

**CHAPTER 264a. OWNERS AND OPERATORS OF HAZARDOUS  
WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

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**Authority**

The provisions of this Chapter 264a issued under sections 105, 401—403 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

**Source**

The provisions of this Chapter 264a adopted April 30, 1999, effective May 1, 1999, 29 Pa.B. 2367, unless otherwise noted.

**Cross References**

This chapter cited in 25 Pa. Code § 252.3 (relating to scope); 25 Pa. Code § 261a.7 (relating to residues of hazardous waste in empty containers); 25 Pa. Code § 270a.10 (relating to general application requirements and permit issuance procedures); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.12 (relating to prohibitions); 25 Pa. Code § 298.22 (relating to waste oil storage); 25 Pa. Code § 298.45 (relating to waste oil storage at transfer facility); 25 Pa. Code § 298.54 (relating to waste oil management); and 25 Pa. Code § 298.64 (relating to waste oil storage).

**Subchapter A. GENERAL**

Sec.

264a.1. Incorporation by reference, purpose, scope and reference.

**Cross References**

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

**§ 264a.1. Incorporation by reference, purpose, scope and reference.**

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 and its appendices (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference:

(1) 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs) and Appendix VI

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to Part 264—(relating to political jurisdictions in which compliance with 40 CFR 264.18(a) must be demonstrated) are not incorporated by reference.

(2) Instead of 40 CFR 264.1(b), this chapter applies to an owner or operator of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapters 261a and 266a and § 270a.60 (relating to identification and listing of hazardous waste; standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits-by-rule).

(3) Instead of 40 CFR 264.1(g)(2), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent the requirements are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) 40 CFR 264.1(g)(6) (relating to elementary neutralization unit and wastewater treatment unit) is not incorporated by reference. The owner or operator of an elementary neutralization unit or wastewater treatment unit may satisfy permitting requirements by complying with § 270a.60(b)(1).

(5) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal wastes).

#### Authority

The provisions of this § 264a.1 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

#### Source

The provisions of this § 264a.1 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (317323) to (317324).

#### Cross References

This section cited in 25 Pa. Code § 298.12 (relating to prohibitions); 25 Pa. Code § 298.20 (relating to applicability); 25 Pa. Code § 298.52 (relating to general facility standards); 25 Pa. Code § 298.54 (relating to waste oil management); 25 Pa. Code § 298.61 (relating to restrictions on burning); and 25 Pa. Code § 298.62 (relating to notation).

### Subchapter B. GENERAL FACILITY STANDARDS

Sec.

- 264a.11. Identification number and transporter license.
- 264a.12. Required notices.
- 264a.13. General and generic waste analysis.
- 264a.15. General inspection and construction inspection requirements.
- 264a.18. Location standards.

#### Cross References

This section cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

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**§ 264a.11. Identification number and transporter license.**

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste provided that the conditionally exempt small quantity generator is in compliance with § 261.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements) or universal waste transporters in compliance with § 266b.50 (relating to applicability).

**Cross References**

This section cited in 25 Pa. Code § 270a.60 (relating to permits-by-rule); and 25 Pa. Code § 298.51 (relating to notification).

**§ 264a.12. Required notices.**

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.12 (relating to required notices).

**§ 264a.13. General and generic waste analysis.**

(a) In addition to the requirements incorporated by reference, before an owner or operator of a facility that treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department a notification that the facility intends to accept an additional waste stream generated by the specified generator. This notification shall include information that is specified in the facility's permit.

(b) If the notification information required in subsection (a) is not required by the facility's permit, the owner or operator shall submit the information required by § 265a.13 (relating to general and generic waste analysis) until the permit is amended to require the notification information.

**§ 264a.15. General inspection and construction inspection requirements.**

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

**§ 264a.18. Location standards.**

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

**Cross References**

This section cited in 25 Pa. Code § 270a.60 (relating to permits-by-rule).

**Subchapter D. CONTINGENCY PLAN AND  
EMERGENCY PROCEDURES**

Sec.  
264a.56. Emergency procedures.

**Cross References**

This subchapter cited in 25 Pa. Code § 269a.47 (relating to safety services); and 25 Pa. Code § 270a.60 (relating to permits by rule).

**§ 264a.56. Emergency procedures.**

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department or the Department's Central Office by telephone at (717) 787-4343.

