501, 272.512, 272.513, 272.533, 272.541 and 283.123 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations. (*Editor's Note:* The amendment of § 283.123 was not included in the proposal at 31 Pa.B. 796.)

(b) The Chairperson of the Board shall submit this order, 31 Pa.B. 769 and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 31 Pa.B. 769 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 31 Pa.B. 769 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DAVID E. HESS,
Chairperson

(*Editor's Note:* For the text of the order of the Regulatory Review Commission, relating to this document, see 31 Pa.B. 5622 (October 6, 2001).)

Fiscal Note: 7-361. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND
SAFETY**

**ARTICLE VII. HAZARDOUS WASTE
MANAGEMENT**

**CHAPTER 261a. IDENTIFICATION AND LISTING
OF HAZARDOUS WASTE**

Subchapter A. GENERAL

§ 261a.4. Exclusions.

In addition to the requirements incorporated by reference:

(1) The exclusion in 40 CFR 261.4(b)(1) (relating to exclusions) does not apply to household hazardous waste as defined in § 271.1 (relating to definitions) if the waste is collected as part of a collection event or collected at an

out-of-State household hazardous waste collection and brought into this Commonwealth for processing, treatment, storage or disposal.

(2) A copy of the written State agreement required by 40 CFR 261.4(b)(11)(ii) that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed for free phase hydrocarbon recovery operations shall be submitted to: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, Post Office Box 8471, Harrisburg, Pennsylvania 17105-8471.

**ARTICLE VIII. MUNICIPAL WASTE
CHAPTER 271. MUNICIPAL WASTE
MANAGEMENT—GENERAL PROVISIONS
Subchapter A. GENERAL**

§ 271.1. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Collection contractor—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act (35 P. S. § 6029.203) is incorporated by reference.

Collection event—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

* * * * *

Eligible entity—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

* * * * *

Household hazardous waste—

(i) Waste generated by a household that could be chemically or physically classified as a hazardous waste under the standards of Article VII (relating to hazardous waste management).

(ii) For the purpose of this definition, the term “household” includes those places described as “households” in 40 CFR 261.4(b)(1) (relating to exclusions).

* * * * *

Sponsor—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

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**CHAPTER 272. MUNICIPAL WASTE PLANNING,
RECYCLING AND WASTE REDUCTION**

**Subchapter F. HOUSEHOLD HAZARDOUS WASTE
COLLECTION, TRANSPORTATION AND
MANAGEMENT**

SCOPE

§ 272.501. Scope.

This subchapter sets forth provisions for the registration, approval and operation of household hazardous waste collection programs and for the management and transportation of household hazardous waste collected as part of an organized collection for the purpose of separating the hazardous waste component from the nonhazardous waste component.

(1) Household hazardous waste that is collected as part of a collection event or that originates at an out-of-State household hazardous waste collection and is brought into this Commonwealth for processing, treatment, storage or disposal is regulated under Article VII (relating to hazardous waste management) and the household hazardous waste provisions of this chapter.

(2) Household hazardous waste that is not collected at a collection event or does not originate at an out-of-State household hazardous waste collection is solid waste which is excluded as hazardous waste under 40 CFR 261.4(b)(1) (relating to exclusions), as incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope).

REGISTRATION AND APPROVAL OF PROGRAMS

§ 272.512. General application requirements.

(a) Registration applications shall be submitted to the Department on a form provided by the Department, and shall contain information the Department deems necessary to properly develop and implement a household hazardous waste collection program. The application shall be submitted by the potential sponsor. An application shall be submitted to the Department at least 60 days before the collection event.

(b) A registration application shall contain the following information:

(1) The location of the proposed site for the collection event. The site may be on public or private property, including, but not limited to, property owned, leased or controlled by the Commonwealth, its agencies or political subdivisions. If the sponsor of the collection program is not the owner of the site, the sponsor shall include as part of the registration application, written permission from the owner of the site to use the property for the collection event.

(2) The expected sources, types and quantities of household hazardous waste that will be deposited at the collection site during the collection event.

