

### ARTICLE VIII. MUNICIPAL WASTE

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#### Authority

The provisions of this Article VIII issued under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(a), 304 and 402 of The Clean Streams Law (35 P. S. §§ 691.5(a), 691.304 and 691.402); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20), unless otherwise noted.

#### Source

The provisions of this Article VIII adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681, unless otherwise noted.

#### Cross References

This article cited in 7 Pa. Code § 82.13 (relating to refuse); 25 Pa. Code § 87.100 (relating to topsoil: nutrients and soil amendments); 25 Pa. Code § 88.90 (relating to vegetation-supporting material: nutrients and soil amendments); 25 Pa. Code § 88.185 (relating to nutrients and soil amendments); 25 Pa. Code § 88.290 (relating to vegetation-supporting material: nutrients and soil amendments); 25 Pa. Code § 129.201 (relating to boilers); 25 Pa. Code § 250.9 (relating to interaction with other environmental statutes); 25 Pa. Code § 252.3 (relating to scope); 25 Pa. Code § 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 287.2 (relating to scope); 25 Pa. Code § 287.101 (relating to general requirements for permit); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 290.2 (relating to scope); 25 Pa. Code § 298.10 (relating to applicability); 25 Pa. Code § 298.20 (relating to applicability); 25 Pa. Code § 298.40 (relating to applicability); 25 Pa. Code § 298.50 (relating to applicability); and 25 Pa. Code § 299.201 (relating to scope).

### CHAPTER 271. MUNICIPAL WASTE MANAGEMENT—GENERAL PROVISIONS

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**Authority**

The provisions of this Chapter 271 issued under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)); sections 5(a) and (b), 304 and 402 of The Clean Streams Law (35 P. S. §§ 691.5(a) and (b), 691.304 and 691.402); and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20); amended under the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Pennsylvania Used Oil Recycling Act (58 P. S. §§ 471—480); section 104(a) of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.104(a)); the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law; sections 1905-A, 1917-A, 1920-A and 1937-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17, 510-20 and 510-37); section 207 of the Small Business and Household Pollution Prevention Program Act (35 P. S. § 6029.207); section 15(a) of the act of November 26, 1997 (P. L. 530, No. 57); the Environmental Stewardship and Watershed Protection Act, 27 Pa.C.S. § 6105(g); sections 301 and 302 of the Radiation Protection Act (35 P. S. §§ 7110.301 and 7110.302); and section 4(a) of the Household Hazardous Waste Funding Act (35 P. S. § 6025.4(a)), unless otherwise noted.

**Source**

The provisions of this Chapter 271 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681, unless otherwise noted.

**Cross References**

This chapter cited in 7 Pa. Code § 82.13 (relating to refuse); 25 Pa. Code § 252.3 (relating to scope); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 272.1 (relating to scope); 25 Pa. Code § 273.1 (relating to scope); 25 Pa. Code § 277.1 (relating to scope); 25 Pa. Code § 279.1 (relating to scope); 25 Pa. Code § 279.101 (relating to general requirements); 25 Pa. Code § 279.201 (relating to basic limitations); 25 Pa. Code § 281.1 (relating to scope); 25 Pa. Code § 281.101 (relating to general requirements); 25 Pa. Code § 281.201 (relating to basic limitations); 25 Pa. Code § 283.1 (relating to scope); 25 Pa. Code § 283.101 (relating to general requirements); 25 Pa. Code § 283.201 (relating to basic limitations); 25 Pa. Code § 284.1 (relating to scope); 25 Pa. Code § 284.201 (relating to scope); 25 Pa. Code § 284.301 (relating to scope); 25 Pa. Code § 284.401 (relating to scope); and 25 Pa. Code § 284.501 (relating to scope).

**Subchapter A. GENERAL**

Sec.	
271.1.	Definitions.
271.2.	Scope.
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**Cross References**

This subchapter cited in 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); and 25 Pa. Code § 284.122 (relating to waiver or modifications of certain requirements).

**§ 271.1. Definitions.**

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

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*ASTM*—The American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103-1187.

*Abatement*—The restoration, reclamation, recovery and the like of a natural resource adversely affected by the activity of a person, permittee or municipality.

*Abatement standards*—Background, MCLs and risk-based standards as those terms are defined under this article.

*Access road*—A roadway or course providing access to a municipal waste processing or disposal facility, or areas within the facility, from a road that is under Federal, Commonwealth or local control.

*Act*—The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Adjacent area*—Land located outside the permit area, where air, surface water or groundwater, fish, wildlife, vegetation or other resources protected by this article may be adversely affected by municipal waste processing or disposal facilities.

*Agricultural utilization*—The land application of sewage sludge for its plant nutrient value or as a soil conditioner as part of an agricultural operation.

*Agricultural waste*—Poultry and livestock manure, or residual materials in liquid or solid form generated in the production and marketing of poultry, livestock, fur bearing animals, and their products, if the agricultural waste is not hazardous. The term includes the residual materials generated in producing, harvesting and marketing of agronomic, horticultural and silvicultural crops or commodities grown on what are usually recognized and accepted as farms, forests or other agricultural lands.

*Airport*—Public airport, as defined in 67 Pa. Code § 471.2 (relating to definitions).

(i)—The term includes military airports.

(ii)—The term does not include heliports.

*Alternative groundwater protection standard*—A risk-based remediation standard for substances that have no primary MCLs under the Federal and State Safe Drinking Water Acts (42 U.S.C.A. §§ 300f—300j-18; and 35 P. S. §§ 721.1—721.17). For carcinogens, the standard represents a concentration associated with an excess lifetime cancer risk level between  $1 \times 10^{-4}$  and  $1 \times 10^{-6}$ , including the cumulative risk of all contaminants. For systemic toxicants, the standard represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. When several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index may not exceed one.

*Aluminum*—Refers to cans comprised of 100% aluminum.

*Aquifer*—A geologic formation, group of formations or part of a formation capable of yielding sufficient groundwater for monitoring purposes.

*Association*—A corporation, partnership, limited liability company, business trust or two or more persons associated in a common enterprise or undertaking.

*Attenuating soil*—Soil material existing in place or placed beneath solid waste that will provide natural attenuation of leachate emanating from the waste.

*Attenuation*—A decrease in the maximum concentration or total quantity of an applied chemical or biological constituent of solid waste in a fixed time or distance that results from physical, chemical or biological reactions or transformations.

*Autoclave*—A pressure vessel in which regulated medical waste is disinfected using high temperature steam, directly or indirectly, to maintain specified temperatures for retention times consistent with the waste being processed.

*Autofluff*—The residue from the shredding of automobiles, after all fluids have been removed.

*Background standard*—A numerical value as determined under section 302 of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.302) and § 250.202 (relating to establishing background concentrations).

*Beneficial use*—Use or reuse of residual waste or residual material derived from residual waste for commercial, industrial or governmental purposes, where the use does not harm or threaten public health, safety, welfare or the environment, or the use or reuse of processed municipal waste for any purpose, where the use does not harm or threaten public health, safety, welfare or the environment.

*Biologicals*—Preparations made from living organisms and their products, including vaccines, cultures, and the like, intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

*Blood products*—A product derived from human blood, including blood plasma, serum, platelets, red or white blood corpuscles, licensed products such as interferon and other derived material containing free-flowing blood and blood components.

*Body fluids*—Liquids emanating or derived from humans and limited to the following: blood; cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; semen and vaginal secretions; and amniotic fluid. The term also includes the following fluids if they contain visible blood: feces, sputum, saliva, urine and vomitus.

*Byproduct material*—The Federal definition for “byproduct material” in 10 CFR 20.1003 (relating to definitions) is incorporated by reference.

*Chemotherapeutic waste*—Waste resulting from the production or use of antineoplastic agents used for the purpose of inhibiting or stopping the growth of malignant cells or killing malignant cells. The term does not include waste containing antineoplastic agents that are hazardous wastes under Chapter 261a (relating to identification and listing of hazardous waste) and 40 CFR Part 261

(relating to identification and listing of hazardous waste) to the extent that Part 261 is incorporated in § 261a.1 (relating to incorporation by reference, purpose and scope).

*Clean fill*—Uncontaminated, nonwater-soluble, nondecomposable inert solid material used to level an area or bring the area to grade. The term does not include material placed into or on waters of this Commonwealth.

*Closure*—The date on which a municipal waste processing or disposal facility permanently ceases to accept waste, and access is limited to activities necessary for postclosure care, maintenance and monitoring.

*Closure certification*—A written document attested to by a corporate official that states that a landfill has permanently ceased accepting waste and access has been limited to activities necessary for postclosure care, maintenance and monitoring.

*Collateral bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the operator and 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, Commonwealth bank automatically renewable and assignable certificates of deposit or irrevocable and standby Commonwealth bank letters of credit.

*Collection contractor*—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act (35 P. S. § 6029.203) is incorporated by reference.

*Collection event*—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

*Commercial establishment*—An establishment engaged in nonmanufacturing or nonprocessing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

*Commercial regulated medical or chemotherapeutic waste facility*—A facility that processes regulated medical or chemotherapeutic waste under either of the following conditions:

- (i) The facility does not generate any of the regulated medical or chemotherapeutic waste that it processes.
- (ii) If the facility generates the regulated medical or chemotherapeutic waste that it processes, the amount of waste on a monthly average that is generated onsite and offsite by wholly-owned generators of the facility is less than 50% of the waste that it processes.

*Community activities*—Events sponsored in whole or in part by a municipality, or conducted within a municipality and sponsored privately, which include, but are not limited to, fairs, bazaars, socials, picnics and organized sporting events that will be attended by 200 or more individuals per day.

*Composting*—The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

*Composting facility*—A facility using land for processing of municipal waste by composting. The term includes land thereby affected during the lifetime of the operations, including, but not limited to, areas where composting actually occurs, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility. The term does not include a facility for composting residential municipal waste that is located at the site where the waste was generated.

*Composting pad*—An area within a general composting facility where compost or solid waste is processed, stored, loaded or unloaded.

*Conditionally exempt small quantity generator*—A generator of hazardous waste generating in a calendar month less than 100 kg of nonacute hazardous waste, and less than 1 kg per month of acutely hazardous wastes under 40 CFR 261.31, 261.32 or 261.33(e) (relating to hazardous wastes from non-specific sources; hazardous wastes from specific sources; and discarded commercial chemical products, off-specification species, container residues, and spill residues thereof), incorporated in § 261a.1 or a total of 100 kg of residue or contaminated soil waste, or other debris resulting from the cleanup of a spill, into or on land or waters of this Commonwealth, of acute hazardous waste listed in 40 CFR 261.31, 261.32 or 261.33(e), incorporated in § 261a.1.

*Construction/demolition waste*—Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term does not include the following if they are separate from other waste and are used as clean fill:

- (i) Uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt.
- (ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

*Construction/demolition waste landfill*—A facility using land exclusively for the disposal of construction/demolition waste. The term includes land affected during the lifetime of the operations, including, but not limited to, areas where disposal activities actually occur, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities and other activities in which the natural land surface has been disturbed as a result of or incidental to the operation of the facility.

*Construction material*—The engineered use of municipal waste as a substitute for a raw material or a commercial product in a construction activity, if the waste has the same engineering characteristics as the raw material or commercial product for which it is substituting. The term includes the use of municipal waste as a road bed material, for pipe bedding and in similar operations. The term does not include valley fills, the use of municipal waste to fill open pits from coal or other fills or the use of municipal waste solely to level an area or bring the area to grade when a construction activity is not completed promptly after the placement of the solid waste.

*Container*—A portable device in which waste is held for storage or transportation.

*Corrugated paper*—A structural paper material with an inner core shaped in rigid parallel furrows and ridges.

*Department*—The Department of Environmental Protection of the Commonwealth, and its authorized representatives.

*Disinfection*—The treatment or processing of regulated medical waste so that it poses no risk of infection or other health risk to individuals handling or otherwise coming into contact with the waste. The term includes autoclaving; dry heat, gas or chemical disinfection; radiation and irradiation; and incineration.

*Disposal*—The deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth.

*Disposal area*—The part of the site where disposal is occurring or will occur.

*Dredged material*—Material dredged or excavated from waters for the direct or indirect purpose of establishing or increasing water depth, or increasing the surface or cross-sectional area of a waterway and which includes sediment, soil, mud, shells, gravel or other aggregate. The material does not include waste removed or dredged from an impoundment that has received solid waste.

*EPA*—The United States Environmental Protection Agency.

*Eligible entity*—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

*Environmental protection acts*—The act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904), the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305), the Low-Level Radioactive Waste Disposal Act (35 P. S. §§ 7130.101—7130.905), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6), known as the Infectious and Chemotherapeutic Waste Disposal Law, the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b), the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), and other State or Federal statutes relating to environ-

mental protection or the protection of public health, including statutes adopted or amended after April 9, 1988.

*Environmental Stewardship and Watershed Protection Act*—27 Pa.C.S. §§ 6101—6113.

*FAA*—The Federal Aviation Administration of the United States Department of Transportation.

*Facility*—Land, structures and other appurtenances or improvements where municipal waste disposal, processing or beneficial use is permitted or takes place.

*Feasibility study*—A study which analyzes a specific municipal waste processing, recycling or disposal system to assess the likelihood that the system can be successfully implemented, including, but not limited to, an analysis of the prospective market, the projected costs and revenues of the system, the municipal waste stream that the system will rely upon and various options available to implement the system.

*Final closure*—The date after which no further treatment, maintenance or other action is or will be necessary at a municipal waste processing or disposal facility to ensure compliance with the act and this article.

*Free liquids*—Liquids which readily separate from the solid portion of waste under ambient temperature and pressure.

*Friable asbestos containing waste*—Waste containing more than 1% asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. The term also includes nonfriable asbestos containing waste which is rendered friable during management.

*General composting facility*—A composting facility other than an individual backyard composting facility or yard waste composting facility operating under § 271.103(h) (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements).

*General permit*—Except as provided in Subchapter J (relating to beneficial use of sewage sludge by land application), a regional or Statewide permit issued by the Department for a specified category of beneficial use or processing of solid waste, the terms and conditions of which allow an original applicant, a registrant and a person or municipality that obtains a determination of applicability, to operate under the permit if the terms and conditions of the permit and certain requirements of this article are met.

*Generator*—A person or municipality that produces or creates a municipal waste.

*Groundwater*—Water beneath the surface of the ground that exists in a zone of saturation.

*Groundwater degradation*—A measurable increase in the concentration of one or more contaminants in groundwater above background concentrations for those contaminants.



*Hazardous waste*—Garbage, refuse or sludge from an industrial or other waste water treatment plant; sludge from a water supply treatment plant or air pollution control facility; and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities; or a combination of the above, which because of its quantity, concentration or physical, chemical or infectious characteristics may do one of the following:

- (i) Cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population.
- (ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.101). The term does not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on under and in compliance with a valid permit issued under The Clean Streams Law (35 P. S. §§ 691.1—691.1001). The term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341) or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2284).

*High grade office paper*—Bond, copier, letterhead or mimeograph paper typically sold as “white ledger” paper; and computer paper.

*Highly virulent diseases*—Diseases derived from Class IV etiologic agents, as defined by the Centers for Disease Control, United States Department of Health and Human Services. Information about Class IV etiologic agents may be obtained from CDC-NIH Biosafety, Microbiological and Biomedical Laboratories Centers for Disease Control, 1600 Clifton Road, N. E., Atlanta, Georgia 30333.

*Home self-care*—The provision of medical care in the home setting (for example, private residents) through either self-administration practices or by a family member or other person.

*Household hazardous waste*—

- (i) Waste generated by a household that could be chemically or physically classified as a hazardous waste under the standards of Article VII (relating to hazardous waste management).
- (ii) For the purpose of this definition, the term “household” includes those places described as “households” in 40 CFR 261.4(b)(1) (relating to exclusions).

*Incineration*—The act of reducing to ashes by combustion.

*Incinerator*—An enclosed device using controlled combustion for the primary purpose of thermally breaking down solid waste, and which is equipped with a flue as defined in § 121.1 (relating to definitions).

*Incorporating*—Injecting sludge beneath the surface of the soil or mixing sludge with the surface soil.

*Industrial establishment*—An establishment engaged in manufacturing or processing, including, but not limited to, factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

*Infectious agent*—

(i) An organism, such as a virus or bacteria, that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(ii) The term does not include agents classified as Biosafety Level 1 by a facility engaged in the production or research and development of vaccines or other biologics classified under the North American Industrial Classification System (NAICS) as Code 325414—Biological Product (except Diagnostic) Manufacturing or Code 541711—Research and Development in Biotechnology, as determined by the protocols established in the most recent edition of the Centers for Disease Control's (CDC) *Biosafety in Microbial and Biomedical Laboratories* (BMBL) existing at the time the waste is generated.

*Infectious waste*—

(i) *General.* Municipal and residual waste which is generated in the diagnosis, treatment, immunization or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for interment or cremation, or in the production or testing of biologicals, and which falls under one or more of the following categories:

(A) *Cultures and stocks.* Cultures and stocks of infectious agents and associated biologicals, including the following:

(I) Cultures from medical and pathological laboratories.

(II) Cultures and stocks of infectious agents, and cell lines that have been exposed to infectious agents from research and industrial laboratories.

(III) Wastes from the production of biologicals.

(IV) Discarded live and attenuated vaccines except for residue in emptied containers, as determined by applying the criteria in 40 CFR 261.7(b)(1) or (2) (relating to residues of hazardous waste in empty containers) to the residue remaining in the container.

(V) Culture dishes, assemblies and devices used to conduct diagnostic tests or to transfer, inoculate and mix cultures.

(B) *Pathological wastes.* Human pathological wastes, including tissues, organs and body parts and body fluids that are removed during surgery, autopsy, other medical procedures or laboratory procedures. The term does not include hair, nails or extracted teeth.

(C) *Human blood and body fluid waste.*

(I) Liquid waste human blood.

(II) Blood products.

(III) Items saturated or dripping with human blood.

(IV) Items that were saturated or dripping with human blood that are now caked with dried human blood, including serum, plasma and other blood components, which were used or intended for use in patient care, specimen testing or the development of pharmaceuticals.

(V) Intravenous bags that have been used for blood transfusions, including soft plastic pipettes and plastic blood vials.

(VI) Items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers.

(VII) Items saturated or dripping with body fluids or caked with dried body fluids from persons during surgery, autopsy, other medical procedures or laboratory procedures.

(VIII) Specimens of blood products or body fluids, and their containers.

(D) *Animal wastes.* Contaminated animal carcasses, body parts, blood, blood products, secretions, excretions and bedding of animals that were known to have been exposed to zoonotic infectious agents or nonzoonotic human pathogens during research, production of biologicals, or testing of pharmaceuticals.

(E) *Isolation wastes.* Biological wastes and waste contaminated with blood, excretion, exudates or secretions from:

(I) Humans who are isolated to protect others from highly virulent diseases.

(II) Isolated animals known or suspected to be infected with highly virulent diseases.

(F) *Used sharps.*

(I) Broken glass, hypodermic needles, syringes to which a needle is or can be attached, razors, pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plasticware that have been in contact with infectious agents or that have been used in animal or human patient care or treatment.

(II) The term does not include broken or unbroken plasticware generated at facilities engaged in the production or research and development of vaccines or other biologics and classified under the NAICS as Code 325414—Biological Product (except Diagnostic) Manufacturing or Code 541711—Research and Development in Biotechnology, where no agent in the waste is classified as Biosafety Levels 2—4 as deter-

mined by the protocols established in the most recent edition of the CDC's BMBL existing at the time the waste is generated.

(ii) *Mixtures.*

(A) The term also includes materials identified under subparagraph (i) that are mixed with municipal and residual waste, including disposable containers.

(B) The term also includes mixtures of materials identified in subparagraph (i) with quantities of radioactive waste not subject to regulation.

(iii) *Exceptions.* The term does not include the following:

(A) Wastes generated as a result of home self-care.

(B) Human corpses, remains and anatomical parts that are intended for interment or cremation, or are donated and used for scientific or medical education, research or treatment.

(C) Etiologic agents being transported for purposes other than waste processing or disposal under the requirements of the United States Department of Transportation (49 CFR 171.1—171.26 (relating to general information, regulations, and definitions)), the Department of Transportation (67 Pa. Code Part I) and other applicable shipping requirements.

(D) Samples of regulated medical waste transported offsite by Commonwealth or United States government enforcement personnel during an enforcement proceeding.

(E) Body fluids, tissues, specimens or biologicals that are being transported to or stored at a laboratory prior to laboratory testing.

(F) Ash residue from the incineration of materials identified in subparagraphs (i) and (ii) if the incineration was conducted in accordance with § 284.321 (relating to regulated medical waste monitoring requirements). The ash residue shall be managed as special handling municipal waste.

(G) Reusable or recyclable containers or other nondisposable materials, if they are cleaned and disinfected, or if there has been no direct contact between the surface of the container and materials identified in subparagraph (i). Laundry or medical equipment shall be cleaned and disinfected in accordance with the United States Occupational Safety and Health Administration requirements in 29 CFR 1910.1030 (relating to bloodborne pathogens).

(H) Soiled diapers that do not contain materials identified in subparagraph (i).

(I) Mixtures of hazardous waste subject to Article VII and materials identified in subparagraph (i) shall be managed as hazardous waste and not regulated medical waste.

(J) Mixtures of materials identified in subparagraph (i) and regulated radioactive waste shall be managed as radioactive waste in accordance

with applicable Commonwealth and Federal statutes and regulations, including § 236.521 (relating to minimum requirements for classes of waste).