**Cross References**

This section cited in 25 Pa. Code § 298.52 (relating to general facility standards); and 25 Pa. Code § 298.54 (relating to waste oil management).

**Subchapter E. MANIFEST SYSTEM,  
RECORDKEEPING AND REPORTING**

Sec.  
264a.71. Use of the manifest system.  
264a.75. Biennial report.  
264a.78. Hazardous waste management fee.  
264a.79. Documentation of hazardous waste management fee submission.  
264a.80. [Reserved].  
264a.81. [Reserved].  
264a.82. Administration fees.  
264a.83. Administration fees during closure.

**Cross References**

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

**§ 264a.71. Use of the manifest system.**

Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 264.71 (relating to use of manifest system).

**Authority**

The provisions of this § 264a.71 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.71 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102; amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (294510).

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**§ 264a.75. Biennial report.**

Relative to the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

**§ 264a.78. Hazardous waste management fee.**

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazardous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

(b) A hazardous waste management fee will not be assessed for:

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 264a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

(d) Payment shall be by check or money order, payable to “The Hazardous Sites Cleanup Fund,” and shall be forwarded along with the required forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(e) For purposes of assessing fees incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons shall be converted to tons using a factor of 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds per liter.

- (3) Cubic yards and cubic meters shall be converted to standard tons using a factor of 1 ton per each of these units, or part thereof.
- (g) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.
- (h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.
- (i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator will be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

#### Cross References

This section cited in 25 Pa. Code § 264a.79 (relating to documentation of hazardous waste management fee submission).

### § 264a.79. Documentation of hazardous waste management fee submission.

- (a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.
- (1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit Forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55D.
- (2) The owner or operator of an offsite captive disposal facility shall submit Forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.
- (3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit Forms ER-WM-55I, ER-WM-

55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

#### Cross References

This section cited in 25 Pa. Code § 264a.78 (relating to hazardous waste management fee).

### § 264a.80. [Reserved].

#### Source

The provisions of this § 264a.80 reserved January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (294513).

### § 264a.81. [Reserved].

#### Source

The provisions of this § 264a.81 reserved January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (294513) to (294514).

### § 264a.82. Administration fees.

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the “Commonwealth of Pennsylvania” and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

#### Cross References

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); 25 Pa. Code § 266a.80 (relating to applicability and requirements); and 25 Pa. Code § 270a.201 (relating to incorporation by reference, scope and applicability).

**§ 264a.83. Administration fees during closure.**

A nonrefundable administration fee in the form of a check payable to the “Commonwealth of Pennsylvania” shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

- (1) Land disposal facilities—\$100.
- (2) Impoundments—\$100.
- (3) All other facilities—\$50.

**Authority**

The provisions of this § 264a.83 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.83 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102; amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (294514) to (294515).

**Cross References**

This section cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 270a.201 (relating to incorporation by reference, scope and applicability).

**Subchapter F. RELEASES FROM SOLID WASTE  
MANAGEMENT UNITS**

Sec.

- 264a.97. General groundwater monitoring requirements.  
264a.101. [Reserved].

**§ 264a.97. General groundwater monitoring requirements.**

In addition to the requirements incorporated by reference:

- (1) The owner or operator shall keep records of analyses and evaluations of groundwater quality and surface elevations, which shall be conducted quarterly, and flow rate and direction determinations, which shall be conducted annually. These evaluations and determinations shall be conducted as required under 40 CFR Part 264, Subpart F (relating to releases from solid waste management units).
- (2) The owner or operator shall report the following information in writing to the Department:



(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in 40 CFR 264.98(a) (relating to detection monitoring program) for an upgradient groundwater monitoring well within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(ii) Quarterly after the first year: concentrations or values of the parameters in 40 CFR 264.98(a) and required under 40 CFR 264.97(g) (relating to detection monitoring program), for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR 264.97(h), within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(iii) Annually: concentrations or values of those parameters for each well which are specified by the facility's permit within 15 days of completing the annual analysis.

(iv) Annually: those determinations for the groundwater flow rate and direction specified in 40 CFR 264.99(e) (relating to compliance monitoring).

(3) The owner or operator shall report the groundwater quality required by paragraph (2) and 40 CFR 264.97 at a monitoring point established under 40 CFR 264.95 (relating to point of compliance) in a form necessary for the determination of statistically significant increases under 40 CFR 264.98 (relating to detection monitoring program).

