

**FINAL-OMITTED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
Hazardous Waste Generator Improvements Rule
[25 Pa. Code Chapters 261a, 262a, 263a, 264a and 265a]**

Preamble

The Environmental Quality Board (Board) amends Chapters 261a, 262a, 263a, 264a and 265a to update the regulations to be consistent with the Federal regulations amended under the Hazardous Waste Generator Improvements Rule (HWGIR) regulatory amendments adopted by the United States Environmental Protection Agency (EPA) in 2016, effective May 30, 2017. See 81 FR 85732 (November, 28, 2016). The Federal amendments were automatically incorporated by reference into Pennsylvania’s regulations under § 260a.3(e) (relating to terminology and citations related to Federal regulations), which provides that “[t]he incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.” The amendments to Chapters 261a – 265a are set forth in Annex A.

This final-omitted rulemaking was adopted by the Board at its meeting of _____, 2020.

A. Effective Date

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons:

For further information, contact Thomas Mellott, Chief, Division of Hazardous Waste Management, P.O. Box 69170, Rachel Carson State Office Building, Harrisburg, PA 17106-9170, (717) 787-6239; or Nikolina Smith, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8501. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department of Environmental Protection’s (Department) website at www.dep.pa.gov (Select “Public Participation,” then “Environmental Quality Board (EQB)”).

C. Statutory Authority

This final-omitted rulemaking is being made under the following statutory authorities: Sections 105, 402 and 501 of the Solid Waste Management Act (35 P.S. §§ 6018.105 and 6018.402)), which grant the Board the authority to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste; Sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P.S. § 6020.303), which grant the Board the authority to promulgate regulations to carry out the provisions of that Act; and Section 1920A of the Administrative Code of 1929 (71 P.S. § 510-20), which grants the Board the authority to adopt rules and regulations for the proper performance of the work of the Department.

D. Background and Purpose

Consistency of Pennsylvania's Hazardous Waste Program with Federal Law

The Pennsylvania hazardous waste program regulations under Chapters 260a – 268a and 270a, incorporate by reference the Federal hazardous waste regulations under 40 CFR parts 260 – 273. See 25 Pa. Code § 260a.3(e). See also 29 Pa.B. 2369 (May 1, 1999). On November 28, 2016, EPA finalized the HWGIR, which substantially revised provisions in 40 CFR Parts 260 – 268 and 270 and became effective on May 30, 2017. See 81 FR 85372.

The revisions to the Federal rules are automatically incorporated into the *Pennsylvania Code* by reference. However, certain nonsubstantive revisions are needed to some sections of the Pennsylvania regulations to reflect the Federal changes under the HWGIR.

These changes will ensure the consistency of Chapters 261a – 265a with the revised Federal regulations, provide the correct cross-references to the applicable Federal regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.

Notice of proposed rulemaking is omitted under section 204 of the Commonwealth Documents Law (CDL), the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §1204). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if “the agency for good cause finds . . . that the [public notice and comment] procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.” See 45 P.S. § 1204(3).

Public comment is omitted because the substantive changes in the HWGIR were automatically incorporated by reference in Pennsylvania's regulations and the amendments in this final-omitted rulemaking are not substantive. The HWGIR was subject to a notice and comment process when it was proposed at the Federal level on September 25, 2015. See 80 FR 57918. The amendments to 25 Pa. Code Chapters 261a – 265a set forth in Annex A are not substantive changes but rather are minor corrections to ensure consistency with the provisions of the Federal regulations already incorporated by reference.

Additionally, a notice and comment process is unnecessary for the renumbering changes that are unrelated to the HWGIR. These changes comprise a simple renumbering of § 261a.8 to § 261a.9 to be consistent with the numbering structure under 40 CFR Part 261 (relating to identification and listing of hazardous waste). No change in the heading or text of the regulation is being made. Two erroneous cross-references §§ 264a.11 and 265a.11 are also corrected in this final-omitted rulemaking.