(3) The name, address and license number of the collection contractor who will provide collection and transportation services for the collection program.

(4) The location, permit number and permit expiration date of the facilities to which the household hazardous waste deposited at the collection event will be sent for management. The collection contractor for the program shall provide confirmation, on a form provided by the Department, from those facilities, that wastes deposited at the collection event will be accepted by a permitted facility for management.

§ 272.513. Contract.

The application shall include a negotiated contract between the sponsor and the collection contractor. A signed contract shall be submitted to the Department prior to the collection event. The contract shall meet the following requirements:

(1) The contract shall establish the responsibilities of each party for the safe collection, transportation and management of household hazardous waste that is deposited at the collection event in accordance with the statutes and regulations of the Commonwealth and the United States.

(2) The contract shall require that the collection contractor will provide the sponsor with a statement that lists the names and qualifications of personnel accepting waste at the collection event.

(3) The contract shall provide for the cleanup of the collection site and certification of the cleanup of the site by both parties.

OPERATION OF PROGRAMS

§ 272.533. Fees.

To help defray the costs of operating a collection event, a sponsor may require eligible entities to pay a reasonable fee to deposit waste with the collection event.

COLLECTION CONTRACTORS

§ 272.541. Collection contractor.

(a) A collection contractor shall comply with the following requirements:

(1) The collection contractor shall have an EPA hazardous waste identification number under 40 CFR 262.12 (relating to EPA identification numbers), incorporated by reference in § 262a.10 (relating to incorporation by reference, purpose, scope and applicability) and modified in § 262.a12 (relating to EPA identification numbers).

(2) The collection contractor shall have a hazardous waste transporter's license under § 263a.13 (relating to licensing). In the event that the collection contractor will not transport the household hazardous waste collected at the collection event, the collection contractor shall demonstrate to the Department that the person or municipality that will transport the household hazardous waste has a valid hazardous waste transporter's license under § 263a.13.

(b) The collection contractor shall be deemed to be the generator of hazardous waste for household hazardous wastes accepted during the collection event and shall ensure that transportation and management of the waste, including treatment, storage and disposal, are in accordance with this chapter and the applicable provisions of Article VII (relating to hazardous waste management) except Chapter 262a, Subchapter I (relating to source reduction strategy) and 40 CFR 262.34 (relating to accumulation time), incorporated by reference in § 262a.10. The waste shall be manifested to a permitted or interim status hazardous waste treatment, storage or disposal facility, and shipped to that facility within 48 hours of the end of the collection event, unless a longer time has been authorized by the Department under § 272.535 (relating to cleanup of site).

(c) The collection contractor shall comply with the following requirements:

(1) The collection contractor shall transport and manage the waste in accordance with conditions the Department may attach to the approval of the collection event.

(2) The collection contractor shall deliver a copy of the generator copy of the manifests to the sponsor to maintain in accordance with § 272.537 (relating to sponsor recordkeeping).

(3) The collection contractor shall provide a copy of the record of operations to the sponsor.

(4) The collection contractor shall provide for the recycling, reuse or use of the collected materials to the greatest extent feasible.

CHAPTER 283. RESOURCE RECOVERY AND OTHER PROCESSING FACILITIES

Subchapter B. APPLICATION REQUIREMENTS

RECYCLING

§ 283.123. Plan for removal of hazardous materials.

(a) An application for a facility that will be receiving waste after September 26, 1990, including the expansion of an existing facility, shall include a plan consistent with § 283.283 (relating to removal of hazardous materials). The plan shall include a screening and inspection program at the facility and one or more of the following methods of removing hazardous materials from the waste to be processed:

(1) Sponsorship by the operator of the household hazardous waste collection programs under Chapter 272, Subchapter F (relating to household hazardous waste collection, transportation and management).

(2) Municipal sponsorship of household hazardous waste collection programs under Chapter 272, Subchapter F.

(b) For purposes of this section, hazardous materials include plastics if appropriate, corrosive materials, batteries, pressurized cans and household hazardous waste.

[Pa.B. Doc. No. 01-1803. Filed for public inspection October 5, 2001, 9:00 a.m.]