FINAL RULEMAKING
HAZARDOUS WASTE AMENDMENTS
COMMENT AND RESPONSE DOCUMENT

INTRODUCTION

In assembling this document, the Department has addressed all pertinent comments associated with this package. For the purposes of this document, comments of similar subject material have been grouped together and responded to accordingly.

During the public comment period, the Department received approximately 240 comments from twenty companies, four organizations representing industry, two private citizens, the US EPA, the US Navy, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission and the Independent Regulatory Review Commission.

Following is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation during the official comment period. The ID number identifies each commentator who submitted a particular comment. That number is found in parentheses following the comment in the comment response document.

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ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
1	Mr. W. Lloyd Balderston President Chemclene Corporation 258 N. Phoenixville Pike Malvern, PA	19355-1126			
2	Stephen T. Smith, Manager Environmental Compliance Dept. Koppers Industries, Inc. 436 7th Ave. Pittsburgh, PA	15219-1800			
3	Richard H. Hanewald, President INMETCO 245 Portersville Road P.O. Box 720 Ellwood City, PA	16117	S		
4	Mr. William P. Gotschall General Counsel World Resources Company 1600 Anderson Road McLean, VA	22102			
5	Mr. Denver A. McDowell, Chief Division of Environmental Planning and Habitat Protection Bureau of Land Management Pennsylvania Game Commission 2001 Elmerton Avenue Harrisburg, PA	17110-9797			
6	Mr. Scott K. Rodgers PEA Solid Waste Subcommittee 301 APC Building 800 North Third Street Harrisburg, PA	17102			
7	Mr. James K. Cool Manager, Environmental Affairs Duquesne Light 411 Seventh Avenue P.O. Box 1930 Pittsburgh, PA	15230-1930	S		
8	Mr. Robert J. Garner Chemcentral Corporation 7050 W. 71st Street P.O. Box 730 Bedford Park, IL	60499-0730			
9	Mr. John M. Boyle Bethlehem Resource Recovery Division 890 Front St. P.O. Box Y Hellertown, PA	18055			

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
10	Mr. Robert D. Fox Safety Kleen Corp c/o Manko, Gold and Katcher Suite 500 401 City Avenue Bala Cynwyd, PA	19004			
11	Mr. Eugene M. Barr Executive Director Associated Petroleum Industries of Pennsylvania 240 N. Third Street P.O. Box 925 Harrisburg, PA	17108			
12	Manufacturers Association of Tri-County c/o Mr. John McN. Cramer Reed Smith Shaw and McClay LLP 213 Market Street, Ninth Floor Harrisburg, PA	17101-2132			
13	Mr. David Sumner Assistant General Counsel Pennsylvania Gas Association 800 North Third Street Harirsburg, PA	17102-2025			
14	David W. Patti, President Pennsylvania Chemical Industry Council 25 N. Front Street, Suite 100 Harrisburg, PA	17101		T	
15	Richard B. Hoyt, Chairman Specialty Steel Industry of Pennsylvania Allegheny Ludlum Corporation 1000 Six PPG Place Pittsburgh, PA	15222			
16	Mr. Ronald W. Skinner Air Products and Chemicals, Inc. 7201 Hamilton Boulevard Allentown, PA	18195-1501	S		
17	Mr. Charles D. Barksdale Jr., P.E. Sun Company, Inc. Ten Penn Center 1801 Market STreet Philadelphia, PA	19103-1699	S		
18	Mr. John F. Warren 233 Ridge Avenue Pittsburgh, PA	15202	S		
19	East Penn Manufacturing Co., Inc. c/o Mr. Louis A. Naugle Reed Smith Shaw and McClay LLP 435 Sixth Avenue Pittsburgh, PA	15219-1886	S		

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
20	Mr. Richard Klawunn Environmental Engineer Tosco Refining Company 1400 Park Avenue Linden, NJ	07036			
21	Accurate Recovery Systems, Inc. c/o Mark A. Stevens, Esquire Langsam Stevens and Morris LLP 1616 Walnut Street, Suite 812 Philadelphia, PA	19103-5308			
22	Mr. John J. Humphries, III, Chief State Programs Branch United States Environmental Protection Agency Region III 841 Chestnut Building Philadelphia, PA	19107-4431			
23	Mr. Fred A. Sembach Vice President, Government Affairs Pennsylvania Chamber of Business and Industry 417 Walnut Street Harrisburg, PA	17101-1902		T	
24	Regulatory Comment Group c/o Brian J. Clark Buchanan Ingersoll 30 North Third Street, Eighth Floor Harrisburg, PA	17101	S		
25	Horsehead Resource Development Company, Inc. c/o Mr. John N. Moore Akin, Gump, Strauss, Hauer and Feld, LLP Suite 400 1333 New Hampshire Ave, NW Washington, DC	20036	S		
26	Steven G. Olson, Director Regional Environmental Coordination Naval Base 1530 Gilbert Street, Suite 2200 Norfolk, VA	23511-2797			
27	Mr. John Onuska MATCO P.O. Box 807 Beaver Falls, PA	15010	S		
28	Mr. Gaylord H. Magoon Environmental/Safety Specialist American Meter Company 920 Payne Avenue Griswold Plaza Branch P.O. Box 1251 Erie, PA	16512-1251			

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
29	John A. Arway, Chief Division of Environmental Services Pennsylvania Fish & Boat Commission 450 Robinson Lane Bellefonte, PA	16823-9620			
30	Lisa Graves Marcucci Jefferson Action Group 123 Oakwood Drive Clairton, PA	15025		T	
31	Independent Regulatory Review Commission 333 Market Street 14th Floor Harrisburg, PA	17101			

COMMENT RESPONSE DOCUMENT

GENERAL

General: Regulatory Basics Initiative and "Compelling state interest"

1. **Comment:** The department should include criteria from the Governor's Executive Order in the regulation and have the burden of proof to show there is a compelling state interest for sections of the regulations being more stringent than the federal regulations. The department should be required to show and give details of why and how such a compelling state interest exists. (14, 24, 25, 27)

Response: This regulation was developed under the Governor's Executive Order 1996-1 entitled "Regulatory Review and Promulgation". The General Requirements section states that "Where federal regulations exist, Pennsylvania's regulations shall not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." The Executive Order provides a procedure for review of a final-form rule by the Governor's Office to assure that the regulation is consistent with the regulatory principals and overall policies of the Administration. This final-form rule is subject to and will conform to all requirements of the Executive Order. The Department is obligated to perform the requirements of the Executive Order and therefore, it is unnecessary to include the Executive Order provisions in the regulations.

2. **Comment:** The Commonwealth does not give a date for its incorporation by reference because it uses prospective incorporation by reference. EPA's comments are based on Federal regulations promulgated as of July 1, 1997. (22)

Response: A provision of the final form rule at 260a.3(c) states that the incorporated Federal regulations will be those in effect on the date of publication in the *Pennsylvania Bulletin*.

3. **Comment:** In several instances, the Commonwealth has made extensive modifications to requirements that it has incorporated by reference. This is usually accomplished with the following language: "Notwithstanding the requirements incorporated by reference,…" This language is followed by language modifying the incorporation by reference. This is an acceptable format for specific changes to provisions that are easily applied to the Federal code. However, when the Commonwealth uses this format for major and substantive modifications to the code it can be confusing to the regulated community. (22)

Response: The Department agrees. The "notwithstanding" terminology was replaced throughout the entire proposed regulations with more appropriate terminology, including terminology suggested by the commentator.

4. **Comment:** The commentator suggests not using the phrase "in addition to" in the incorporation process. (22)

Response: The final form rule includes the phrase "in addition to" where appropriate, for clarity.

5. **Comment:** Pennsylvania should always state whether or not the incorporation by reference applies to the appendices. (22)

   Response: The final form rule includes incorporation by reference of all appropriate and applicable appendices. When a particular appendix is not incorporated, the affected Chapter states the exception.

6. **Comment:** When stating an amendatory provision to a federal regulation that Pennsylvania has incorporated by reference, Pennsylvania does not usually indicate which Federal provision is affected or relevant. (22)

   Response: The Department has attempted to clarify how each amendatory provision affects the federal regulation incorporated by reference. A descriptive term is used in place of the term "Notwithstanding" at the beginning of each chapter part affected by an amendment.

7. **Comment:** The Commonwealth should reprint the existing regulations that were proposed to be renumbered only as they would appear when renumbered. (22)

   Response: Pennsylvania's regulatory amendment process is such that only those portions of the regulations proposed to be changed are published. When the regulations are finalized, the Department will print a complete version of the Code.

8. **Comment:** It is implied in Section 260a.3(b) of the proposed regulations that Pennsylvania may not have the authority needed to carry out a hazardous waste program. EPA requires that certain Commonwealth authorities be in place for both the non-HSWA and HSWA programs. If the Commonwealth has these authorities, it should have the authority to carry out all of the provisions required for authorization and would not need the last sentence at 25 Pa. Code 260a.3(b). (22)

   Response: The statement which appeared at Section 260a.3(b) of the proposed rulemaking has been deleted in the final-form rule.

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Section 260a.2. Subchapter A. General

9. **Comment:** Section 260a.2. Several commentators are concerned about the lack of a transition mechanism for existing and proposed coproduct determinations to ensure that they continue to be excluded from the definition of "solid waste" under the incorporated federal requirements. One commentator recommended maintaining coproduct determinations in Pennsylvania. (3, 4, 12, 14, 25, 27, 31)

Response: The coproducts that the Department has concurred with would not be regulated as hazardous waste under the federal regulations because they either fit one of the exclusions found in *40 CFR 261.2,* or they meet the criteria for one of the variances found in *40 CFR Part 260 Subpart C* (Rulemaking Petitions). The Department agrees that a transition period is necessary for those who will be seeking a variance, or for those who may be handling materials as coproducts that have not requested a Department concurrence and will require a variance. The Department has, therefore, included a transition mechanism at Section 260a.30 to provide the opportunity for those operators who generate coproducts which are not excluded as a solid waste in the federal regulations at 40 CFR §261.2, 261.3, 261.4, or elsewhere to obtain a variance from classification as a solid waste. The final form regulation also includes a 90-day notification period during which time any person producing, selling, transferring, possessing or using a material as a coproduct that is not exempt from regulation in other parts of these final regulations must notify the Department so that the person can qualify for the transition period.

Section 260a.3. Terminology and citations related to Federal regulations.

10. Comment: 40 CFR 262.11 should not be excluded from the blanket substitution of terms because Pennsylvania has adopted all of the rulemaking petitions at 40 CFR Part 260 Subpart C, including the petitions for equivalent testing or analytical methods. (22)

Response: The Department has made the appropriate change to the regulations.

11. Comment: Section 260a.3. The Commonwealth should exclude all of 40 CFR Part 262, Subpart E from its blanket substitution of terms. These are non-delegable provisions for which EPA retains authority. (22)

Response: The Subpart has been excluded from the blanket substitution.

12. Comment: Section 260a.3(a) of the regulations refers to incorporation, scope and terminology used in the regulations. Specific requirements in 40 CFR 263.20(a),(c),(e)(2) &(f)(2) make reference to manifest requirements for exports which are reserved for EPA. Therefore the blanket substitution of terms should not apply. (22)

Response: The regulation has been modified to ensure that the incorporation by reference of 40 CFR 263.20 does not include the substitution of terms.

13. Comment: Section 260a.3, Pennsylvania should include a provision that explicitly indicates that any reference to the "Department of Transportation" or "DOT" means the U.S. Department of Transportation as opposed to an analogous Pennsylvania agency. (22)

Response: The provision has been included in the final form rule.

14. Comment: Section 260a.3(a)(1), Pennsylvania has included a blanket substitution of "Administrator" and "Regional Administrator" with "Department". The Commonwealth should include "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", and "State Director" with this blanket substitution. The Commonwealth should

address those instances where the blanket substitution should not apply, or would apply to a particular provision of the Federal code. (22)

Response: The Department agrees and has made the appropriate changes in the final form rule.

15. Comment: Section 260a.3(a)(3), The Department should exclude the terms "EPA form", "EPA identification number", "EPA hazardous waste number", "EPA test methods" and "EPA guidance" from the blanket substitutions in 25 Pa. Code (22)

Response: The suggested change has been made in the final form rule.

16. Comment: Section 260a.3(a)(3), Pennsylvania has included a blanket substitution of "Environmental Protection Agency" with "Department of Environmental Protection". The Commonwealth should include all names and associated acronyms (e.g. EPA Headquarters, EPA Regions, etc.) with this blanket substitution. The Commonwealth should address those instances where the blanket substitution should not apply, or would apply to a particular provision of the Federal code. (22)

Response: The final form regulation includes all names and associated acronyms and notes in the sections identified by the commentator (EPA Region 3) where the blanket substitutions should not apply.

17. Comment: Section 260a.3(c), For clarity and convenience of the regulated community, the Commonwealth has included this provision which describes the role of Federal statutes and regulations not adopted by reference. It is unclear why Pennsylvania chose not to include Parts 273 and 279 in this clarifying provision. (22)

Response: 40 CFR Part 273 (Standards for Universal Waste Management) is incorporated at 25 Pa. Code Chapter 266b because 25 Pa. Code Chapter 273 currently is in use for Pennsylvania's municipal waste regulations. It was deemed to be too disruptive to the municipal waste program to relocate those requirements simply to accommodate parallel numbering with the federal regulation.

40 CFR Part 279 (Standards for the Management of Used Oil) was not incorporated by reference because the Department is developing a separate regulatory amendment to address used oil. This regulation is scheduled to be proposed in the next few months. In the meantime, these regulations reference Pennsylvania's existing parallel provisions currently found in 25 Pa. Code Chapter 266 Subchapter E, which has been relocated as 25 Pa. Code Chapter 266a. Subchapter E in the final form rule.

18. Comment: Section 260a.3(a)(4), Pennsylvania should not substitute "Pennsylvania Bulletin" for "Federal Register" except at its analogs to 40 CFR 260.20 (c) and (e). The Commonwealth should specifically reference the provisions to be affected by the substitution. (22)

Response: The Department agrees and has made the appropriate changes.

19. **Comment:** Section 260a.3(a)(6), Pennsylvania has included a blanket substitution of "State (s)", "Authorized state", "approved state", and "approved program" with "Commonwealth of Pennsylvania". There are certain places in the regulations where this substitution should not be made. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

Subchapter B. DEFINITIONS

20. **Comment:** Section 260a.10(a)(1)(i), the Commonwealth's regulations exclude "Act" from incorporation by reference. In the Federal code "Act" is defined along with "RCRA". This is acceptable, but the Commonwealth should include in its substitution of terms that its references to"the Act", imply a reference to the Commonwealth's analogous statutes. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

21. **Comment:** Section 260a.10(a)(1)(i), it is not clear if Pennsylvania is excluding the term "Act" or the entire definition of "Act" or "RCRA". A definition of RCRA is needed because there are certain references to RCRA (e.g., RCRA §3008) which should not be substituted with Commonwealth analogs. (22)

Response: The Department agrees and has made the appropriate changes to the regulation.

Section 260a.10. Definitions.