The amendments included in this final-omitted rulemaking provide clarity to the public and the regulated community with respect to the Federal provisions incorporated by reference and the numbering structure of 40 CFR Part 261. As a result, the Board for good cause finds that public comment in this case is not necessary.

E. Summary of the Final-Omitted Rulemaking

This final-omitted rulemaking includes changes to Pennsylvania's regulations to address: the relocation of certain Federal provisions in 40 CFR Parts 260 – 265 as a result of the HWGIR; a change in the terminology used in the Federal rule from “conditionally exempt small quantity generator” to “very small quantity generator;” and the deletion of a reference in Subpart J of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste) in the HWGIR. These changes are further explained below

Relocation of Federal Provisions

To be consistent with the numbering structure of the Federal regulations and the change in terminology relating to very small quantity generators, § 261a.5 is being deleted and reserved and the provisions of the section transferred to two new sections. Specifically, the waste oil provision of subsection (a) is being transferred to new § 262a.13. The provision in subsection (b) regarding prohibition of hazardous waste in a municipal or residual waste landfill and the provision in subsection (c) regarding deemed transporter license are being transferred to new § 262a.14. These changes reflect changes in the Federal regulations.

In particular, § 261a.5 paralleled former 40 CFR 261.5 which, under the HWGIR, was deleted and its provisions transferred to other sections of 40 CFR Part 262. See 81 FR 85732, 85736, 85737 and 85806. Under the HWGIR, EPA deleted 40 CFR 261.5(c)(4) and (j) and transferred their provisions to 40 CFR 262.13(c)(4) and (f)(1)(iii) (relating to generator category determination). See 81 FR 85737 and 85809. New § 262a.14 includes the provisions that were in § 261a.5(b) and (c), as described above. These provisions pertain to prohibiting hazardous waste in a municipal or residual waste landfill and to deemed transporter licenses.

Section 262a.34 is reserved in this final-omitted rulemaking. This section set forth additional requirements for accumulation time for accumulated hazardous waste. It provided that a generator who accumulated hazardous waste onsite under 40 CFR 262.34(a)(1)(i) (formerly relating to accumulation time) (removed and relocated in the HWGIR) must also comply with Chapter 265a, Subchapter I (relating to use and management of containers). The cited Federal provision, 40 CFR 262.34, has been deleted and reserved. See 81 FR at 85818. More specifically, the language of 40 CFR 262.34(a)(1)(i) was moved to 40 CFR 262.17(a)(1) (relating to conditions for exemption for a large quantity generator that accumulates hazardous waste). See 81 FR at 85739 and 85814.

To maintain consistency with the numbering structure of the Federal regulation, the provisions of § 262a.34 are transferred in this final-omitted rulemaking to two new sections, 262a.16 and 262a.17. The requirements for the new sections are identical to each other, except that § 262a.16 applies to small quantity generators and § 262a.17 applies to large quantity generators.

Terminology Changes

The EPA replaced the term “conditionally exempt small quantity generator” in 40 CFR 261.5 with “very small quantity generator” in 40 CFR 262.14 (relating to conditions for exemption for a very small quantity generator). See 81 FR 85733, 85734 and 85809.

Similarly, in §§ 264a.11 and 265a.11 (relating to identification number and transporter license; and identification number and transporter license), references to “conditionally exempt small quantity generators” in these sections are changed to “very small quantity generators” to match the change in terminology in the HWGIR. “Very small quantity generator” is defined at 40 CFR 260.10 (relating to definitions).

Reference Deletions

Existing § 262a.10 (relating to incorporation by reference, purpose, scope and applicability) incorporated by reference 40 CFR Part 262 but specified that § 262.10(j) and Part 262 Subpart J were not incorporated by reference. EPA deleted these two portions of Part 262 under the HWGIR. Consequently, the Board is amending § 262a.10 by removing citations to Section 262.10(j) and Subpart J.

