

**Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapter 261a
Identification and Listing of Hazardous Waste**

**Hazardous Waste Management System;
Exclusion for Identification and Listing of Hazardous Waste**

Order

The Environmental Quality Board (Board) by this order amends Chapter 261a (relating to the identification and listing of hazardous waste). The final-form rulemaking modifies an existing hazardous waste delisting previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS), whose successor by merger, Waste Management Disposal Services of Pennsylvania, Inc. (WMDSPA), petitioned the Board to increase the maximum annual volume covered by the current delisting.

This order was adopted by the Board at its meeting of _____, 2010.

A. Effective Date

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

B. Contact Persons

For further information contact Dwayne Womer, Environmental Engineer Manager, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Curtis Sullivan, Assistant 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 final-form rulemaking is available on the Department of Environmental Protection's (Department) Web site: www.depweb.state.pa.us.

C. Statutory Authority

The rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.105, 6018.402 and 6018.501) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901—6986) and SWMA regulations. Under 40 CFR 260.20 and 260.22 (relating to general; and petitions to amend part 261 to exclude a waste produced at a particular facility), which are incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and modified by § 260a.20 (relating to rulemaking petitions), a person may petition the United States Environmental Protection Agency (EPA) or a state administering an EPA-approved hazardous waste management program to remove waste or the residuals resulting from effective treatment of a waste from a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources). Specifically, 40 CFR 260.20 allows a person to petition to modify or revoke any provision of 40 CFR Parts 260—266, 268 and 273. Section 260.22 of 40 CFR provides a person the opportunity to petition to exclude a waste on a “generator specific” basis from the hazardous waste lists.

Under the Commonwealth’s hazardous waste regulations in § 260a.20, these petitions are to be submitted to the Board in accordance with the procedures established in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)—(e).

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed in 40 CFR 261.11 (relating to criteria for listing hazardous waste). In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity and toxicity) and must present sufficient information for the agency to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste.

WMDSPA operates a commercial landfill and associated wastewater treatment plant in Falls Township, Bucks County, PA. In 1991, WMDSPA’s predecessor, GROWS, submitted a delisting petition under 40 CFR 260.20 and 260.22. In response to the petition, the EPA excluded the wastewater treatment sludge filter cake derived from the treatment of landfill leachate originating from the closed “Old GROWS” landfill, that contains a mixture of solid wastes and hazardous wastes, and other nonhazardous waste landfills. The EPA noted that the petitioner submitted sufficient information to allow the EPA to determine that the filter cake was not hazardous based upon the criteria for which it was listed and no other hazardous constituents were present in the waste at levels of regulatory concern. Accordingly, using risk assessment tools in use by the EPA at that time to evaluate the potential risk to human health and the environment associated with the disposal of the filter cake as a nonhazardous waste, the EPA excluded the filter cake generated from the treatment of EPA Hazardous Waste No. F039, multisource leachate, from the list of hazardous wastes found in 40 CFR 261.31 (relating to hazardous wastes from non-specific sources). This delisting was limited to a maximum annual volume of 1,000 cubic yards of filter cake and was conditioned upon the petitioner performing

certain verification testing of the filter cake to demonstrate compliance with maximum allowable concentration limits (MACLs). The MACLs were selected for organic and inorganic constituents of the filter cake and were established as delisting conditions by EPA to be met before the delisted waste could be disposed in a RCRA Subtitle D (nonhazardous waste) landfill. The original petition and subsequent amendments, including the one proposed by this petition, do not address the wastes disposed in any landfill for which its leachate is treated at the treatment plant, or the grit generated during the physical removal (for example, screening) of heavy solids from the landfill leachate.

In 2001, GROWS petitioned EPA to increase the volume of excluded wastewater treatment sludge filter cake to 2,000 cubic yards because of increased filter cake production attributable to improved efficiencies in its wastewater treatment operations. In support of the petition to amend its delisting, the petitioner submitted the verification testing results it had generated in the preceding 2 years and supplemented that data with the total constituents analyses of inorganic constituents for four samples at the request of the EPA. The EPA applied its Delisting Risk Assessment Software (DRAS) program to analyze the risk associated with the request to amend the delisting. The DRAS contains more advanced risk assessment models than those the EPA used in the 1991 delisting. The EPA ultimately concluded that the filter cake sample results and the results of the risk assessment modeling supported the delisting of the filter cake at the increased volume of 2,000 cubic yards annually. This conclusion was subject to the filter cake continuing to meet new MACLs set by the EPA based on the more conservative of: 1) the values generated by the DRAS program; or 2) the toxicity characteristic regulatory levels. The 2001 delisting amendment also required verification testing to show that the MACLs continued to be met.

Recently the volume of leachate treated by WMDSPA at the treatment plant has increased coincident with increased concentrations of certain leachate constituents. Accordingly, WMDSPA is generating substantially more filter cake and, to accommodate the disposal of this increased volume as a nonhazardous waste, it is requesting an increase in the volume limit established in its delisting from 2,000 to 4,000 cubic yards annually.

On December 18, 2008, WMDSPA submitted a petition to the Board requesting the increase in the volume limit to 4,000 cubic yards annually. The Board accepted the petition at its April 21, 2009, meeting and directed the Department to review the contents of the petition under § 23.6 (relating to notice of acceptance and Department report).