22. **Comment:** Proposed Section 260a.10 is broken into three separate categories related to definitions. Subsection (a)(1) lists definitions not incorporated by reference, Subsection (a)(2) contains definitions whose dates are modified, and Subsection (b) provides definitions for terms that do not appear in the Code of Federal Regulations (CFR). The proposed format requires a reader to review all three subsections to determine how a term is defined, or whether it differs from the CFR. It may be clearer to consolidate these provisions into one list of definitions. The individual definitions can provide all of the important details regarding a particular term. Using a consolidated format, the reader could determine whether and how a term varies from the CFR by reviewing one subsection. We recommend that the EQB consider consolidating the definitions into one subsection. (17, 23, 31)

Response: The Department has modified the definition section, §260a.10 of the final form regulation so that all of the definitions are contained within one section rather than in several subsections. The definition section is now in alphabetical order and includes every term that modifies a federal definition, adds to a federal definition or is excluded from the incorporation by reference of the federal definitions. The final form regulation does not incorporate by reference any federal definition that is defined by the SWMA since the regulation should be read in conjunction with the Act.

23. **Comment:** The federal definitions for "act", "disposal", "management", "storage", and "transportation" are specifically excluded from incorporation by reference. The commentators

suggest that if the Department intends to use the verbatim definitions found in the SWMA, then the text of these regulations should be included in the regulations. (14, 17, 23, 24, 31)

Response: The final form regulation includes the text of definitions from the Solid Waste Management Act.

24. Comment: The proposed definition for "disposal" includes "abandonment of solid waste with the intent of not asserting or exercising control over, or title or interest in the solid waste." This additional wording is not found in the federal regulations nor in the SWMA and therefore should be eliminated. (14, 22, 23, 24, 31)

Response: The definition of "disposal" has been eliminated and the final form rule at §260a.10 now clearly states that the federal definition is not incorporated by reference. Disposal is defined in Section 103 of the Solid Waste Management Act, and that definition is included in the final form rule.

25. Comment: The Federal definition of "disposal" includes situations where the waste or any constituent thereof "**may** enter the environment or be emitted into the air or discharged into any waters". The Commonwealth's definition is limited to situations where the waste or any constituent thereof "**enters** the environment, **is** emitted into the air, or **is** discharged to the waters". Pennsylvania's definition is less stringent than its Federal analog. It does not include situations where there is a potential for waste entering the environment but has not actually done so. (22)

Response: The term "disposal" is defined by statute in the SWMA and, therefore, can not be modified by regulation.

26. Comment: The proposed definition for "hazardous waste management unit" is virtually identical to the definition found in the federal regulations and should, therefore, be eliminated. The federal definition should be incorporated by reference. (22, 23, 31)

Response: The separate definition has been eliminated and the federal definition has been incorporated by reference in the final form rule.

27. Comment: The Commonwealth's regulations exclude "management" from the incorporation by reference. In the Federal code, "management" is defined with "hazardous waste management". It is not clear whether the Commonwealth is excluding this entire definition or just the term from the definition. (22)

Response: The term "management" is defined by statute in the SWMA and, therefore, can not be modified by regulation. The term "hazardous waste management" is included in the definition as it is in the current regulations.

28. Comment: The term "processing" is not defined under Section 260a.10. (23, 14)

Response: The term is defined in the SWMA, the definition is included in the final form rule..

29. Comment: The commentator maintains that the definition for "responsible official" in the proposed regulations, as worded, is unclear as to whether the responsible official for corporations and partnerships is any officer or partner, or all officers and partners. The commentator recommends that, in order to clarify the definition, the word "any" be inserted before these classes of individuals. The revised relevant part would read "for corporations, any corporate officer; for limited partnerships, any partner; for all other partnerships, any partner…." (23)

Response: The definition is clarified in the final form rule.

30. Comment: The proposed definition of in-transit storage requires that the hazardous waste remain in containers that conform with 40 CFR 262.30 and 262.33. This would preclude bulking of compatible wastes at in-transit storage facilities which is presently permissible under both federal and state regulations. This also conflicts with the amendments adopted on January 11, 1997, commonly referred to as PK-5. (10, 22, 23)

Response: The definition of in-transit storage has been removed from the definitions section of the final form rule. The incorporated regulations at 40 CFR 263.12 stipulate the in-transit storage requirements.

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Section 261a.3(c)(2)(ii) Definition of Hazardous Waste

31. Comment: Section 261a.3(c)(2)(ii)(C). HTMR slags that meet health-based criteria should not be excluded from the regulations. If this is not done and the Board eliminates coproducts, beneficial uses of HTMR slag (which are currently allowed in PA and fed regs) would be eliminated. The exclusion of these materials should be incorporated into the regulations. HTMR slags being shipped for beneficial use should not be subject to hazardous waste transportation licensing or fee requirements. Through discussions with the department we have learned that the intention is to prohibit disposal in Subtitle D landfills. (3, 25, 27, 23, 15, 24, 31)

Response: *40 CFR261.3(c)(2)(ii)(C)* provides an exemption for high temperature metals reclamation (HTMR) slags that meet certain criteria that are disposed in "subtitle D units". The term "subtitle D units" refers to RCRA Subtitle D which is the section of the Resource Conservation and Recovery Act that addresses municipal and nonhazardous industrial waste. The Department reviewed this provision and found that even if the Board did adopt the federal exclusion for these HTMR slags, the recycling of this waste would still be subject to all of the Pennsylvania regulations that apply to the storage or treatment of hazardous wastes. Furthermore, the Department believes that the absence of the exemption will encourage recycling of these slags, since recycling tends to be a more economical alternative than disposal

of these slags in accordance with hazardous waste disposal requirements but may not be more economical than disposal in a municipal or residual landfill.

The Board also bases its decision to prohibit these slags from going to subtitle D landfills, because the Department received many comments from the public opposing a proposal to allow conditionally exempt small quantity generator (CESQG) hazardous waste to go to hazardous waste landfills. Like HTMR slags, EPA was not concerned about CESQG wastes going to subtitle D landfills but the public was concerned. Since EPA exempts HTMR slags from the definition of hazardous waste only to allow for its disposal in subtitle D landfills, the Board believes that the public would not approve of this exemption any more than it approved of the exemption to allow CESQG waste to go to subtitle D landfills.

The beneficial uses of HTMR slag will not be affected by the Board's decision to exclude from incorporation the federal exemption. Beneficial uses do not involve "disposal in subtitle D units", which is the specific exemption in *40 CFR 261.3(c)(2)(ii)(C),* and therefore, beneficial uses are authorized by the current hazardous waste regulations as well as by the final form regulations. Since the final form regulations do not amend the existing hazardous waste regulations with regard to this exemption, the regulated community will experience no additional costs as a result of the final form regulations. In addition, HTMR slags that have been determined to be coproducts or that are beneficially used are HTMR slags that are residual wastes. The beneficial use or coproduct status of residual waste HTMR slags is unaffected by these hazardous waste regulations.

32. Comment: Section 261a.3(c)(2)(ii)(D) The proposed regulations incorporate 40 CFR 261.3(c)(2)(ii)(D), (sludge for the biological treatment of organic carbonate and carbamoyl oxide production wastes, and wastewaters from the production of carbonate and carbamoyl oxide production). Yet the department intends to regulate these wastes due to it's lack of experience with them. Such lack of experience cannot constitute a state interest sufficiently compelling to justify departure from the federal regulatory scheme. (23, 31)

Response: The exemption at *40 CFR 261.3(c)(2)(ii)(D)* for certain listed wastes from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156 and K157) was not included as an exclusion in the proposal because the federal listings and the exclusion were relatively new, controversial and had been challenged in a lawsuit (*Dithiocarbamate Task Force v. EPA,* 98 F.3d 1394). In addition, when the proposal was being developed, the waste listing was so recent that the Department was not able to verify if any hazardous waste handlers for EPA hazardous waste numbers K156 and K157 exist in Pennsylvania. This lack of information with the newly listed waste prompted concern for automatically adopting by reference the exemption and its effect in Pennsylvania. The Department has researched whether any entities exist in Pennsylvania that have been affected by this exemption and determined that no entities within Pennsylvania would be affected by this exemption at this time. The Department has also conducted a detailed review of the preamble of the carbamate rule, and has determined that including the exemption at *40 CFR 261.3(c)(2)(ii)(D)* is consistent with other provisions the proposal includes on the "carbamate rule". The Department has reviewed the extensive research and analysis conducted by EPA on the carbamate rule and believes that the exemption would be protective of human health and the environment were such a facility to be

developed in Pennsylvania. The final form rule incorporates the federal exemption with no additional requirements.

Section 261a.4 Exclusions

33. Comment: The Board should incorporate the federal exclusions found at 40 CFR 261.4 without any modifications. Under the Commonwealth's current verbiage, an entity wishing to recycle or reuse materials completely excluded under the federal regulations is still dealing with a solid waste as the material is only excluded from being a hazardous waste in PA. The Board should adopt the federal exclusions unchanged. (2, 14, 27, 31)

Response: The Department has re-evaluated the proposed manner of adopting *40 CFR 261.4,* related to exclusions. After closer examination of the materials excluded from classification as solid wastes under *40 CFR 261.4(a),* the Department agrees that there are no compelling environmental or human health needs justifying further regulation of these materials as solid wastes in Pennsylvania. The final form regulation will adopt the entire *40 CFR 261.4* by reference so that the materials identified have been excluded as solid wastes.

Section 261a.5. Special requirements for hazardous waste generated by small quantity generators.

34. Comment: Sections 261a.3, 261a.5, (existing) 25 Pa. Code 261.5(g)(3)(iv) and 40 CFR 279. The currently proposed amendments to the hazardous waste regulations do not incorporate by reference EPA's used oil regulation at 40 CFR 279 which expressly favors the recycling of used oil and used oil mixed with conditionally exempt small quantity generators (CESQG) waste. Proposed Section 261a.3 directly conflicts with the provisions of existing 25 Pa. Code Section 261.5(g)(3)(iv) and the goals of both the federal and state hazardous waste programs because it provides for a reduced regulation of waste oil which is recycled or reused only where the waste oil has not been mixed with <u>any</u> hazardous waste, even the waste of a CESQG. By contrast, the mixture of the same waste oil and CESQG waste which is burned for energy recovery has been subject to less stringent requirements. The commentator recommends that proposed Section 261a.3 be amended by inserting after the clause "has not been mixed with hazardous waste," the phrase "<u>except for a conditionally exempt small quantity generator's waste.</u>" This amendment will again "level the playing field." Proposed Section 261a.5 deletes in its entirety the relevant portions of existing Section 261.5(g)(3)(iv) which were added to the hazardous waste regulations, effective January 11, 1997, to treat mixtures of CESQG waste and waste oil destined for reuse and recycling as residual or municipal waste. The commentator recommends that these provisions be retained as 261a.5(3)(iii). (10)

Response: The Board has incorporated by reference 40 CFR 261.5(j). This federal provision, as incorporated into the Pennsylvania program, applies Pennsylvania's waste oil regulations found at Chapter 266a, Subchapter E to mixtures of CESQG hazardous waste and waste oil only if the mixture is destined to be burned for energy recovery. This is the same as the federal equivalent waste oil provision found at 40 CFR Part 279, although EPA has proposed to broaden the class of mixtures subject to Part 279 to include CESQG waste mixed with waste oil that is not destined to be burned for energy recovery. Mixtures of CESQG waste and waste oil should be

regulated in the same manner as any other conditionally exempt small quantity generator hazardous waste if the mixtures are not destined to be burned for energy recovery. It is the Department's intent to develop a draft chapter of waste oil regulations and to present it to the Board as a proposed rulemaking in the near future. The issue regarding mixtures of waste oil and CESQG generator waste has been addressed in that proposed rulemaking, which will also consider the final outcome of the May 6, 1998, EPA proposed/direct final rule regarding recycling of such mixtures.

Section 261a.6 Requirements for recyclable materials

35. Comment: The commentator contends that the Board should make clear that Section 261a.6 should be read to require a permit for owners and operators of facilities that are reclaiming or are otherwise treating materials; permits should not be required for owners and operators of facilities that are storing such materials prior to treatment. (10)

Response: Federal regulations at 40 CFR 261.6(c)(1) specifically require permits for storing recyclable materials before they are recycled. The term "recyclable materials" is defined in 40 CFR 261.6(a)(1) as "hazardous wastes that are recycled." The federal regulations at 40 CFR 261.6, except 261.6(c), have been adopted by reference with this regulatory package. Section 261a.6 adds the requirement for a permit to be obtained for hazardous waste treatment activities that occur prior to the actual recycling process.

36. Comment: Facilities that recycle hazardous wastes should not be required to obtain an expensive recycling permit. This is not a federal requirement. If the department feels that certain recycling activities require a permit they should permit only those activities and state why. The SWMA does not regulate the recycling of materials, but regulates the storage, treatment and disposal of hazardous waste. Pennsylvania would also have permits for scrap metals and other recyclables. (17, 24, 23, 27, 31)

Response: The proposal to require permits for recycling activities was not intended to include all recycling and reclamation activities. The Department has incorporated most of the federal regulations that exempt from permitting most recycling and reclamation activities that occur within Pennsylvania. Specifically, the Department has incorporated the federal definition of solid waste at 40 CFR 261.2; the federal exclusions at 40 CFR 261.4; the federal provisions on recyclable materials at 40 CFR 261.6 (with the exception of 40 CFR 261.6(c)), and the federal provisions for reduced management standards for certain recycling activities contained in Part 266. These incorporated provisions reduce or eliminate regulation of most of the recycling activities involving hazardous waste in Pennsylvania.

The only federal provision regarding recycling exemptions that the Department has not incorporated by reference is 40 CFR 261.6(c), which includes a parenthetical phrase that states that the recycling process is exempt from regulation. In retaining the exclusion of 40 CFR 261.6(c) from Pennsylvania's regulations, Pennsylvania does not intend to regulate all recycling activities. Because reclamation and recovery processes tend to resemble or replace a manufacturing process, the permit requirement is not intended to apply to the recovery process itself. Operation of the recovery process such as feed rates, temperature, residence time, and the

construction of the recovery unit are dictated by the specific process and properly used should not be regulated in the same manner as a waste management unit. The Department intends to regulate only those activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery. Consequently, the Department does not intend to regulate the actual recovery process.

The Department does intend to regulate more extensively than the federal government certain hazardous waste activities that occur prior to the actual recycling process. The Department believes that it is responsible for ensuring that hazardous waste is properly managed before it enters the recycling process so that it poses a minimal risk to human health and the environment. The Department believes that including 40 CFR 261.6(c) in Pennsylvania's regulations adds confusion since the Department has been presented with an argument that 40 CFR 261.6(c) exempts all non-storage related recycling activities, including non-storage activities that occur prior to the actual recycling or reclamation process. Therefore, the Department is not incorporating by reference 40 CFR 261.6(c). This is not a substantive change from the proposed rulemaking, but it simply clarifies a point which the commentators found confusing.

After these regulations were proposed, the Department reviewed all of the hazardous waste recycling activities that occur in Pennsylvania to determine how many facilities are impacted by its recycling regulations and whether the recycling regulations were essential to assuring proper management of hazardous waste that is destined for recycling or reclamation. As a result of this review, the Department has identified approximately sixty hazardous waste recycling facilities in Pennsylvania that are currently subject to recycling requirements that are more stringent than the federal requirements. Of these, six are required to receive individual permits, the remainder operate pursuant to a permit by rule. Onsite solvent recovery accounts for the greatest number of the activities subject to a permit by rule.