(K) Mixtures of materials identified in subparagraph (i) and chemotherapeutic waste shall be managed as chemotherapeutic waste in accordance with this article.

(L) Wastes, mixtures of wastes or cell lines from facilities engaged in the production or research and development of vaccines or other biologics and classified under the NAICS as Code 325414—Biological Product (except Diagnostic) Manufacturing or Code 541711—Research and Development in Biotechnology, where no agent in the waste is classified as Biosafety Levels 2—4 as determined by the protocols established in the most recent edition of the CDC's BMBL existing at the time the waste is generated.

*Institutional establishment*—An establishment engaged in service, including, but not limited to, hospitals, nursing homes, orphanages, schools and universities.

*Intermittent stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

*Land application*—Agricultural utilization or land reclamation of solid waste. The term does not include the disposal of solid waste in a landfill or disposal impoundment.

*Land disposal*—The land application of sewage sludge for purposes other than agricultural utilization or land reclamation.

*Landowner*—The person or municipality in whom legal title to the surface of the land is vested.

*Land reclamation*—The land application of sewage sludge for its plant nutrient value or as a soil conditioner, in order to establish vegetative growth or restore or enhance the soil.

*Leachate*—A liquid that has permeated through or drained from solid waste.

*Leaf composting facility*—A facility for composting vegetative material, including leaves, garden residue and chipped shrubbery and tree trimmings. The term does not include a facility that is used entirely or partly for composting grass clippings.

*Leaf waste*—Leaves, garden residues, shrubbery and tree trimmings, and similar material, but not including grass clippings.

*Lift*—A compacted layer of solid waste upon which daily, intermediate or final cover may be applied.

*Liquid waste*—A waste that contains free liquids as determined by Method 9095 (paint filter liquids test), as described in the EPA’s “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (EPA Publication No. SW-846).

*MCL*—Maximum contaminant level.

*Management*—The entire process, or a part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process.

*Marketed*—The transfer of ownership of recyclable materials for the purpose of recycling the materials into a new product or use.

*Maximum daily volume*—The maximum daily volume limit that is permitted to be received for disposal at the facility on an operating day.

*Mine*—A deep or surface mine, whether active, inactive or abandoned.

*Mining*—The process of the extraction of minerals from the earth, from waste or stockpiles or from pits or banks.

*Mobile regulated medical waste processing facility*—A regulated medical waste processing unit that is moved from one waste generation site to another for the purpose of onsite processing of a generator’s regulated medical waste. The term refers to any processing activity designed to disinfect waste in accordance with § 284.321 to render the waste noninfectious. The term does not include any permanently placed waste processing units.

*Municipality*—A city, borough, incorporated town, township, county or an authority created by any of the foregoing.

*Municipal recycling program*—A source separation and collection program for recycling municipal waste or source-separated recyclable materials, or a program for designated drop-off points or collection centers for recycling municipal waste or source-separated recyclable materials, that is operated by or on behalf of a municipality. The term includes a source separation and collection program for composting yard waste that is operated by or on behalf of a municipality. The term does not include a program for recycling construction/demolition waste or sludge from sewage treatment plants or water supply treatment plants.

*Municipal waste*—Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; and sludge not meeting the definition of residual or hazardous waste under this section from a municipal, commercial or institutional water supply treatment plant, waste water treatment plant or air pollution control facility.

*Municipal waste disposal or processing facility*—A facility using land for disposing or processing of municipal waste. The facility includes land affected during the lifetime of operations, including, but not limited to, areas where disposal or processing activities actually occur, support facilities, borrow areas,

offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility.

*Municipal waste landfill*—A facility using land for disposing of municipal waste. The facility includes land affected during the lifetime of operations including, but not limited to, areas where disposal or processing activities actually occur, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite and contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility. The term does not include a construction/demolition waste landfill or a facility for the land application of sewage sludge.

*Municipal waste management plan*—A comprehensive plan for an adequate municipal waste management system in accordance with Chapter 272, Subchapter C (relating to municipal waste planning).

*Municipal Waste Planning, Recycling and Waste Reduction Act*—53 P. S. §§ 4000.101—4000.1904.

*NARM*—Naturally occurring or accelerator-produced radioactive material. The term does not include byproduct, source or special nuclear material.

*NORM*—Naturally occurring radioactive material. A nuclide which is radioactive in its natural physical state—that is, not manmade—but does not include source or special nuclear material.

*NPDES*—National Pollutant Discharge Elimination System.

*Normal farming operations*—The customary and generally accepted activities, practices and procedures that farms adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products; and in the production, harvesting and preparation for market of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities; if the operations are conducted in compliance with applicable laws, and if the use or disposal of these materials will not pollute the air, water or other natural resources of this Commonwealth. The term includes the storage and utilization of agricultural and food process wastes for animal feed, and the agricultural utilization of septic tank cleanings and sewage sludges which are generated offsite. The term also includes the management, collection, storage, transportation, use or disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil, the growth of crops or in the restoration of the land for the same purposes.

*Occupied dwelling*—A permanent building or fixed mobile home that is currently being used on a regular or temporary basis for human habitation.

*Onsite*—The same or geographically contiguous property owned or leased or used by a generator or waste management facility, which may be divided by public or private right-of-way, if the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned or leased by the same person or municipality but connected by a right-of-way under the control of the person or municipality and to which the public does not have access, are also considered onsite property. A facility that does not meet the requirements of this definition is an offsite facility.

*Operate*—To construct a municipal waste management facility in anticipation of receiving solid waste for the purpose of processing or disposal; to receive, process or dispose of solid waste; to carry on an activity at the facility that is related to the receipt, processing or disposal of waste or otherwise affects land at the facility; to conduct closure and postclosure activities at a facility.

*Operator*—A person or municipality that operates a municipal waste processing or disposal facility.

*Owner*—The person or municipality who is the owner of record of a facility or part of a facility.

*PCB containing waste*—Solid waste containing PCBs in the following concentrations:

- (i) More than 4 parts per million, but less than 50 parts per million.
- (ii) Fifty parts per million or more, if the following are met:
  - (A) Regulations promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2629) provide that the waste may be disposed of as municipal solid waste.
  - (B) The waste is not a hazardous waste under the act.
  - (C) The Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6991) does not impose specific standards or requirements for the disposal of the waste.

*Pennsylvania Used Oil Recycling Act*—58 P. S. §§ 471—480.

*Perched aquifer*—An aquifer that is separated from an underlying aquifer by an unsaturated zone.

*Perched water table*—The water table in a perched aquifer.

*Perennial stream*—A body of water flowing in a channel or bed composed of substrates associated with flowing waters and capable, in the absence of pollution or other manmade disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.



*Permit*—A permit issued by the Department to operate a municipal waste disposal or processing facility, or to beneficially use municipal waste. The term includes a general permit, permit-by-rule, permit modification, permit reissuance and permit renewal.

*Permit area*—The area of land and water within the boundaries of the permit, which is designated on the permit application maps as approved by the Department. The area includes the areas which are or will be affected by the municipal waste processing or disposal facility.

*Permit-by-rule*—A permit which a person or municipality is deemed to have for the operation of a facility or an activity upon compliance with § 271.102 or § 271.103 (reserved).

*Person*—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal Government or agency, State institution and agency—including, but not limited to, the Department of General Services and the State Public School Buildings Authority—or another legal entity which is recognized by law as the subject of rights and duties. In the provisions of this article pertaining to a fine or penalty, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

*Plan revision*—A change that affects the contents, terms or conditions of a Department approved plan under the Municipal Waste Planning, Recycling and Waste Reduction Act.

*Pollution*—Contamination of air, water, land or other natural resources of this Commonwealth that will create or is likely to create a public nuisance or to render the air, water, land or other natural resources harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other life.

*Postclosure*—Activities after closure which are necessary to ensure compliance with the act and this article, including application of final cover, grading and revegetation; groundwater, surface water and gas monitoring; erosion control and gas control; leachate treatment, and abatement of pollution or degradation to land, water, air or other natural resources.

*Postconsumer material*—A product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purposes of collection, recycling and disposition. The term includes industrial byproducts that would otherwise go to disposal or processing facilities. The term does not include internally generated scrap that is commonly returned to industrial or manufacturing processes.

*Principal shareholder*—A person or municipality that owns, holds or controls at least 5% of the stock of a publicly held corporation or at least 10% of the stock of a privately held corporation.

*Processing*—Technology used for the purpose of reducing the volume or bulk of municipal or residual waste or technology used to convert part or all of the waste materials for offsite reuse. Processing facilities include, but are not limited to, transfer facilities, composting facilities and resource recovery facilities.

*Project development*—Activities required to be conducted prior to constructing a processing or disposal facility that have been shown to be feasible, including, but not limited to, public input and participation, siting, procurement and vendor contract negotiations, and market and municipal waste supply assurance negotiations.

*Radioactive material*—A substance which spontaneously emits alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom's nucleus.

*Reasonable expansion*—A municipal waste landfill that meets the following:

(i) The facility represents growth of an existing permitted municipal waste landfill to land which is contiguous to the existing landfill.

(ii) The contiguous land meets one of the following:

(A) The land is owned in fee by the owner of the municipal waste landfill.

(B) The land is subject to an irrevocable option exercisable within 1 year of one of the following:

(I) If the land is located in a county that will be submitting a plan under § 272.211(a) (relating to general requirement), the date that the first written notice of plan development is given under § 272.203 (relating to notice to municipalities).

(II) If the land is located in a county that had a plan approved under § 272.211(b), the date that the first written notice of proposed revision of the approved plan is given under § 272.203.

(iii) The contiguous land contains the same geological features as are present at the existing municipal waste landfill.

(iv) A complete permit application for the expansion is filed with the Department within 1 year of one of the following:

(A) If the land is located in a county that will be submitting a plan under § 272.211(a), the date that the first written notice of plan development is given under § 272.203.

(B) If the land is located in a county that had a plan approved under § 272.111(b), the date that the first written notice of proposed revision of the approved plan is given under § 272.203.

*Recycling*—The collection, separation, recovery and sale or reuse of metals, glass, paper, plastics and other materials which would otherwise be disposed or processed as municipal waste.

*Recycling facility*—A facility employing a technology that is a process that separates or classifies municipal waste and creates or recovers reuseable mate-

rials that can be sold to or reused by a manufacturer as a substitute for or a supplement to virgin raw materials. The term does not include transfer facilities, municipal waste landfills, composting facilities or resource recovery facilities.

*Recycling Fund*—The fund established under section 706 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.706).

*Regional groundwater table*—The fluctuating upper water level surface of an unconfined or confined aquifer, where the hydrostatic pressure is equal to the ambient atmospheric pressure. The term does not include the perched water table or the seasonal high water table.

*Regulated medical or chemotherapeutic waste aggregation facility*—A facility that accepts, aggregates or stores regulated medical or chemotherapeutic waste, or both.

*Regulated medical waste*—Infectious waste.

*Related party*—A person or municipality engaged in solid waste management that has a financial relationship to a permit applicant or operator. The term includes a partner, associate, officer, parent corporation, subsidiary corporation, contractor, subcontractor, agent or principal shareholder of another person or municipality, or a person or municipality that owns land on which another person or municipality operates a municipal waste processing or disposal facility.

*Remaining available permitted capacity*—The remaining permitted capacity that is actually available for processing or disposal to the county or other municipality that generated the waste.

*Remaining permitted capacity*—The weight or volume of municipal waste that can be processed or disposed of at an existing municipal waste processing or disposal facility. The term includes weight or volume capacity for which the Department has issued a permit under the act. The term does not include a facility that the Department determines, or has determined, has failed and continues to fail to comply with the act, the regulation thereunder, an order issued thereunder or permit conditions.

*Remediation standards*—Background, MCLs, site-specific, Statewide health and alternative groundwater protection standards as those terms are defined under this article.

*Residential septage*—Liquid or solid material removed from a septic tank, cesspool or similar treatment works that receives only waste or wastewater from humans or household operations. The term includes processed residential septage from a residential septage treatment facility. The term does not include liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

*Residual waste*—Garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from

industrial, mining and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if it is not hazardous. The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66). The term does not include treatment sludges from coal mine drainage treatment plants, disposal of which is being carried on under and in compliance with a valid permit issued under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Resource recovery facility—*

(i) A processing facility that provides for the extraction and utilization of materials or energy from municipal waste.

(ii) The term includes a facility that mechanically extracts materials from municipal waste, a combustion facility that converts the organic fraction of municipal waste to usable energy and a chemical and biological process that converts municipal waste into a fuel product.

(iii) The term includes a facility for the combustion of municipal waste that is generated offsite, whether or not the facility is operated to recover energy.

(iv) The term includes land affected during the lifetime of operations, including, but not limited to, areas where processing activities actually occur, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility.

(v) The term does not include:

(A) A composting facility.

(B) Methane gas extraction from a municipal waste landfill.

(C) A separation and collection center, drop-off point or collection center for recycling, or a source separation or collection center for composting leaf waste.

(D) A facility, including all units in the facility, with a total processing capacity of less than 50 tons per day.

*Risk-based standard—*A risk-based abatement standard for substances that have no MCLs under the Federal and State Safe Drinking Water Acts.

(i) For carcinogens the standard represents a concentration associated with an excess lifetime cancer risk level between  $1 \times 10^{-4}$  and  $1 \times 10^{-6}$ , including the cumulative risk of all contaminants and represents a concentration associated with an excess cancer risk level of  $1 \times 10^{-5}$  at the property boundary of a municipal waste facility.

(ii) For systemic toxicants, the standard represents a concentration to which the human population, including sensitive subgroups, could be

exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

(iii) When several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index may not exceed one.

*Salvaging*—The controlled removal or recycling of material from a solid waste processing or disposal facility.

*Seasonal high water table*—The minimum depth from the soil surface at which redoximorphic features are present in the soil.

*Secondary contaminant*—A substance for which a secondary MCL exists, and no lifetime health advisory level exists.

*Sewage sludge*—Liquid or solid sludges and other residues from a municipal sewage collection and treatment system; and liquid or solid sludges and other residues from septic and holding tank pumpings from commercial, institutional or residential establishments. The term includes materials derived from sewage sludge. The term does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screenings generated during preliminary treatment of sewage sludge at a municipal sewage collection and treatment system, or grit, screenings and nonorganic objects from septic and holding tank pumpings.

*Site*—The area where municipal waste processing or disposal facilities are operated. If the operator has a permit to conduct the activities, and is operating within the boundaries of the permit, the site is equivalent to the permit area.

*Site-specific standard*—A numerical value as determined under section 304 of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.304) and Chapter 250, Subchapter F (relating to exposure and risk determinations).

*Small business*—A commercial establishment producing hazardous waste in amounts not regulated under the Resources Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986). For acutely hazardous wastes under 40 CFR 261.33, incorporated in § 261a.1, the term means commercial establishments producing less than 220 pounds per calendar month. For all other hazardous wastes, the term means commercial establishments producing less than 2,200 pounds per calendar month.

*Small Business and Household Pollution Prevention Program Act*—35 P. S. §§ 6029.201—6029.209.

*Soil additive or soil substitute*—Municipal waste which is beneficially used at specified loading or application rates, to replace soil that was previously available at the site, to enhance soil properties or to enhance plant growth. The term does not include structural fills, construction material, valley fills or the use of municipal waste to fill open pits from coal or noncoal mining or the disposal of coal ash.

*Soil mottling*—Irregularly marked spots in the soil profile that vary in color, size and number.

*Solid waste*—Waste, including, but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials.

*Solid Waste Abatement Fund*—The fund established under section 701 of the act (35 P. S. § 6018.701).

*Source material*—The Federal definition for “source material” in 10 CFR 20.1003 is incorporated by reference.

*Source reduction*—The reduction or elimination of the quantity or toxicity of residual waste generated, which may be achieved through changes within the production process, including process modifications, feedstock substitutions, improvements in feedstock purity, shipping and packing modifications, house-keeping and management practices, increases in the efficiency of machinery and recycling within a process. The term does not include dewatering, compaction, reclamation or the use or reuse of waste.

*Source separated recyclable materials*—Materials that are separated from municipal waste at the point of origin for the purpose of recycling. The term is limited to clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper, plastics and other marketable grades of paper.

*Special handling waste*—Solid waste that requires the application of special storage, collection, transportation, processing or disposal techniques due to the quantity of material generated or its unique physical, chemical or biological characteristics. The term includes dredged material, sewage sludge, regulated medical waste, chemotherapeutic waste, ash residue from a solid waste incineration facility, friable asbestos-containing waste, PCB-containing waste and waste oil that is not hazardous waste.

*Special nuclear material*—The Federal definition for “special nuclear material” in 10 CFR 20.1003 is incorporated by reference. The term “Commission” refers to the Nuclear Regulatory Commission. The term “act” refers to the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297h-13). The term “Department” shall be substituted for the term “Commission” when the Department assumes Agreement State Status from the Nuclear Regulatory Commission.

*Sponsor*—The definition from section 203 of the Small Business and Household Pollution Prevention Program Act is incorporated by reference.

*Stabilized sewage sludge*—Sewage sludge that has been treated to reduce odor potential and the number of pathogenic organisms. Treatment methods include anaerobic and aerobic digestion, composting, lime stabilization and chlorine stabilization.

*Statewide health standard*—A numerical value as determined under section 303 of the Land Recycling and Environmental Remediation Standards Act (35 P. S. § 6026.303) and § 250.304, except for subsection (d), §§ 250.305 and

250.308 (relating to MSCs for groundwater; MSCs for soil; and soil to ground-water pathway numeric values).

*Storage*—The containment of any waste on a temporary basis in such a manner as not to constitute disposal of the waste. It shall be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

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

*TENORM*—Technologically Enhanced Naturally Occurring Radioactive Materials. A technologically enhanced naturally occurring radioactive material not subject to regulation under the laws of the Commonwealth or the Atomic Energy Act, whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities.

*Tank*—A stationary containment device which provides its own structural support and is constructed entirely of nonearthen or nonwood materials.

*Thermal processing*—A method, technique or process, excluding incineration and autoclaving, designed to disinfect regulated medical waste by means of exposure to high thermal temperatures through methods such as ionizing radiation or electric or plasma arc technologies.

*Transfer facility*—A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source-separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, corrugated paper and plastics.

*Transportation*—The offsite removal of solid waste at any time after generation.

*Transuranic radioactive material*—Material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium and curium.

*Treatment*—A method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of waste to neutralize the waste or to render the waste nonhazardous, safer for transport, suitable for recovery, suitable for storage or reduced in volume. The term includes an activity or processing designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.

*Unrecognizable regulated medical waste*—All components of the waste have been processed to produce indistinguishable and unusable pieces smaller than 3/4 inch, except that all used sharps must be smaller than 1/2 inch. The term does not mean compaction or encapsulation except through:

- (i) Processes such as thermal treatment or melting, during which disinfection and destruction occur.
- (ii) Processes such as shredding, grinding, tearing or breaking, during or after disinfection occurs.
- (iii) Processes that melt plastics and fully encapsulate metallic or other used sharps and seals waste completely in a container that will not be penetrated by untreated used sharps.

*Used oil*—A petroleum-based or synthetic oil which is used in an internal combustion engine as an engine lubricant, or as a product for lubricating motor vehicle transmissions, gears or axles which, through use, storage or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

*Waste*—A material whose original purpose has been completed and which is directed to a disposal, processing or beneficial use facility or is otherwise disposed of, processed or beneficially used. The term does not include source separated recyclable materials, material approved by the Department for beneficial use under a beneficial use order issued by the Department prior to May 27, 1997, or material which is beneficially used in accordance with a general permit issued under Subchapter I or Subchapter J (relating to beneficial use; and beneficial use of sewage sludge by land application) if a term or condition of the general permit excludes the material from being regulated as a waste.

*Waste oil*—Oil refined from crude oil or synthetically produced, used and as a result of the use, contaminated by physical or chemical impurities. The term includes used oil.

*Waste reduction*—Design, manufacture or use of a product to minimize weight of municipal waste that requires processing or disposal, including, but not limited to:

- (i) Design or manufacturing activities which minimize the weight or volume of materials contained in a product, or increase durability or recyclability.
- (ii) The use of products that contain as little material as possible, are capable of being reused or recycled or have an extended useful life.

*Water source*—The site or location of a well, spring or water supply stream intake which is used for human consumption.

*Wetlands*—Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.



*Yard waste*—Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

*Yard waste composting facility*—A facility that is used to compost leaf waste, or leaf waste and grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material. The term includes land affected during the lifetime of the operation, including, but not limited to, areas where composting actually occurs, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection and transportation activities, and other activities in which the natural surface has been disturbed as a result of or incidental to operation of the facility.

#### Source

The provisions of this § 271.1 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; corrected March 30, 1990, effective April 9, 1988, 20 Pa.B. 1797; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended July 2, 1992, effective July 4, 1992, 22 Pa.B. 3389; amended August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended October 5, 2001, effective October 6, 2001, 31 Pa.B. 5547; amended March 21, 2008, effective March 22, 2008, 38 Pa.B. 1357; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (333615) to (333616), (274443) to (384449), (272767) to (272776), (284451) to (284452) and (333617) to (333618).

#### Notes of Decisions

##### *Permit Area*

Under the definition of “permit area,” the areas affected by the 1988 and 1990 solid waste permits were within the permitted areas under the 1978 permit and were exempt. The Environmental Hearing Board correctly concluded that the entire 1988 and 1990 permit areas were part of landfill operations prior to April 9, 1988. *Szarko v. Department of Environmental Resources*, 668 A.2d 1232 (Pa. Cmwlth. 1995), appeal denied, 683 A.2d 885 (Pa. 1996).