#### Source

The provisions of this § 264a.97 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial pages (254929) to (254930).

### § 264a.101. [Reserved].

#### Source

The provisions of this § 264a.101 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (294516).

## Subchapter G. CLOSURE AND POSTCLOSURE

Sec.	
264a.115.	Certification of closure.
264a.120.	Certification of completion of postclosure care.

**§ 264a.115. Certification of closure.**

The owner or operator shall satisfy § 264a.166 (relating to closure and post-closure certification) instead of the reference to 40 CFR 264.143(i) (relating to financial assurance for closure).

**Cross References**

This section cited in 25 Pa. Code § 264a.83 (relating to administration fees during closure); and 25 Pa. Code § 265a.83 (relating to administration fees during closure).

**§ 264a.120. Certification of completion of postclosure care.**

The owner or operator shall satisfy § 264a.166 (relating to closure and post-closure certification) instead of the reference to 40 CFR 264.145(i) (relating to financial assurance for postclosure care).

**Subchapter H. FINANCIAL REQUIREMENTS**

Sec.	
264a.141.	Definitions.
264a.143.	Financial assurance for closure.
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264a.155.	Special terms and conditions for surety bonds.
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264a.168.	Bond forfeiture.
264a.169.	Preservation of remedies.

**Cross References**

This subchapter cited in 25 Pa. Code § 267a.143 (relating to financial assurance for closure).

**§ 264a.141. Definitions.**

In addition to the terms defined in 40 CFR 264.141 (relating to definitions of terms as used in this subpart), which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to hazardous waste management system: general) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

*Collateral bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator and is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

*Final closure*—Successful completion of requirements for closure and post-closure care as required by 40 CFR Part 264, Subpart G (relating to closure and postclosure).

*Financial institutions*—Banks and other similar establishments organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

*Surety bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator, and is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

*Surety company*—A corporation licensed to do business as a surety in this Commonwealth.

**§ 264a.143. Financial assurance for closure.**

40 CFR 264.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 264.143(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging financial test or corporate guarantee for closure).

**Authority**

The provisions of this § 264a.143 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of

The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.143 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (254932).

**Cross References**

This section cited in 25 Pa. Code § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

**§ 264a.145. Financial assurance for postclosure care.**

40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference; except for 40 CFR 264.145(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging financial test or corporate guarantee for closure).

**Authority**

The provisions of this § 264a.145 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.145 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (254932).

**§ 264a.147. Liability requirements.**

The substitution of terms as specified in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.147(g)(2) and (i)(4) (relating to liability requirements).

**§ 264a.148. Incapacity of owners or operators, guarantors or financial institutions.**

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the Regional Administrator of the EPA.

**§ 264a.149. Use of state-required mechanisms.**

40 CFR 264.149 (relating to use of state-required mechanisms) is not incorporated by reference.

**§ 264a.150. State assumption of responsibility.**

40 CFR 264.150 (relating to state assumption of responsibility) is not incorporated by reference.

**§ 264a.151. Wording of instruments.**

40 CFR 264.151 (relating to wording of the instruments) is not incorporated by reference.

**§ 264a.153. Requirement to file a bond.**

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 264a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by the Department, and the bond is approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as having a permit, shall cease accepting hazardous waste unless the owner or operator submits a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

**Authority**

The provisions of this § 264a.153 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.153 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (254933).

**§ 264a.154. Form, terms and conditions of bond.**

- (a) The Department accepts the following types of bond:
- (1) A surety bond.
  - (2) A collateral bond.
  - (3) A bond pledging a financial test or corporate guarantee.
  - (4) A phased deposit collateral bond as provided in § 264a.157 (relating to phased deposits of collateral).
- (b) The Department will prescribe and furnish the forms which shall be used for bond instruments.
- (c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.4c, 1396.4e and 1396.15c—1396.25), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.
- (d) The bond must cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond must cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.
- (e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

**Authority**

The provisions of this § 264a.154 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.154 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (254933) to (254934).

**§ 264a.155. Special terms and conditions for surety bonds.**

(a) The Department does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days of receipt of the notice of cancellation, the owner or operator shall provide the Department with a replacement bond under § 264a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 264a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for a owner or operator, on all facilities owned or operated by the owner or operator, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety has complied with the provisions of The Insurance Company Act of 1921 (40 P. S. §§ 1—297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety, notwithstanding judicial or administrative appeal of the forfeiture, and that the amount is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint and severally liable for payment of the bond amount.