In support of its petition, WMDSPA submitted 3 years of verification testing—41 sets of sample results of leachate analyses for inorganic constituents and totals analyses for organic constituents collected over the period from December 2005 through December 2008 along with the total constituents analyses for inorganic constituents for four samples collected in 2008. The scope of data was comparable to, though more extensive than, the data submitted to the EPA in connection with the 2001 amendment. WMDSPA also submitted the results of the modeling of this data that it performed using the DRAS program to evaluate the potential risk associated with treating the filter cake as a nonhazardous waste and to generate MACLs for the filter cake at the proposed increased annual level of disposal. The MACLs were generated in a similar fashion to those generated by the EPA in connection with the 2001 delisting.

The petition demonstrates that the filter cake sample results and the results of the risk assessment modeling support the delisting of the filter cake at the increased volume of 4,000 cubic yards annually. Accordingly, the Board approved the amended delisting to increase the annual volume of filter cake that may be disposed as nonhazardous waste and also includes conditions in the amended delisting governing the testing and management of the filter cake similar to the conditions required by the EPA in the current delisting.

The Department carefully and independently reviewed the information contained in the petition submitted by WMDSPA. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA), as reflected in section 222 of the HSWA (42 U.S.C.A. § 6921(f) and 40 CFR 260.22(d)(2)—(4). In addition, the Department contacted the municipalities near the WMDSPA landfill and the Bucks County Health Department to gauge local concern over the petition. Based on the Department's review and report, on June 16, 2009, the Board directed the Department to develop this proposed rulemaking granting the changes requested by the WMDSPA petition.

The Board adopted the proposed rulemaking at its August 18, 2009 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on November 7, 2009, with a 30-day public comment period (39 Pa.B. 6453). The Solid Waste Advisory Committee was briefed on the petition and proposed rulemaking on December 7, 2009, and reviewed and endorsed the final-form rulemaking on May 27, 2010. No public comments were submitted in response to the proposed rulemaking, either in support or opposition to the proposed amendments. On January 6, 2010, the Independent Regulatory Review Commission notified the Board that the Commission had no comments on the proposed rulemaking. No public meetings or hearings were held.

E. *Summary of Changes and Comments and Responses on the Proposed Rulemaking*

Chapter 261a contains provisions for the identification and listing of hazardous waste. Section 261a.32 was added in 2006 to refer to Appendix IXa (relating to wastes excluded under 25 Pa. Code § 260a.20 and 40 CFR 260.20 and 260.22). Appendix IXa contains Table 2a (relating to wastes excluded from specific sources), which lists wastes from specific sources that have been delisted through the petition process by the Department and the Board. This numbering scheme is being used to parallel the Federal regulations for clarity and consistency with the incorporation by reference of the Commonwealth's hazardous waste regulations.

The proposal amended Appendix IXa Table 2a to provide a specific conditional delisting of wastewater treatment sludge filter cake at the WMDSPA facility (as opposed to incorporating the existing EPA delisting). The delisting levels in Appendix IXa were established by using the more conservative of health-based values calculated by DRAS or toxicity characteristic regulatory levels. WMDSPA will perform verification testing on the filter cake as set forth in the proposed delisting.

In preparing the final-form rulemaking, the Department recognized that there was an error in the placement of the WMDSPA delisting amendments. The Federal Appendix IX in Part 261

contains two tables, one for wastes excluded from non-specific sources (Table 1) and one for wastes excluded from specific sources (Table 2). EPA placed the original GROWS delisting that is amended by this final-form rulemaking in Table 1, not Table 2. Therefore, in order to be consistent with the Federal hazardous waste regulations, the final rulemaking creates a new “Table 1a, Wastes Excluded from Non-Specific Sources” in Chapter 261a. Although two additional minor editorial corrections were made to the final-form rulemaking, it does not make any substantive changes to the proposed rulemaking published on November 7, 2009.

F. Benefits, Costs and

Compliance Benefits

The final-form rulemaking will provide additional delisted volume of filter cake commensurate with WMDSPA’s increased production of wastewater treatment sludge filter cake resulting from its operations. Allowing WMDSPA to dispose of the filter cake in a permitted Subtitle D landfill after performing certain verification testing provides a cost-effective and environmentally responsible method of disposal for this non-hazardous waste. Based on the current costs incurred by WMDSPA to properly dispose of the hazardous filter cake sludge at Model City Landfill in New York, the company will save over \$400,000 annually in avoided disposal costs as a result of this delisting amendment.

Compliance Cost

WMDSPA will be required to continue to comply with the conditions set forth in the delisting regulation, including testing and recordkeeping requirements. However, the delisting of the filter cake should result in an overall reduced waste management cost for the WMDSPA facility, which would otherwise send the filter cake it generates beyond 2,000 cubic yards to a Subtitle C landfill.

Compliance Assistance Plan

The final-form rulemaking should not require any educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and Web site information consistent with the final-form rulemaking. In the event that assistance is required, the Department’s central office staff will provide it.

Paperwork Requirements

The final-form rulemaking creates no new paperwork requirements to be satisfied by WMDSPA beyond those it already implements under the existing delisting to demonstrate ongoing compliance with the conditions of the current delisting regulation.

G. Pollution Prevention

For this final-form rulemaking, the Department would require no additional pollution prevention efforts. The Department already provides pollution prevention educational material

as part of its hazardous waste program.

H. Sunset Review

These 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 October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6453 (November 7, 2009), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on _____, 2010, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2010, and approved the final-form rulemaking.

J. Findings

The Board finds that:

(1) Public notice of 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 at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 39 Pa.B. 6453.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing SWMA identified in Section C of this order.

K. Order of the Board

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

(a) The regulations of the Department, 25 Pa. Code Chapter 261a, are amended by amending § 261a.32, Appendix IXa as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order, 39 Pa.B. 6453 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 shall submit this order, 39 Pa.B. 6453 and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 39 Pa.B. 6453 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

John Hanger
Chairperson
Environmental Quality Board