#### Cross References

This section cited in 7 Pa. Code § 130d.45 (relating to prohibited applications); 25 Pa. Code § 261a.4 (relating to exclusions); 25 Pa. Code § 271.907 (relating to special definitions); and 25 Pa. Code § 287.2 (relating to scope).

### § 271.2. Scope.

(a) This chapter specifies certain general procedures and rules for persons who operate municipal waste management facilities. This chapter, together with Chapters 273, 275, 277, 279, 281, 283, 284 and 285, specifies the Department’s requirements for municipal waste processing, disposal, transportation, collection and storage.

(b) Management of the following types of residual waste is subject to this article instead of Article IX (relating to residual waste management), and shall be regulated as if the waste is municipal waste, regardless of whether the waste is a municipal waste or residual waste.

- (1) Construction/demolition waste, except construction/demolition waste with greater than 4 ppm PCBs.
  - (2) Regulated medical and chemotherapeutic waste.
  - (3) Leaf waste and grass clippings.
  - (4) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.
- (c) Management of the following types of waste is subject to Article IX instead of this article, and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:
- (1) Water supply treatment plant sludges.
  - (2) Waste oil that is not hazardous waste.
  - (3) Waste tires and auto fluff.
  - (4) Contaminated soil.
  - (5) Used asphalt.
  - (6) Dredged material.
- (d) The disposal, processing, storage and transportation at a municipal waste management facility of the following types of special handling waste is subject to the applicable additional requirements for the disposal, processing, storage and transportation of these wastes in Article IX, and shall be regulated as if the waste is residual waste, regardless of whether the waste is municipal waste or residual waste:
- (1) Friable asbestos containing waste.
  - (2) PCB containing waste.

#### Source

The provisions of this § 271.2 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (333618) and (313769).

#### Notes of Decisions

##### *Waste Tires*

The accumulation of waste tires which were buried by Defendant are “residual waste” and, therefore, considered to be solid waste under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003). *Commonwealth v. Packer*, 798 A.2d 192 (Pa. 2002).

### § 271.3. Environmental protection.

- (a) The Department may, in writing, request information from a permit applicant or operator not specifically identified in this article that the Department deems necessary to implement the purpose and provisions of the act, the environmental protection acts and the regulations promulgated thereunder, including a provision of this article.
- (b) The Department may, in issuing a permit under this article, impose terms and conditions the Department deems necessary to implement the provisions and

purposes of the act, the environmental protection acts and the regulations promulgated thereunder, including this article.

**Source**

The provisions of this § 271.3 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (238967).

**§ 271.4. Computerized data submission.**

(a) Data required under this article may be submitted electronically or on magnetic or optic storage media in a format specified by the Department, if authorized by the Department.

(b) Data required under this article shall be submitted electronically or on magnetic or optic storage media in a format specified by the Department, if required by the Department.

(c) The Department may require a different scale than required in the application and operation requirements in this article to facilitate the use of data on maps, reports and plans submitted electronically or on magnetic or optic storage media.

**Source**

The provisions of this § 271.4 adopted November 28, 1997, effective November 29, 1997, 27 Pa.B. 6190; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (238967).

**§ 271.5. Public records and confidential information.**

(a) Except as provided in subsection (b), records, reports or other information submitted to the Department under this article shall be available to the public for inspection or copying during regular business hours.

(b) The Department may, upon request, designate records, reports or other information as confidential when the person or municipality providing the information demonstrates the following:

(1) The information contains trade secrets, processes, operations, style of work or apparatus of a person or municipality or is otherwise confidential business information.

(2) The information is not emission or discharge data or other information that relates to public health, safety, welfare or the environment.

(c) When submitting information under this article, a person or municipality shall designate the information which the person or municipality believes is confidential or shall submit that information separately from other information being submitted.

(d) Information which the Department determines to be confidential under this section will not be made available to the public.

(e) This section does not prevent the disclosure of information to the Federal Government or other State agencies as may be necessary for purposes of administration of Federal or State Law.

(f) This section does not prevent the disclosure of information submitted to the Department as part of a general permit application under § 271.821 (relating to the application for general permit) which meets one of the following:

(1) The Department is required to make the information available to the public as part of the general permit.

(2) The Department determines that it is necessary to disclose the information during the comment period for the general permit to obtain informed public comment on the general permit.

#### Source

The provisions of this § 271.5 adopted December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685.

### Subchapter B. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

#### REQUIREMENT

Sec.

271.101. Permit requirement.

271.102. [Reserved].

271.103. Permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements.

#### EXISTING FACILITIES

271.111. [Reserved].

271.112. [Reserved].

271.113. Closure plan.

271.114. [Reserved].

#### GENERAL APPLICATION REQUIREMENTS

271.121. Application contents.

271.122. Form of application.

271.123. Right of entry.

271.124. Identification of interests.

271.125. Compliance information.

271.126. Requirement for environmental assessment.

- 271.127. Environmental assessment.
- 271.128. Permit application fee.
- 271.129. Verification of application.

### PUBLIC NOTICE AND COMMENTS

- 271.141. Public notice by applicant.
- 271.142. Public notice by Department.
- 271.143. Public comments.
- 271.144. Public notice and public hearings for permit modifications.

#### Cross References

This subchapter cited in 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 273.111 (relating to general); 25 Pa. Code § 273.411 (relating to processed regulated medical or chemotherapeutic waste disposal); and 25 Pa. Code § 277.111 (relating to general).

### REQUIREMENT

#### § 271.101. Permit requirement.

(a) Except as provided in subsection (b), a person or municipality may not own or operate a municipal waste disposal or processing facility unless the person or municipality has first applied for and obtained a permit for the facility from the Department under the requirements of this article.

(b) A person or municipality is not required to obtain a permit:

(1) For the use or application of agricultural waste in normal farming operations, unless the proposed use or application of the waste may cause pollution to air, water or other natural resources of this Commonwealth.

(2) For a source separation and collection program for recycling municipal waste, or for dropoff points, or collection or processing centers for source separated recyclable materials.

(3) For the use as clean fill of the following materials if they are separate from other waste:

(i) Uncontaminated soil, rock, stone, gravel, unused brick and block and concrete.

(ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

(4) For the use of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material if the waste is not hazardous. A person managing waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, shall implement best management practices. The Department will prepare a manual for the management of waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material which identifies best management prac-

tices and may approve additional best management practices on a case-by-case basis. If a person fails to implement best management practices for managing waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material, the Department may require compliance with the disposal, composting, processing and storage operating requirements of this chapter and Chapters 281, 283 and 285 (relating to composting facilities; resource recovery and other processing facilities; and storage, collection and transportation of municipal waste).

(c) Subsection (b) does not relieve a person or municipality of the requirements of an applicable environmental protection act or an applicable regulation promulgated under it. Notwithstanding subsection (b), the Department may require a person or municipality to apply for, and obtain, an individual or general solid waste permit, or take other appropriate action, when the person or municipality is conducting a solid waste activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

#### Source

The provisions of this § 271.101 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272784) and (313771) to (313772).

#### Notes of Decisions

##### *Beneficial Use*

Transfer of solid waste from one collection vehicle into a transfer trailer does not constitute an activity requiring an additional permit for handling of solid waste. *Department of Environmental Resources v. O'Hara Sanitation Co.*, 562 A.2d 973 (Pa. Cmwlth. 1989).

#### Cross References

This section cited in 25 Pa. Code § 271.121 (relating to application contents); 25 Pa. Code § 271.812 (relating to nature of a general permit); and 25 Pa. Code § 284.102 (relating to nature of a general permit; substitution for individual applications and permits).

## § 271.102. [Reserved].

#### Source

The provisions of this § 271.102 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; reserved and renumbered December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234785) to (234787).

**Cross References**

This section cited in 25 Pa. Code § 271.1 (relating to definitions); and 25 Pa. Code § 271.421 (relating to administrative inspections).

**§ 271.103. Permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements.**

(a) *Purpose.* Facilities and activities described in this section shall be deemed to have a municipal waste permit by rule if the following general requirements are met:

(1) The facility or activity complies with Chapter 285 (relating to storage, collection and transportation of municipal waste).

(2) The facility or activity has the other necessary permits under the applicable environmental protection acts, and is operating under the acts and the regulations promulgated thereunder, and the terms and conditions of permits.

(3) A copy of a Preparedness, Prevention and Contingency (PPC) Plan that is consistent with the Department's guidelines for the development and implementation of environmental emergency response plans is retained onsite and available to the Department upon request.

(4) Daily records of the weight or volume of waste that is processed, the method and location of processing or disposal facilities for wastes from the facility and waste handling problems or emergencies are retained onsite and available to the Department upon request.

(b) *Financial assurances.* Subchapter D (relating to financial assurances requirements) is not applicable to facilities which are deemed to have a permit under this section.

(c) *Inappropriate activity.* The Department may require a person or municipality deemed to have a permit-by-rule to apply for, and obtain, an individual or general permit, or take other appropriate action, when the person or municipality is not in compliance with the conditions of the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(d) *Captive processing facility.* A facility that processes municipal waste that is generated solely by the operator, onsite or offsite, shall be deemed to have a municipal waste processing permit under this article if, in addition to subsections (a)—(c), the following conditions are met:

(1) Waste resulting from the processing is managed under the act and the regulations promulgated thereunder.

(2) The processing does not have an adverse effect on public health, safety, welfare or the environment.

(3) The processing occurs at the production facility at which some or all of the waste is generated.

(4) The operator performs the analyses required by § 271.611 (relating to chemical analysis of waste), unless the analyses are waived or modified by the Department in writing, and maintains results of these analyses at the facility for 5 years. The results shall be submitted to the Department upon request.

(5) For special handling waste, the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

(e) *Septage treatment facility.* A processing facility, other than a transfer or composting facility, that treats residential septage, either exclusively or mixed with nonresidential septage, shall be deemed to have a municipal waste processing permit under this article if, in addition to subsections (a)—(c), the facility complies with the following:

(1) The operator performs the analyses required by § 271.611, unless the analyses are waived or modified by the Department in writing, and maintains results of these analyses at the facility for 5 years. The results shall be submitted to the Department upon request.

(2) The processing is included as part of a wastewater treatment process permitted by the Department under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), or as part of a permit issued under the act, or the discharge resulting from the processing activity is connected to a public sewer in compliance with the local sewer authority's requirements, and one of the following applies:

(i) The facility discharges into waters of this Commonwealth under a Part II NPDES permit or a water quality management permit and is in compliance with the permit.

(ii) The facility discharges into a permitted wastewater treatment plant and is in compliance with the permit.

(3) The operator submits a written notice to the Department that includes the name, address and the telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

(f) *Incinerator.* A municipal waste incinerator located at the generation site shall be deemed to have a municipal waste permit under this article if, in addition to the requirements of subsections (a)—(c), the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility and the facility meets one of the following:

(1) The facility is not required to obtain a permit under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and the regulations promulgated thereunder.

(2) The facility has a capacity of less than 500 pounds or 227 kilograms per hour and is permitted under the Air Pollution Control Act.



(g) *Mechanical processing facility.* A facility for the processing of uncontaminated rock, stone, gravel, brick, block and concrete from construction/demolition activities, individually or in combination, by mechanical or manual sizing or by mechanical or manual separation for prompt reuse shall be deemed to have a municipal waste processing permit-by-rule if it meets the requirements of subsections (a)—(c) and submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the waste and the facility. The facility shall be onsite or process less than 50 tons or 45 metric tons per day, and may not operate in violation of any State, county or municipal waste management plan.

(h) *Yard waste composting facility.* A person or municipality that operates a yard waste composting facility that is less than 5 acres, other than an individual backyard composting facility, shall be deemed to have a municipal waste processing permit-by-rule if the person or municipality meets the requirements of subsections (a)—(c), the facility is operated in accordance with the Department's guidelines on yard waste composting and the operator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

#### Source

The provisions of this § 271.103 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (313772), (272787) to (272788) and (313773).

#### Cross References

This section cited in 25 Pa. Code § 271.1 (relating to definitions); 25 Pa. Code § 271.421 (relating to administrative inspections); 25 Pa. Code § 271.611 (relating to chemical analysis of waste); 25 Pa. Code § 283.1 (relating to scope); and 28 Pa. Code § 1151.40 (relating to management and disposal of medical marijuana waste).

## EXISTING FACILITIES

### § 271.111. [Reserved].

#### Source

The provisions of this § 271.111 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; reserved December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234790) to (234791).

**Notes of Decisions***Deadline Extended*

Because the landfill operator's permit was pending, the operator could not have known what modifications would be necessary to meet the more stringent regulations which became effective while the operator's appeal was pending; thus, the deadline within which to make the application to continue operations would be extended. *Bichler v. Department of Environmental Resources*, 600 A.2d 686 (Pa. Cmwlth. 1991).

**§ 271.112. [Reserved].****Source**

The provisions of this § 271.112 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; reserved December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234792) and (225989).

**Notes of Decisions**

The admitted incompleteness of petitioner's permit application precluded the Department of Environmental Resources from issuing a permit under the new regulations requiring satisfaction of new requirements. *T. C. Inman, Inc. v. Department of Environmental Resources*, 556 A.2d 25 (Pa. Cmwlth. 1989).

**§ 271.113. Closure plan.**

(a) The Department may require a person or municipality that closed a municipal waste landfill, construction/demolition waste landfill or municipal waste disposal impoundment after September 7, 1980, and before April 9, 1988, to submit a closure plan to the Department under this section. The person or municipality shall submit the closure plan to the Department within 6 months after receiving written notice.

(b) A closure plan for municipal waste landfills or municipal waste disposal impoundments submitted under this section shall show how the operator plans to close in a manner that will protect public health, safety and the environment. At a minimum, the closure plan shall be consistent with the following:

- (1) Final cover and grading requirements in § 273.234 (relating to final cover and grading).
- (2) Sedimentation and erosion control requirements in § 273.242 (relating to soil erosion and sedimentation control).
- (3) Revegetation requirements in §§ 273.235 and 273.236 (relating to revegetation; and standards for successful revegetation).
- (4) Water quality monitoring requirements in §§ 273.281—273.288 (relating to water quality monitoring).
- (5) Leachate management requirements in §§ 273.271—273.277 (relating to leachate treatment).
- (6) Gas venting and monitoring requirements in § 273.292 (relating to gas control and monitoring).

- (7) Bonding and insurance requirements in Subchapter D (relating to financial assurances requirements).
- (c) A closure plan for construction/demolition waste landfills submitted under this section shall show how the operator plans to close in a manner that will protect public health, safety and the environment. At a minimum, the closure plan shall be consistent with the following:
- (1) Final cover and grading requirements in § 277.233 (relating to final cover and grading).
  - (2) Sedimentation and erosion control requirements in § 277.242 (relating to soil erosion and sedimentation control).
  - (3) Revegetation requirements in § 277.235 (relating to standards for successful revegetation).
  - (4) Water quality monitoring requirements in §§ 277.281—277.288 (relating to water quality monitoring).
  - (5) Leachate management requirements in §§ 277.271—277.277 (relating to leachate treatment).
  - (6) Bonding and insurance requirements in Subchapter D.
- (d) The Department may waive or modify the applicable regulations concerning subsection (b)(1)—(6) or subsection (c)(1)—(5) if a person or municipality can demonstrate that an existing system or design performs at a level that is equivalent to the applicable regulations.
- (e) The Department may approve, approve with modifications or disapprove a closure plan submitted under this subchapter.
- (f) A person or municipality may not implement a closure plan submitted under this subchapter until the Department has approved the closure plan.
- (g) Groundwater degradation at a municipal waste landfill which ceased receiving waste between September 7, 1980, and October 9, 1993, and groundwater degradation at a construction/demolition waste landfill or municipal waste disposal impoundment which ceased receiving waste after September 7, 1980 and before April 9, 1988, shall be remediated in accordance with one of the following:
- (1) An approved closure plan, permit or any prior administrative consent order, consent adjudication, judicially approved consent order or other settlement agreement entered into with the Department.
  - (2) The remediation standards for other facilities in § 271.342(b)(4) (relating to final closure certification).
- (h) A person or municipality may request final closure certification under § 271.342 upon completion of a closure plan approved under this section.

**Source**

The provisions of this § 271.113 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (225989) to (225990).

**Cross References**

This section cited in 25 Pa. Code § 271.312 (relating to existing facilities); 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 272.104 (relating to operator withdrawals from trust fund); 25 Pa. Code § 277.234 (relating to revegetation); and 25 Pa. Code § 285.124 (relating to impoundments—failure).

**§ 271.114. [Reserved].****Source**

The provisions of this § 271.114 adopted December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; reserved November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272791) to (272792).

**GENERAL APPLICATION REQUIREMENTS****§ 271.121. Application contents.**

A person or municipality submitting a permit application under § 271.101 (relating to permit requirement) shall include with the permit application the applicable information required by this chapter and:

- (1) Chapter 273 (relating to municipal waste landfills).
- (2) Chapter 275 (relating to land application of sewage sludge).
- (3) Chapter 277 (relating to construction/demolition waste landfills).
- (4) Chapter 279 (relating to transfer facilities).
- (5) Chapter 281 (relating to composting facilities).
- (6) Chapter 283 (relating to resource recovery and other processing facilities).

**Source**

The provisions of this § 271.121 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**§ 271.122. Form of application.**

(a) An application for a permit under this article shall be submitted to the Department, in writing, on forms provided by the Department.

(b) An application for a permit shall be accompanied by information, maps, plans, specifications, designs, analyses, test reports and other data as may be required by the Department to determine compliance with this article.

(c) Information in the application shall be current, presented clearly and concisely and supported by appropriate references to technical and other written material available to the Department.

(d) An application for a permit shall be prepared by or under the supervision of a Pennsylvania registered professional engineer. The design section of the application shall bear the seal of a Pennsylvania registered professional engineer. The soils, geology and groundwater sections of a permit application shall be completed by experts in the fields of soil science, soil engineering, geology and groundwater. The geology and groundwater sections of a permit application also shall be completed under the supervision of a registered professional geologist licensed in Pennsylvania.

(e) To the greatest extent feasible, a permit application shall be submitted to the Department on paper that is manufactured partly or entirely from postconsumer material.

**Source**

The provisions of this § 271.122 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (225991).

**§ 271.123. Right of entry.**

(a) An application shall contain a description of the documents upon which the applicant bases the legal right to enter and operate a municipal waste processing or disposal facility within the proposed permit area. The application shall also state whether that right is the subject of pending litigation.

(b) The application shall provide one of the following for lands within the permit area:

(1) A copy of the written consent to the applicant by the current landowner to operate a municipal waste processing or disposal facility.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to operate a municipal waste processing or disposal facility and an abstract of title relating the documents to the current landowner.

(c) An application shall include, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Common-

wealth and its authorized agents to enter the proposed permit area. The consent shall be applicable prior to the initiation of operations, for the duration of operations at the facility, and for up to 10 years after final closure for the purpose of inspection and monitoring, maintenance or abatement measures deemed necessary by the Department to carry out the purposes of the act and the environmental protection acts.

(d) The forms required by subsections (b) and (c) shall be deemed to be recordable documents. Prior to the initiation of operations under the permit, the forms shall be recorded by the applicant at the office of the recorder of deeds in the county in which the proposed permit area is situated. This subsection does not apply to agricultural utilization permits under Chapter 275 (relating to land application of sewage sludge) nor to permits issued under Subchapter J (relating to beneficial use of sewage sludge by land application).

(e) Subsequent landowners shall be deemed to have constructive knowledge if the forms required by this section have been properly filed at the office of the recorder of deeds in the county in which the proposed solid waste activity is situated.

#### Source

The provisions of this § 271.123 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (225991) to (225992).

#### Cross References

This section cited in 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); and 25 Pa. Code § 284.122 (relating to waiver or modification of certain requirements).

### § 271.124. Identification of interests.

(a) An application for a municipal waste processing or disposal permit shall contain the following information on a form provided by the Department:

- (1) The names, addresses and telephone numbers of:
  - (i) The permit applicant.
  - (ii) Any contractor, including a contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant.
  - (iii) Related parties to the applicant, including the relationship to the applicant.
- (2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, parts of the proposed permit area.
- (3) The names and addresses of the holders of record to a leasehold interest of surface and subsurface areas within, and contiguous to, parts of the proposed permit area.

(b) An application shall contain a statement of whether the applicant is an individual, corporation, partnership, limited partnership, limited liability company, government agency, proprietorship, municipality, syndicate, joint venture or other association or entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(1) The names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant.

(2) For corporations, the principal shareholders.

(3) For corporations, the names, principal places of business and Internal Revenue Service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations.

(4) The names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the Department, including, but not limited to, associates and agents.

(c) If the applicant or an officer, principal shareholder, general or limited partner, limited liability company member or manager or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(1) The name, address and tax identification number or employer identification number of the corporation or other person or municipality.

(2) The nature of the relationship or participation with the corporation or other person or municipality.

(d) An application shall list permits or licenses, issued by the Department under the environmental protection acts to each person or municipality identified in subsection (b) and to other related parties to the applicant, that are currently in effect or have been in effect in at least part of the previous 10 years. This list shall include the type of permit or license, number, location, issuance date and, when applicable, the expiration date.