**§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.**

(a) The Department obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department uses the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit are subject to the following conditions:

- (1) The Department requires that certificates of deposit are assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.
  - (2) The Department may accept an individual certificate of deposit for the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.
  - (3) The Department requires the issuing institution to waive all rights of setoff or liens it has or might have against the certificates.
  - (4) The Department only accepts automatically-renewable certificates of deposit.
  - (5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.
  - (6) The Department only accepts certificates of deposit from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.
  - (7) The Department does not accept certificates of deposit from banks that failed or delayed in making payment on defaulted certificates of deposit.
- (d) Collateral bonds pledging a bank letter of credit are subject to the following conditions:
- (1) The letter of credit is a standby letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a State or Federal agency and Federally insured or equivalently protected.
  - (2) The letter of credit may not be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the owner's or operator's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.
  - (3) The letter of credit may not be issued when the amount of the letter of credit, aggregated with other loans and credits extended to the owner or operator, exceeds the issuer legal lending limits for that owner or operator as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).
  - (4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for at least a 1 year period if the following conditions are met and stated in the credit:
    - (i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail to the Department and the customer of its intent to terminate the credit at the end of the current time period.



(ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.

(5) Letters of credit shall name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this subchapter.

(6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.

(7) The issuing bank waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a financial test or corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relating to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture.

#### **Authority**

The provisions of this § 264a.156 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

#### **Source**

The provisions of this § 264a.156 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (254935) to (254937).

#### **Cross References**

This section cited in 25 Pa. Code § 264a.143 (relating to financial assurance for closure); and 25 Pa. Code § 264a.145 (relating to financial assurance for postclosure).

**§ 264a.157. Phased deposits of collateral.**

(a) An owner or operator may post a collateral bond in phased deposits for a new hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department will make the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

**Authority**

The provisions of this § 264a.157 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

**Source**

The provisions of this § 264a.157 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (254937).

**Cross References**

This section cited in 25 Pa. Code § 264a.154 (relating to form, terms and conditions of bond); and 25 Pa. Code § 264a.163 (relating to failure to maintain adequate bond).

**§ 264a.158. Replacement of bond.**

(a) The Department may allow an owner or operator to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond is determined under this chapter, but in no case may it be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the owner or operator submits and the Department approves acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the owner or operator.

**Cross References**

This section cited in 25 Pa. Code § 264a.155 (relating to special terms and conditions for surety).

**§ 264a.159. Reissuance of permits.**

Before a permit is reissued to a new owner or operator, the new owner or operator shall post a new bond in an appropriate amount determined by the Department under this subchapter, but in no case less than the amount of bond on deposit with the Department, in the new owner's or operator's name and assume all accrued liability for the hazardous waste storage, treatment or disposal facility.

**§ 264a.160. Bond amount determination.**

(a) The Department determines bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. This is done in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount is based on the permit applicant's written estimate submitted under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

**Cross References**

This section cited in 25 Pa. Code § 264a.153 (relating to requirement to file a bond).

**§ 264a.162. Bond amount adjustments.**

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

- (1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that requires an additional amount of bond determined under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).
- (2) Inflationary cost factors exceed the estimate used for the original bond amount determination under 40 CFR 264.142 and 264.144.
- (3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, requiring an additional amount of bond determined under 40 CFR 264.142 and 264.144.
- (4) An additional amount of bond is required as determined by 40 CFR 264.142 and 264.144 to meet the requirements of applicable statutes, this subchapter and the terms and conditions of the permit or orders of the Department.

**Cross References**

This section cited in 25 Pa. Code § 264a.153 (relating to requirement to file a bond); 25 Pa. Code § 264a.163 (relating to failure to maintain adequate bond); 25 Pa. Code § 264a.164 (relating to separate bonding for a portion of a facility); and 25 Pa. Code § 264a.165 (relating to bond release).

**§ 264a.163. Failure to maintain adequate bond.**

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 264a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 264a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

**§ 264a.164. Separate bonding for a portion of a facility.**

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department determines that separate bonding of the facility is

necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 264a.162 (relating to bond amount adjustments).

#### Cross References

This section cited in 25 Pa. Code § 264a.166 (relating to closure and postclosure certification).