Regarding the individually permitted facilities, the six facilities are subject to the storage permit requirements at 40 CFR 261.6(c). In addition to the storage permit requirement, the Department found that the following processes that occur prior to reclamation were regulated at these facilities: physical treatment, chemical/physical treatment and thermal treatment. The Department has determined that it is necessary to continue to regulate these facilities with individual permits because these activities that make the waste suitable for recovery are identical to activities that would occur for hazardous waste at a facility where the end result is to neutralize the waste, render the waste nonhazardous, less hazardous, safer to transport, store, or dispose of (all of which are included in the definition of treatment).

Regarding the facilities regulated by permit by rule, the Department determined that the permits by rule ensure adequate protection of human health and the environment without being overly burdensome on the facilities' operations. Permit by rule is a self implementing process where the facility is deemed to have a permit as long as it complies with the requirements specified for that process. There is no requirement for submission of a permit application, no financial assurance requirement, and record keeping and reporting are minimal. The Department uses the permit by rule approach for those activities that are mandated by statute to be permitted, but are not so technically complex that a full written permit is justified. The permit by rule provisions for hazardous waste recycling facilities are: 1) battery manufacturing facilities that treat spent, lead

acid batteries prior to reclaiming them, 2) facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of precious metals, and 3) facilities that treat hazardous waste onsite prior to reclaiming the hazardous waste. The permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed Section 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

Examples of activities conducted at battery manufacturing facilities reclaiming spent lead acid batteries that are covered by a permit by rule include: 1) breaking of the battery cases to remove the acid, 2) physical separation of the lead components from the plastic cases, and 3) physical mixing of the lead component with flux materials, limestone, coke or other additives to prepare the materials for charging to the secondary lead smelter. The smelter is the reclamation unit and is not subject to a permit. The other activities described meet the definition of treatment.

Examples of activities conducted at facilities that reclaim economically significant amounts of precious metals that are covered by a permit by rule include: 1) various physical, chemical or electrochemical methods used to extract silver metal from x-ray or photographic film fixers, and 2) drying silver recovery media prior to charging to the secondary smelter. The smelter is the reclamation unit not subject to a permit. The other activities described meet the definition of treatment.

Examples of activities conducted at facilities that reclaim hazardous waste onsite can be extremely varied. The most common onsite reclamation is solvent recovery. Physical separation of the spent solvent and water or sludge would constitute an activity subject to permit-by-rule. In some cases the spent solvent can be placed directly into a distillation unit. In this case there is no treatment prior to reclamation and the permit-by-rule would not be applicable. The distillation unit is the reclamation unit not subject to a permit. Other onsite reclamation activities that require a physical, chemical or thermal process prior to placing the recyclable materials in any of the various reclamation units for onsite recovery would be subject to permit by rule rather than a full hazardous waste treatment permit.

As stated in the Pennsylvania Hazardous Waste Facilities Plan, the Department supports the hierarchy of preferred waste management practices in order to promote more effective methods of hazardous waste management. To promote the improved operation of existing hazardous waste recycling facilities and to encourage the development of new improved technologies for hazardous waste reclamation, the final-form regulation eliminates the requirement for permit application, modification and administration fees for hazardous waste recycling permits and for research, development and demonstration permits (40 CFR §270.65) that employ new improved technologies for hazardous waste reclamation.

Finally, permitted reclamation facilities will no longer be required to submit Module 1's. The final form regulation eliminates the prescriptive requirements of the existing Section 264.12 (General requirements for hazardous waste management approvals and analysis of a specific

waste from a specific waste generator.)and Section 264.13 (Generic Module I applications.). The final form rule Section 264a.13 (General and generic waste analysis.) specifies that before a permitted facility accepts a new waste for the first time, notification will be provided to the Department including information as specified in the permit. The requirements of the notification will be established for existing permitees by a modification to the permit and will be established at new facilities during the permitting process.

Section 261a.7. Residues of hazardous waste in empty containers.

37. Comment: The proposed regulations appear to classify all containers or container liners "being transported to a facility for processing … or disposal" as a residual waste, regardless of whether the containers can be reused or otherwise qualify as coproducts under the residual waste program. It is also unclear whether the status of such containers and container liners as residual waste apply only during transportation, or during other stages of management. Section 261.7(b) requires that the residue removed from a container or container liner "be managed in compliance with the act and the regulations thereunder." This provides no real guidance to the regulated community on how these residues are to be managed. (23,14)

Response: The Department agrees that the proposed regulation is confusing. Therefore the final form regulation clarifies the intent of the proposed regulation. The final form regulation specifically states that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners. The final form regulation focuses on the residues rather than on the containers that hold the residues. As intended by the proposed regulation, the containers, tanks and inner liners will not be subject to hazardous waste regulation unless the containers, tanks or inner liners satisfy the criteria used to determine whether or not a solid waste is a hazardous waste.

Section 261a.41(b)(7) Notification of hazardous waste activities

38. Comment: Eliminate the notification requirements for small quantity generators who must notify the state each time they have a temporary change in generator status. This is not a requirement of the federal regs. (16)

Response: The proposed rule proposed to delete this section, as described in the Editor's Note at the beginning of Annex A. The final form rule also eliminates the notification requirements for conditionally exempt small quantity generators.

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Section 262a.10 Incorporation by reference, purpose, scope and applicability.

39. Comment: Pennsylvania should add its own analog to the federal reference RCRA §3008 in this provision. (22)

Response: The appropriate section of the Solid Waste Management Act has been added to Section 262a.10.

40. Comment: Section 262a.10, The Commonwealth should modify these federal provisions to make it clear that these requirements do not apply to Commonwealth-only wastes. (22)

Response: The Department has incorporated the federal hazardous and solid waste definitions and listings from 40 CFR Part 261 and, there are no longer any "Commonwealth-only" wastes.

41. Comment: 40 CFR 262.11 should not be excluded from the blanket substitution of terms because Pennsylvania has adopted all of the rulemaking petitions at 40 CFR 260 Subpart C, including the petitions for equivalent testing or analytical methods. (22)

Response: The Department has made the appropriate change to the final form rule.

Subchapter B. THE MANIFEST

Section 262a.20 Manifest

42. Comment For clarity, the Commonwealth should specifically exclude 40 CFR 262.20(b)&(c). (22)

Response: The appropriate changes have been made to the final form rule.

Section 262a.10; 262a.23(1); 262a.23(2) Incorporation by reference and Use of the manifest

43. Comment: This provision is less stringent than the corresponding federal provision because it does not require the generator to distribute copies of the manifest to the transporter(s). (22)

Response: Section 262a.20 has been changed to reflect the proper distribution of the manifest copies.

44. Comment: The Department should exclude the phrase "for the Region in which the generator is located" from its incorporation by reference of 40 CFR 262.42. That language is only relevant in the context of the Federal program. (22)

Response: The suggested change has been made in the final form rule.

Section 262a.22. Number of copies.

45. Comment: EPA is considering revising the manifest system to streamline reporting efforts. If Pennsylvania adopts Section 262a.22 as proposed, generators in Pennsylvania would receive no benefit. Also, the proposed 6-part manifest addresses an administrative concern and doesn't serve any health, safety or environmental protection related purpose. (6, 7, 13, 14, 23, 31)

Response: In addition to a generator tracking hazardous waste, the federal manifest system was designed as a paperwork reduction effort, so that it was not necessary for EPA to receive a copy of each manifest from each shipment in each of the 50 states. However, if the regulatory agency does not receive a manifest copy, there is no way it can track the movement of the waste.

The Pennsylvania program presently requires a manifest distribution system which has been reduced in the proposed regulation. If the generator and the TSD were both located in Pennsylvania, with only 1 transporter, then five copies of the manifest would be required. In the case where the waste is shipped to an out-of-state TSD, or if two transporters are necessary, then six copies of the manifest would be required. As the number of transporters for a shipment increases, the number of manifest copies will also increase accordingly. If the TSD is located in one of the states that uses the 8-part manifest, then the generator would be required to use the 8-part manifest of that state as required by 40 CFR 262.

In addition to tracking the movement of the waste in Pennsylvania, the state copy is used to verify payment of fees as required by Act 108. The biennial report only supplies data for the previous year of the report. The manifest data is also used in developing the Hazardous Waste Facilities plan.

EPA and DEP are considering promoting electronic data interchange. This will not take the place of manifests, but will provide an additional option to satisfy the reporting requirements, resulting in less paperwork and faster more accurate data transmission. The Department is currently exploring this option with several companies.

Section 262a.34(a)(1)(ii)(A-B). Accumulation.

46. Comment: These sections should be deleted from the regulations. They are unduly specific and require unnecessary paperwork. (16)

Response: The final-form rule will incorporate 40 CFR 262.34 by reference, which does not have provisions such as those at existing 25 Pa. Code Section 262.34(a)(1)(ii)(A) & (B).

Section 262a.34(a)(3). Accumulation.

47. Comment: The existing container packing, labeling and marking requirements that apply to accumulation in containers should be deleted from the regulations. (16)

Response: The proposal incorporates 40 CFR 262.34 by reference, which does not have provisions such as those at existing 25 Pa. Code Section 262.34(a)(3).

Section 262a.34(e)(5). Accumulation.

48. Comment: This section should be deleted from the regulations. The section requires PPC plans from small quantity generators and imposes unnecessary paperwork when considering the amount of waste involved. (16)

Response: The proposed rulemaking, as well as the final-form rule will incorporate 40 CFR 262.34 by reference, which does not have provisions for PPC plans for SQG.

Section 262a.41. Biennial report.

49. Comment: The Department should review the more stringent provisions of the regulations including quarterly reporting by generators. (13)

Response: The regulations presently do not contain the quarterly reporting requirement for generators. The generator requirements for quarterly reporting were replaced prior to this proposed rule, and the Department has no intention of reinstituting them. The reporting requirements contained in the federal regulations have been incorporated into Pennsylvania's regulations.

CHAPTER 263a. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

Sections 263a.10(a), 263a.12(1) Incorporation by reference and scope and Transfer facility requirements

50. Comment: The requirement for a preparedness, prevention and contingency plan for transporters utilizing in-transit storage of hazardous waste for periods of not more than 10 days but greater than 3 days is broader in scope than the federal regulations. (22)

Response: The requirement is broader in scope than the federal regulations, but the department feels there is a clear and compelling need for such a plan. In-transit storage facilities are not subject to siting criteria, and therefore could be located in almost any commercial area and subject the public in that area to possible hazardous waste spills or other accidents. This requirement only requires the transporter to have a plan ready and to be prepared for such an occurrence.

Section 263a.12. Transfer facility requirements.

51. Comment: The proposed regulations require approval of the in-transit storage PPC plan and the normal transporter contingency plan in writing, but do not provide a deadline for Department review and approval of PPC plans. The Department should be allowed 30 days to complete the review, and if the review is not approved in that time-frame, then the plan should be considered approved. (10, 31)

Response: The Department agrees that the time-frame for the review of an administratively complete plan should be limited. The in-transit storage PPC plan approval will be added to the list of authorizations covered by the DEP Money-Back Guarantee Permit Review Program. The DEP will have a maximum of forty-five days to process the PPC Plan in accordance with the guidelines of the Money-Back Guarantee Program.

52. **Comment:** Because of the inconsistency between the definition of in-transit storage and the incorporated requirements at 40 CFR 263.12, one could argue that an in-transit contingency plan is not necessary for storage of 4-10 days. (22)

Response: Section 263a.12(1) has been modified in the regulations to clarify that the plan must be approved in writing prior to initiation of storage for greater than 3 days.

Sections 263a.23; 264a.78; 265a.78 Hazardous waste transportation and management fees

53. **Comment:** The charges (fees) sought to be collected from transporters and TSDs under Sections 263a.23, 264a.78 and 265a.78 are impermissible taxes as they would be applied against federal government activities. The regulations should be modified to exempt federal facilities from the need to pay these particular charges. (26)

Response: The hazardous waste transportation and management fees are a statutory requirement imposed by the Hazardous Sites Cleanup Act (Act 108) and cannot be changed by regulation.

Section 263a.30 Immediate action

54. **Comment:** The Commonwealth requires that a transporter immediately notify the Department by telephone in the event of a discharge or spill during transporting. This is more stringent than the federal requirement. (22)

Response: The requirement is more stringent than the corresponding federal requirement, but the Department feels that in order to assure that a discharge or spill is adequately remediated, the Department must be made aware of the discharge or spill.

Subchapter D. BONDING

Sections 263a.32. Bonding.

55. **Comment:** Hazardous waste transporter bonds are unnecessary. First, the requirement is unenforceable due to a USDOT ruling which preempts it. Second, the environmental impairment risk of transporting hazardous waste is financially covered with liability insurance. (1)

Response: In Massachusetts versus US DOT, 93 F.3rd 890, the D.C. Circuit Court found that the Massachusetts bonding requirements for hazardous waste transporters were not preempted by Federal law. Pennsylvania's bonding requirements are similar to Massachusetts's and therefore the Department believes that Pennsylvania's bonding requirements are not preempted by federal law. The Circuit Court decision is expected to be appealed to the Supreme Court by industry; therefore, the Department will use enforcement discretion until a final determination is reached.

The bond is required by the Solid Waste Management Act. In addition, it has helped the Department to receive timely and accurate paperwork and fee submission from the regulated

community. It has also provided the Department with leverage in collecting civil penalties when they are assessed.

56. Comment: The provision requires transporters to file a collateral bond payable to the department. Such a requirement is broader in scope than the federal program. (22)

Response: The provision is required by the SWMA and has aided the Department in the past for the collection of civil penalties and the timely submission of fees and required reports.

CHAPTER 264a. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES and CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter A. GENERAL

57. Comment: Section 264a.1(a) and 40 CFR Part 264, Appendix VI. This appendix is only applicable to the States listed in the appendix. The Commonwealth should not incorporate this appendix by reference. (22)

Response: The Department agrees and has changed the incorporation by reference language of Section 264a.1.

58. Comment: Section 264a.1(a) and 40 CFR 264.1030(c). Pennsylvania incorporates by reference 40 CFR 264.1030(c). This Federal provision includes an internal reference to 40 CFR 124.15. Pennsylvania does not have an analog to 40 CFR 124.15 in its hazardous waste regulation as that provision is not required for authorization. However, the Commonwealth should make certain that the reference to this Federal provision is not inconsistent with the Commonwealth's own procedures relating to the issuance and effective date of a permit. If the text at 40 CFR 124.15 is inconsistent with such procedures, then Pennsylvania should exclude the internal reference to 40 CFR 124.15 from its incorporation by reference of 40 CFR 264.1030(c) and replace it with a reference to 40 CFR 124.5 or its analog to that section. (22)

Response: Section 260.3 of the regulations clarifies and defines how references to Part 124 are substituted with Pennsylvania procedures.