(e) An application shall identify the solid waste processing or disposal facilities in this Commonwealth which the applicant or a person or municipality identified in subsection (b) and other related parties to the applicant currently owns or operates, or owned or operated in the previous 10 years. For each facility, the applicant shall identify the location, type of operation and State or Federal permits under which they operate or have operated. Facilities which are no longer permitted or which were never under permit shall also be listed.

**Source**

The provisions of this § 271.124 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (225992) and (270909) to (270910).

**Cross References**

This section cited in 25 Pa. Code § 271.125 (relating to compliance information); 25 Pa. Code § 271.212 (relating to conditions of permits); 25 Pa. Code § 271.221 (relating to permit reissuance); 25 Pa. Code § 271.331 (relating to bond and trust amount determination); 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 279.252 (relating to annual operation report); 25 Pa. Code § 281.272 (relating to annual operation report); 25 Pa. Code § 283.262 (relating to annual operation report); 25 Pa. Code § 284.122 (relating to waiver or modification of certain requirements); and 25 Pa. Code § 284.611 (relating to general application requirements).

**§ 271.125. Compliance information.**

(a) An application shall contain the following information for the 10-year period prior to the date on which the application is filed:

(1) A description of notices of violation, including the date, location, nature and disposition of the violation, that were sent by the Department to the applicant or a related party, concerning the act, the environmental protection acts, a regulation or order of the Department or a condition of a permit or license. In lieu of a description, the applicant may provide a copy of notices of violation.

(2) A description of administrative orders, civil penalty assessments and bond forfeiture actions by the Department, and civil penalty actions adjudicated by the EHB, against the applicant or a related party concerning the act, the environmental protection acts or a regulation or order of the Department or a condition of a permit or license. The description shall include the date, location, nature and disposition of the actions. In lieu of a description, the applicant may provide a copy of the orders, assessments and actions.

(3) A description of summary, misdemeanor or felony convictions, pleas of guilty or pleas of no contest that have been obtained in this Commonwealth against the applicant or a related party under the act and the environmental protection acts, or under other acts in this Commonwealth concerning the storage, collection, treatment, transportation, processing or disposal of solid waste. The description shall include the date, location, nature and disposition of the actions.

(4) A description of court proceedings concerning the act or the environmental protection acts that were not described under paragraph (3), in which the applicant or a related party has been a party. The description shall include the date, location, nature and disposition of the proceedings.

(5) A description of consent orders, consent adjudications, consent decrees or settlement agreements in this Commonwealth entered by the applicant or a



related party concerning the act, the environmental protection acts or an environmental protection ordinance, in which the Department, the EPA or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, decree or agreement.

(6) For facilities and activities identified under § 271.124 (relating to identification of interests), a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the Department has denied a permit application filed by the applicant or a related party, based on compliance status.

(7) When the owner or operator is a corporation, partnership or limited liability company, a list of each principal shareholder, partner or member that has also been a principal shareholder, partner or member of another corporation, partnership or limited liability company which has committed violations of the act or the environmental protection acts. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationships between the principal shareholder, partner or member and both of the following:

- (i) The owner or operator.
- (ii) The other corporation, partnership or limited liability company.

(8) A description of misdemeanor or felony convictions, pleas of guilty and pleas of no contest, by the applicant or a related party for violations outside of this Commonwealth of the environmental protection acts. The description shall include the date of the convictions or pleas, and the date, location and nature of the offense.

(9) A description of final administrative orders, court orders, court decrees, consent decrees or adjudications, consent orders, final civil penalty adjudications, final bond forfeiture actions or settlement agreements involving the applicant or a related party for violations outside of this Commonwealth of the environmental protection acts. The description shall include the date of the action and the location and nature of the underlying violation. In lieu of a description, the applicant may provide a copy of the appropriate document.

(b) If the waste to be disposed or processed is generated outside the county in which the facility is proposed to be located, the application shall also include a description of applicable State and local laws, including State and local solid waste management plans adopted under those laws, that may affect, limit or pro-

hibit the transportation, processing or disposal of the waste at the proposed facility. The application shall state whether or not disposal or processing of waste from each generating county may violate each applicable law or plan.

#### Source

The provisions of this § 271.125 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (270910) and (225995) to (225996).

#### Cross References

This section cited in 25 Pa. Code § 271.212 (relating to conditions of permits); 25 Pa. Code § 271.221 (relating to permit reissuance); 25 Pa. Code § 271.331 (relating to bond and trust amount determination); 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 279.252 (relating to annual operation report); 25 Pa. Code § 281.272 (relating to annual operation report); 25 Pa. Code § 283.262 (relating to annual operation report); 25 Pa. Code § 284.122 (relating to waiver or modification of certain requirements); and 25 Pa. Code § 284.611 (relating to general application requirements).

### § 271.126. Requirement for environmental assessment.

(a) Except as provided in subsection (b), an application for a municipal waste disposal or processing permit shall include an environmental assessment on a form prescribed by the Department.

(b) The following permit applications do not require an environmental assessment unless the Department determines that the facility may have a significant effect on the environment:

- (1) Permit applications for the beneficial use of municipal waste.
- (2) Permit applications for the processing of municipal waste under Subchapter I (relating to beneficial use).
- (3) Permit modification applications that are not for major modifications under § 271.144 (relating to public notice and public hearings for permit modifications).

(c) For facilities which have previously been subject to the environmental assessment process, the Department will limit the scope of review under that process to the following:

- (1) Proposed modifications to the facility.
- (2) Changes in the areas covered by the assessment that have occurred since the assessment was conducted.

#### Source

The provisions of this § 271.126 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (225996).

**Cross References**

This section cited in 25 Pa. Code § 273.140 (relating to daily volume); 25 Pa. Code § 277.139 (relating to daily volume); 25 Pa. Code § 279.111 (relating to daily volume); 25 Pa. Code § 281.123 (relating to daily volume); and 25 Pa. Code § 283.114 (relating to daily volume).

**§ 271.127. Environmental assessment.**

(a) *Impacts.* Each environmental assessment in a permit application shall include at a minimum a detailed analysis of the potential impact of the proposed facility on the environment, public health and public safety, including traffic, aesthetics, air quality, water quality, stream flow, fish and wildlife, plants, aquatic habitat, threatened or endangered species, water uses, land use and municipal waste plans. The applicant shall consider features such as scenic rivers, recreational river corridors, local parks, State and Federal forests and parks, the Appalachian Trail, historic and archaeological sites, National wildlife refuges, State natural areas, National landmarks, farmland, wetland, special protection watersheds designated under Chapter 93 (relating to water quality standards), airports, public water supplies and other features deemed appropriate by the Department or the applicant. The permit application shall also include all correspondence received by the applicant from any State or Federal agency contacted as part of the environmental assessment.

(b) *Harms.* The environmental assessment shall describe the known and potential environmental harms of the proposed project. The applicant shall provide the Department with a written mitigation plan which explains how the applicant plans to mitigate each known or potential environmental harm identified and which describes any known and potential environmental harms not mitigated. The Department will review the assessment and mitigation plans to determine whether there are additional harms and whether all known and potential environmental harms will be mitigated. In conducting its review, the Department will evaluate each mitigation measure and will collectively review mitigation measures to ensure that individually and collectively they adequately protect the environment and the public health, safety and welfare.

(c) *Municipal waste landfills, construction/demolition waste landfills and resource recovery facilities.* If the application is for the proposed operation of a municipal waste landfill, construction/demolition waste landfill or resource recovery facility, the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(d) *Other facilities.* If the application is for the proposed operation of another type of facility and the applicant or the Department upon review determines that known or potential environmental harm remains despite the mitigation measures described in subsection (b), the applicant shall demonstrate that the benefits of the project to the public clearly outweigh the known and potential environmental harms. In making this demonstration, the applicant shall consider harms and mitigation measures described in subsection (b). The applicant shall describe in detail the benefits relied upon. The benefits of the project shall consist of social and economic benefits that remain after taking into consideration the known and potential social and economic harms of the project and shall also consist of the environmental benefits of the project, if any.

(e) *Identification of harms and benefits.* Known and potential harms and benefits of a proposed project may also be identified by the Department or any other person or municipality.

(f) *Need.* The description required by subsections (c) and (d) may include an explanation of the need for the facility, if any. Simply adding new capacity does not establish need for a facility.

(g) *Evaluation.* After consultation with other appropriate agencies and potentially affected persons, the Department will evaluate the environmental assessment in Phase I of permit review or otherwise prior to technical review.

(h) *Revision.* The Department may require submission of a revised environmental assessment if additional harms or potential harms are discovered during any phase of permit application review.

#### Source

The provisions of this § 271.127 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (225996) and (248213) to (248214).

#### Notes of Decisions

##### *Constitutionality*

The Environmental Quality Board's regulations adopting a Harm/Benefits Test as part of the permitting process for waste disposal facilities does not exceed the Commonwealth's police power; a determination of a project's inherent harms and benefits is reasonably necessary in order to determine whether a potentially dangerous project should be granted a permit in a heavily regulated industry. *Eagle Environmental II, L. P. v. Department of Environmental Protection*, 884 A.2d 867, 883 (Pa. 2005).

The inclusion of implementation of PA. CONST. ART I, Sec. 27 as an express purpose of the Storm Water Management Act (33 P. S. §§ 6018.101—6018.1003) indicates that the Legislature intended to authorize the balancing of environmental harms against social and economic benefits. Therefore, the harms/benefits test of the regulations comport with the Constitution. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003).

##### *Delegation*

The General Assembly made the "basic policy choice" and its will was merely carried out by the substantive rulemaking process. Therefore, the creation of the harms/benefits test of the regulations is a valid exercise of the rulemaking powers. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003).

*Department Requirement*

The Department erred by issuing a permit to a landfill operator without requiring the operator to include the potential harm of bird hazard in its environmental assessment. *Leatherwood, Inc. v. Department of Environmental Protection*, 819 A.2d 604 (Pa. Cmwlth. 2003).

*Economic Benefits*

Where the Department determined that the faster payment of fees would economically benefit the local municipalities, that determination is entitled to great deference; therefore, it was an error of law for the Environmental Hearing Board to determine that the increase in host fees did not represent an economic benefit. *Browning-Ferris Industries v. Department of Environmental Protection*, 819 A.2d 148 (Pa. Cmwlth. 2003); appeal granted in part 893 A.2d 67 (Pa. 2006).

*Harms/Benefits; Standards*

Department of Environmental Protection's failure to complete the "harms/benefits" part of its analysis before turning to the technical review of application seeking modification of solid waste permit had no material effect on its grant of permit application; purpose of regulation providing the environmental assessment be conducted prior to technical review was to save time and resources, and consideration of technical aspects of landfill was necessary to fully evaluate harms and benefits. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 193 (Pa. Cmwlth. 2006).

There is no rule or mandatory requirement in the Department of Environmental Protection's (DEP) regulation which precluded it from offering permittee an opportunity to submit additional information to address an issue raised during the review process; DEP did not view it as fair or proper to deny the entire application based on concerns identified after it began drafting its "harms/benefits" analysis as fairness required expending an opportunity to permittee to respond. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 194 (Pa. Cmwlth. 2006).

Issue of whether certain benefits were sufficiently related to landfill expansion project to warrant consideration in the Department of Environment Protection's harms/benefits analysis was waived for appeal where County had opportunity to raise issue before the Environmental Hearing Board but failed to do so. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 205 (Pa. Cmwlth. 2006).

In determining whether to issue permit to expand solid waste landfill, the Department of Environmental Protection properly considered permittee's clean-up of nearby stream and uncontrolled dumps as a benefit in conducting the harms/benefits analysis. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 205 (Pa. Cmwlth. 2006).

County's claim that clean-up and waste services offered by applicant for landfill expansion permit to municipalities surrounding the landfill were improperly considered by the Department of Environmental Protection and the Environmental Hearing Board because the benefit was neither quantified in a dollar amount nor enforceable by contract; there was no requirement that all of the benefits or harms of the project be quantified in a dollar amount and provision of the services was enforceable by the Department through the permit. *Berks County v. Department of Environmental Protection*, 894 A.2d 183, 204 (Pa. Cmwlth. 2006).

Since there is no enunciated standard by which benefits must clearly outweigh the harms, the standard may be met where the benefits outweigh the harms by a mere scintilla, so long as proof is provided with the high degree of certainty. *Browning-Ferris Industries v. Department of Environmental Protection*, 819 A.2d 148 (Pa. Cmwlth. 2003); appeal denied 541 A.2d 1139 (Pa. 1988).

*Validity*

The statutes reflect the General Assembly's clear intent to regulate every aspect of waste disposal, and the language of the relevant acts clearly conferred broad supervisory power to the Environmental Quality Board. This power is broad enough to encompass the harms/benefits test contained in duly promulgated regulations. *Tri-County Industries, Inc. v. Department of Environmental Protection*, 818 A.2d 574 (Pa. Cmwlth. 2003); appeal granted 835 A.2d 706 (Pa. 2003); aff. 884 A.2d 867 (Pa. 2005).

**Cross References**

This section cited in 25 Pa. Code § 271.201 (relating to criteria for permit issuance or denial); 25 Pa. Code § 273.140 (relating to daily volume); 25 Pa. Code § 277.139 (relating to daily volume); 25 Pa. Code § 279.111 (relating to daily volume); 25 Pa. Code § 281.123 (relating to daily volume); and 25 Pa. Code § 283.114 (relating to daily volume).

**§ 271.128. Permit application fee.**

(a) An application for a new permit shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for the following amount:

- (1) Eighteen thousand five hundred dollars for a municipal waste landfill.
- (2) Nineteen thousand two hundred fifty dollars for a construction/demolition waste landfill.
- (3) One thousand two hundred dollars for the agricultural utilization of sewage sludge.
- (4) Four thousand dollars for the utilization of sewage sludge for land reclamation and land disposal.
- (5) Four thousand four hundred dollars for a transfer facility.
- (6) For municipal waste processing facilities other than transfer facilities:
  - (i) One thousand nine hundred dollars for incinerators or resource recovery facilities.
  - (ii) Four thousand dollars for other municipal waste processing facilities.
- (7) Seventeen thousand three hundred dollars for demonstration facilities.

(b) An application for a permit modification under § 271.144 (relating to public notice and public hearings for permit modifications) shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for the following amount:

- (1) Three hundred dollars for the addition of types of waste not approved in the permit.
- (2) Seven thousand eight hundred dollars for municipal waste landfills and construction/demolition waste landfills.
- (3) Four hundred dollars for the agricultural utilization of sewage sludge.
- (4) One thousand one hundred dollars for the utilization of sewage sludge for land reclamation and land disposal.
- (5) Seven hundred dollars for transfer facilities.
- (6) For municipal waste processing facilities other than transfer facilities:
  - (i) One thousand five hundred dollars for incinerators or resource recovery facilities.
  - (ii) Seven hundred dollars for other municipal waste processing facilities.
- (7) Six thousand seven hundred dollars for demonstration facilities.

(c) An application for a minor permit modification, including a minor permit modification under § 271.222 (relating to permit modification), shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$300.

(d) An application for a permit reissuance under § 271.221 (relating to permit reissuance) shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$300.

(e) An application for a permit renewal under § 271.223 (relating to permit renewal) shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$300.

#### Source

The provisions of this § 271.128 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (248215) and (225999).

#### Cross References

This section cited in 25 Pa. Code § 271.220 (relating to permit modification); and 25 Pa. Code § 271.223 (relating to permit renewal).

### § 271.129. Verification of application.

An application for a permit shall be verified by a responsible official of the applicant with a statement that the information contained in the application is true and correct to the best of the official’s information and belief, and attested by a notary public or district justice.

#### Source

The provisions of this § 271.129 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### Cross References

This section cited in 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); and 25 Pa. Code § 284.122 (relating to waiver or modification of certain requirements).

## PUBLIC NOTICE AND COMMENTS

### § 271.141. Public notice by applicant.

(a) An applicant for a new permit, major permit modification, permit renewal or permit reissuance and a person or municipality submitting a closure plan shall publish once a week for 3 consecutive weeks a notice in a newspaper of general circulation in the area where the facility or proposed facility is located. The notice shall meet the following requirements:

(1) Include a brief description of the location and proposed operation or closure of the facility, and indicate where copies of the application or closure plan will be filed. If groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day

public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site.

(2) State that the host municipality and county may submit comments to the Department within 60 days of receipt of the application or closure plan, recommending conditions upon, revisions to and approval or disapproval of the permit or closure plan, with the specific reasons described in the comments.

(3) State that the Department will accept comments from the public on the permit application or closure plan and state the procedure for submission of comments.

(4) If the applicant proposes a design alternative under § 271.231 (relating to equivalency review procedure), it shall so state, and briefly describe the alternative design.

(5) If the application is for a new municipal waste landfill, construction/demolition waste landfill, transfer facility or resource recovery facility, or for a major modification of a municipal waste landfill permit, it shall be in the form of a display advertisement.

(b) An applicant for a new permit, permit reissuance, permit renewal or major permit modification, and a person or municipality submitting a closure plan, shall also notify by certified mail owners and occupants of land contiguous to the site or the proposed permit area of the nature and extent of the proposed facility or closure plan. If the applicant proposes a design alternative under § 271.231, the notice shall so state and briefly describe the alternative design. The applicant shall submit proof of the notice in the form of a United States Postal Service postmarked signature card or other dated acknowledgment form of private letter carrier services.

(c) The Department may require the person or municipality to provide additional public notice if the Department determines that the proposed facility or closure plan is of significant interest to the public or may cause significant environmental impact.

(d) An applicant for a new permit, permit reissuance, permit renewal or major permit modification, and a person or municipality submitting a closure plan shall, immediately before the application or plan is filed with the Department, give written notice to each municipality in which the site or proposed permit area is located. If groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If the applicant proposes a design alternative under § 271.231, the notice shall so state and briefly describe the alternative design. The applicant shall file with the Department a



copy of the notice as part of the application or plan. The Department will not issue a permit for 60 days from the date of the notice unless each municipality to which the notice is sent submits a written statement to the Department expressly waiving the 60-day period.

(e) Proof of compliance with the applicable requirements of this section shall be submitted within 30 days of filing its permit application or closure plan with the Department.

#### Source

The provisions of this § 271.141 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226000) and (234795).

#### Notes of Decisions

##### Notice

Notice must be given to all counties and municipalities having jurisdiction over the site defined as the entire permit area. *Fontaine v. Department of Environmental Protection*, 1996 EHB 1333.

##### Personal Notice Required

Because the county and township were not given the notice of the Department of Environmental Protection's action to which it was entitled, they were not barred from raising the claim that the permit was issued without the notice required by SWMA and Act 101 upon the filing of the permit application. While official notice was given of the action by publication in the *Pennsylvania Bulletin*, that was insufficient notice where the interested person was entitled to personal notice. Therefore, because the applicant and the Department should have given notice to the county and township, the Department abused its discretion in issuing the permit without assurance that such a notice had been given. *Fontaine v. Department of Environmental Protection*, 1996 EHB 1333.

##### Subsection (d)

Site is defined by this regulation so as to include the entire permit area of the facility. *Fontaine v. Department of Environmental Protection*, 1996 EHB 1333.

Subsection (d) of this regulation requires that notice be given to each municipality in which the site is located; site being defined as equivalent to the permit area if the operator has a permit to conduct the activities. *Fontaine v. Department of Environmental Protection*, 1996 EHB 1333.

#### Cross References

This section cited in 25 Pa. Code § 271.144 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 271.221 (relating to permit reissuance); 25 Pa. Code § 271.341 (relating to release of bonds); 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited); 25 Pa. Code § 277.202 (relating to areas where construction/demolition waste landfills are prohibited); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 281.202 (relating to areas where general composting facilities are prohibited); and 25 Pa. Code § 283.202 (relating to areas where resource recovery facilities and other processing facilities are prohibited).

#### § 271.142. Public notice by Department.

(a) The Department will publish a notice in the *Pennsylvania Bulletin* of the following:

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(1) Receipt of an application for a new permit, permit reissuance, permit renewal or major permit modification.

(2) Receipt of a closure plan and if groundwater degradation exists at closure or occurs after closure, the notice shall include a list of contaminants, abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met. If the permittee proposes to utilize the alternative groundwater protection standard, the notice shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site.

(3) Final action on an application for a new permit, permit reissuance, permit renewal or major permit modification.

(4) Justification for overriding county or host municipality recommendations regarding an application for a new permit, permit reissuance, permit renewal or major permit modification under section 504 of the act (35 P. S. § 6018.504).

(b) The Department will submit a copy of an application for a new permit, permit reissuance, permit renewal, major permit modification or closure plan to the host municipality and the appropriate county, county planning agency and county health department, if one exists. If groundwater degradation exists at closure or occurs after closure, the Department will include a copy of the applicant's list of contaminants, identification of abatement measures taken prior to closure, if applicable, proposed remediation measures and proposed remediation standards to be met.

(c) The Department will provide written notice of final action taken on an application for a new permit, permit reissuance, permit renewal, permit modification or closure plan to the host municipality and the appropriate county, county planning agency and county health department, if one exists.

#### Source

The provisions of this § 271.142 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234795) to (234796).

#### Cross References

This section cited in 25 Pa. Code § 271.144 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 271.202 (relating to receipt of application and completeness review); and 25 Pa. Code § 271.341 (relating to release of bonds).