### § 264a.165. Bond release.

(a) The owner or operator may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. The bond release may be requested during the operation of the facility as part of a request for bond adjustment under § 264a.162 (relating to bond amount adjustments); upon completion of closure for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility as specified in 40 CFR Part 264, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain all of the following:

(1) The name of the owner or operator and identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) A revised cost estimate for closure and postclosure care in accordance with 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and postclosure care).

(5) Closure or postclosure certification for full bond release requests.

(6) Other information required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 264.142 and 264.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which

would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months of receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

### **§ 264a.166. Closure and postclosure certification.**

(a) The owner or operator shall submit a request for closure or postclosure certification upon completion of closure or postclosure of the facility in accordance with 40 CFR 264.115 or 264.120 (relating to certification of closure; and certification of completion of postclosure care).

(b) Within 60 days after receipt of a written request for closure or postclosure certification, the Department will initiate an inspection of the facility to verify that closure or postclosure was effected in accordance with the approved facility closure or postclosure care plan and this article.

(c) If the Department determines that the facility closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the owner or operator that closure or postclosure was effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this article, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the owner or operator setting forth the schedule of measures the owner or operator shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1-year liability period, the Department will require the owner or operator to deposit a separate bond under § 264a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) on deposit with the Department.

#### Cross References

This section cited in 25 Pa. Code § 264a.115 (relating to certificate of closure); and 25 Pa. Code § 264a.120 (relating to certification of completion of postclosure care).

#### § 264a.167. Public notice and comment.

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

#### § 264a.168. Bond forfeiture.

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility if the Department determines that any of the following occur:

- (1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.
- (2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with the requirements of this article, the act, section 505(a) of the act, the terms and conditions of the permit or orders of the Department.
- (3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.
- (4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or has action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities

at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund. Use moneys received from the forfeiture of bonds, and interest accrued, first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from, the facility upon which liability was charged on the bonds. Excess moneys may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

#### Authority

The provisions of this § 264a.168 amended under sections 105, 402 and 501 of the Solid Waste Management Act (35 P. S. §§ 6018.105, 6018.402 and 6018.501); sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.303 and 6020.305(e)(2)); section 5, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.5, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20).

#### Source

The provisions of this § 264a.168 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial pages (254942) and (294519).

#### Cross References

This section cited in 25 Pa. Code § 264a.155 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure); and 25 Pa. Code § 264a.166 (relating to closure and postclosure certification).

### § 264a.169. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—



1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), this article and the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

### Subchapter I. USE AND MANAGEMENT OF CONTAINERS

Sec.	
264a.173.	Management of containers.
264a.180.	Weighing or measuring facilities.

#### Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

#### § 264a.173. Management of containers.

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

#### Source

The provisions of this § 264a.173 amended December 13, 2002, effective December 14, 2002, 32 Pa.B. 6102. Immediately preceding text appears at serial page (254944).

#### § 264a.180. Weighing or measuring facilities.

Weighing or measuring facilities, if necessary or when required by the Department, shall weigh hazardous wastes brought to the treatment, storage or disposal facility, except for captive facilities that handle liquids or flowable wastes—less

than 20% solids—amenable to accurate flow measurements, or captive facilities that possess other waste inventory controls-volume controls. Weighing facilities shall be capable of weighing the maximum anticipated load plus the weight of the transport vehicle. The precision of weighing devices shall be certified by the Department of Agriculture. For offsite facilities or onsite facilities receiving waste from offsite sources, the hours of operation for the facility shall be prominently displayed on a sign at the entrance. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background.

### Subchapter J. TANK SYSTEMS

Sec.	
264a.191.	Assessment of existing tank system's integrity.
264a.193.	Containment and detection of releases.
264a.194.	General operating requirements.
264a.195.	[Reserved].

#### Cross References

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

#### § 264a.191. Assessment of existing tank system's integrity.

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity in accordance with 40 CFR 264.191 (relating to assessment of existing tank system's integrity).

#### § 264a.193. Containment and detection of releases.

In addition to the requirements incorporated by reference, an owner or operator of existing tank systems shall comply with 40 CFR 264.193 (relating to containment and detection of release) by January 16, 1995, except that an owner operator of existing tank systems for which the age cannot be documented shall comply with 40 CFR 264.193 by January 16, 1996.

#### § 264a.194. General operating requirements.

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify their contents.