Subchapter B. GENERAL FACILITY STANDARDS

59. Comment: Sections 264a.13 and 265a.13. Several commentators oppose requiring owners or operators of TSD facilities to submit Module 1 forms in accordance with Sections 264a.13 and 265a.13. The commentators stated that the requirement to obtain Department approval before accepting new waste streams exceeds federal requirements, adds unnecessary costs and delays their ability to accept new wastes and customers. The commentators feel that this requirement is unnecessary since it duplicates approvals granted through the permitting process. One commentator also expressed concern about the safety of confidential business information which

might need to be submitted as part of the Source Reduction Strategy submission requirement under this section. Recent failures by EPA to keep track of confidential business information further points to the need for confidentiality of sensitive process information. (3, 12, 13, 14, 23, 27, 31)

Response: As an alternative to the Module 1, Section 264a.13 has been modified to allow a facility to incorporate a facility specific procedure in the waste analysis plan in its permit to characterize a new waste prior to acceptance of the waste for the first time. The facility will then only be required to provide the information specified in the permit to the Department when they are going to accept a new waste stream for the first time. The requirement for generators to submit their Source Reduction Strategy to the Department as part of this approval process has been eliminated.

The requirements found in Section 265a.13 are for interim status facilities. These facilities may not have approved waste analysis plans in place, so the Module I and Generic Module I requirements in this section will remain.

60. **Comment:** Section 264a.13(1)(viii), The commentator opposes the open-ended empowerment the proposed rulemaking would grant DEP to require "other information which the department may prescribe for the department to determine whether the waste has been treated, stored or disposed of in accordance with this chapter." (14)

Response: In response to this and other comments on Section 264a.13, the final-form rule incorporates by reference the federal requirements and specifies in addition to the federal requirement that the permit contain the details for the information required to be submitted to the Department before a TSD accepts a new waste from a generator for the first time. In this way, each TSD can address only those chemical or physical characteristics that are important to assure that the waste can be safely accepted and appropriately handled by the permitted facility.

61. **Comment:** Sections 264a.13(6) and 265a.13(6)of the proposed regulations, The Generic Module I process, or an equivalent process should be retained in the regulations to expedite an owner and operator's ability to receive new waste streams and to reduce burdens on the owner and operator who receives consistent waste from various generators. (10)

Response: The final form rule provides that permitted facilities may establish equivalent customized Module I requirements in their facility specific permits. Those permitted facilities that accept wastes previously addressed by the Generic Module I process will now have the ability to address those wastes. The Generic Module I process for interim status facilities subject to Chapter 265a requirements has been retained with the exception of the requirement for the generator to submit the source reduction strategy.

Section 264a.15 General inspection and construction inspection

62. **Comment:** EQB proposes retaining prior approval and a step-by-step inspection/approval process of construction without any justification. The commentator believes that general inspection authority is well provided for elsewhere in law and regulation. There is no

compelling need to micro-manage the construction schedule. Waiting for approvals will extend the time and cost of construction without commensurate benefit. (14)

Response: The intent is not to manage the construction schedule but rather for the Department to be fully aware of the proposed schedule. This permits the Department to plan for and have the opportunity to be on-site for critical phases of construction, for example installation of the liner, drilling of monitoring wells, etc. To help ensure that the facility is constructed in accordance with the approved permit application.

Sections 264a.52 and 265a.52 Content of contingency plan

63. Comment: Several commentators stated that requiring contingency plans submitted pursuant to Sections 264a.52 and 265a.52 to be in accordance with "DEP guidance for contingency plans" is unclear because it does not identify the Department guidance for contingency plans. If this requirement is retained, the commentator suggested that the Department should include the guidance as part of the regulation. The commentators also believed that this provision is vague since it requires the plan to be submitted "at the time in the application process the Department prescribes." In addition, commentators stated that the federal "Integrated Contingency Plans" are adequate and the commentators requested that the Department explain the insufficiency of the federal requirements. Finally, one commentator asked the Department to include an estimate of the economic impact that the Department contingency plan will have on the regulated community. (6, 7, 31, 22, 31)

Response: The Department's "Guidelines for the Development and Implementation of Environmental Emergency Response Plans" is a guidance document which has been prepared to assist the regulated facilities in consolidating all required emergency response plans into one single document. These guidelines are updated periodically with input from the various Department programs which require emergency response plans.

The EPA, as the chair of the National Response Team (NRT), published the Integrated Contingency Plan Guidance in the June 5, 1996 Federal Register. The intent of EPA's Guidance is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations, into a functional emergency response plan or integrated contingency plan (ICP). Emergency response plans prepared from either guidance would contain very similar information but with different formats.

The Department has proposed to adopt by reference the regulations relating to contingency plans found in 40 CFR 264.51-264.55 and 265.51-265.55, which are identical to the current PA regulations, with the exception that current Pennsylvania regulations require operators to incorporate into their contingency plans Pennsylvania Guidelines for Emergency Response Plans. Subsequent to this rulemaking plans will be required to satisfy regulatory requirements.

The requirements for submitting contingency plans with permit applications are clearly defined in other areas of the regulations; therefore, the Department will delete Sections 264a.52(2) and 265a.52(2).

Sections 264a.56 and 265a.56. Emergency procedures.

64. Comment: Several commentators stated that the emergency procedure requirements in Sections 264a.56 and 265a.56 are unauthorized by state law, to the extent that they require an emergency coordinator to notify a federal agency. In addition, several commentators noted that the Federal law requires notice to either a designated government official or the National Response Center, while the state provision requires notification to both the Department and the National Response Center. The commentators believe that notification should be given to the Department's regional offices rather than the Department's Central Office in Harrisburg, as the proposed regulation requires. Other commentators suggested that it is more efficient to notify the Department's Central Office rather than requiring emergency coordinators to figure out which regional office to call. The commentators suggested reviewing the selection of the phone numbers to assure that the Department is not duplicating the services and equipment of other Commonwealth entities. Finally, one commentator stated that the proposed regulation duplicated Federal language and that the duplicative language should be eliminated. (6, 7, 13, 14, 22, 23, 31)

Response: The Department has reviewed the emergency notification requirements proposed in Sections 264a.56 and 265a.56 and 40 CFR 264.56 and 265.56 and agrees that it is unnecessary to include the requirement to notify the National Response Center given the incorporation by reference of 40 CFR 264.56(d)(2) and 265.56(d)(2).

The requirements found in Sections 264a.56(1) and 265a.56(1), that the emergency coordinator will notify the Department by telephone, will remain. The proposed regulations have been changed to provide the option of contacting the appropriate regional office of the Department or Central Office.

The requirements proposed in Sections 264a.56(2) & (3) and 265a.56(2)&(3) are duplicative of federal requirements that the Department will incorporate; therefore, the proposed Pennsylvania requirements have been deleted in the final regulation.

Section 264a.71. Use of the manifest system.

65. Comment: Sections 264a.71 and 265a.71. The use of the term six-part manifest is confusing due to the fact that the number of copies depends on the number of transporters. (22)

Response: The proposed regulations at Sections 264a.71 and 265a.71 have been revised by deleting the term "six-part" and instead simply requiring the use of the Department's manifest or a manifest approved by the Department. The number of copies ("parts") will be dictated by the requirements of distribution and will vary.

66. Comment: Sections 264a.71 and 265a.71. Pennsylvania prohibits a TSD facility in the Commonwealth from accepting hazardous waste unless it is accompanied by a Pennsylvania manifest, except as otherwise provided in 40 CFR 262.23. Pennsylvania incorrectly cites 40 CFR 262.23(1). The Commonwealth incorporates by reference 40 CFR 264.71(b) which permits a facility to accept rail and water shipments accompanied by a shipment paper. It is unclear

whether a facility would violate Section 264a.71(l) if the facility later received the manifest form for such a shipment that is not a Pennsylvania manifest. The Commonwealth should clarify this as well as modify its incorporation of 40 CFR 264.71(b) if a shipment paper is unacceptable. Currently, the requirements are unclear and potentially confusing to the regulated community. (22)

Response: The incorrect citation 40 CFR 262.23(l) has been changed to 40 CFR 262.20(e), which exempts from manifesting, waste from small quantity generators which is reclaimed under contractual agreement as described in the regulation.

Regarding bulk rail and water shipments, 40 CFR 262.21(a), requires the generator to use the receiving state's manifest, if the state supplies and requires its use. As per 40 CFR 262.23(c) and (d), for bulk rail and water shipments the generator must send three copies of the manifest to the destination facility. Therefore, it would be a violation to use a manifest that is not the Department's or a manifest not approved by the Department if the receiving facility is located within Pennsylvania.

Section 264a.75 and 265a.75. Biennial Reports.

67. Comment: The proposed rule requires biennial reports to be kept for the life of the facility while EPA only requires them to be kept for three years. The additional requirement creates more paperwork and does not serve any practical purpose. (14, 15, 23, 31)

Response: The final form rule incorporates the three-year retention period.

Section 264a.83. Administration fees during closure.

68. Comment: Sections 264a.78-264a.83 and 265a.78-265a.83. The hazardous waste management fees should be retained. (18)

Response: The Department agrees. The fees will be retained. Fees for recycling permits will be eliminated to encourage hazardous waste recycling facilities.

69. Comment: Sections 264a.78-264a.83 and Sections 265a.78-265a.83. Pennsylvania hazardous waste management fees are not required by EPA. (22)

Response: The Hazardous Waste Management fees are required by the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, ("HSCA"), 35 P.S. 6020.101 et seq.

Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Section 264a.94. Concentration Limits.

70. Comment: The use of Alternate Concentration Limits (ACL's) is a questionable step because of the potential for abuse. The preamble states that a background standard for groundwater remediation has often been "unattainable". In dealing with operators, DEP should make a greater effort to distinguish between the inability to attain the standard, and the unwillingness to attain the standard. (18)

Response: For existing facilities with groundwater contamination problems, the norm has been, and continues to be compliance with background. Because of technological and monetary limitations many facilities are unable to achieve the background standard. However, the Federal regulation allows a facility to obtain an Alternate Concentration Limit ("ACL") for the site. To obtain an ACL for the site, a permit applicant must demonstrate that the hazardous waste constituents detected in the groundwater will not pose a substantial present or potential hazard to human health and the environment.

Because a facility that wishes to obtain an ACL must undergo considerably more expense to perform a detailed evaluation of the site using a number of environmental criteria, it is anticipated that the Department will receive very few requests for the use of an ACL.

Section 264a.96. Compliance Period.

71. Comment: To provide clarity, the Commonwealth should replace the reference to "Subchapter F" with "40 CFR Part 264, Subpart F, as incorporated by reference at Section 264a.1(a)". (22)

Response: The Department agrees and has made the change in the final form rule.

72. Comment: Several commentators stated that compliance and monitoring reports required by Section 264a.96 exceed Federal requirements and add unnecessary costs on the regulated community. In addition, it was noted that there are no exemptions from these requirements; and therefore, the proposed regulations, unlike the federal regulations, lack flexibility that is necessary to deal with different conditions that exist at different sites.(13, 14, 15, 23, 31)

Response: The monitoring and reporting requirements that the Department proposed in Section 264a.96 are also authorized by the incorporated federal regulations provisions found at 40 CFR 264.91, 264.97, 264.98 and 264.99, but the federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. The Department feels that permit conditions are appropriate for requirements that are determined on a case-by-case basis rather than for requirements that are applicable to an entire class of facilities. In this case, Pennsylvania's seasonal, climatological and hydrological features, including a high water table, make it necessary to require all surface impoundments, land treatment units, landfills and, in some cases, waste piles operating in Pennsylvania to conduct the same type of groundwater monitoring and reporting. Consequently, the Department has determined that these requirements should be included in a regulation rather than a permit condition.

The Department has determined that the proposed monitoring and reporting requirements found in Section 264a.96 are necessary for the protection of human health and the environment for the following reasons:

1. A quarterly interval between sampling events would allow for early detection of a potential problem and for the operator to respond to and correct a problem before significant wide-spread contamination would occur.
2. The frequency established provides a basis for valid statistical evaluation of groundwater data.
3. Quarterly data generated considers Pennsylvania's seasonal, temporal and spatial variablity and climatological variations which are not adequately taken into account with less frequent monitoring.
4. These reporting requirements allow the Department to receive the data in a timely fashion. It can be analyzed and assessed in the early stages of any environmental problem. This provides a pro-active rather than a remedial response which is the purpose of the hazardous waste regulations.

These monitoring and reporting requirements should be required of all active facilities which require groundwater monitoring as a condition of their permit. For facilities that have gone through closure and are in post-closure care, some flexibility may be warranted. The Department has provided flexibility on the issue of monitoring and reporting frequency: where the owner or operator of a facility has demonstrated that the facility is secure, a reduction of the monitoring frequency from quarterly to semi-annual was implemented. The proposal, by incorporation of federal language found at 40 CFR 264.117 and 118, provides this flexibility.

CHAPTER 264a & 265a Subchapter H. FINANCIAL REQUIREMENTS

Sections 40 CFR 264.143, 264.145, 265.143 and 265.145 relating to Financial Assurance for Closure and Post-closure Care.

73. **Comment:** Pennsylvania is less stringent than the federal program because it does not have the requirement for an owner or operator who uses a surety bond to satisfy the financial requirement to also establish a standby trust fund. (22)

Response: The Solid Waste Management Act specifies that forfeited bond funds are to be placed in Pennsylvania's Solid Waste Abatement fund. The final form regulation replaces the establishment of a standby trust fund with the existing requirements in Pennsylvania's regulations for bond forfeiture, since the standby trust is a mechanism that would place forfeited bond dollars in a trust rather than in the Solid Waste Management Abatement Fund.

74. **Comment:** Pennsylvania is less stringent than the federal rules because at Section 264a.168(a) the Commonwealth states that the Department may forfeit the bond, while the federal code states that the surety will perform closure. Pennsylvania should replace "may" with "shall". (22)

Response: The final form rule has replaced "may" with "shall" to respond to the intent of the commentator's remark.

Section 264a.145. Financial assurance for post-closure care.

75. Comment: Several commentators noted that Pennsylvania's failure to incorporate 40 CFR 264.145 puts Pennsylvania's facilities at a competitive disadvantage, since Pennsylvania's closure and post-closure RCRA requirements foreclose all of the financial instrument options available under 40 CFR 264.145. The commentators recommended either incorporating 40 CFR 264.145 into Pennsylvania's regulations or explain why all of the mechanisms in that section are inappropriate or insufficient. (12, 14, 23, 31)

Response: The Department intended to incorporate by reference 40 CFR 264.145 in the same manner as 40 CFR 264.143 and its failure to do so was an oversight. The final form rule incorporates both 40 CFR 264.143(f) and 40 CFR 264.145(f) to provide for the use of the financial test and corporate guarantee for both closure and post-closure financial assurances.

Section 264a.147. Liability requirements.

76. Comment: Several commentators noted that Section 264a.147 contains liability insurance requirements that exceed federal requirements. The preamble to the proposed rulemaking contained an explanation that the higher amounts are required because the SWMA requires an ordinary public liability insurance policy in an amount prescribed by rules and regulations promulgated under the SWMA. Commentators expressed opinions that the federal requirements are sufficient and should be adopted by reference. (13, 14, 23, 31)

Response: The requirement for an ordinary public liability policy, including the amounts required, exists in the current regulatory requirements at Section 267.42. The proposal anticipated the need to continue to differentiate between environmental impairment and ordinary public liability coverage . Upon further review, the Department has determined that the federal requirements satisfy the Solid Waste Management Act (SWMA) requirement. Changes have been made to the federal insurance requirements since Pennsylvania last amended its hazardous waste insurance requirements, which now include comprehensive general (ordinary public liability) coverage, and consequently, the federal insurance requirements now satisfy the SWMA requirements. The final rulemaking will incorporate the federal requirement, and the separate requirement for comprehensive general liability (ordinary public liability) coverage has been removed.