### § 271.143. Public comments.

(a) The Department may conduct public hearings for the purpose of receiving information on an application for a new permit, permit reissuance, permit renewal, major permit modification or closure plan, whenever there is significant public interest or the Department otherwise deems a hearing to be appropriate. At

least 30 days prior to conducting a hearing, the Department will publish notice of the hearing in a newspaper of general circulation in the proposed permit area.

(b) If a public hearing is held, a person may testify within the time provided or submit written comments, or both. The Department will consider testimony relevant to the requirements of the act, the environmental protection acts and this title.

(c) After a hearing, the Department will prepare a summary of the written and oral comments submitted at the hearing, the Department's responses to the comments and the reasons therefor. The Department will provide copies of this summary to persons who submitted comments and to other persons who request a copy.

(d) Whether or not the Department holds a public hearing, the Department may conduct an informal meeting, public meeting or series of meetings.

#### Source

The provisions of this § 271.143 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### Cross References

This section cited in 25 Pa. Code § 271.144 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 271.341 (relating to release of bonds); and 25 Pa. Code § 271.422 (relating to permit suspension or revocation).

### § 271.144. Public notice and public hearings for permit modifications.

(a) An application for a permit modification for municipal waste landfills or construction/demolition waste landfills shall be considered an application for a major permit modification under §§ 271.141—271.143 (relating to public notice by applicant; public notice by Department; and public comments) if the application involves the following:

- (1) Change in site volume—waste capacity.
- (2) Change in the average or maximum daily waste volume.
- (3) Change in excavation contours or final contours, including final elevations and slopes, if the change results in increased disposal capacity or impacts the groundwater isolation distance or groundwater quality.
- (4) Change in permitted acreage.
- (5) Change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters.
- (6) Change in approved leachate collection and treatment method.
- (7) Change in gas monitoring or management plan, or both, except when installation of additional wells or improvements to the collection systems are proposed.
- (8) Change in the approved closure plan.
- (9) Acceptance for disposal of types of waste not approved in the permit.
- (10) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 271.221 (relating to permit reissuance).

- (11) Change in approved design under § 271.231 (relating to equivalency review procedure) if the design has not been previously approved through an equivalency review.
  - (12) The submission of an abatement plan.
  - (13) The disposal of waste in areas that have reached final permitted elevations.
  - (14) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 271.221.
  - (15) Submission of a radiation protection action plan.
- (b) An application for a permit modification for a municipal waste processing facility shall be considered an application for a major permit modification under §§ 271.141—271.143, if the application involves the following:
- (1) Changes in specifications or dimensions of waste storage or residue storage areas if the change results in increased processing or storage capacity.
  - (2) Change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters.
  - (3) Change in approved closure plan.
  - (4) Acceptance for processing of types of waste not approved in the permit.
  - (5) Change in residue disposal area, if applicable.
  - (6) Change in approved design under § 271.231 if the design has not been previously approved through an equivalency review.
  - (7) Change in the maximum daily waste volume.
  - (8) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 271.221.
  - (9) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 271.221.
  - (10) Submission of a radiation protection action plan.
- (c) The Department may require public notice or public hearings for an application for permit modification not described in this section that the Department believes should be subject to public notice or public hearings.
- (d) If the Department modifies a permit under section 503(e) of the act (35 P. S. § 6018.503(e)) without first receiving a permit application, it will subsequently publish notice of the permit modification in the *Pennsylvania Bulletin*.

**Source**

The provisions of this § 271.144 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234797) and (226003).

**Cross References**

This section cited in 25 Pa. Code § 271.126 (relating to requirement for environmental assessment); 25 Pa. Code § 271.128 (relating to permit application fee); 25 Pa. Code § 271.212 (relating to conditions of permits); and 25 Pa. Code § 273.322 (relating to closure).

**Subchapter C. PERMIT REVIEW PROCEDURES  
AND STANDARDS****PERMIT REVIEW**

Sec.

- 271.201. Criteria for permit issuance or denial.
- 271.202. Receipt of application and completeness review.
- 271.203. Review period.

**GENERAL PERMIT RESTRICTIONS**

- 271.211. Term of permits.
- 271.212. Conditions of permits.

**PERMIT REISSUANCE, MODIFICATION  
AND RENEWAL**

- 271.221. Permit reissuance.
- 271.222. Permit modification.
- 271.223. Permit renewal.

**OTHER PERMITTING PROVISIONS**

- 271.231. Equivalency review procedure.
- 271.232. [Reserved].

**Cross References**

This subchapter cited in 25 Pa. Code § 271.801 (relating to scope).

**PERMIT REVIEW****§ 271.201. Criteria for permit issuance or denial.**

A permit application will not be approved unless the applicant affirmatively demonstrates that the following conditions are met:

- (1) For a disposal or processing permit, each of the entities that is the permit applicant, an owner of the facility or a part thereof, an operator of the facility, or a related party to one or more of the foregoing entities, is one of the following: a natural person; a partnership; a corporation; a municipality of this Commonwealth; a municipal authority or joint municipal authority established under the laws of the Commonwealth; an agency of the Commonwealth; the Commonwealth; an agency of the Federal Government; or the Federal Government.
- (2) The permit application is complete and accurate.
- (3) The requirements of the environmental protection acts, this title and PA.CONST. art. I, § 27 have been complied with.
- (4) Mitigation plans required by § 271.127 (relating to environmental assessment) are implemented if required by the Department.
- (5) Municipal waste management operations under the permit will not cause surface water pollution or groundwater pollution, except that the Department may approve an application for permit modification to control or abate groundwater pollution under a new or modified groundwater collection or treatment facility.
- (6) When the potential for mine subsidence exists, subsidence will not endanger or lessen the ability of the proposed facility to operate in a manner that is consistent with the act, the environmental protection acts and this title, and will not cause the proposed operation to endanger the environment or public health, safety or welfare.
- (7) The proposed facility will not interfere with implementation of the approved host county plan or another county, municipality or State plan approved under applicable law.
- (8) The proposed facility will not interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.
- (9) For a new municipal waste landfill subject to 49 U.S.C.A. § 44718(d) (relating to limitation on construction of landfills), the Administrator of the Federal Aviation Administration has determined that exemption of the landfill from application of 49 U.S.C.A. § 44718(d) would have no adverse impact on aviation safety. This exemption is only available if the state aviation agency of the state in which the airport is located has requested that the Administrator exempt the landfill from the application of 49 U.S.C.A. § 44718(d).

**Source**

The provisions of this § 271.201 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226004) to (226006).

**Notes of Decisions***In General*

An application for a permit will not be approved unless the applicant affirmatively demonstrates compliance with the requirements of the Solid Waste Management Act, the environmental protection acts and Article I, § 27 of the Pennsylvania Constitution. Without NPDES permits, there is no compliance with The Clean Streams Law. *Szarko v. Department of Environmental Resources*, 668 A.2d 1232 (Pa. Cmwlth. 1995), appeal denied, 683 A.2d 885 (Pa. 1996).

**Cross References**

This section cited in 25 Pa. Code § 272.245 (relating to submission of implementing documents).

**§ 271.202. Receipt of application and completeness review.**

(a) After receipt of a permit application, the Department will determine whether the application is administratively complete.

(b) For purposes of this section, “receipt of a permit application” does not occur for an application for a new facility or a permit modification that would result in an increased average or maximum daily waste volume, increased disposal capacity or expansion of the permit area, until the following requirements are met:

(1) The Department, applicant and municipal officials meet to discuss the permit application, the Department’s permit application review process and the public involvement steps in that process and to hear and understand the concerns and questions of the municipal officials, as described in the Department’s *Local Municipality Involvement Process Policy*, Document Number 254-2100-100. The Department may invite other persons from the local municipalities who have an interest in the application.

(2) An alternative project timeline is established for review of a permit application for a municipal waste landfill, construction/demolition waste landfill or resource recovery facility through negotiation among the Department, applicant and representatives of the host county and host municipality. If the parties are unable to reach agreement, the Department will determine an appropriate timeline, taking into consideration the level of public interest and incorporating into the timeline sufficient opportunity for meaningful public participation. Public notice of a negotiated timeline will be made in the *Pennsylvania Bulletin* as part of the permit application receipt announcement required by § 271.142 (relating to public notice by Department).

(c) For purposes of this section, an application is administratively complete if it contains necessary information, maps, fees and other documents, regardless

of whether the information, maps, fees and documents would be sufficient for issuance of the permit. If the Phase I and Phase II parts of the application for a landfill are submitted separately, the application will not be considered to be administratively complete until both parts are determined to be administratively complete.

(d) If the application is not administratively complete, the Department will, within 60 days of receipt of the application, return it to the applicant, along with a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete.

(e) The Department will deny the application if the applicant fails to provide the information, maps, fees and documents within 90 days of receipt of the notice in subsection (d).

(f) The Department will not accept a permit application for an expansion that would result in an increase in capacity of a municipal waste landfill or construction/demolition waste landfill if more than 5 years of disposal capacity remains at the landfill based upon information submitted in the most recent annual report or equivalent information that includes a topographic survey map and a description of the capacity used since the last annual report.

(g) The following definitions apply in this section:

(1) *Local municipalities.* Local municipalities include the host municipality, the host county, municipalities adjacent to the host municipality or municipalities, municipalities located within 1 mile of the permitted or proposed area, other municipalities that demonstrate that they may be adversely impacted by the proposed project and municipalities located along the approach routes.

(2) *Approach routes.* Approach routes are routes from the nearest limited access (or major) highway used by vehicles traveling to and from the facility.

(3) *Municipal officials.* Representatives of local municipalities with whom the Department will coordinate prepermit application and early permit application review.

#### Source

The provisions of this § 271.202 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226006) and (247051).

#### Cross References

This section cited in 25 Pa. Code § 271.203 (relating to review period); 25 Pa. Code § 272.372 (relating to eligible costs); 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited); 25 Pa. Code § 277.202 (relating to areas where construction/demolition waste landfills are prohibited); 25 Pa. Code § 279.202 (relating to areas where transfer facilities are prohibited); and 25 Pa. Code § 283.202 (relating to areas where resource recovery facilities and other processing facilities are prohibited).



**§ 271.203. Review period.**

(a) The Department will issue or deny permit applications for municipal waste landfills, construction/demolition waste landfills, and resource recovery facilities within the time period established in the alternative project timeline developed under § 271.202 (relating to receipt of application and completeness review).

(b) The time period in subsection (a) does not include a period beginning with the date that the Department in writing has requested the applicant to make substantive corrections or changes to the application and ending with the date that the applicant submits the corrections or changes to the Department's satisfaction.

**Source**

The provisions of this § 271.203 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (247051).

**GENERAL PERMIT RESTRICTIONS****§ 271.211. Term of permits.**

(a) A permit will be issued for a fixed term consistent with the approved operation and design plans of the facility, and not to exceed 10 years. An operator may apply for permit renewal prior to the expiration of the permit terms under § 271.223 (relating to permit renewal).

(b) The Department may grant a longer fixed term if:

(1) The application is complete for the longer fixed term.

(2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for the facility, and this need is confirmed, in writing, by the applicant's source of financing.

(c) No municipal waste may be disposed, processed or beneficially used under a permit after the expiration of the permit term for disposal, processing or beneficial use. Expiration of the permit term does not limit the operator's responsibility for complying with closure and postclosure requirements and all other requirements under the act, the environmental protection acts, regulations thereunder or the terms or conditions of its permit.

(d) The Department will, from time to time, but at intervals not to exceed 5 years, review a permit issued under this article. In its review, the Department will evaluate the permit to determine whether it reflects currently applicable operating requirements, as well as current technology and management practices. The Department may require modification, suspension or revocation of the permit when necessary to carry out the purposes of the act, the environmental protection

acts and this title. The Department will require the operator to provide a summary of changes to the operations since the initial permit or latest major permit modification was approved.

(e) If no municipal waste is processed or disposed under a permit within 5 years of the date of issuance by the Department of a permit for the facility, the permit is void.

(f) A municipal waste management facility without a permit term that was permitted by the Department prior to April 9, 1988, shall have a permit term that expires April 9, 1993. The operator of the facility may apply for permit renewal under § 271.223.

#### Source

The provisions of this § 271.211 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (247051) to (247052).

#### Notes of Decisions

##### *Permit Void Due to Names*

There is no language in the regulations which provides the Department of Environmental Protection with any explicit authority to exempt facilities with pre-1988 permits from application of subsection (c); in promulgating this section, the Environmental Quality Board intended to discourage the building of new facilities under outdated conditions as Departmental regulation and technology progressed. *Tinicum Township v. Department of Environmental Protection*, 1997 EHB 1119.

#### Cross References

This section cited in 25 Pa. Code § 271.223 (relating to permit renewal); and 25 Pa. Code § 273.202 (relating to areas where municipal waste landfills are prohibited).

### § 271.212. Conditions of permits.

A permit issued by the Department will, at a minimum, ensure and contain the following conditions:

- (1) Except to the extent that the permit states otherwise, the permittee shall conduct solid waste management activities as described in the approved application.
- (2) The permittee shall allow authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which operations will be, are being or have been conducted.
- (3) The permittee shall affect by solid waste management activities only lands specifically approved in the permit and for which financial assurances have been filed with the Department under Subchapter D (relating to financial assurances requirements).
- (4) The permittee shall notify the Department within the time stated in the permit and if no time is stated within 45 days, on a form prepared by the

Department, after the transfer has occurred of a controlling interest in the owner or operator, if the transfer does not require a permit modification under § 271.144 (relating to public notice and public hearings for permit modifications) or a permit reissuance under § 271.221 (relating to permit reissuance). The notification shall contain the same information relating to the person who obtained the controlling interest as is required of a permit applicant in a permit application under §§ 271.124 and 271.125(a) (relating to identification of interests; and compliance information). A “controlling interest” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

#### Source

The provisions of this § 271.212 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (247052) and (226009).

### PERMIT REISSUANCE, MODIFICATION AND RENEWAL

#### § 271.221. Permit reissuance.

- (a) A transfer, assignment or sale of rights granted under a permit may not be made without obtaining permit reissuance.
- (b) An application for permit reissuance shall be made on forms provided by the Department and shall contain the following:
  - (1) A written statement that the person assumes, upon reissuance of the permit, liability for operation, maintenance, pollution, closure, postclosure maintenance, final cover and other responsibilities under the act, the environmental protection acts, this title and the terms and conditions of the permit from the date of original issuance of the permit.
  - (2) A detailed explanation of the schedule and procedure for transferring control of the facility to the applicant.
  - (3) One of the following:
    - (i) An entirely new application under this article.
    - (ii) A written statement expressly agreeing to abide by permit conditions, and assuming responsibility for violations which have occurred, or may occur, on the area previously affected. The statement shall include the following:
      - (A) The identity of the applicant as required in § 271.124 (relating to identification of interests) and the compliance information required in § 271.125 (relating to compliance information).
      - (B) For a municipal waste disposal permit, a property map showing the extent to which disposal has been accomplished under the existing permit.

- (C) The name and address of the existing permittee.
  - (D) Appropriate financial assurances in the amount specified by the Department under Subchapter D (relating to financial assurance requirements).
  - (E) Proof of public notice as required by § 271.141 (relating to public notice by applicant).
- (c) Departmental approval of permit reissuance under this section does not limit the original permittee's responsibility, liability, duty or obligation under law.

#### Source

The provisions of this § 271.221 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226009) to (226010).

#### Cross References

This section cited in 25 Pa. Code § 271.128 (relating to permit application fee); 25 Pa. Code § 271.144 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 271.212 (relating to conditions of permits); and 25 Pa. Code § 271.362 (relating to reissuance of permit).

### § 271.222. Permit modification.

- (a) A permittee shall file with the Department an application for permit modification:
- (1) Prior to making a change in the design or operational plans in the application upon which the permit is issued.
  - (2) Prior to making a change that would affect the terms or conditions of the existing permit.
  - (3) Prior to conducting solid waste processing or disposal activities that are not approved in the permit.
  - (4) If otherwise required by the Department.
- (b) An application for permit modification shall be complete and contain the following information:
- (1) The permittee's name, address and permit number.
  - (2) A description of the proposed modifications, including appropriate maps, plans and applications to demonstrate that the proposed modification complies with the act, the environmental protection acts and this title.
- (c) The Department may issue onsite, in writing, a conditional approval of a minor modification for the construction of liner systems or of erosion and sedimentation control devices if impracticable to comply with subsections (a) and (b) and the modification will improve the permitted design. Approval is conditioned upon timely submission of the information and fee required in subsection (d).
- (d) Within 5 working days of obtaining written onsite Department conditional approval of a minor modification under subsection (c), the permittee shall file

with the Department documentation to modify its permit application in accordance with the conditional approval issued under subsection (c). The permit modification documentation shall be accompanied by the fee required in § 271.128(c) (relating to permit application fee).

#### Source

The provisions of this § 271.222 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226010) to (226011).

#### Cross References

This section cited in 25 Pa. Code § 271.128 (relating to permit application fee); 25 Pa. Code § 273.163 (relating to modifications of leachate treatment plan); 25 Pa. Code § 273.255 (relating to leachate detection zone); 25 Pa. Code § 273.286 (relating to groundwater assessment plan); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 273.322 (relating to closure); 25 Pa. Code § 277.163 (relating to modifications in leachate treatment plan); 25 Pa. Code § 277.254 (relating to leachate detection zone); 25 Pa. Code § 277.286 (relating to groundwater assessment plan); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 277.322 (relating to closure); 25 Pa. Code § 285.117 (relating to emergency storage); and 25 Pa. Code § 299.117 (relating to emergency storage).

### § 271.223. Permit renewal.

(a) A permittee that plans to dispose of or process municipal waste after the expiration of the term set under § 271.211 (relating to term of permits) shall file a complete application for permit renewal on forms provided by the Department. The complete application for a processing facility shall be filed at least 270 days before the expiration date of the permit term and for a disposal facility at least 1 year before the expiration date of the permit term. For a processing facility with a permit term that expires on or before September 19, 2001, the application for permit renewal shall be filed at least 180 days prior to the expiration date of the permit term. For a disposal facility with a permit term that expires on or before December 23, 2001, the application for permit renewal shall be filed at least 180 days prior to the expiration date of the permit term.

(b) An application for renewal of a municipal waste disposal permit shall include a clear statement of the remaining permitted capacity of the facility, with documentation, in relation to the requested term of the permit renewal.

(c) A permit renewal, if approved by the Department, may only continue the term of the permit on its presently permitted acreage, including the terms and conditions of the permit. An applicant that seeks to add permitted acreage or change the terms or conditions of the permit shall also file an application for a permit modification.

(d) A permit renewal shall be for a term not to exceed the term of the original permit.

**Source**

The provisions of this § 271.223 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (226011).

**Cross References**

This section cited in 25 Pa. Code § 271.128 (relating to permit application fee); 25 Pa. Code § 271.211 (relating to term of permits); and 25 Pa. Code § 271.504 (relating to operating requirements).

**OTHER PERMITTING PROVISIONS****§ 271.231. Equivalency review procedure.**

(a) In approving a permit application under this article, the Department may authorize, in writing, alternatives to the design requirements in this article only if, and only to the extent that, specific sections in this article expressly state that alternatives may be authorized under this section.

(b) A person requesting an alternative under this section shall submit a request to the Department, in writing. The request shall:

(1) Identify the specific regulation for which an equivalency alternative is being sought.

(2) Demonstrate, through supporting technical documentation, justification and quality control procedures, that the requested alternative to the design requirements in a section of the regulations will, for the life of operations at the facility, achieve the performance standards in that section, and will do so in a manner that is equivalent or superior to the design requirements in that section.

(c) No equivalency alternative will be approved unless the application affirmatively demonstrates that the following conditions are met:

(1) The request is complete and accurate and the requirements of this section have been complied with.

(2) The proposed alternative will, for the life of operations at the facility, achieve the performance standards in the section of regulations for which the alternative to the design requirements in that section is sought, and will do so in a manner that is equivalent or superior to the design requirements in that section.

(3) The proposed alternative will not cause pollution to the air, water or other natural resources of this Commonwealth, and will not harm or endanger public health, safety or welfare.

(d) In lieu of approving an equivalency alternative for the entire facility, the Department may approve an equivalency alternative for part of a site as provided in Subchapter F (relating to demonstration facilities).

(e) If an alternative design is approved through a major permit modification, the Department may approve the applicability of the alternative design to another applicant through a minor permit modification.

**Source**

The provisions of this § 271.231 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226011) to (226012).

**Cross References**

This section cited in 25 Pa. Code § 271.141 (relating to public notice by applicant); 25 Pa. Code § 271.144 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 273.233 (relating to intermediate cover and slopes); 25 Pa. Code § 273.234 (relating to final cover and grading); 25 Pa. Code § 273.253 (relating to subbase); 25 Pa. Code § 273.254 (relating to secondary liner); 25 Pa. Code § 273.255 (relating to leachate detection zone); 25 Pa. Code § 273.256 (relating to primary liner); 25 Pa. Code § 273.257 (relating to protective cover); 25 Pa. Code § 273.258 (relating to leachate collection system within protective cover); 25 Pa. Code § 273.259 (relating to surface mined areas); 25 Pa. Code § 277.232 (relating to intermediate cover and slopes); 25 Pa. Code § 277.233 (relating to final cover and grading); 25 Pa. Code § 277.253 (relating to subbase); 25 Pa. Code § 277.254 (relating to leachate detection zone); 25 Pa. Code § 277.255 (relating to liner); 25 Pa. Code § 277.256 (relating to protective cover); 25 Pa. Code § 277.257 (relating to leachate collection system within protective cover); and 25 Pa. Code § 277.258 (relating to surface mined areas).