**§ 264a.195. [Reserved].****Source**

The provisions of this § 264a.195 amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 201. Immediately preceding text appears at serial page (254945).

**Subchapter K. SURFACE IMPOUNDMENTS**

Sec.  
264a.221. Design and operating requirements.

**Cross References**

This subchapter cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

**§ 264a.221. Design and operating requirements.**

In addition to the requirements incorporated by reference:

(1) For surface impoundments subject to 40 CFR 264.221(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet shall be maintained between the bottom of the liner and seasonal high water table without the use of artificial or manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the top of the subbase and the regional water table shall be a minimum of 8 feet.

(2) The Department may, upon written application from a person who is subject to this provision, grant a variance from this provision. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

**Subchapter L. WASTE PILES**

Sec.  
264a.251. Design and operating requirements.

**Cross References**

This section cited in 25 Pa. Code § 270a.60 (relating to permits by rule).

**§ 264a.251. Design and operating requirements.**

In addition to the requirements incorporated by reference:

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(1) For a waste pile subject to the design and operating requirements of 40 CFR 264.251(a) or (c) (relating to design and operating requirements), a minimum distance of 20 inches between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and man-made groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table.

(2) 40 CFR 264.251(c)(5) (relating to leak detection systems not located completely above the seasonal high water table) is not incorporated by reference.

### Subchapter M. LAND TREATMENT

Sec.	
264a.273.	Design and operating requirements.
264a.276.	Food chain crops.

#### § 264a.273. Design and operating requirements.

In addition to the requirements incorporated by reference, land treatment of hazardous waste shall be subject to the following restrictions:

(1) The hazardous waste shall be mixed into or turned under the soil surface within 24 hours of application, unless it is spray irrigated and the spray irrigated hazardous waste:

- (i) Is used for top dressing.
- (ii) Has plant nutrient value.
- (iii) Is applied with proper spray irrigation equipment and through proper spray irrigation methods.
- (iv) Is not transported offsite by aerosol transport while being spray irrigated.

(2) Hazardous waste shall be spread or sprayed in thin layers to prevent ponding and standing accumulations of liquids or sludges.

(3) Hazardous waste may not be applied when the ground is saturated, covered with snow, frozen or during periods of rain.

(4) Hazardous waste may not be applied in quantities which will result in vector or odor problems.

(5) Hazardous waste shall only be applied to those soils which fall within the United States Department of Agriculture (USDA) textural classes of sandy loam, loam, sandy clay loam, silty clay loam and silt loam.

(6) The soils shall have sola with a minimum depth of 20 inches and at least 40 inches of soil depth.

**§ 264a.276. Food chain crops.**

In addition to the requirements incorporated by reference tobacco and crops intended for direct human consumption may not be grown on hazardous waste land treatment facilities.

**Subchapter N. LANDFILLS**

Sec.  
264a.301. Design and operating requirements.

**§ 264a.301. Design and operating requirements.**

In addition to the requirements incorporated by reference:

(1) For a landfill subject to the design and operating provisions of 40 CFR 264.301(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the bottom of the liner and the regional groundwater table shall be a minimum of 8 feet.

(2) The Department may, upon written application from a person who is subject to this section, grant a variance from this section. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

(3) 40 CFR 264.301(l) (relating to landfills located in the State of Alabama) is not incorporated by reference.

**Subchapter W. DRIP PADS**

Sec.  
264a.570. Applicability.

**§ 264a.570. Applicability.**

Instead of 40 CFR 264.570(a), this subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-off to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

**Subchapter DD. CONTAINMENT BUILDINGS**

Sec.	
264a.1100.	Applicability.
264a.1101.	Design and operating standards.

**Cross References**

This subchapter cited in 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); and 25 Pa. Code § 270a.60 (relating to permits-by-rule).

**§ 264a.1100. Applicability.**

Instead of the effective date of February 18, 1993, found in 40 CFR 264.1100 (relating to applicability), the effective date is January 11, 1997.

**§ 264a.1101. Design and operating standards.**

In addition to the requirements incorporated by reference:

(1) An owner or operator of existing units described in 40 CFR 264.1101(b)(4) (relating to design and operating standards) seeking a delay in the secondary containment requirement for up to 2 years shall provide written notice to the Department by July 11, 1997. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment.

(2) For units placed into operation prior to January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) shall be placed in the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit.

(3) For units placed into operation after January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) will be required prior to operation of the unit.

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