Section 264a.151. Wording of instruments.

77. Comment: Section 264a.151 would incorporate federal requirements for wording of financial instruments only to the extent that those requirements are consistent with the laws and regulations of the Commonwealth. Commentators suggested that the wording of this section be

revised to specifically state which existing federal laws or regulations are inconsistent with the laws of this Commonwealth. (31)

Response: The proposed regulation incorporated by reference 40 CFR 264.151 and 265.151(relating to wording of instruments). The Board has decided not to incorporate this federal provision since Pennsylvania will review each instrument on a case by case basis to determine if it complies with Pennsylvania law and if it is appropriate for the facility that is submitting the financial instrument. Many of the financial instruments are not available to Pennsylvania because of limitations on types of bonds in the Solid Waste Management Act.

Section 264a.154(a). Form, terms and conditions of bond.

78. Comment: Pennsylvania is less stringent than the federal rule because the Commonwealth does not require the owner or operator to submit a bond at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. (22)

Response: The 60 day requirement is incorporated into the final form rule at 264a.154(d).

79. Comment: Pennsylvania is less stringent than the federal rule because the Commonwealth does not require that the bond must be effective before the initial receipt of hazardous waste. (22)

Response: The Department disagrees. Pennsylvania regulations are not less stringent than the federal regulations because the regulations require a bond in place before a permit can be issued, and a permit must be issued before waste can be accepted.

80. Comment: Section 264a.155(b). Pennsylvania is less stringent than the federal rule because the Commonwealth does not specify that the surety company be among those listed in circular 570 of the U.S. Department of Treasury as acceptable sureties on Federal Bonds. (22)

Response: This requirement is contained in the existing regulations at 25 Pa. Code Section 267.13(b), which has been relocated to 264a.155(b) in the final form regulation. The reference to circular 570 was inadvertently omitted in the proposal and has been restored in the final form rule.

Sections 264a.162, 163, 165. Bond amount adjustments, adequate bond and bond release.

81. Comment: Section 264a.162. The responsibility for determining if a bond amount change is needed rests with the permittee under the Federal requirements and with the Department under the Commonwealth's requirements. This could make the Commonwealth less stringent if the Department fails to demand that the permittee increase the bond amount in the same circumstances where the permittee would have to do so under the Federal code. (22)

Response: The language in Section 264a.162 will be modified to reflect 40 CFR 264.143(c)(7), which places the requirement on the owner or operator.

82. **Comment:** Section 264a.154(d). Unlike the Federal requirements, the Commonwealth does not require the owner or operator to submit the letter of credit at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. (22)

Response: The Department agrees. The language of Section 264a.154(d) has been modified to reflect the 60 day requirement in the Federal rule.

83. **Comment:** At Section 264a.156(d)(1) Pennsylvania specifies that the letter of credit shall be a standby or guarantee letter of credit. The Federal code only specifies a standby letter of credit and does not appear to allow a guarantee letter of credit. Depending on the Commonwealth's interpretation of "standby letter of credit" and "guarantee letter of credit", Pennsylvania could be less stringent than the Federal rule. (22)

Response: Section 264a.156(d)(1) has been modified to eliminate the phrase "or guarantee".

84. **Comment:** Pennsylvania is less stringent than the federal rule because it does not require an owner or operator who uses a letter of credit to satisfy the financial assurance requirement to establish a standby trust fund. (22)

Response: The Solid Waste Management Act specifies that forfeited bond funds are to be placed in Pennsylvania's Solid Waste Abatement fund. The final form regulation replaces the establishment of a standby trust fund with the existing requirements in Pennsylvania's regulations for bond forfeiture, since the standby trust is a mechanism that would place forfeited bond dollars in a trust rather than in the Solid Waste Abatement Fund.

85. **Comment:** The Federal code at 40 CFR 264.143(d)(5) requires that the letter of credit must be issued for at least 1 year, be automatically extended for a period of at least 1 year, and provide for a 120 day cancellation notice submitted to the agency by certified mail. Pennsylvania is less stringent because it does not require the 1 year minimum, provides for a 90 day cancellation notice and does not specify that the cancellation notice must be submitted by certified mail. (22)

Response: Section 264a.156(d)(4) has been modified to reflect the 1 year minimum. Section 264a.156(d)(4)(i) has been modified to require automatic extensions of at least 1 year, the cancellation notice has been changed from 90 days to 120 days, and the requirement to provide cancellation notice by certified mail has been added. The same changes have been made to Section 265a.156 in the final form rule.

86. **Comment:** At Section 264a.156(d), Pennsylvania does not have direct analogs to 40 CFR 264.143(d)(7) or 264.145(d)(7) regarding adjustments to the amount of the credit. (22)

Response: The Pennsylvania analog to this requirement is found at 264a.162 (Bond amount adjustments) for all types of bonds including letters of credit.

87. **Comment:** In Section 264a.165(e) the Department has 6 months within which to make a decision on a bond release application. Under the Federal code the Regional Administrator has

60 days to make a decision and notify the owner. This can make the Commonwealth less stringent than the Federal rule. (22)

Response: By having 6 months to reach a decision on bond release, the Department has the time necessary to make a correct decision on bond release. Limiting the time period to a 60 day maximum could force a decision which is based on time rather than on accurate and complete site information. This provision makes Pennsylvania more stringent than the federal rule because the bond can be held for a longer period prior to making a determination for release.

88. Comment: Section 264a.157(a)(3) gives the operator 10 years to complete a bond pay in period. Under the federal code the permittee has 10 years or the life of the permit if the permit is for less than 10 years. This makes Pennsylvania less stringent than the federal rule. (22)

Response: Section 264a.157(a) requires that a facility be operated continuously for at least 10 years or this option is not available to the permittee. This makes Pennsylvania more stringent than the Federal rule and is specified by the Solid Waste Management Act.

Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sections 264a.173 and 265a.173. Management of Containers.

89. Comment: We recommend the Department incorporate by reference 40 CFR 264.173 and 265.173, relating to the management of containers without further restrictions on the labeling of containers. Federal regulations require that any hazardous waste being accumulated in a satellite area be placed in a container labeled as hazardous waste. The containers that are used must be DOT approved containers. Containers placed in a storage area (including< 90 days) must, according to Federal regulations, require containers have the proper labels in a storage area. Information required includes type of waste, waste codes, and date placed in storage area. With labeling requirements already in place, additional requirements are not necessary and place a burden on the generator to maintain multiple systems for labeling. (23)

Response:. The proposed regulation never included a labeling requirement, although the preamble inaccurately stated that the labeling requirement was being proposed. The final form rule does not include a labeling requirement for containers other than what is required by federal regulation.

Sections 264a.175 and 265a.175. Containment.

90. Comment: Proposed Sections 264a.175 and 265a.175 contain detailed provisions applicable to storage of hazardous waste containers. Specific requirements for maximum container height, width and depth of container groups, and aisle widths are given. Comparable federal regulations do not contain such exact requirements. Commentators stated that the proposed State provisions do not accommodate newer containers known as “totes” and suggest that the final form regulation be more performance oriented. (6, 7, 9, 14, 16, 31)

Response: The final form rule modified Sections 264a.173 and 265a.173 to exclude the prescriptive nature of the requirements and replace them with performance-based requirements directed toward the use of best management practices. For example; operaators will simply be required to maintain appropriate aisle spacing, container heights and configurations to facilitate inspections and unobstructed movement of emergency equipment and personnel.

Subchapter J. TANK SYSTEMS

Section 264a.191 and 265a.191. Existing tank systems.

91. Comment: The Commonwealth should make a distinction between HSWA and non-HSWA tanks with regard to effective/compliance dates. (22)

Response: The Department's authority to implement these regulations only became effective on the dates included in the current regulation.

Sections 264a.194 and 265a.194. General operating requirements.

92. Comment: As proposed, the tank labeling requirements should be retained. (18)

Response: The final form regulation retains the tank labeling requirement.

Section 264a.195 and 265a.195. Inspections.

93. Comment: Delete the requirement at Section 265a.195 to inspect hazardous waste tanks every 72 hours when the facility is not operating. Site specific Best Management Practices can be employed to replace inspection requirements when the facility is not operating. (16)

Response: The State regulations at Sections 264a.195 and 265a.195 requires an additional inspection for facilities once every 72 hours when not in operation. The Federal regulations are silent on this issue. EPA assumes that if a facility is not operating there is no waste in the tanks and system components. The rationale for the retention of this language is that a facility might not be operating, but as long as waste remains in the tank and system components, there is a potential for leaks and spillage to occur. Including this requirement in the regulations eliminates the need to include it as a standard permit condition in all permits issued. The Department feels this is a best management practice that adds a minimal burden on the facility, while extending additional protection to human health and the environment.

94. Comment: As proposed, the requirement to inspect tanks every 72 hours when the facility is not operating should be retained. (18)

Response: The final form rule contains the requirement as explained above.

95. Comment: A more direct approach would be to add the following sentence to the 40 CFR 264.195(b) requirements incorporated by reference at Section 264a.1: "The Tank must be

inspected every 72 hours when not operating if waste remains in the tank or tank system components." (22)

Response: The clarifying language has been added to the final form rule.

Subchapter K. Surface impoundments.

Section 264a. 221. Design and operating requirements.

96. Comment: Section 264a.221. The Commonwealth incorporates by reference 40 CFR 264.221(c) at Section 264a.1(a) and then excludes the requirement relating to leak detection systems not located completely above the seasonal high water table. Effectively, this exclusion applies to 40 CFR 264.221(c)(4). For clarity, Pennsylvania should explicitly cite the provision to be excluded. Pennsylvania has a minimum groundwater separation distance requirement which is more stringent than the Federal requirements relating to the seasonal high water table; the Commonwealth requires all surface impoundments to be located above the seasonal high water table. (22)

Response: The Department agrees and has revised the proposed regulations to exclude specifically the provision at 40 CFR 264.221(c)(4) relating to leak detection systems not located completely above the seasonal high water table.

Subchapter L. Waste piles

Section 264a.251 Design and operating requirements.

97. Comment: Section 264a.251. The Commonwealth incorporates by reference 40 CFR 264.251(c) at Section 264a.1(a). It then excludes from the incorporation by reference the requirement relating to leak detection systems not located completely above the seasonal high water table. Effectively, this exclusion applies to 40 CFR 264.251(c)(5). For clarity, Pennsylvania should explicitly cite the provision to be excluded. The exclusion of this requirement is acceptable because Pennsylvania has a minimum groundwater separation distance requirement which makes the Commonwealth more stringent. The Commonwealth does not allow waste piles which are not located above the seasonal high water table. [Note that "264.221(c)" is a typographical error.] (22)

Response: The Department agrees and has revised the proposed regulations to exclude the provision at 40 CFR 264.251(c)(5) and corrected the noted typographic error.

98. Comment: Section 264a.251. The commentator favors proposed requirements for groundwater monitoring and design requirements for run-on control measures for waste piles. (18)

Response: The final form rule includes the requirements.

Subchapter M. Land Treatment

Section 264a.276. Food chain crops.

99. Comment: Section 264a.276. The Commonwealth includes a provision at Section 264a.276(1) that prohibits tobacco and crops intended for direct human consumption from being grown on hazardous waste land treatment facilities. In Section 264a.276(2), the Commonwealth prohibits the application of cadmium-containing waste on land used for tobacco, leafy vegetables, or root crops grown for human consumption. It is unclear why the second provision is needed when the general prohibition in paragraph (1) encompasses the activities described in paragraph (2), unless Pennsylvania intended a less stringent standard for cadmium-containing wastes. In fact, the language of paragraph (2) contradicts the text in paragraph (1) because there are more crops used for human consumption than just leafy vegetables and root crops. Since paragraph (2) prohibits leafy vegetables and root crops from being grown on land treated with cadmium containing wastes, it appears that other types of crops used for human consumption may be grown on land treated with cadmium wastes if the levels in the table are met. However, paragraph (1) says that no crop intended for direct human consumption can be grown on hazardous waste treated land. In any case, the strict prohibitions of these paragraphs are more stringent than the Federal program. (22)

Response: The proposed regulations have been revised to clarify the overall intent of Sections 264a.276(1) and (2), which was to prohibit the growing of tobacco and crops intended for direct human consumption on hazardous waste land treatment facilities.

100. Comment: Section 264a.276. The commentator favors the proposed prohibition on growing food chain crops intended for direct human consumption on Hazardous Waste Land Treatment Facilities. (18)

Response: The final form rule includes the prohibition.

Subchapter S. CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

101. Comment: Section 264a.552 and 40 CFR 264 Subpart S. The exclusion of 40 CFR Part 264, Subpart S from the incorporation by reference makes the Commonwealth's program more stringent. However, the Commonwealth should also make revisions in other portions of its incorporation by reference to take into account the other revisions made by the CAMU rule. (22)

Response: The Department has incorporated 40 CFR Part 264, Subpart S by reference in the final form rule, and will consider requesting authorization of the corrective action program by US EPA when preparing the program authorization update. The regulation will become effective upon EPA's delegation to DEP of the corrective action program.

Subchapter W. DRIP PADS

102. Comment: Sections 264a.1(a), 264a.570, and 40 CFR 264.570(a). The Commonwealth has replaced the Federal date of "December 6, 1990" with "January 11, 1997". The wood preserving waste regulations were promulgated pursuant to both HSWA and non-HSWA

authority dependent upon the type of waste generated at the drip pad. The Commonwealth should make a distinction between HSWA and non-HSWA drip pads with regard to the effective/compliance dates. The requirements relative to HSWA drip pads should retain the Federal date, as the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date for HSWA drip pads may generate confusion within the regulated community and has enforcement implications. The Commonwealth may only enforce the requirements after January 11, 1997. Any enforcement for activities that occurred between December 6, 1990 and January 11, 1997 will have to be conducted by the EPA. If the Commonwealth uses the Federal date for HSWA drip pads, then it can enforce back to December 6, 1990. (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific drip pad provisions prior to the date that they were promulgated in the State regulations.

Subchapter DD. CONTAINMENT BUILDINGS

103. Comment: Sections 264a.1(a) and 264a.1100. The Commonwealth has included language at 25 Pa. Code Section 264a.1100 that affects the incorporation by reference of 40 CFR 264.1100 at Section 264a.1(a). This language states that the provisions of Section Chapter 264a, Subchapter DD (related to containment buildings) apply to units designed and operated under the requirements of 40 CFR 264.1101. It is unclear why the Commonwealth included this provision as it is unnecessary and inconsistent with the format used in other subchapters. It also incorrectly states that the incorporation by reference occurs "herein", evidently referring to the subchapter. The incorporation by reference actually occurs in Section Chapter 264a. Subchapter A. (22)

Response: The language in Section 264a.1100 (relating to applicability) was included because certain provisions applicable to containment buildings operating prior to the effective date of Pennsylvania's provisions (January 11, 1997) must continue to be addressed by the State. These provisions are listed in Section 264a.1101 and include requests for delays in the secondary containment requirement and recordkeeping requirements for engineer certifications. Use of the phrase "incorporated by reference" is consistent throughout this regulatory package. The term "herein" has been removed from the regulations.