**§ 271.232. [Reserved].****Source**

The provisions of this § 271.232 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; reserved January 24, 1997, effective May 27, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (208058) to (208060).

**Cross References**

This section cited in 25 Pa. Code § 271.903 (relating to operation under existing permits and beneficial use orders).

**Subchapter D. FINANCIAL ASSURANCES REQUIREMENTS****GENERAL**

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**ENVIRONMENTAL IMPAIRMENT LIABILITY  
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- 271.394. Commercial insurance; proof of coverage—persons other than municipalities and municipal authorities.
- 271.395. Environmental impairment trust funds; general—persons other than municipalities and municipal authorities.
- 271.396. Trust fund management—persons other than municipalities and municipal authorities.
- 271.397. Self-insurance—persons other than municipalities and municipal authorities.

#### Cross References

This subchapter cited in 25 Pa. Code § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements); 25 Pa. Code § 271.113 (relating to closure plan); 25 Pa. Code § 271.212 (relating to conditions of permits); 25 Pa. Code § 271.221 (relating to permit reissuance); 25 Pa. Code § 271.411 (relating to when a penalty will be assessed); 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 271.821 (relating to application for general permits); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); 25 Pa. Code § 273.131 (relating to basic requirements); 25 Pa. Code § 273.133 (relating to map and grid requirements); 25 Pa. Code § 277.131 (relating to basic requirements); 25 Pa. Code § 277.133 (relating to map and grid requirements); 25 Pa. Code § 279.103 (relating to maps and related information); 25 Pa. Code § 281.112 (relating to maps and related information); 25 Pa. Code § 283.103 (relating to maps and related information); and 25 Pa. Code § 284.2 (relating to permits-by-rule for regulated medical or chemotherapeutic waste processing facilities; qualifying facilities; general requirements).

#### GENERAL

#### § 271.301. Scope.

(a) This subchapter sets forth minimum requirements for demonstrating sufficient financial responsibility for the operation of municipal waste processing or disposal facilities by providing for bond guarantees for the operation of those facilities, and by providing for minimum standards for insurance protection for personal injury and property damage to third parties arising from the operation of the facilities.

(b) This subchapter applies to a person or municipality that operates the facility but is not a permit applicant or permittee when the person or municipality submits a bond or provides insurance. Nothing in this subchapter excuses the applicant or permittee from complying with this subchapter.

(c) A municipality operating a municipal waste landfill solely for the disposal of municipal waste may satisfy the requirements of this subchapter by establishing a trust fund under § 271.328 (relating to trust fund for municipally operated landfills) and this subchapter. A municipality that disposes, has disposed or proposes to dispose of residual waste at a municipal waste landfill that it operates may not satisfy the requirements of this subchapter by establishing a trust fund and shall file a bond under this subchapter.

(d) A department or agency of the United States or the Commonwealth which owns and operates a municipal waste processing or disposal facility shall satisfy

the requirements of this subchapter. The department or agency of the United States or the Commonwealth may satisfy financial assurance requirements by using applicable forms of financial assurance under this subchapter or by other means of financial assurance approved by the Department.

(e) When an application for the land application of sewage sludge is made by a municipality of a municipal authority, the filing of a bond with the Department is not required as a condition for issuance of a permit to the municipality or municipal authority for the application of the sewage sludge for land reclamation or agricultural utilization purposes.

#### Source

The provisions of this § 271.301 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226016) and (208063).

#### Cross References

This section cited in 25 Pa. Code § 271.312 (relating to existing facilities); 25 Pa. Code § 271.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 271.341 (relating to release of bonds); 25 Pa. Code § 271.351 (relating to forfeiture determination); 25 Pa. Code § 271.353 (relating to certification procedures for municipally operated landfills); 25 Pa. Code § 271.362 (relating to reissuance of permit); and 25 Pa. Code § 272.106 (relating to termination of trust).

### BOND AND TRUST REQUIREMENTS—GENERAL

#### § 271.311. New facilities.

(a) The Department will not approve a new, reissued, renewed or modified permit for the processing or disposal of municipal waste, unless the applicant first submits to the Department a bond under this subchapter, and the bond is approved by the Department.

(b) The bond shall be submitted under this subchapter on a form prepared by the Department, shall be made payable to the Department and shall provide for continuous liability from the initiation of operations at the facility. The amount of the bond shall be determined under § 271.331 (relating to bond and trust amount determination).

(c) A municipality operating a municipal waste landfill solely for the disposal of municipal waste, and which receives a permit from the Department under the act after September 26, 1988, shall establish a trust fund under § 271.328 (relating to trust fund for municipally operated landfills) and this subchapter prior to the operation of the landfill, unless the municipality posts another bond consistent with this subchapter. The landfill may not accept waste or initiate operation prior to the establishment of the trust fund.

(d) A department or agency of the United States or the Commonwealth applying for a permit to operate a municipal waste processing or disposal facility shall

satisfy the requirements of this section by filing a bond with the Department under § 271.313(a) (relating to form, terms and conditions of the bond or trust) or by another means of financial assurance approved by the Department which satisfies the terms and conditions for bonds under § 271.313(b)—(e) and this subchapter. The facility may not accept waste or initiate operation prior to the approval by the Department of the financial assurances required by this section.

#### Source

The provisions of this § 271.311 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126138) and (151735).

#### Cross References

This section cited in 25 Pa. Code § 271.333 (relating to failure to maintain adequate bond).

### § 271.312. Existing facilities.

(a) Except as provided in § 271.301(c) (relating to scope), a person or municipality operating a municipal waste landfill or construction/demolition waste landfill on or after April 9, 1988, who has not filed a bond under the act, shall file a bond with the Department within 90 days by July 8, 1988. Nothing in this section prevents the Department from requiring a bond to be submitted as required by the act for another facility operating after April 9, 1988.

(b) A person or municipality that possesses a municipal waste landfill permit or a demolition waste landfill permit under the act, or a permit for an impoundment used for municipal waste disposal issued under The Clean Streams Law (35 P. S. §§ 691.1—691.1001), which permit was issued by the Department prior to April 9, 1988, shall submit an updated bond in an approved bond amount as required by the Department, prior to Departmental approval of a closure plan submitted under § 271.113 (relating to closure plan). Nothing in this section prevents the Department from requiring a bond to be an updated bond under this chapter for another facility operating after April 9, 1988.

(c) A municipality operating a municipal waste landfill solely for the disposal of municipal waste, and which received a permit from the Department under the act before September 26, 1988, shall establish a trust fund under § 271.328 (relating to trust fund for municipally operated landfills) and this subchapter or post another bond consistent with this subchapter as of November 25, 1988.

(d) The bond required by this section shall be submitted under the requirements of this subchapter, on a form prepared by the Department, shall be made payable to the Department and shall provide for continuous liability from the initiation of operations at the facility. The amount of the bond shall be determined in accordance with § 271.331 (relating to bond and trust amount determination).

(e) The trust required by this section shall be submitted under the requirements of this subchapter, on a form approved by the Department, and shall pro-

vide for continuous liability from the initiation of operations at the facility. The amount of the trust shall be determined in accordance with § 271.331.

(f) A department or agency of the United States or the Commonwealth which owns and operates a municipal waste processing or disposal facility shall satisfy the requirements of this section by filing a bond with the Department under § 271.313(a) (relating to form, terms and conditions of the bond or trust) or by another means of financial assurance approved by the Department which satisfies the terms and conditions for bonds under § 271.313(b)—(e) and this subchapter.

#### Notes of Decisions

A land owner who operated a landfill for 15 years even though it had never been permitted could be required to post a closure bond. *T. C. Inman, Inc. v. Department of Environmental Resources*, 608 A.2d 1112 (Pa. Cmwlth. 1992).

#### Source

The provisions of this § 271.312 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (208064) to (208065).

### § 271.313. Form, terms and conditions of the bond or trust.

(a) The Department will accept the following types of bonds or trusts:

(1) A surety bond as provided in § 271.321 (relating to special terms and conditions for surety bonds).

(2) A collateral bond as provided in §§ 271.322—271.325.

(3) A combination of surety and collateral bonds as provided in § 271.327 (relating to surety/collateral combination bond).

(4) For a facility with a permit term of at least 10 years, a phased deposit of collateral bond as provided in § 271.326 (relating to phased deposit of collateral).

(5) A trust fund as provided in § 271.328 (relating to trust fund for municipally operated landfills), for a municipal waste landfill operated by a municipality solely for the disposal of municipal waste.

(b) A person or municipality submitting a bond or trust shall comply with Department guidelines, which can be obtained from the Bureau of Waste Management, Division of Enforcement, Post Office Box 2063, Harrisburg, Pennsylvania 17105-2063, establishing minimum criteria for execution and completion of the bond or trust forms and related documents and on calculation of total bond or trust liability.

(c) Bonds and trusts shall be conditioned on compliance with the act, the environmental protection acts, this title, Department orders relating to operation of municipal waste processing and disposal facilities, the terms and conditions of the permit, and amendments, revisions and changes to the act, the environmental protection acts, the regulations and the permit. The liability of the operator under

the bond or trust is absolute and unconditional to ensure compliance by the operator with requirements for the operation of a municipal waste processing or disposal facility.

(d) Liability on the bond shall cover the operation of municipal waste disposal or processing activities conducted from the initiation of the activities until the bond is released. The Department may accept a bond executed by an operator who is not the permittee or permit applicant, in lieu of a bond executed by the permittee or permit applicant, only if the liability on the bond meets the requirement of this subchapter. A bond executed by an operator who is not the permittee or permit applicant does not meet the requirements of this subchapter if liability on the bond is limited to the municipal waste management activities of that operator.

(e) Bonds will be reviewed for legality and form according to established Department procedures.

(f) Liability under the trust shall cover the operation of municipal waste disposal or processing activities conducted from the initiation of the activities until the trust is terminated. The Department will not accept a trust executed by an operator who is not the permittee or permit applicant, in lieu of a bond executed by the permittee or permit applicant.

#### Source

The provisions of this § 271.313 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (151735) to (151736).

#### Cross References

This section cited in 25 Pa. Code § 271.311 (relating to new facilities); 25 Pa. Code § 271.312 (relating to existing facilities); and 25 Pa. Code § 284.641 (relating to bond requirement).

### § 271.314. Duration of liability.

(a) The liability under a bond filed with the Department under this subchapter shall continue for the period of operations of the facility, and for 10 years after final closure certification of the facility under § 271.342 (relating to final closure certification), unless released in whole or in part by the Department, in writing, prior thereto as provided by § 271.341 (relating to release of bonds).

(b) The liability under a trust fund under this subchapter shall continue for the period of operations of the facility, until final closure certification under § 271.342, unless released in whole or in part by the Department, in writing, prior thereto as provided by § 271.341.

#### Source

The provisions of this § 271.314 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial page (151736).

**Notes of Decisions**

Ten-year duration of liability runs from final closure. *Commonwealth v. Mayer*, 569 A.2d 415 (Pa. Cmwlth. 1990).

**BOND AND TRUST REQUIREMENTS—TYPES****§ 271.321. Special terms and conditions for surety bonds.**

(a) The Department will not accept the bond of a surety company that has failed or unreasonably delayed, as determined by the Department, in making payment on a forfeited surety bond.

(b) The Department will accept only the bond of a surety licensed or authorized to do business in this Commonwealth. In addition, for facilities permitted after December 23, 2000, the Department will accept only the bond of a surety which is listed in Circular 570 of the United States Department of Treasury. If a surety is removed from Circular 570 or is no longer authorized to do business in this Commonwealth, the bond of the surety shall be replaced.

(c) The bond shall provide that full payment shall be made under the bond within 30 days of receipt of the Department's declaration of forfeiture notwithstanding judicial or administrative appeal of the forfeiture.

(d) The surety may cancel the bond by sending written notice of cancellation to the Department, the operator and the principal on the bond, only under the following conditions:

(1) The notice of cancellation shall be sent by certified mail, return receipt requested. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the Department, the operator and the principal on the bond as evidenced by return receipts.

(2) Within 60 days after receipt of a notice of cancellation, the operator shall provide the Department with a replacement bond under § 271.361 (relating to replacement of existing bond). If the operator fails to submit a replacement bond acceptable to the Department within the 60-day period, the Department will issue a notice of violation to the operator requiring that the bond be replaced within 30 days of the notice of violation. If the bond is not replaced within that 30-day period, the Department may issue a cessation order for the permits of the operator and related parties, and thereafter take action as may be appropriate.

(3) Failure of the operator to submit a replacement bond within 30 days after the notice of violation constitutes grounds for forfeiture of the bond, and other bonds submitted by the operator, under § 271.351 (relating to forfeiture determination). If the Department declares the bond forfeited before the expiration of the 120-day period, the notice of cancellation is void.

(e) Upon receipt of notice of cancellation by a surety, the Department will notify every municipality in which the facility or part of the facility is located.

The Department may provide copies of notices of violation, cease orders and other relevant correspondence regarding the surety cancellation, to the governmental units.

(f) The Department will not accept surety bonds from a surety company when the total bond liability to the Department on bonds filed by the operator, the principal and related parties exceeds the surety company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

(g) The bond shall provide that the surety and the principal are jointly and severally liable for payment of the bond amount.

(h) The Department will provide in the bond that the amount shall be confessed to judgment and execution upon forfeiture.

(i) The Department will retain, during the term of the bond, and upon forfeiture of the bond, a property interest in the surety's guarantee of payment under the bond which may not be affected by the bankruptcy, insolvency or other financial incapacity of the operator or principal on the bond.

(j) Moneys collected on bonds posted under this subchapter or trusts established under § 271.301 (relating to scope) shall be deposited with the State Treasurer, who will hold the same in the name of the Commonwealth in trust as cash collateral until the Department determines one of the following:

(1) Bonds or trust funds would otherwise be released under § 271.341 (relating to release of bonds).

(2) There are other grounds for forfeiture under § 271.351 or collection under the terms and conditions of the bond or trust.

(3) Other bonds or collateral acceptable to the Department have been posted.

(k) If the bonds are releasable under § 271.341, the moneys shall be returned to the surety or the operator as determined by the Department.

(l) If there are other grounds for forfeiture under § 271.351, or collection under the terms and conditions of the bond or trust, the State Treasurer or the Department will deposit the collected moneys into the Solid Waste Abatement Fund for the purpose specified in § 271.352 (relating to forfeiture procedures). Funds from trusts for municipally operated landfills under § 271.301 shall only be used for closure, abatement, postclosure care, monitoring and other remedial measures necessary for that particular municipally operated landfill.

#### Source

The provisions of this § 271.321 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (208067) to (208069).

#### Cross References

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust).



**§ 271.322. General terms and conditions for collateral bonds.**

- (a) The operator shall execute the collateral bond.
- (b) The operator shall submit a collateral bond with one or more of the following types of collateral acceptable to the Department:
  - (1) Cash.
  - (2) Certified checks, cashier's checks or treasurer's checks which are issued, drawn on or certified by a state-chartered or National financial institution chartered or authorized to conduct the business of banking in the United States and which are examined by a State or Federal agency.
  - (3) Automatically renewable and assignable certificates of deposit from state-chartered or National financial institutions chartered or authorized to conduct the business of banking in the United States and which are examined by a state or Federal agency.
  - (4) Automatically renewable, irrevocable standby letters of credit from state-chartered or National financial institutions chartered or authorized to conduct the business of banking in the United States and which are examined by a state or Federal agency.
  - (5) Negotiable bonds of the United States Government, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority or a municipality within this Commonwealth.
- (d) The Department will place collateral submitted under this subchapter with the State Treasurer, who is responsible for its custody and safekeeping until released or collected and deposited in the Solid Waste Abatement Fund by the Department under this chapter.
- (e) Collateral shall be in the name of the operator, and shall be pledged and assigned to the Department free and clear of claims or rights. The pledge or assignment shall vest in the Department a property interest in the collateral which shall remain until release under the terms of this subchapter and may not be affected by the bankruptcy, insolvency or other financial incapacity of the operator.
- (f) The Department will ensure its ownership interest in collateral posted on a bond under this section is of a type that the collateral is readily available to the Department upon forfeiture of the bond. The Department may require proof of ownership or enter into other agreements it determines to be necessary to ensure its ownership interest is fully protected and may take actions under the law it deems necessary to protect the ownership interest.

**Source**

The provisions of this § 271.322 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126142) to (126143).

**Cross References**

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); and 25 Pa. Code § 284.641 (relating to bond requirement).

**§ 271.323. Collateral bonds—letters of credit.**

(a) Letters of credit submitted as collateral for collateral bonds are subject to the following conditions:

(1) The letter of credit shall be a standby or guarantee letter of credit issued by a Federally insured or equivalently protected state-chartered or National financial institution chartered or authorized to conduct the business of banking in the United States and examined by a state or Federal agency. The letter of credit may not be issued without a credit analysis substantially equivalent to a credit analysis applicable to a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the customer's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.

(2) The letter of credit shall be irrevocable and shall be so designated. The Department may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the letter:

(i) The letter of credit is automatically renewable for additional time periods unless the bank gives at least 90 days prior written notice to both the Department and the operator 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 this time period, if the operator fails to replace the letter of credit with other acceptable bond guarantees within 60 days of the bank's notice to terminate the credit.

(3) The Department will not accept letters of credit issued for a customer when the amount of the letter of credit, aggregated with other loans and credits extended to the customer, exceeds the issuer's legal lending limit for that customer as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).

(4) Letters of credit shall name the Department as the beneficiary and shall 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 does not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement.

(5) Letters of credit are subject to letters of credit or the equivalent article or division of 13 Pa.C.S. (relating to the Uniform Commercial Code) in effect in the state of and which governs the bank issuing the letter of credit and the latest edition of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce.

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

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

(b) If the Department collects an amount under the letter of credit due to failure of the operator to replace the letter of credit after demand by the Department, the Department will hold the proceeds as cash collateral as provided by this subchapter.

(c) Upon notice by the bank of its intent to terminate the letter of credit, the Department will notify every municipality in which the facility or a part of the facility is located, of the Department's receipt of notice of the bank's intent to terminate the letter of credit. The Department may provide the notice by submitting a copy of the Department's notice to the operator requiring replacement collateral or surety guarantee to the governmental unit.

#### Source

The provisions of this § 271.323 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126143) to (126145).

#### Cross References

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); 25 Pa. Code § 284.641 (relating to bond requirement); and 25 Pa. Code § 285.341 (relating to bond requirement).

### § 271.324. Collateral bonds—certificates of deposit.

Certificates of deposit submitted as collateral for collateral bonds are subject to the following conditions:

(1) The certificate of deposit shall be made payable to the operator and shall be assigned to the Department by the operator, in writing, containing terms and conditions required by the Department and on forms prepared and approved by the Department. The assignment shall be recorded upon the books of the bank issuing the certificate.

(2) The certificate of deposit shall be issued by a federally-insured or equivalently protected state-chartered or National financial institution which is authorized to conduct the business of banking in the United States and examined by a state or Federal agency.

(3) The Department will not accept certificates of deposit from a state-chartered or National financial institution when the accumulated total of certificates of deposit issued by the bank or banking institution for the operator is in excess of \$100,000, or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation if the state-chartered or National financial institution is insured by the Federal Deposit Insurance Corporation. If it is

insured by an equivalent method administered by the Commonwealth, similar limits apply. If the operator is a political subdivision, the accumulated total of certificates of deposit for the operator may be in an amount secured by a pledge of assets by a depository institution under the act of August 6, 1971 (P. L. 281, No. 72) (72 P. S. §§ 3836-1—3836-8). The depository shall pledge the assets securing the amount of certificates of deposit offered under this subsection on a pooled basis in conformance with section 3 of the act of August 6, 1971 (P. L. 281, No. 72) (72 P. S. § 3836-3). A certificate of deposit will not be acceptable if there is an agreement between the operator, the depository and the custodian providing the custodian discretion to surrender the pledged assets in its possession to a receiver or other successor in interest of the depository.

(4) The certificate of deposit shall state that the bank issuing it waives the rights of setoff or liens which it has or might have against the certificate.

(5) The certificate of deposit shall be automatically renewable and fully assignable to the Department. Certificates of deposit shall state on the face that they are automatically renewable.

(6) The operator shall submit certificates of deposit in amounts which will allow the Department to liquidate the certificates prior to maturity, for the full amount of the bond without penalty to the Department.

(7) The Department will not accept certificates of deposit from banks which have failed or unduly delayed in making payment on certificates of deposit which have previously been submitted as collateral to the Department.

(8) The operator is not entitled to interest accruing on the certificates of deposit after forfeiture is declared by the Department, until the forfeiture declaration is ruled invalid by a court having jurisdiction over the Department, and the ruling is final.

#### Source

The provisions of this § 271.324 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126145) to (126146).

#### Cross References

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); 25 Pa. Code § 284.641 (relating to bond requirement); and 25 Pa. Code § 285.341 (relating to bond requirement).

### § 271.325. Collateral bonds—negotiable bonds.

Negotiable bonds submitted and pledged as collateral for collateral bonds are subject to the following conditions:

(1) The Department may determine the current market value of governmental securities for the purpose of establishing the value of the securities for bond deposit.

(2) The current market value shall be at least equal to the amount of the required bond.

(3) The Department may periodically revalue the securities and will require additional amounts if the then current market value is insufficient to satisfy the bond amount requirements for the facility.

(4) The Department will not accept government securities unless they are rated at least "A" by Standard and Poor's or "A" by Moody's.

