

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

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

**Preamble**

The Environmental Quality Board (Board) proposes to amend Chapter 261a (relating to the identification and listing of hazardous waste). The proposed rulemaking would modify 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 proposal was adopted by the Board at its meeting of \_\_\_\_\_, 2009.

A. *Effective Date*

The proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

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 Kurt Klappkowski, 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 proposed rulemaking is available on the Department of Environmental Protection's (the "Department's") website: [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

C. *Statutory Authority*

The proposed 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*

### 1. *Delisting Petitions*

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 incorporated 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 at § 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).

Effective November 27, 2000, the Department received approval from the EPA, under the RCRA, to administer the Commonwealth’s hazardous waste management program instead of RCRA. As part of that program approval and delegation, the Department and the Board are authorized to review and approve petitions for the delisting of hazardous waste.

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 and the background document for the 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.

### 2. *The WDMSA Petition*

WMDSPA operates a commercial landfill and associated wastewater treatment plant in Falls Township, Bucks County, Pennsylvania. In 1991, WMDSPA’s predecessor, Geological Reclamation Operations and Waste Systems (GROWS) submitted a delisting petition pursuant to 40 CFR 260.20 and 260.22. In response to the petition, the United States Environmental Protection Agency (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 non-hazardous waste landfills. EPA noted that the petitioner submitted sufficient information to allow 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 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 non-hazardous waste, EPA excluded the filter cake generated from the treatment of EPA Hazardous Waste No. F039, multi-source leachate, from the list of hazardous wastes found in 40 CFR 261.31. 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 concentrations 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 (non-hazardous waste) landfill. The original petition and subsequent amendments, including the one proposed by this petition, do not address the wastes disposed in any landfill whose leachate is treated at the treatment plant, or the grit generated during the physical removal (i.e., screening) of heavy solids from the landfill leachate.

In 2001, GROWS petitioned EPA to increase the volume of excluded waste water 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 two years and supplemented that data with the total constituents analyses of inorganic constituents for four samples at the request of EPA. 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 EPA used in the 1991 delisting. 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 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 non-hazardous 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 25 Pa.Code § 23.6 (relating to acceptance of petition and department report).

In support of its petition, WMDSPA submitted three 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 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 non-hazardous 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 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 proposes to approve the amended delisting to increase the annual volume of filter cake that may be disposed of as non-hazardous waste and also proposes to include conditions in the amended delisting governing the testing and management of the filter cake similar to the conditions required by EPA in the current delisting. The Board proposes to adopt this delisting by amending Chapter 261a, Table 2a of Appendix IXa to exclude an annual volume of 4,000 cubic yards of filter cake subject to the terms and conditions as set forth in the accompanying proposed rule.

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.

#### E. *Summary of Regulatory Requirements*

Chapter 261a contains the provisions for the identification and listing of hazardous waste. Section 261a.32 (relating to hazardous wastes from specific sources) 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 amends Table 2a of Appendix IXa to provide a specific conditional delisting of waste water 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.

## F. *Benefits, Costs and Compliance*

### *Benefits*

The proposed 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 proposed rulemaking 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 rulemaking. In the event that assistance is required, the Department's central office will provide it.

### *Paperwork Requirements*

The proposed 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 proposed 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 \_\_\_\_\_, 2009, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commissioner (the “IRRC”) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the rulemaking.

J. *Public Comments*

*Written Comments* – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by \_\_\_\_\_ (within 30 days of publication in the Pennsylvania Bulletin). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by \_\_\_\_\_ (within 30 days following publication in the Pennsylvania Bulletin). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

*Electronic Comments* – Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by \_\_\_\_\_ (within 30 days of publication in the Pennsylvania Bulletin). A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two (2) working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger  
Chairperson  
Environmental Quality Board