104. Comment: Sections 264a.1(a) and 264a.1101(1), and 40 CFR 264.1101(b)(4)(i). Pennsylvania has changed the date in this Federal provision from "November 16, 1992" to "July 11, 1997". This regulation was promulgated pursuant to HSWA authority. Therefore, the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date may generate confusion within the regulated community. Non-retention also has enforcement implications as explained in Comment 26 (relating to drip pads). (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific containment building provisions prior to the date that they were promulgated in the State regulations.

105. Comment: Sections 264a.1(a) and 264a.1101(2)&(3). Pennsylvania has changed the dates in this Federal provision from "February 18, 1993" to "January 11, 1997". This regulation was promulgated pursuant to HSWA authority. Therefore, the Federal date overrides whatever date the Commonwealth uses. Not retaining the Federal date may generate confusion within the regulated community. Non-retention also has enforcement implications as explained in Comment 26 (relating to drip pads). (22)

Response: The Department will retain the effective date contained in the proposed rulemaking. Pennsylvania does not have authority to enforce any specific containment building provisions prior to the date that they were promulgated in the State regulations.

CHAPTER 265a. Subchapter A. GENERAL

106. Comment: Sections 265a.1(b)(4), 270a.60 and 40 CFR Part 270. In Section 265a.1(b)(4), Pennsylvania reiterates that the requirements of Chapter 265a do not apply to facilities covered by a permit-by-rule. The provision specifically mentions that variances from permits-by-rule granted under Section 270a.60 do not affect this exemption. It is unclear whether or not Section 265a.1(b)(4) is equivalent to and consistent with the Federal program. Pennsylvania includes various permits-by-rule in 25 Pa. Code Chapter 270a that are not included in the Federal regulations in 40 CFR Part 270. The Federal program also lacks analogs to the variance provisions of Section 270a.60. This provision seems inconsistent with Section 265a.1(b)(3) because it does not include language addressing situations when certain provisions of 25 Pa. Code Chapter 265a may be applicable, as specified by the permit-by-rule. (22)

Response: The final form rule includes clarifying language in Section 265a.1(b)(3) and the variance referenced in 265a.1(b)(4) has been removed.

CHAPTER 266a. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZAROUS WASTE MANAGEMENT FACILITIES

107. Comment: Section 266a. The first paragraph of the Preamble discussion concerning precious metal recovery states that Subpart F has been incorporated by reference. Subpart F provides reduced regulatory requirements for certain handlers of hazardous waste. The second paragraph explains that recycling facilities are still subject to the permitting requirements under the Solid Waste Management Act. Therefore, the language that has been incorporated by reference is not consistent with the fact that handlers who are eligible for the reduced requirements may actually be subject to additional requirements. For clarity, the Commonwealth should include language in its regulations that specifically addresses this issue instead of only explaining this inconsistency in the preamble. (22)

Response: The reduced requirements discussed in the first paragraph of the subject preamble discussion are applicable to generators, transporters or storers, not to the actual precious metal reclamation activity. Provisions have been included in the final form regulations whereby facility owners or operators reclaiming precious metals from hazardous wastes may operate under permit-by-rule. This permit-by-rule will satisfy the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste treatment facilities.

Section 266a.20(b) Waste derived products applied to the land

108. Comment: Prior department written approval for waste-derived products to be beneficially reused on the land should be waived for HTMR slags that have received a coproduct determination. Prior written department approval is unnecessary when the federal rule is self-implementing. Most states do not have this requirement. (2, 14, 27, 31)

One commentator stated that prior written approval should be required before products containing or derived from hazardous waste are applied to the land and that this is a minimal and obvious precaution. (18)

Response: Some HTMR slags that have Department concurrence as coproducts would otherwise be residual waste and not hazardous waste. The provision at Section 266a.20(b) will not affect those coproduct determinations. Coproducts that would otherwise be hazardous wastes and are not excluded by the regulatory definition of solid waste are subject to the provisions of 260a.30, coproduct transition scheme.

The Department believes that requiring written approval prior to applying or placing products produced from hazardous waste on the land would provide an extra level of human health and environmental protection. At the May 14, 1998 Solid Waste Advisory Committee meeting, the Department stated that it would conduct a detailed review to determine how many other States require such prior written approval. In the time available for that research, the Department did not find any other state that requires prior written approval. Similarly, the Department did not identify any specific problems that have resulted from placing products that contain or are produced from hazardous waste on the land. The Department will adopt by reference 40 CFR 266.20 with no additional requirements.

Note: EPA has launched a major effort to assess whether or not contaminants in fertilizers may be causing harmful effects, and whether additional government actions to safeguard public health and the environment may be warranted. Possible actions that could be taken include: (1) issuing guidance or regulations on labeling fertilizer ingredients; (2) further restricting the use of hazardous waste in fertilizers; or (3) issuing comprehensive new regulations for contaminants in all fertilizers and soil conditioners. Any such actions has been incorporated into Pennsylvania's implementation of the hazardous waste program. Additional information can be found on the Internet at http:/www.epa.gov/oswer/hazwaste.

Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY

109. Comment: 40 CFR Part 279, 40 CFR Part 266, Subpart E and 25 Pa. Code Chapter 266a, Subchapter E. The Commonwealth should perform a computer search of the electronic CFR to determine where the references are to provisions within 40 CFR Part 279 and amend these provisions, at each appropriate incorporated by reference of the 40 CFR Part, to appropriately reflect and reference the old authorization checklist 19 requirements adopted at 25 Pa. Code Chapter 266a, Subchapter E. The Commonwealth may need to go back to an older version of the provision containing the 40 CFR Part 279 internal reference to determine if the wording can be

used without jeopardizing authorization for other checklists. It is strongly recommended that the Commonwealth adopt and seek authorization for the 40 CFR Part 279 requirements at the same time it applies for authorization of the rest of its RCRA requirements. (22)

Response: The Department agrees and has made changes to the final form rule to refer to Chapter 266a, Subchapter E in each case that a reference to 40 CFR Part 279 is contained in a Federal regulation adopted by reference (40 CFR Sections 261.5(c)(4), 261.5(j), 261.6(a)(4), 264.1(g)(2), 265.1(c)(6) and 266.100(b)(1)). The Department is developing a draft chapter of waste oil regulations which is scheduled to be presented to the Board as a proposed rulemaking in September, 1998. That rulemaking has been patterned after the Federal used oil provisions at 40 CFR Part 279 and will replace the existing 25 Pa. Code Chapter 266a, Subchapter E.

110. Comment: 25 Pa. Code Chapter 266, Subchapter E. The current Pennsylvania program does not include requirements for generators, transporters, and processor/re-refiners of used oil that are used for other purposes. In addition, there are no requirements for collection centers. (22)

Response: Presently, waste oil generators, transporters, and processor/re-refiners are regulated under Pennsylvania's Residual Waste Management Regulations at 25 Pa. Code Article IX. As stated in the above response, the Department is developing a draft chapter of waste oil regulations which is scheduled to be presented to the Board as a proposed rulemaking by the end of 1998.

111. Comment: 25 Pa. Code, Chapter 266a, Subchapter E. 25 Pa. Code, Chapter 266a, Subchapter E is misnumbered. It should be 25 Pa. Code, Chapter 266a, Subchapter D because the subchapter numbering jumps from "C" to "E". (22)

Response: The existing text of Chapter 266, Subchapter D is being deleted and the existing Subchapter E text is being retained and relocated as Chapter 266a, Subchapter E. To minimize confusion, the Subchapter E title has been retained resulting in the absence of a Subchapter D. As described in the above responses, when Pennsylvania's waste oil regulation is promulgated, Chapter 266a, Subchapter E will be deleted resulting in the absence of both Subchapters D and E as in the federal 40 CFR Part 266.

112. Comment: 25 Pa. Code, Chapter 266a, Subchapter E. There are internal references to regulations which no longer exist in Pennsylvania's regulations because of the switch to incorporation by reference. Thus, the current Pennsylvania regulations are internally inconsistent. The Commonwealth should change these internal references. (22)

Response: The Department agrees and has reprinted the text of Subchapter E in the final form rule with appropriately revised references.

113. Comment: Section 266a.41(a) & 266a.41(a)(1). Because Pennsylvania places the phrase "to burners" in Section 266.41(a) rather than in Section 266.41(a)(1), as it is found in the Federal code, Pennsylvania does not require that burners notify the EPA and have an EPA identification number to be eligible to buy off-specification waste oil. (22)

Response: The Department disagrees. When Section 266a.41(a) is read together with Section 266a.41(a)(1), burners desiring to accept off-specification waste oil must first notify the Department and EPA and have an EPA identification number.

114. Comment: Section 266.41(b)(2)(iii). The numbering for this paragraph is incorrect. It should be "(3)" rather than "(2)(iii)". This numbering makes it appear that space heaters are a type of boiler. (22)

Response: The appropriate change has been made in the final form rule.

115. Comment: Section 266.43(b)(4)(i)(F). Under what circumstances would off-specification waste oil be subject to EPA rather than Pennsylvania regulation? (22)

Response: Until Pennsylvania receives EPA authorization of the boiler and industrial furnace regulations, burning of off-specification waste oil in boilers or industrial furnaces will be subject to both Federal and State regulations. When Pennsylvania's waste oil regulations, which are scheduled to be presented to the Board as a proposed rulemaking by the end of 1998, are promulgated, the existing 25 Pa. Code Chapter 266a., Subchapter E will be deleted.

Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

116. Comment: 40 CFR 266.70. Any permit-by-rule that is placed in the final rule should not require silver recyclers to obtain hazardous waste transporter licenses. Based on all of the above considerations, DEP and EQB should include a permit-by-rule that allows silver recyclers to be regulated consistently with, but no more stringently than the federal rule governing the Management of Recyclable Materials Utilized for Precious Metals Recovery as set forth under Subpart F of 40 CFR Part 266. (21)

Response: The Federal regulations (40 CFR Part 266, Subpart F) adopted by reference at Section 266a.20 only subject transporters of materials utilized for precious metal recovery to manifesting requirements (40 CFR 263.20 and 263.21). The Department will include a provision in the final form rule whereby transporters of such material are deemed to have a license to transport if they comply with the other provisions of 40 CFR Part 266, Subpart F and obtain an EPA identification number. It should be noted that the hazardous waste transportation fees required by the Hazardous Sites Cleanup Act, 35 P.S. § 6020.903 will apply even though a transporter is deemed to have a license under this provision. Also, many precious metal containing materials being reclaimed may not be defined as hazardous waste in accordance with the new definition of hazardous waste contained at 25 Pa. Code Chapter 261a (for example sludges or byproducts exhibiting a characteristic of hazardous waste that are reclaimed).

117. Comment: Sections 266.80(b), 266.70(a)(1), and 270a.60(3). Unless the proposed regulations are modified - either by clarifying that the permit-by-rule provision for "reclaiming" spent lead-acid batteries ("SLABs") includes storage prior to reclamation or by including a separate permit-by-rule provision for the storage of SLABs prior to reclamation - the facility which the commentator is associated with has been required to undergo the substantial burdens and

expense (around $100,000) of obtaining a full Resource Conservation and Recovery Act Part B permit for the storage of SLABs at a battery manufacturing facility. The commentator urges the Environmental Quality Board (EQB) to revise the December 1997 proposed regulations to include, under the permit-by-rule provisions of Chapter 270a, a specific permit-by-rule provision for the storage of SLABs prior to reclamation. This can be simply and easily accomplished by including the language of the present permit-by-rule in Section 266.80(b) as an additional permit-by-rule provision in Chapter 270a of the proposed regulations. Before any final action by the EQB which would delete the PBR provisions of Section 266.80(b), the EQB and the Department should provide an express statement of the rationale behind this deletion. (19)

Response: Federal regulations at 40 CFR Part 266, Subpart G subject to regulation the owners or operators of facilities that store spent lead acid batteries before reclaiming them. Specifically these facilities are subject to the storage permit requirements of 40 CFR Part 270. Pennsylvania is prohibited from maintaining regulations that are less stringent than federal RCRA requirements. During the initial RBI, the existing permit-by-rule for storage of spent lead acid batteries before reclamation (Section 266.80(b)) was identified by the US EPA as less stringent than RCRA requirements and has become an authorization issue, where Pennsylvania regulations are less stringent.

Consistent with other recycling related activities that require a permit, the application fee and permit administration fee for the storage permit for spent lead acid batteries has been eliminated in the final form rule.

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

118. Comment: Section 266a.103. *Interim Status Standards for Burners*. The proposed 8,000 BTU/lb minimum heating value is certainly better than the weak federal standard. The Board is correct in identifying the need for assurance that hazardous wastes are being burned for energy recovery, rather than disposal. (18)

Response: The Department has determined that substituting 8,000 Btu/lb for the Federal 5,000 Btu/lb minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The substitution proposed at Section 266a.103(1) was applicable only to interim status BIFs that have not certified compliance with certain emission standards or received a final permit. All interim status BIF facilities in Pennsylvania have certified compliance with the US EPA. There will not be any additional interim status BIF facilities in Pennsylvania since the owners or operators of facilities wishing to initiate burning or processing of hazardous waste in a BIF unit must first obtain a permit. The 8,000 Btu/lb minimum heating value substitutions proposed in Section 266a.103 will not be included in the final form rule.

119. Comment: Sections 266a.20(a), 266a.103(a) and 40 CFR 266.100(c)(2)(ii). At Section 266a.103(a), the Commonwealth replaces the 5,000 Btu/lb heating value minimum with an 8,000 Btu/lb heating value minimum. It is not clear whether or not Pennsylvania meant for this substitution to apply to 40 CFR 266.100. If it does, the Commonwealth is less stringent because

it would mean that hazardous wastes that have a heating value of 5,000 to 8,000 Btu/lb would now be eligible for the conditional exemption. (22)

Response: The substitution of 8,000 Btu/lb for 5,000 Btu/lb does not apply to 40 CFR 266.100. This is due to the fact that Section 266a.20(a) states that 40 CFR Part 266 is being incorporated by reference except as expressly provided in Chapter 266a. There are no changes shown for 40 CFR 266.100 by virtue of the fact that there is no Section 266a.100 in Chapter 266a. This technique is consistent throughout the regulatory package and is explained in Section E, Summary of Regulatory Requirements, of the preamble to the proposed rulemaking.

As stated in an above response, the Department has determined that substituting 8,000 Btu/lb for the Federal 5,000 Btu/lb minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The 8,000 Btu/lb minimum heating value substitutions proposed in Section 266a.103 will not be included in the final form rule.

120. Comment: Sections 266a.20(a), 266a.103(b) & (c) and 40 CFR 266.103(a)(1)(ii) & (a)(6)(iii). The non-HSWA units—sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators – are all incinerators and are not affected by the 40 CFR 266.103 requirements. Therefore, the Commonwealth would not modify the language of this provision to make a distinction between HSWA and non-HSWA units. The Federal date should be retained because all units affected by the 40 CFR 266.103 requirements are HSWA units. (22)

Response: The Department agrees and has made appropriate changes to the regulatory language. The HSWA vs. non-HSWA distinction was included in the proposed rulemaking based on an outdated copy of US EPA's Guidelines for State Adoption of Federal RCRA Regulations by Reference.