(5) The operator may request and receive the interest accruing on governmental securities held by the Department as the interest becomes due and payable. The operator is not entitled to interest accruing on the securities after forfeiture is declared by the Department, unless the forfeiture declaration is ruled invalid by a court having jurisdiction over the Department and the ruling is final. The Department has the authority to receive interest accruing after declaration of forfeiture and during any period of appeal and hold the interest pending final determination of the Department's declaration of forfeiture.

(6) When negotiable bonds mature or are called, the State Treasurer, at the request of the permittee and upon Department approval, shall convert the negotiable bonds into other negotiable bonds of the classes specified in this subchapter, as designated by the permittee.

#### Source

The provisions of this § 271.325 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial page (126146).

#### Cross References

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); and 25 Pa. Code § 284.641 (relating to bond requirement).

### § 271.326. Phased deposit of collateral.

(a) If the Department determines, based upon the approved facility operation plan, that the facility will be accepting municipal waste for a period of at least 10 years from the date of permit issuance or the commencement of acceptance of municipal waste, whichever is later, prior to closure of the facility, a person or municipality may post a collateral bond according to the following requirements:

(1) The operator shall submit a collateral bond to the Department, accompanied by sufficient collateral required in this subchapter, and a schedule for deposit of the remaining required collateral.

(2) The operator shall deposit with the Department \$10,000 or 25% of the total amount of bond determined in this subchapter, whichever is greater, in approved collateral prior to issuance of the permit.

(3) The operator shall submit a schedule agreeing to deposit 10% of the remaining amount of bond in approved collateral in each of the next 10 years, or in proportions so that final payment is made by the date required by the

Department. The entire bond amount shall be submitted by the operator no later than the actual or expected closure of the facility. Annual payments shall become due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. Payments shall be accompanied by appropriate bond documents required by the Department.

(4) Failure or refusal to make annual payments on or before the due date is grounds for forfeiture of the bond.

(5) The Department may require additional bonding if the Department determines that a higher bond amount is necessary. The increase in the total bond amount required shall proportionately increase the remaining annual payments. The operator shall submit a new schedule, and the increased portions of payments already made, within 30 days of notice by the Department of the increase in the total bond amount.

(b) The operator shall deposit the full amount of bond required for the facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department may make the demand when one of the following occurs:

(1) The operator has failed to make a deposit of bond amount when required according to the schedule for the deposits.

(2) The operator has violated the requirements of the act, the environmental protection acts, this title, the terms or conditions of the permit or orders of the Department.

(3) The actual or expected closure of the facility will occur prior to the expiration of the 10-year period determined under this section.

(c) The operator shall survey the facility annually to determine the remaining permitted capacity, and shall notify the Department if the actual or expected closure of the facility will occur prior to the expiration of the 10-year period under this section, or if the facility will reach 50% capacity within 5 years after commencement of acceptance of municipal waste at the facility.

(d) The Department will not accept phased deposit of collateral as bond for a facility if one of the following occurs:

(1) The operator has failed to pay to the Department, when due, permit fees, fines, penalties or other payments, or has failed to deposit bond amounts with the Department when due.

(2) The operator has a pattern or history of violations of the act, the environmental protection acts, this title, the terms and conditions of the permit or orders of the Department which even if later corrected, demonstrates a lack of ability or intention to comply with these requirements.

(e) Interest earned by collateral on deposit shall be accumulated and become part of the bond amount until the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. After the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit, the operator may request the Department for a return of accumulated interest. The

Department may return accumulated interest if the return of accumulated interest does not reduce the amount of collateral below the required bond amount.

**Source**

The provisions of this § 271.326 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126146) to (126148).

**Cross References**

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); 25 Pa. Code § 271.332 (relating to bond and trust amount adjustments); and 25 Pa. Code § 271.333 (relating to failure to maintain adequate bond).

**§ 271.327. Surety/collateral combination bond.**

The Department may accept a bond which is comprised of surety and collateral bond instruments otherwise allowed by this subchapter. The instruments shall be construed as part of the entire bond for the facility. The Department may refuse to accept the bond if it determines that the financial guarantee of the bond is unacceptable, or for another reason does not meet the purposes of the act, this article or orders of the Department.

**Source**

The provisions of this § 271.327 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**Cross References**

This section cited in 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust).

**§ 271.328. Trust fund for municipally operated landfills.**

(a) A trust fund established under this subchapter shall meet the following requirements:

(1) The trust fund shall be established for the sole purpose of providing funding for completion of final closure of the municipal waste landfill and for the taking of measures that may be necessary for the abatement and prevention of adverse effects on the environment, as required by the Department, in accordance with the act, the environmental protection acts, this title, the terms and conditions of the permit and orders issued by the Department and the closure plan.

(2) The trustee shall be a state-chartered or National bank or a financial institution with trust powers or trust company with offices in this Commonwealth and whose trust activities are examined or regulated by a state or Federal agency. The trustee shall have an office located in the county in which the municipality or municipal authority is operating the municipal waste landfill for which the trust fund is established.

(i) The trustee may resign by sending written notice to the Department and the municipality or municipal authority, by certified mail, return receipt requested, of its intention to resign. The resignation will not take effect until the following conditions are met:

(A) The expiration of a 120-day period after the trustee has provided written notice of its intention to resign.

(B) The municipality or municipal authority has appointed a successor trustee and the successor trustee accepts the appointment.

(ii) If the municipality or municipal authority fails to appoint a successor trustee or a successor trustee fails to accept the appointment at the expiration of the 120-day period, the trustee may apply to a court of competent jurisdiction for instructions.

(3) The trust fund shall be established by the municipality or municipal authority. The trust shall provide that the municipality or municipal authority and the Department are co-beneficiaries under the trust.

(4) The trust shall be irrevocable and shall continue until terminated at the written agreement of the municipality or the municipal authority and the Department. A settlor municipality seeking trust termination shall comply with § 271.343 (relating to withdrawals from municipal trust). If the municipality or municipal authority fails or refuses to enter into the written agreement for the termination of the trust, the Department will have the sole power to terminate the trust as provided in § 271.343.

(5) The corpus of the trust fund shall be an amount equal to the cost of completing final closure and shall be calculated according to §§ 271.331 and 271.332 (relating to bond and trust amount determination; and bond and trust amount adjustments). The trust shall be funded by moneys paid quarterly by the municipality or municipal authority in an amount, determined by the Department, computed on the basis of the cost of completing final closure and levied on each ton or cubic yard of solid waste received at the landfill for the quarter for which the payment is being made.

(i) It is not the duty of the trustee to collect from the municipality or municipal authority a quarterly payment required under this section, nor is the trustee responsible for the amount or adequacy of a quarterly payment made by the municipality or municipal authority. The trustee shall send the Department, in writing on a quarterly basis, a statement of the trust account transactions including the amounts received from the municipality or municipal authority and paid into the trust corpus. If the trustee does not receive a quarterly payment within 15 days after the payment is due, the trustee shall promptly notify the Department that it has not received the payment.

(ii) Payments made by the municipality or the municipal authority shall consist of cash, bank checks, bank wire transfers or other means of payment acceptable to the trustee.



(b) The trustee is authorized to invest and reinvest the principal and income of the trust fund and keep the fund invested as a single fund, without distinction between principal and income. In investing, reinvesting and otherwise managing the trust fund, the trustee shall discharge its duties solely in the interest of the beneficiaries. The trustee shall manage the trust fund with that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with these matters, exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(c) For purposes of investing or reinvesting the moneys in the trust fund, the trustee is authorized to:

(1) Purchase United States Treasury Bills.

(2) Purchase short-term obligations of the United States Government or its agencies or instrumentalities.

(3) Purchase obligations of the United States of America or its agencies or instrumentalities backed by the full faith and credit of the United States.

(4) Purchase obligations of the Commonwealth or its agencies or instrumentalities backed by the full faith and credit of the Commonwealth.

(5) Purchase obligations of political subdivisions of the Commonwealth or its agencies or instrumentalities backed by the full faith and credit of the political subdivision.

(6) Purchase shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), whose shares are registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), if the investments of the investment company are those described in this subsection.

(7) Invest in time or demand deposits of the trustee to the extent insured by an agency of the Federal or State Government.

(d) The trustee may, when a municipality which established the trust fund is a city of the first or second class, purchase commercial paper and prime commercial paper defined as follows:

(1) Commercial paper means unsecured promissory notes issued at a discount from par or on an interest bearing basis by an industrial, common carrier, public utility, finance company, real estate investment trust, commercial bank holding companies, or corporations whose credit has been approved by Moody's Investors Service, Incorporated; Standard and Poor's Corporation; Fitch Investors Services, Incorporated; or their successors.

(2) The trustee may not purchase commercial paper without first determining or obtaining the following:

(i) The commercial paper is rated Prime-1, Prime 1-LOC or Prime 1 by Moody's Investors Service, A-1 or A-2 by Standard and Poor's, Fitch 1 by Fitch Investors Service, or the equivalent.

- (ii) The certification or other evidence the commercial paper proposed to be delivered is not subordinate to other debt of the issuer.
  - (iii) The certification or other evidence there is no litigation pending or threatened that would affect the commercial paper.
  - (iv) The certification or other evidence the issuer is not in default as to payment of principal and interest on its outstanding obligations.
  - (v) The certification or other evidence the issuer is incorporated in the United States, is transacting business within the United States and has assets of \$1 billion or more, or is a wholly owned subsidiary of a corporation which is incorporated in the United States, which is transacting business within the United States and has assets of \$1 billion or more.
- (e) The trustee is authorized to hold cash awaiting investment or distribution for a reasonable period of time.
- (f) The trust agreement shall be provided by the municipality or municipal authority to the trustee. The wording of the trust agreement shall be submitted to the municipality or municipal authority on a form prepared and approved by the Department. An original of the trust agreement shall be submitted to the Department, accompanied by a formal certification of acknowledgement.
- (g) The trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the trust fund, furnish to the municipality or municipal authority and the Department a statement confirming the value of the trust fund, and the dates and amounts of the payments into the trust from the municipality and withdrawals for administration or a purpose other than investment or reinvestment. The trustee shall value securities in the trust fund at the lesser of market or par value as of no more than 60 days prior to the anniversary date.

#### Source

The provisions of this § 271.328 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.301 (relating to scope); 25 Pa. Code § 271.311 (relating to new facilities); 25 Pa. Code § 271.312 (relating to existing facilities); 25 Pa. Code § 271.313 (relating to form, terms and conditions of the bond or trust); and 25 Pa. Code § 271.354 (relating to miscellaneous provisions for municipal trusts).

### BOND AND TRUST REQUIREMENTS—AMOUNT

#### § 271.331. Bond and trust amount determination.

- (a) The total corpus amount of the trust established for a municipally operated landfill under this subchapter shall be calculated in the same manner as a bond under this subchapter. A person or municipality shall calculate the proposed amount of total bond liability or the total corpus amount of the trust established

for a municipality operated landfill based upon the total estimated cost to the Commonwealth for the following:

(1) To complete final closure of the facility under the act, the environmental protection acts, this title, the terms and conditions of the permit and orders issued by the Department.

(2) To take measures necessary to prevent adverse effects upon public health and safety, public welfare and the environment, during operation and after closure, until released as provided by this subchapter.

(b) A person or municipality required to file a bond or establish a trust under this subchapter, shall prepare a written estimate of the cost of closing the facility under this article, and other related costs necessary to comply with the requirements of this article, for the purpose of determining the bond or trust corpus amount required by this subchapter. The related costs shall include direct and indirect expenses for taking measures during the period preceding final closure to prevent and correct adverse environmental affects from the operation of the facility.

(1) The cost estimate shall incorporate the likely increase in cost in the future, including inflation, as required by the Department.

(2) The Department may require adjustments to the cost estimate to meet the requirements of this chapter.

(3) The operator shall revise the cost estimate when a change in the closure plan or in the measures necessary to prevent adverse environmental affects increase the prior cost estimate.

(4) The written cost estimate shall be submitted to the Department on a form prepared by the Department.

(5) Within 90 days after closure of the facility, the operator shall prepare an updated written cost estimate. A new bond shall be submitted to the Department within 90 days after closure if the updated cost estimate indicates an increase from the prior estimate required by the Department. The bond shall reflect the updated cost estimate.

(c) The bond and trust corpus amount shall be calculated using guidelines prepared by the Department and shall be based on factors which include, but are not limited to, the following:

(1) The costs to the Commonwealth to conduct closure and postclosure care activities at the point in the life of the facility when costs to the Commonwealth would be greatest, as determined by the cost estimate for closure and postclosure care under this section, as well as costs of monitoring, sampling and analysis, soil and leachate analysis, facility security measures, remedial abatement measures and postclosure restoration and maintenance measures.

(2) The nature and size of the facility and type of operation.

(3) The quantity, type and nature of the waste to be managed at the facility.

(4) The costs related to size of the surface area, the topography and geology of the area and the land uses around the facility.

(5) The additional estimated costs to the Department which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the operator to perform restoration and abatement work.

(6) The additional estimated costs incident to or necessary and proper for the satisfactory completion of the requirements of the act, the environmental protection acts, this title, the terms and conditions of the permit and orders of the Department.

(7) The additional estimated cost for at least the next 3 years which is anticipated to be caused by inflation, determined by averaging the annual Implicit Price Deflator for Gross National Product published by the United States Commerce Department, or a superseding standard, for at least the prior 3 years.

(8) The compliance history of the operator, applicant, permittee and related parties, in §§ 271.124 and 271.125 (relating to identification of interests; and compliance information).

(d) The bond and trust corpus amount shall cover areas where municipal waste disposal or processing activities are to be conducted.

(e) The minimum bond or trust corpus amount is \$10,000.

(f) The Department will review the bond and trust corpus amount calculated by the operator and will not issue a permit, approve a closure plan or otherwise authorize operation of municipal waste processing or disposal facilities under this article prior to approval of the bond or trust corpus amount.

#### Source

The provisions of this § 271.331 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126148) to (126150).

#### Cross References

This section cited in 25 Pa. Code § 271.311 (relating to new facilities); 25 Pa. Code § 271.312 (relating to existing facilities); 25 Pa. Code § 271.328 (relating to trust fund for municipally operated landfills); 25 Pa. Code § 271.332 (relating to bond and trust amount adjustments); 25 Pa. Code § 271.341 (relating to release of bonds); 25 Pa. Code § 271.343 (relating to withdrawals from municipal trust); 25 Pa. Code § 272.104 (relating to withdrawals from trust fund); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 275.222 (relating to annual operation report); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 279.252 (relating to annual operation report); 25 Pa. Code § 281.272 (relating to annual operation report); and 25 Pa. Code § 283.262 (relating to annual operation report).

### § 271.332. Bond and trust amount adjustments.

(a) The operator shall submit bond documents required by the Department to increase the total bond liability, and deposit additional bond amounts, upon

demand by the Department under § 271.333 (relating to failure to maintain adequate bond), or if additional bond amounts are required under this chapter, including §§ 271.326 and 271.331 (relating to phased deposit of collateral; and bond and trust amount determination).

(b) The Department will require an operator to deposit additional bond or trust corpus amounts when the existing bond or trust corpus does not meet the requirements of this subchapter, including, but not limited to, the following:

(1) Inflationary cost factors have resulted in a new cost estimate which exceeds the estimate used for the original bond amount determination.

(2) The permit is to be renewed or reissued, or is subject to a major permit modification or the bond on deposit is to be replaced.

(3) The Department otherwise determines that the existing total bond liability amount does not meet the purposes of the act, the environmental protection acts, this title, the permit or orders of the Department.

(c) Periodically after the date on which the bond was required to be submitted under this subchapter, the Department may determine the adequacy of bond amount requirements for municipal waste processing or disposal facilities and, if necessary, require additional bond amounts.

(d) A request for reduction of the required bond will be considered a request for bond release under § 271.341 (relating to release of bonds).

#### Source

The provisions of this § 271.332 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (208081).

#### Cross References

This section cited in 25 Pa. Code § 271.328 (relating to trust funds for municipally operated landfills); and 25 Pa. Code § 271.341 (relating to release of bonds).

### § 271.333. Failure to maintain adequate bond.

(a) The operator shall maintain a bond in an amount and with sufficient guarantees as provided by this subchapter.

(b) If a permittee fails to post additional bond within 90 days after receipt of a demand by the Department for additional bond amounts under this subchapter or fails to make timely deposits of bond under the schedule submitted under § 271.326 (relating to phased deposit of collateral), the Department will take appropriate enforcement action, including issuing of a notice of violation to the operator. If the operator fails to deposit the required bond amount within 15 days of a notice of violation, the Department will issue a cessation order for the municipal waste processing and disposal activities conducted by the operator. The Department may take additional actions that are appropriate, including suspending or revoking permits and assessment of civil penalties.

(c) Failure of the operator to maintain adequate bond under this chapter constitutes grounds for forfeiture of the existing bonds filed with the Department. Monies collected on bonds forfeited under this section shall be deposited with the Treasurer of the Commonwealth, who shall hold the same in the name of the Commonwealth until the Department determines that the bonds would otherwise be released under § 271.341 (relating to release of bonds), or that there are other grounds for forfeiture under § 271.351 (relating to forfeiture determination).

(1) If the bonds are releasable, the moneys may be returned to the surety, banking institution or operator, as appropriate, in a manner and under conditions determined by the Department.

(2) If there are other grounds for forfeiture, the Department will deposit the collected monies into the Solid Waste Abatement Fund for the purposes specified in § 271.352 (relating to forfeiture procedures).

(d) If a surety company that had provided surety bonds, or a bank that had provided certificates of deposit or letters of credit for an operator, fails in business, enters into bankruptcy or liquidation, has its license suspended or revoked or for other reasons indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond, the Department will take appropriate enforcement action, including issuance of a notice of violation to the operator requiring that acceptable replacement bonds be submitted for affected permits under this subchapter. If the operator fails to correct the violation within 45 days of notice, the Department will issue a cessation order for the operator's and related parties' permits. The Department may take other action as is appropriate. This subsection does not excuse the operator from the requirements of this subchapter, including the requirement to file a bond approved by the Department prior to conducting municipal waste disposal or processing activities under § 271.311 (relating to new facilities).

#### Source

The provisions of this § 271.333 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### Cross References

This section cited in 25 Pa. Code § 271.332 (relating to bond and trust amount adjustments).

### BOND AND TRUST REQUIREMENTS—RELEASE

#### § 271.341. Release of bonds.

(a) An operator seeking a termination of a trust for a municipally operated landfill established under § 271.301(c) (relating to scope) or release of a bond previously submitted to the Department shall file a written request with the Department for termination of the trust or for release of all or part of the bond amount posted for the facility as part of a request for bond or trust adjustment under § 271.332 (relating to bond and trust amount adjustments), or after certi-

fication of closure of the facility. Requests for trust termination or for withdrawals from trusts for municipally operated landfills established under § 271.301(c) shall comply with the requirements of § 271.343 (relating to withdrawals from municipal trust).

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

(1) The name of the operator and identification of the facility for which the bond release is sought.

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

(3) A detailed explanation of why the bond release is requested, including, but not limited to, completion of a measure carried out in preparation for closure as defined in the closure plan or otherwise discernible upon inspection of the facility, closure of the facility, completion of postclosure measures, abatement measures taken and amendments to the permit or changes in the 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 under § 271.331 (relating to bond and trust amount determination).

(c) Upon receipt of a written request for bond release under this section, the Department will inspect the facility to verify the accuracy of the information provided in the application for the bond release by the operator, as required by § 271.342 (relating to final closure certification).

(d) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under § 271.331. If the new bond amount determination would require less bond amount for the facility than the amount already on deposit, the Department may release the portion of the bond amount which is not required for the facility, subject to the public notice and comment provisions of this chapter. If the new bond amount determination requires an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(e) A request for a bond release under this section upon final closure, or any-time after final closure, shall be, for the purpose of providing public notice and comment, considered a major permit modification and shall satisfy the public notice and comment requirements for major permit modifications under §§ 271.141—271.143 (relating to public notice by applicant; public notice by Department; and public comments) unless waived, in writing, by the Department. The Department may waive the public notice and comment requirement for a particular bond release when a definite schedule of bond release has been set forth in an approved closure plan, a permit or an order of the Department, and the closure plan, permit or order has met the public notice and comment requirements of this chapter.

(f) Upon receipt of a written request for a bond release under this section, the Department will, within 12 months prior to the expiration of the 10-year period following final closure, conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with the act, the environmental protection acts, this title, the terms and conditions of the permit, orders of the Department and the terms and conditions of the bond. Based upon this determination, the Department will either forfeit the bond prior to the expiration of the 10-year period following final closure or release the bond at the expiration of the 10-year period following final closure.

(g) The following apply with regard to bond release:

(1) 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 post-closure care, including long term maintenance of remediation measures, and to take measures that are necessary to prevent adverse effects upon the environment or public health, safety or welfare under the act, the environmental protection acts, this title, the terms and conditions of the permits and orders of the Department.

(2) The release of a bond by the Department does not constitute a waiver or release of other liability provided in law, nor does it abridge or alter rights of action or remedies of a person or municipality presently or prospectively existing in equity or under criminal and civil common or statutory law. The release of a bond does not discharge an owner or an operator from liability to restore the groundwater to remediation standards and to maintain groundwater quality, at a minimum, at those levels.

(3) The Department may grant bond releases immediately upon final closure, for facilities other than landfills, if it is clearly demonstrated that further monitoring, restoration or maintenance is not necessary to protect the public health, safety and welfare and the environment.