Renumbering for Consistency

Section 261a.8 (relating to requirements for universal waste), which is reserved in this final-omitted rulemaking, is comparable to the Federal regulation in 40 CFR 261.9 (relating to requirements for universal waste). In this final-omitted rulemaking, § 261a.8 is being renumbered as § 261a.9 to be consistent with the numbering structure for the Federal regulation. See 80 FR 25492 (May 11, 1995).

Section 262a.12 (relating to EPA identification numbers), which is reserved in this final-omitted rulemaking, provided additional Pennsylvania-specific requirements for hazardous waste generators applicable to EPA identification numbers. It was a parallel provision to 40 CFR 262.12 (formerly relating to EPA identification numbers), which was reserved and renumbered as 40 CFR 262.18 under the HWGIR. See 81 FR 85737, 85740, 85808, and 85818. Section 262a.12 is being renumbered as section 262a.18 (relating to EPA identification numbers) to be consistent with the Federal numbering structure and contains provisions relating to EPA identification numbers that had previously existed in § 261a.12.

In § 263a.13(a) (relating to licensing), a reference to § 261a.5(c) is being changed to § 262a.14(b) because of the transfer of the content of part of § 261a.5(c) to section 262a.14(b).

The Board is correcting an error in §§ 264a.11 and 265a.11. The references in these two sections to § 261a.5(d) are to a nonexistent subsection. The references should have been to § 261a.5(c). Because the language of § 261a.5(c) is being transferred to § 262a.14(b), these references in §§ 264a.11 and 265a.11 are accordingly being changed to § 262a.14(b).

F. Benefits, Costs and Compliance

Benefits

The fundamental benefit of this final-omitted rulemaking is that these changes will ensure the consistency of 25 Pa. Code Chapters 261a – 265a with the revised Federal regulations, provide the correct cross-references in the Pennsylvania regulations to the applicable Federal regulations, and provide clarity to the public and the regulated community with respect to the Federal provisions Pennsylvania incorporates by reference.

Compliance Costs

The amendments will create no additional compliance costs. No additional financial, economic or social impact will result from these amendments.

Compliance Assistance Plan

No formal compliance assistance is necessary for implementation of this final-omitted rulemaking, because the amendments are not substantive and do not have an impact on the regulated community. The HWGIR became effective at the Federal level on May 30, 2017. In accordance with Pa. Code Section 260a.3(e), the HWGIR was incorporated into the Pennsylvania regulations by reference and became effective on the same date. Further, the Hazardous Waste Management Division of the Department has made appropriate changes to the Department's *Hazardous Waste Management Compliance Guide* (available through DEP's eLibrary) and to the *Hazardous Waste Frequently Asked Questions* (available online) to reflect the HWGIR.

Paperwork Requirements

This final-omitted regulation will not revise paperwork requirements.

G. Pollution Prevention

This final-omitted regulation will not impact pollution prevention efforts of the Department.

H. Sunset Review

The Board is not establishing a sunset date for these amended regulations because the amendments are necessary for the regulations to accurately reflect the Department's legal authority and for the Department to meet its obligations under State and Federal law.

I. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on _____, 2020, the Department submitted a copy of this final-omitted rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732.101 – 732.506).

Under section 5.1(j.2) of the Regulatory Review Act, on _____, 2020, this final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2020 and approved this final-omitted rulemaking,

J. Findings of the Board

The Board finds that:

- (1) The amendments as set forth in Annex A are appropriate to ensure consistency with the Federal HWGIR and among the Commonwealth's hazardous waste regulations.
- (2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the proposed rulemaking procedures specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) are, in this instance, "impractical, unnecessary, or contrary to the public interest."
- (3) No hazardous waste permits are affected by this final-omitted rulemaking.
- (4) These amendments are necessary and appropriate for the administration and enforcement of the authorizing acts identified in Section C of this order and are in the public interest.

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, 262a, 263a, 264a, and 265a are amended as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1 – 745.14).
- (d) The Chairperson of the Board shall certify this order and Annex A, as approved to legality and form, 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*.

PATRICK McDONNELL
Chairperson