121. Comment: Sections 266.103(a), 266a.20(a), 40 CFR 266.103(a)(5)(ii)(B), and 266.103(a)(6). The change that Pennsylvania makes in 25 Pa. Code § 266a.103(a), replacing the 5,000 Btu/lb heating value minimum with an 8,000 Btu/lb minimum, would make Pennsylvania less stringent because hazardous wastes that have a heating value of 5,000 to 8,000 Btu/lb that are not burned for destruction would not be subject to the special requirements listed in 40 CFR 266.103(a)(5). Yet, the change would also make Pennsylvania more stringent because hazardous wastes that have a heating value of 5,000 to 8,000 Btu/lb would now be subject to the restrictions on burning in 40 CFR 266.103(a)(6). (22)

Response: The Department agrees that the 5,000 Btu/lb heating value contained in 40 CFR 266.103(a)(5)(ii)(B) should not be raised to 8,000 Btu/lb since the value establishes a minimum heating value which triggers additional controls applicable to interim status facilities that burn hazardous waste for destruction purposes (as opposed to feeding hazardous waste solely as an ingredient).

As described above, the Department has determined that substituting 8,000 Btu/lb for the Federal 5,000 Btu/lb minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in Pennsylvania. The 8,000 Btu/lb minimum heating value substitutions proposed in 25 Pa. Code 266a.103 will not be included in the final form rule.

122. Comment: Sections 266a.20(a), 266a.103(c)(1) & (2) and 40 CFR 266.103(a)(6)(iii)(A) & (B). Because the Commonwealth incorporates by reference, it should retain Federal internal references and refer to the appropriate Commonwealth incorporation reference. (22)

Response: The Department agrees, however, as described above, the final-form rule adopts 40 CFR 266.103 by reference.

CHAPTER 266b. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Section 266b. Universal waste.

123. Comment: Other materials such as mercury switches or light bulbs should be added to the universal waste program. (14)

Response: The Department agrees that other materials could be added to the Universal Waste program. The regulations contain a petition process for adding additional wastes to the list of wastes managed as universal wastes in Pennsylvania. The Department presently has two such petitions under consideration – one for mercury-containing lighting devices, and the other for other mercury-containing devices.

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

124. Comment: In 25 Pa. Code Chapter 270a., Pennsylvania has included regulations which are analogous to the 40 CFR Part 124 requirements. However, the Commonwealth has incorporated by reference 40 CFR Part 270, which contains internal references to 40 CFR Part 124. The Commonwealth has not established in its regulations how the internal references relate to the numbering and placement of the 40 CFR Part 124 requirements in 25 Pa. Code Chapter 270a. In addition, the structure of Pennsylvania's analog to 40 CFR Part 124 does not resemble the organization of these provisions in the Federal Code. (22)

Response: Pennsylvania is not incorporating Part 124 by reference, but instead has included regulations which are analogous to the Part 124 requirements. Therefore, the internal references to Part 124 in 40 CFR Part 270 are not applicable in the Pennsylvania RCRA Program.

125. Comment: 25 Pa. Code Chapter 270a. Pennsylvania has substituted "termination" with "revocation" in its analog to 40 CFR Part 124. This is inconsistent with the provisions of 40 CFR Part 270, which the Commonwealth adopts by reference. The Federal Code made a distinction between "termination" and "revocation and reissuance". (22)

Response: The Department agrees. The Department has added the term "termination" to Chapter 270a. of the final regulations to maintain the distinction contained in the federal regulations.

126. Comment: 25 Pa. Code Chapter 270a, Subchapter D contains analogs to 40 CFR 124.3, 124.5, 124.6, 124.7, 124.8, and 124.17. The title of that subchapter is "Changes to Permits", and the

only section in the subchapter is titled "Modification or Revocation and Reissuance of Permits". These titles are inconsistent with the substance of the requirements contained in that subchapter. Only 40 CFR 124.5 exclusively addresses changes to permits. Pennsylvania should place the analogs to the other Federal sections under headings which reflect the substance of the provisions contained within them. Also, note that in the listing of the subchapters at the beginning of 25 Pa. Code Chapter 270a, the title of 25 Pa. Code Chapter 270a, Subchapter D is "Transfer of Permits". (22)

Response: The listing of Subchapters at the beginning of Chapter 270a has been corrected from "Transfer of Permits" to "Changes to Permits".

127. Comment: Pennsylvania's code does not contain definitions for "disposal", "hazardous waste", "person", "storage", and "treatment", applicable to the 25 Pa. Code Chapter 270a requirements. The Commonwealth specifically excluded the Federal definitions from its incorporation by reference of 40 CFR Part 270, but did not include its own definitions in 25 Pa. Code Chapter 270a. It is unclear why these definitions were excluded. For clarity and the convenience of the regulated community, the Commonwealth should either include the terms in its incorporation by reference or add it's own equivalent definitions into its code. (22)

Response: Pennsylvania definitions are found in the Solid Waste Management Act. The governor's executive order 1996—1 directs the Department not to repeat statutory definitions in the regulations.

128. Comment: The provisions at 25 Pa. Code Chapter 270a.3 address the fee schedule for TSD facility permit applications. The Federal code does not contain analogous provisions; therefore, Pennsylvania is broader in scope. (22)

Response: Application fees are mandated by the Solid Waste Management Act.

129. Comment: Pennsylvania has excluded 40 CFR 270.4 from its incorporation by reference of 40 CFR Part 270. This provision addresses the effect of a permit. The Federal section is required for authorization; therefore, the Commonwealth is less stringent. (22)

Response: Including this provision in Pennsylvania's regulations would violate the SWMA and, without this provision, the Department has more enforcement power than EPA, because it is not limited to enforcing the requirements of the permit. Specifically, section 602 of the SWMA, 35 P.S. § 6018.602 authorizes the Department to issue orders to require compliance with any provision of the act, without limiting the violations to noncompliance with the terms of a permit.

130. Comment: Pennsylvania has excluded 40 CFR 270.5 from its incorporation by reference of 40 CFR Part 270. 40 CFR 270.5 addresses reporting by the State Director. (22)

Response: All necessary reporting is done through the RCRA Grant procedures and does not need to be duplicated.

131. Comment: 40 CFR 270.5 should be excluded from the blanket substitutions of terms at 25 Pa. Code Chapter 260a. 3. (22)

Response: The Department agrees and has made this change.

132. Comment: Section 270a.10(a)(2). The Commonwealth is correct in indicating that these terms should not be replaced. However, "Department" and a State analog to RCRA 3008 need to be inserted into this paragraph. (22)

Response: In the final form rule "Department" has been substituted for "Administrator" and "Sections 602 and 610" of the SWMA have been substituted for "Section 3008 of RCRA".

133. Comment: The provision at Section 270a.10(a)(3) could be misinterpreted as implying that the only applications required are those under 40 CFR 270.10(f)(2) and (g)(1)(i). A clearer approach would be to exclude 40 CFR 270.10(f)(2) and (g)(1)(i) from the IBR and replace them with paragraphs in which the Federal phrasing regarding the optional submittal is removed, which appears to be the Commonwealth's intent. (22)

Response: The Department drafted new language that it believes will not be misinterpreted.

134. Comment: The Commonwealth should remove the phrase "if the facility is located in a State which has obtained interim authorization or final authorization" from its incorporation by reference of CFR 270.10(g)(1)(i). (22)

Response: The Department has added language to Section 270a.10 of the regulations which clarifies that permit applications are submitted to the Department rather than to the EPA.

135. Comment: The Commonwealth incorporates by reference 40 CFR 270.12 (relating to confidentiality of information). In section 270a.12, Pennsylvania has modified the incorporation by reference; however, due to the general text of the modification, it is unclear how the modification impacts the regulations incorporated by reference. It appears that the text at 25 Pa. Code 270a.12 does not directly change the requirements of 40 CFR 270.12, but merely clarifies the requirements. Also, Pennsylvania has added informational requirements to the submission of a confidentiality claim at 25 Pa. Code 270a.12(2)(iii)-(vi) which the Federal code does not contain in 40 CFR Part 2. (22)

Response: The Department clarified this section by deleting the incorporation by reference and listing its requirements.

136. Comment: Section 270a.3. Since the Commonwealth has not incorporated by reference 40 CFR 270.3, it should exclude the provision at 40 CFR 270.14(b)(20) from its incorporation by reference as well. (22)

Response: The Department agrees and has made the necessary change.

137. Comment: Section 270a.29. Pennsylvania has substituted the phrase "25 Pa. Code Chapter 270a, Subchapter H" for "Part 124". However, this replacement does not take into account that several of the Commonwealth's analogs to the 40 CFR Part 124 procedures are located in 25 Pa. Code Chapter 270a, Subchapter D. In addition, this type of substitution must be corrected for other references to 40 CFR Part 124 provisions in 40 CFR Part 270 and in all of the Federal provisions incorporated by reference. (22)

Response: Section 260a.3 of the final form rule contains language which clarifies the replacement of Part 124 procedures.

138. Comment: The Commonwealth should exclude 40 CFR 270.32(a)&(c) from the blanket substitution of "EPA" or modify these provisions to remove non-applicable wording. (22)

Response: The Department agrees and has made the necessary changes.

139. Comment: The Commonwealth should exclude 40 CFR 270.32(b)(2) from the blanket substitution of "Administrator". An alternative would be to modify this paragraph to replace RCRA §3005 with the appropriate Commonwealth analog and remove "Administrator". (22)

Response: The appropriate analog to RCRA §3005 is sections 501, 502 and 503 of the SWMA. The correct language has been inserted. The blanket substitution of terms with respect to "Administrator" and "Department" now correctly applies.

140. Comment: Section 270a.61. This provision clarifies that the Department has other authorities under which the permit requirements can be waived. However, it is unknown if these conditions are consistent with those addressed by 40 CFR 270.61. If they are not consistent, then the Commonwealth is potentially less stringent than the Federal requirements. (22)

Response: Section 270a.61 has been removed from the final form regulation.

141. Comment: Section 270a.64. Pennsylvania excludes 40 CFR 270.64 from its incorporation by reference. (22)

Response: There are no class 1 UIC wells in Pennsylvania and Pennsylvania does not have an approved UIC program.

142. Comment: Section 270a.41(1). Pennsylvania does not specify that a permit application must be submitted for each required permit. (22)

Response: The requirement has been added at 270a.10(c) in the final form rule.

143. Comment: Section 270a.41(3). The Commonwealth's regulations do not set time limits for the Department's review for completeness. Under the Federal program, an application submitted by an existing facility must be reviewed for completeness within 60 days, and an application submitted by a new facility must be reviewed for completeness within 30 days. (22)

Response: While the time limits are not set in the regulations, they are in Pennsylvania's "Money Back Program". The Department has 20 days to do a completeness review under that program. 40 CFR 124.3(c) is not required for authorized programs in 40 CFR 271.14.

144. Comment: Pennsylvania does not reference 40 CFR 270.43 which deals with reasons for termination of a permit. For clarity, the Commonwealth should include this internal reference. (22)

Response: The internal reference has been added to the final form rule in Section 270a.41.

145. Comment: Section 270a.80(1)(iv). The Commonwealth requires the Department to give public notice whenever a closure/postclosure plan has been received in accordance with 40 CFR 264.112(d) and 264.118(a). (Note that it appears that the reference to 40 CFR 264.112(d) should be to 264.112(a).) Pursuant to those 40 CFR Part 264 requirements, a facility must include a closure/postclosure plan within its permit application. Therefore, by the requirements at 25 Pa. Code 270a.80(1)(iv), the Department must give public notice whenever a permit application is received. This is more stringent than Federal Code. (22)

Response: The reference to 40 CFR 264.112(d) has been changed to 40 CFR 264.112(a). Pennsylvania regulations at 264a.112 also require the closure plan / postclosure plan to be included in the permit application. Public notification of the receipt of a permit application has been included in Pennsylvania's regulations for many years. The Department feels that the public should be kept informed as to the receipt of all permit applications which could affect the surrounding area. Public input could be invaluable in supplying information necessary to make an informed decision concerning a permit.

146. Comment: Commonwealth regulations do not contain analogous language to the Federal notification provision regarding sludge management permits and ocean dumping permits. This modification has the potential to make Pennsylvania less stringent; however, the Commonwealth is only less stringent if these types of activities are allowed in Pennsylvania. (22)

Response: The notice provision has been added in the final form rule at 270a.80(d)(1)(ii).

147. Comment: The Commonwealth has replaced "any unit of government" with "A unit of local government". Under the Commonwealth's requirements, only one unit of government needs to be notified. Under the Federal requirements, all units of government in the affected areas must be notified. Thus, Pennsylvania is less stringent. (22)

Response: The Department agrees and has made the change in the final form rule.

148. Comment: The Commonwealth has replaced "each state agency" with "A State Agency". Under the Commonwealth's requirements, only one State agency needs to be notified. Under the Federal requirements, each State agency having any jurisdiction must be notified. Thus, Pennsylvania is less stringent. (22)

Response: The Department agrees and has made the change in the final form rule.

149. Comment: The Commonwealth has added the language "before, during or after the public hearing" to clarify when oral and written statements and data may be submitted. The Federal analog does not specifically indicate that comments may be submitted before, during or after the hearing. It appears to be inconsistent with the structure of the public hearing provision to allow comments to be submitted outside of the comment period, which normally ends at the close of the public hearing unless extended by the Department. Pennsylvania should address this inconsistency. If comments are allowed after the close of the public hearing without an extension of the comment period, then the Commonwealth may be more stringent. (22)

Response: The Department allows for a 45 day comment period, but the Department can schedule a public hearing 30 days after public notice which leaves 15 days after the close of the public hearing. The Department has clarified this in the regulations.

150. Comment: Pennsylvania's code does not include any of the requirements of Revision Checklist 148, which provide for extended public participation. Thus, the Commonwealth is less stringent. The extended public participation language can now be found at 270a.83. (22)

Response: The Department has included equivalent language in Chapter 270a, Subchapter H, Section 270a.83 (Public Notice and Hearings) in the final form rule.

Appendix I for 40 CFR 270.42. Classification of Permit Modification.

151. Comment: This provision of the preamble (obtained through the DEP web site) refers to "an appendix that classifies permit modifications as Class 1, Class 2, or Class 3 modifications." That appendix could not be found in the accompanying document containing the actual language of the proposed regulations (obtained through the DEP web site). The appendix was also missing from the corresponding issue of the Pennsylvania Bulletin (12/6/97-Vol.27,No. 49, Part II). (18)

Response: This appendix was proposed to be adopted by reference and can be found at 40 CFR 270.42. This regulation adopts Appendix I and will expand our conformance with the federal program by adopting the classifications for permit modifications.

152. Comment: Appendix I would increase the scope of permit changes that could be instituted by Department and the permittee, with no effective public participation. Based on the general trend of Department's conduct in recent years, there is ample reason for concern that this provision would be abused. (18)

Response: All three classes of permit modifications require the permittee to notify everyone on the facility mailing list (including local and county government) of the proposal. In the minor modification (Class1), anyone can request the Secretary of the Department to review and deny the modification request. Class 2 and 3 modifications procedures call for full public participation, including publishing the notice in a major local newspaper, announcement of at least a 45-day comment period, and announcement of a public meeting and a public hearing, if

requested. The Department believes that adopting this appendix by reference will increase public participation. The current regulations do not require the Department or the permittee to notify the public of a minor permit modification.

Subchapter F. SPECIAL FORMS OF PERMITS

Section 270a.60. Permits-by-rule.

153. Comment: Section 270a.60. Permits-by-Rule. In practice, permit-by-rule serves the permitted industries by providing the illusion of regulation, instead of serving the public by providing effective regulation. It might be better to abolish permit-by-rule. (18)

Response: In general, permit-by-rule is available, under Pennsylvania's regulations, to the owners or operators of certain hazardous waste management facilities that are exempt from permit and other requirements under federal hazardous waste regulations. Permit-by-rule satisfies the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste storage, treatment or disposal facilities and provides a reasonable level of regulatory oversight. The owners or operators of permit-by-rule facilities must notify the Department of their activity and meet some basic facility standards. The notification requirement alone is important to the Department in order that inspectors may schedule and prioritize periodic visits to a permit-by-rule facility. In situations where a facility is not in compliance with the applicable permit-by-rule requirements, particularly to the extent that harm or threat of harm to people or the environment is present, the Department may require the owners or operators of such facilities to obtain an individual permit.

154. Comment: Section 270a.60(b)(1) and 40 CFR 270.1(c)(2)(v). Pennsylvania should adopt the Federal regulation at 40 CFR 270.1(c)(2)(v) which specifically excludes wastewater treatment units that treat hazardous waste, from RCRA permitting and RCRA permit-by-rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. A commentator stated that the federal exclusion from permitting and permit-by-rule requirements for units regulated under the Clean Water Act eliminates duplication of effort by different departments of the federal agency and allows the regulated community to focus its compliance efforts on the regulations that are most appropriate to the operating unit. Concern was also expressed over the additional recordkeeping requirements for operators as well as additional inspection requirement for state hazardous waste inspectors. A commentator stated that if Pennsylvania statute requires permit-by-rule for units such as elementary neutralization and wastewater treatment units, the regulations should clarify that wastes to such units do not count in determining if site is large quantity generator. (14, 16, 17)

Response: Permit-by-rule is available to wastewater treatment units, and certain other hazardous waste management facilities, in order to satisfy the Pennsylvania Solid Waste Management Act requirement for permitting hazardous waste storage, treatment, or disposal facilities. Pennsylvania's Regulatory Basics Initiative provided for retention of regulations that are more stringent than federal regulations if such requirements are the result of a state statute. The Department has examined the permit-by-rule provisions of proposed 25 Pa. Code § 270a.60 and will reduce or streamline many of the specific requirements in the final form regulation.

Existing regulations at 25 Pa. Code § 261.5(c)(2) and federal regulations at 40 CFR 261.5(c)(2), which has been incorporated by reference with this rulemaking, clearly state that generator quantity determinations do not need to include hazardous wastes that are managed in onsite elementary neutralization or wastewater treatment units.

155. Comment: Section 270a.60(b)(1)(i). This section retains Pennsylvania's prohibition against intracompany shipments of hazardous wastes to an elementary neutralization or wastewater treatment permit-by-rule facility. This limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. The prohibition does not exist in neighboring states; for instance, member companies can send hazardous wastes from their Pennsylvania plants to Ohio plants for treatment, but cannot receive intracompany shipments from either Ohio or Pennsylvania. This type of exception to the Federal rules is typical of the discrepancies between Pennsylvania's rules and the federal rules that were intended to be eliminated by the regulatory basics effort. This section should be consistent with Federal regulations and allow intracompany shipments of wastes for treatment. Conforming to the Federal elementary neutralization/wastewater treatment unit provisions will afford Pennsylvania business the opportunity to use existing investment to reduce operating costs, and reduce risks associated with transporting such wastes to neighboring states. It should be noted that the rules do permit intracompany transfers for reclamation. (15, 17, 23, 31)

Response: Changes have been made to the elementary neutralization and wastewater treatment unit permit-by-rule provisions to allow receipt of off-site hazardous waste shipments for treatment at such facilities, provided the conditions of the permit-by-rule are not violated (e.g. compliance with an NPDES permit or pretreatment requirements is maintained). To prevent classification as a commercial hazardous waste treatment facility and consequential application of the siting, fee assessment, and other requirements of the Hazardous Sites Cleanup Act, such permit-by-rule facilities must be limited to receipt of wastes from other facilities operated or owned by the same generator. Limiting off-site wastes in this manner will also provide additional assurance that the owner or operator of the permit-by-rule facility has a better knowledge of the physical and chemical character and composition of the wastes being treated at the facility.

156. Comment: Section 270a.60. The commentator questions whether they would continue to be allowed to recycle oily wastewaters from other facilities they own and operate as the proposed regulations do not define on-site as including materials generated at facilities owned and operated by the same generator. If this is the case, the commentator requests that a provision allowing recycling of materials generated at facilities owned and operated by the same generator be included in the new regulations. (20)

Response: As proposed, section § 270a.60(b)(5)(iii) provided for the reclamation of materials generated at other facilities operated or owned by the same generator at an onsite reclamation permit-by-rule facility. This is included in the final-form regulation as well.

157. Comment: Sections §§ 260a.3(b) and 270a.60(b)(3), and 40 CFR 266.80. Despite the provisions at section § 260a.3(b), it is confusing to have provisions in one part of the Commonwealth regulations stating that a facility is exempt from the regulations while provisions

in another part of the code state that the facility is subject to certain requirements under those regulations. The Commonwealth should modify its incorporation by reference of 40 CFR 266.80 to take into account the permit-by-rule requirements at 25 Pa. Code § 270a.60(b)(3). (22)

Response: The permit-by-rule available to battery manufacturing facilities that reclaim spent lead-acid batteries is for those activities associated with the reclamation activity that will satisfy the State specific requirement for permitting non-storage hazardous waste recycling activities. To clarify this issue further, the Department has made changes to the incorporation by reference of 40 CFR 266.80 which will refer to the permit-by-rule provision of 25 Pa. Code §270a.60(b)(3).

158. Comment: Sections §§ 270a.60(b)(4), 260a.3(b), 261a.6, and 40 CFR 261.6(a)(3)(iii). This provision is inconsistent with the incorporation by reference of 40 CFR 261.6. At 40 CFR 261.6(a)(3)(iii), these types of facilities are excluded from the permit requirements. Therefore, it is unclear why such a unit would need a permit-by-rule. If these facilities are subject to a permit-by-rule, then Pennsylvania should modify its incorporation by reference of 40 CFR 261.6(a)(3)(iii) to take into account this requirement. Relying on 25 Pa. Code § 260a.3(b) to handle this situation may be confusing to the regulated community. If Pennsylvania intended to require compliance with the permitting requirements, then the Commonwealth's requirements are more stringent than the Federal requirements. It may be that Pennsylvania intended for the modifying text at 25 Pa. Code § 261a.6 to exclude these facilities from the exemption of 40 CFR 261.6(a)(3); however, it is unclear. Additionally, the text of 40 CFR 261.6(a)(3)(iii) requires the waste to result from "normal petroleum refining, production, and transportation practices" in order to qualify for exclusion. If these conditions are not met, this practice is not exempt from the permitting requirements. Because the Commonwealth makes no such qualification, it is less stringent for these wastes which do not meet the qualification, since by the operation of 25 Pa. Code § 260a.3(b), these wastes would be subject only to a permit-by-rule. (22)

Response: The method of incorporating 40 CFR Part 261 by reference has been revised in the final form regulation. 25 Pa. Code 261a.6 now specifically states that 40 CFR 261.6(c) is not being incorporated by reference. The Department interprets the exemption in 40 CFR 261.6(a)(3)(iii) as applicable only to fuels produced from refining oil-bearing hazardous wastes (and then only if the hazardous wastes resulted from normal petroleum refining, production and transportation practices). The permit-by-rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed 25 Pa. Code § 270a.60(b)(4)) has been deleted in the final-form rule. Since the refinery is the actual reclamation unit, there is no need for a permit or permit-by-rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit-by-rule for treatment prior to onsite reclamation.

159. Comment: Section § 270a.60(a) and 40 CFR 270.60. Pennsylvania has added language which gives the Department the authority to require a facility which qualifies for a permit-by-rule to obtain an individual permit under certain circumstances. This is implied in the Federal regulations. (22)

Response: This language was not included to provide the Department with authority to require an individual permit; such authority is provided under the Pennsylvania Solid Waste Management Act. Rather, the language has been included to provide general notice to the owners or operators of permit-by-rule facilities that an individual permit could be required under certain circumstances of non-compliance or endangerment to human health or the environment.

160. Comment: Section § 270a.60(b)(1) and 40 CFR 270.1(c)(2)(v). This provision is inconsistent with the incorporation by reference of 40 CFR 270.1(c)(2)(v) without modification. At 40 CFR 270.1(c)(2)(v), these types of facilities are excluded from the permit requirements. Therefore, it is unclear why such a unit would need a permit-by-rule. If Pennsylvania intended to require compliance with the permitting requirements, then the Commonwealth is broader in scope, but it should exclude 40 CFR 270.1(c)(2)(v) from the incorporation by reference. (22)

Response: The Department has revised the incorporation by reference language of proposed 25 Pa. Code § 270a.1 to reflect that the owners or operators of facilities excluded from permit requirements under 40 CFR 270.1(c)(2) may be subject to the permit-by-rule provisions of 25 Pa. Code § 270a.60. The need for these facilities to operate under a permit-by-rule is based on the Pennsylvania Solid Waste Management Act requirement for all hazardous waste treatment, storage or disposal facilities to operate under a permit issued by the Department.

161. Comment: Section § 270.60(b)(3) and 40 CFR 266.80(b)(4), and Parts 270 and 124. Under the requirements at 40 CFR 266.80(b)(4), the Federal code subjects facilities which store batteries prior to reclaiming them to the full permit requirements of 40 CFR Parts 270 and 124. Therefore, the Commonwealth is less stringent. However, the Federal requirements exclude facilities which reclaim batteries without storing them from the RCRA requirements. Because these facilities must meet permit-by-rule requirements for the Commonwealth, Pennsylvania is more stringent. (22)

Response: The permit-by-rule available to battery manufacturing facilities that reclaim spent lead-acid batteries is for treatment conducted prior to the actual reclamation of the batteries and will satisfy the State specific requirement for permitting hazardous waste treatment activities that occur prior to recycling processes (25 Pa. Code § 261a.6). Federal regulations at 40 CFR 261.6(c)(1) exempt recycling processes from regulation (permitting). Since Pennsylvania is incorporating 40 CFR Part 266, Subpart G by reference, battery manufacturing facilities that store spent lead-acid batteries before reclaiming them has been subject to full permit requirements for the storage. To clarify this issue further, the Department has made changes to the incorporation by reference of 40 CFR 266.80 which will refer to the permit-by-rule provision of 25 Pa. Code § 270a.60(b)(3). Battery manufacturing facilities that reclaim batteries without storing them will only be subject to the permit-by-rule provision of 25 Pa. Code § 270a.60(b)(3).

162. Comment: Sections §§ 270a.60(b)(5), 261a.6 and 40 CFR 261.6(c). The Commonwealth has included a permit-by-rule for facilities that reclaim hazardous waste onsite, at the site where it is generated. According to 40 CFR 261.6(c)(2), the recycling process is exempt from the permitting requirements in the situation where there is no storage prior to recycling or reclamation; however, the Commonwealth requires permits for reclamation pursuant to 25 Pa. Code § 261a.6. Therefore, Pennsylvania is more stringent because these facilities would not

normally require a permit for recycling. Under 25 Pa. Code § 270a.60(5), onsite reclamation can obtain a permit-by-rule if certain conditions are met. The Commonwealth remains more stringent for those facilities which do not store prior to reclamation. (22)

Response: The onsite reclamation permit-by-rule provision of 25 Pa. Code § 270a.60(b)(5), as well as most of the other permit-by-rule provisions of 25 Pa. Code § 270a.60, are designed to satisfy the permitting requirements of Pennsylvania's Solid Waste Management Act. With respect to facilities that treat hazardous waste before it is recycled, this statutory permit requirement is reflected in 25 Pa. Code § 261a.6.

163. Comment: Section § 270a.60(b)(6), 40 CFR 261.6(c)(1), 261.6(a)(3), and 262.34. The Commonwealth has a permit-by-rule for facilities storing hazardous waste onsite in tanks, containers or containment buildings and reclaiming hazardous waste onsite, at the site where it is generated. According to 40 CFR 261.6(c)(1), such facilities are subject to the permitting requirements unless specifically exempted pursuant to 40 CFR 261.6(a)(3). Therefore, the availability of the permit-by-rule makes Pennsylvania less stringent, unless the recyclable material is one listed in 40 CFR 261.6(a)(3). In that situation, Pennsylvania is more stringent. (22)

Response: The Department agrees that the permit-by-rule at 25 Pa. Code § 270a.60(b)(6) for storage of hazardous waste onsite prior to reclamation under the onsite reclamation permit-by-rule provisions of 25 Pa. Code § 270a.60(b)(5) could be less stringent than Federal storage permit requirements. The storage permit-by-rule provision has been dropped from the final form rule.

164. Comment: Sections §§ 270a.60(c) and 270a.60(b)(3)-(6). The variance from any permits-by rule described in 25 Pa. Code § 270 a.60(b)(3)-(6) has made the Commonwealth less stringent if it applies to requirements which are equivalent to or less stringent than the Federal code. Pennsylvania may only grant a variance from more stringent requirements. Because the provision gives the Commonwealth the discretion to issue a variance from requirements which may be equivalent to the Federal code, it is recommended that Pennsylvania remove this provision or reword it so as to guarantee that the result of its applications is no less stringent than the Federal code. (22)

Response: The permit-by-rule provisions of proposed 25 Pa. Code § 270a.60 has been revised as described in above responses to insure that they only apply to hazardous waste activities that are exempt from Federal permit requirements. Therefore, the variance provisions of proposed 25 Pa. Code § 270a.60(c), which are only applicable to certain recycling facilities operating under permit-by-rule, should not result in requirements that are less stringent than Federal requirements.

Miscellaneous.

165. Comment: The hazardous waste amendments will relax our environmental laws. (30)

Response: The Department has extensively reviewed existing regulations and where appropriate has modified the regulation to reflect the federal counterpart. In doing so the Department has determined where the federal counterpart to be protective of human health and the environment.

In those instances where the Department felt the federal regulatory counterpart did not address Pennsylvania's needs, the Department retained its current requirements or modified the federal requirements to address these needs.

166. Comment: Commentator expressed concern about the reclassification of Coal Combustion By-Products from a hazardous waste to a residual waste. (30)

Response: Coal Refuse as defined in the Act of September 24, 1968 (P.L. 1040, No. 318), (The "Coal Refuse Disposal Act.") is specifically excluded from being a hazardous waste by state law (the Solid Waste Management Act of July 7, 1980).

167. Comment: We have reviewed the proposed amendments and concur with the Department's proposal to include the federal regulations by reference. (5)

Response: No response necessary.

168. Comment: We believe none of the proposed regulation changes would weaken the Commonwealth's ability to protect aquatic resources and therefore PFBC supports the amendments as submitted.

Response: No response necessary.