#### Source

The provisions of this § 271.341 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (208083) to (208084).

#### Notes of Decisions

Ten-year duration of liability runs from final closure. *Commonwealth v. Mayer*, 569 A.2d 415 (Pa. Cmwlth. 1990).

#### Cross References

This section cited in 25 Pa. Code § 271.314 (relating to duration of liability); 25 Pa. Code § 271.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 271.332 (relating to bond and trust amount adjustments); and 25 Pa. Code § 271.333 (relating to failure to maintain adequate bond).



**§ 271.342. Final closure certification.**

(a) If the operator of a municipal waste processing or disposal facility believes that closure and postclosure requirements applicable to the facility have been met, the operator may file a request for final closure certification with the Department.

(b) The Department will not issue a final closure certification unless the operator demonstrates that:

(1) The applicable operating requirements of the act, the environmental protection acts, this title, the permit, the approved closure plan and orders of the Department have been complied with.

(2) For a municipal waste landfill permitted on or after December 23, 2000, one of the following remediation standards is met and maintained at and beyond 150 meters of the perimeter of the permitted disposal area or at and beyond the property boundary, whichever is closer:

(i) For constituents for which an MCL has been promulgated under the Federal Safe Drinking Water Act or the Pennsylvania Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-18; and 35 P. S. §§ 721.1—721.17), the MCL for that constituent.

(ii) For constituents for which MCLs have not been promulgated, the background standard for the constituent.

(iii) For constituents for which the background standard is higher than the MCL or alternative groundwater protection standard identified under subparagraph (iv), the background standard.

(iv) For constituents for which MCLs have not been established, an alternative groundwater protection standard that satisfies the following criteria:

(A) The level is derived in a manner consistent with Department guidelines for assessing the health risks of environmental pollutants.

(B) The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards (40 CFR Part 792 (relating to good laboratory practice standards)) promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2692) or other scientifically valid studies approved by the Department.

(C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  range.

(D) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this clause, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

- (3) For a municipal waste landfill that received waste between October 9, 1993, and December 23, 2000, one of the following is met and maintained:
- (i) Groundwater remediation standards, including points of compliance, identified in a closure plan approved prior to December 23, 2000.
  - (ii) Groundwater remediation standards identified in paragraph (2), including the points of compliance.
- (4) For other facilities, one of the following groundwater remediation standards is met and maintained at the identified compliance points:
- (i) The Statewide health standard at and beyond the property boundary.
  - (ii) The background standard at each well selected to determine the extent of contamination, as identified in § 273.286(c)(1) (relating to groundwater assessment plan).
  - (iii) The site-specific standard at and beyond the property boundary.
- (5) No further remedial action, maintenance or other activity by the operator is necessary to continue compliance with the act, the environmental protection acts, this title, the permit, the approved closure plan and orders of the Department.
- (6) The facility is not causing adverse effects on the environment and it is not causing a nuisance.
- (c) For facilities other than municipal waste landfills, the Department may approve a compliance point beyond the property boundary up to a water source for measuring compliance with secondary contaminants under subsection (b)(4)(i) or (iii).
- (d) Upon a request for final closure certification, the Department will inspect the facility to verify that final closure has been completed as provided in subsection (b).
- (e) The date of the Department's final closure certification shall be the date of commencement of the 10-year bond liability period following final closure.
- (f) The final closure certification is not a guarantee of future performance nor does it constitute a waiver or release of bond liability or other liability existing in law or equity for adverse environmental effects or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the operator remains expressly liable. The issuance of a final closure certification does not discharge an owner or operator from liability to restore the groundwater to remediation standards and to maintain groundwater quality, at a minimum, at those levels.
- (g) If after the issuance of a certification of final closure, the Department determines that additional postclosure measures are required to abate or prevent adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the operator setting forth the schedule of measures to be taken to bring the facility into compliance. The measures include, but are not limited to, the applicable requirements of this article.

(h) If, after the issuance of a certification of final closure, the Department determines that the level of risk is increased beyond the acceptable range at a facility due to substantial changes in exposure conditions, such as in a change in land use from a nonresidential to a residential use, or new information is obtained about a substance associated with the facility which revises exposure assumptions beyond the acceptable range, additional remediation shall be required.

(i) For purposes of this section, “property boundary” is the delineation of the parcel of land as described in the deed existing on the date the facility ceases to accept waste.

#### Source

The provisions of this § 271.342 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (208085) to (208086).

#### Cross References

This section cited in 25 Pa. Code § 271.113 (relating to closure plan); 25 Pa. Code § 271.314 (relating to duration of liability); 25 Pa. Code § 271.341 (relating to release of bonds); 25 Pa. Code § 271.343 (relating to withdrawals from municipal trust); 25 Pa. Code § 271.372 (relating to conditions of insurance); 25 Pa. Code § 271.381 (relating to financial assurances requirements); 25 Pa. Code § 272.106 (relating to termination of trust); 25 Pa. Code § 277.322 (relating to closure); 25 Pa. Code § 279.262 (relating to cessation of operations); 25 Pa. Code § 281.282 (relating to cessation of operations); and 25 Pa. Code § 283.272 (relating to cessation of operations).

### § 271.343. Withdrawals from municipal trust.

(a) Except for purposes of investing and reinvesting the moneys in the trust fund by the trustee, no withdrawals may be made from the trust fund prior to certification by the Department of the abandonment of the landfill under § 271.351 (relating to forfeiture determination) or prior to the certification of closure of the landfill under § 273.203(a)(10) (relating to certification). The Department will provide the trustee with a copy of the certification of abandonment.

(b) The trustee shall withdraw and pay over moneys from the trust fund only upon receipt of a written request of the municipality or municipal authority. The trustee may not honor the written request of the municipality or municipal authority unless it has been approved by the Department.

(c) Written requests to the Department to withdraw and pay over moneys from the trust fund to the operator shall include the following:

- (1) The name of the operator and the identification of the facility for which withdrawal is sought.
- (2) The total amount of the trust corpus for the facility, the amount of the withdrawal request and the balance remaining in the trust.
- (3) A detailed explanation of why the withdrawal is requested, including, but not limited to, completion of a stage of postclosure as defined in the closure plan or otherwise discernible upon inspection of the facility, completion of

postclosure remedial measures, abatement measures taken and amendments to the permit or changes in the facts or assumptions made during the trust corpus amount determination.

(4) A revised cost estimate for closure and postclosure care under § 271.331 (relating to bond and trust amount determination) based on the costs to complete final closure after the completion of the activities specified in the request as detailed in paragraph (3).

(d) Written requests made of the trustee to withdraw and pay over moneys from the trust fund shall include the following:

(1) The name of the operator and the identification of the facility for which withdrawal is sought.

(2) The total amount of the trust corpus for the facility, the amount of the withdrawal request and the balance remaining in trust.

(3) A copy of the Department's written approval.

(e) When a written request to terminate or withdraw and pay over moneys from the trust fund is received by the trustee or the Department, the recipient shall immediately provide a copy of the request to the municipality in which the landfill is located.

(f) The trustee, immediately on preparation, shall provide a copy of a document effectuating a withdrawal from the trust fund to the Department and to the municipality in which the landfill is located.

(g) The Department will notify the trustee, in writing, of the Department's certification of final closure of the landfill under § 271.342 (relating to final closure certification). Upon receipt of this notification, the trustee shall take the necessary steps to terminate the trust fund. Upon termination of the trust fund, remaining trust property, less final trust administration expenses of the trustee, shall be returned to the settlor municipality or municipal authority.

#### Source

The provisions of § 271.343 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (208086) to (208087).

#### Cross References

This section cited in 25 Pa. Code § 271.328 (relating to trust fund for municipally operated landfills); and 25 Pa. Code § 271.341 (relating to release of bonds).

### BOND AND TRUST REQUIREMENTS—FORFEITURE

#### § 271.351. Forfeiture determination.

The Department will forfeit a collateral or surety bond, or certify the abandonment of a municipally operated landfill for which a trust has been established under § 271.301(c) (relating to scope) and this subchapter, when it determines that one of the following has occurred:

- (1) The operator has violated or continues to violate the terms or conditions of the bond.
- (2) The operator fails or refuses to comply with the act, the environmental protection acts, this title, an order of the Department, the terms or conditions of the permit or the closure plan.
- (3) The permit for the facility under bond or trust has been suspended or revoked.
- (4) The operator has failed to comply with a compliance schedule in an adjudicated proceeding, consent order or agreement approved by the Department under the act.
- (5) The Department determines that the operator cannot demonstrate or prove its intention or ability to continue to operate in compliance with the act, the environmental protection acts, this title or the conditions of the permit.
- (6) The operator has failed or continues to fail to take measures determined necessary by the Department to prevent adverse effects upon the environment.
- (7) The operator has abandoned the facility without providing closure or postclosure care, or has otherwise failed to properly achieve final closure of the facility under the act, the environmental protection acts, this title, the terms and conditions of the permit or orders of the Department.
- (8) The operator fails or refuses to comply with postclosure measures according to schedules or plans approved by the Department.
- (9) The operator or financial institution has become insolvent, failed in business, had a delinquency proceeding initiated under Article V of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 221.1—221.63), had a receiver appointed by the court or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with, or otherwise meet the requirements of the act, the environmental protection acts, this title, the terms and conditions of the permit and orders of the Department.

#### Source

The provisions of this § 271.351 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126155) to (126156).

**Cross References**

This section cited in 25 Pa. Code § 271.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 271.333 (relating to failure to maintain adequate bond); 25 Pa. Code § 271.343 (relating to withdrawals from municipal trust); 25 Pa. Code § 271.353 (relating to certification procedures for municipally operated landfills); and 25 Pa. Code § 271.376 (relating to maintenance of insurance coverage).

**§ 271.352. Forfeiture procedures.**

(a) If the Department declares a bond forfeit, it will:

(1) Send written notification to the operator, the surety on the bond, and every municipality in which a part of the facility is located, of the Department's determination to declare the bond forfeit and the reasons for the forfeiture.

(2) Advise the operator and surety of the right to appeal to the Environmental Hearing Board 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 laws for the collection of defaulted bonds or other debts.

(b) If the Department declares a collateral bond forfeited, it will pay, or direct the State Treasurer to pay, the collateral funds into the Solid Waste Abatement Fund. If upon proper demand and presentation, the banking institution or other person or municipality which issued the collateral refuses to pay the Department the proceeds of a collateral undertaking such as a certificate of deposit, letter of credit or government negotiable bond, the Department will take appropriate steps to collect the proceeds.

(c) If the Department declares a surety bond forfeited, it will certify the forfeiture to the Office of Attorney General which will proceed to enforce and collect the amount forfeited. This amount will, upon collection, be paid into the Solid Waste Abatement Fund.

(d) Moneys received from the forfeiture of bonds, and interest accrued, will be used first to accomplish final closure of, and to take steps necessary and proper to remedy and prevent adverse environmental effects from, the municipal waste processing or disposal facility upon which liability was charged on the bonds. Excess monies may be used for other purposes consistent with the Solid Waste Abatement Fund and the act.

**Source**

The provisions of this § 271.352 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**Cross References**

This section cited in 25 Pa. Code § 271.321 (relating to special terms and conditions for surety bonds); and 25 Pa. Code § 271.333 (relating to failure to maintain adequate bond).

**§ 271.353. Certification procedures for municipally operated landfills.**

(a) For municipally operated landfills for which a trust is posted under § 271.301(c) (relating to scope) and this subchapter, the Department will certify to the trustee, in writing, that the trust has been abandoned under § 271.351 (relating to forfeiture determination). The Department will not make the certification sooner than 30 days after the Department has provided written notice to the municipality or municipal authority and the trustee of the Department's intention to make the certification.

(b) Upon the trustee's receipt of the certification, all rights, title and interest in the property of the trust shall be vested in the Department. The Department may direct the trustee to make disbursements from the trust fund as may be necessary to complete final closure of the landfill and prevent or abate adverse effect on the environment, or direct the trustee to take the necessary steps to terminate the trust and pay to the Department moneys remaining in the trust together with other property of the trust, less the trustee's final administration expenses. This amount will be paid into the Solid Waste Abatement Fund, to be used solely for abatement, remediation, closure, postclosure care, monitoring and related costs for that particular landfill.

**Source**

The provisions of this § 271.353 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**§ 271.354. Miscellaneous provisions for municipal trusts.**

Under § 271.328(a)(5) (relating to trust fund for municipally operated landfills), if the trustee notifies the Department that the quarterly payment due from the municipality or municipal authority has not been received by the trustee, the Department will immediately, in writing, notify the municipality or municipal authority that it shall pay to the trustee the quarterly payment due within 15 days of the Department's notification. If the municipality or municipal authority fails or refuses to pay to the trustee the quarterly payment at the expiration of the 15-day period, the Department will proceed to collect the quarterly payment in a manner provided by law.

**Source**

The provisions of this § 271.354 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**BOND AND TRUST REQUIREMENTS—OTHER PROVISIONS****§ 271.361. Replacement of existing bond.**

(a) The Department may allow an operator to replace an existing surety or collateral bond with another surety or collateral bond, if the liability which has

accrued against the bond, the operator and the facility is transferred to the replacement bond. The replacement bond shall include an endorsement by the operator acknowledging the retroactivity of the liability to the date of issue of the original municipal waste management permit or a prior date determined by the Department. The bond amount for this replacement bond will be determined under this subchapter, but may not be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the operator has submitted and the Department has approved acceptable replacement bonds. A replacement of bonds under this section does not constitute a release of bond under this subchapter.

#### Source

The provisions of this § 271.361 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### Cross References

This section cited in 25 Pa. Code § 271.321 (relating to special terms and conditions for surety bonds).

### § 271.362. Reissuance of permit.

(a) Before an existing permit is reissued under § 271.221 (relating to permit reissuance), the applicant for permit reissuance shall submit an approved bond, in an appropriate amount determined by the Department under this subchapter but not less than the amount of bond on deposit with the Department, assuming accrued liability for the facility. The bond shall include an endorsement acknowledging the retroactivity of liability upon the bond to the date of issue of the original permit, or a prior date determined by the Department.

(b) An applicant for permit reissuance under § 271.221 which is not a municipality or municipal authority applying to operate an existing municipal waste landfill shall comply with bond requirements of this subchapter, even if a trust under § 271.301(c) (relating to scope) and this subchapter has previously been established for the facility.

(c) An applicant for permit reissuance under § 271.221 which is a municipality or municipal authority applying to operate an existing municipal waste landfill which has never received residual or other nonmunicipal waste for disposal, and for which a bond has previously been posted under § 271.301(c) and this subchapter, may either post a bond or establish a trust under this subchapter.

#### Source

The provisions of this § 271.362 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial page (126158).



**§ 271.363. Incapacity of operators or financial institutions.**

(a) An operator shall notify the Department by certified mail within 10 days after commencement of a voluntary or involuntary proceeding under 11 U.S.C.A. §§ 101—1330, known as the Federal Bankruptcy Act, naming the operator as debtor.

(b) A financial institution which issues a surety bond, letter of credit or certificate of deposit under this subchapter shall notify the Department, when permissible under the law, by certified mail within 10 business days after:

(1) The financial institution has been declared insolvent and a receiver appointed by a state or Federal regulatory authority having jurisdiction in the matter or the commencement of a voluntary or involuntary proceeding under 11 U.S.C.A. §§ 101—1330, known as the Federal Bankruptcy Act.

(2) An action alleging violation of regulatory requirements which could result in suspension or revocation of the authority of the financial institution to issue the instruments or to continue in business.

(c) Notice to the Department shall be by certified mail and shall be given by the financial institution within 10 days of the receipt of the notice by the financial institution from a regulatory agency having jurisdiction over the financial institution.

**Source**

The provisions of this § 271.363 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial page (126158).

**§ 271.364. Preservation of remedies.**

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, the applicable environmental protection acts, this title and terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this subchapter is an exclusive penalty or remedy for the violations. No action taken under this subchapter waives or impairs another remedy or penalty provided in law or equity.

**Source**

The provisions of this § 271.364 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**PUBLIC LIABILITY INSURANCE REQUIREMENTS****§ 271.371. Insurance requirement.**

(a) A person or municipality that has not submitted proof of insurance under the act may not dispose or process municipal waste unless the person or municipi-

pality has in effect financial assurances providing for ordinary liability and covering third-party claims for property damage and bodily injury as provided by this section.

(b) An applicant for a permit to conduct municipal waste processing or disposal activities, and a person or municipality that submits a closure plan under § 271.113 (relating to closure plan), shall submit to the Department proof that it has in effect financial assurances providing for ordinary liability covering third-party claims for property damage and bodily injury.

(1) The insurance policy shall be effective prior to the initiation of municipal waste processing or disposal activities under the permit, or, for a closure plan submitted under § 271.113, prior to the initiation of the closure plan.

(2) The Department may accept as proof of insurance an insurance policy issued to a person or municipality that operates the facility who is not the permittee, in lieu of a policy issued to the permittee, if the insurance policy meets the requirements of this subchapter.

(c) An applicant for a permit for a municipal waste processing or disposal facility shall fulfill the requirement under this section by means of commercial insurance as specified in this section and §§ 271.372—271.376. An applicant which is a municipality or municipal authority, applying for a permit for a municipal waste processing or disposal facility which will be owned and operated by the applicant may fulfill the requirement under this section by either of the following additional means:

(1) An insurance pool, as specified in § 271.377 (relating to insurance pool).

(2) Self-insurance, as specified in § 271.378 (relating to self-insurance).

(d) An applicant for a permit for a municipal waste processing or disposal facility owned and operated by a department or an agency of the United States or the Commonwealth may fulfill the requirement under this section by means of commercial insurance as specified in this section and §§ 271.372—271.376, self-insurance allowed by Federal or state law, or additional means approved by the Department. The minimum amount of liability coverage for departments and agencies of the Commonwealth may not exceed the liability limits of 42 Pa.C.S. Chapter 85 (relating to matters affecting government units).

(e) Permit applications for new facilities shall certify that the applicant has in force, or will, prior to initiation of operations, financial assurance that complies with the requirements of this subchapter.

#### Source

The provisions of this § 271.371 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126158) to (126159).

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**Cross References**

This section cited in 25 Pa. Code § 271.377 (relating to insurance pool); 25 Pa. Code § 271.378 (relating to self-insurance); 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements); 25 Pa. Code § 271.388 (relating to insurance pool—municipalities and municipal authorities); 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 275.222 (relating to annual operation report); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 279.252 (relating to annual operation report); 25 Pa. Code § 281.272 (relating to annual operation report); and 25 Pa. Code § 283.262 (relating to annual operation report).

**§ 271.372. Conditions of insurance.**

(a) Except for operators of municipal waste agricultural utilization sites under Chapter 275 (relating to land application of sewage sludge), the operator shall maintain financial assurances during operation of the facility and until the Department issues a final closure certification under § 271.342 (relating to final closure certification) which satisfy the following conditions:

(1) Commercial insurance provided to satisfy the financial assurance requirement of this section shall follow the standard commercial or comprehensive general liability policy forms approved by the Insurance Department, and shall include coverage for property damage and bodily injury to third persons.

(2) The insurance policy shall specify that per occurrence and aggregate limits apply to property damage and bodily injury combined.

(3) An insurance policy shall be issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this Commonwealth by the Insurance Department. Insurance may be provided by an excess or surplus lines insurer if the insurer is approved by the Insurance Department.

(4) The full policy amount shall be applicable to each facility covered and operated by the operator. There may be no proration of the policy amount of coverage among facilities.

(5) The insurance policy shall provide that the insurer shall notify the Department by certified mail whenever a substantive change is made in the policy, including policy amounts, scope of coverage, tail period, claims procedures, definitions of occurrences or claims, or another provision related to the requirements of this subchapter.

(6) The amount of coverage provided for property damage and bodily injury may be exclusive or inclusive of legal defense costs.

(7) The insurance policy shall provide for the payment of claims up to the full amount of coverage required under this subchapter, regardless of a deductible amount applicable to the policy. If the policy provides the insurer with a right of reimbursement by the insured for payment of a deductible amount, the policy shall provide that the insurer is liable for payment of the deductible amount. If the policy does not provide the insurer with a right of reimburse-

ment or similar method of recoupment, the insured shall provide additional coverage amounts to meet the requirements of this section by the purchase of excess coverage for the deductible amount.

(b) The operator of a municipal waste agricultural utilization site shall maintain liability coverage during the operation of the permitted area and until the Department issues a final closure certification under this chapter. The operator shall submit a certificate from an insurance company licensed or authorized to do business in this Commonwealth, certifying that the operator has a comprehensive general liability insurance in force covering the operator's municipal waste land application activities which include, but are not limited to, vehicular activities. The certificate shall provide for third-party bodily injury and property damage protection. Minimum coverage for bodily injury and property damage shall be \$500,000. Coverage provided under this subsection shall comply with the following:

(1) The insurance policy shall follow the standard commercial or comprehensive general liability policy forms approved by the Insurance Department, and shall include coverage for property damage and bodily injury to third persons.

(2) The insurance policy shall have property damage and bodily injury combined within the per occurrence and aggregate minimum coverage amounts and may be either claims made or occurrence type.

(3) Each insurance policy shall be issued by an insurer having a certificate of authority and a licensed agent authorized to transact the business of insurance in this Commonwealth by the Insurance Department. Insurance may be provided by an excess or surplus lines insurer approved by the Insurance Department.

(4) The full policy amount shall be applicable to each facility covered and operated by the operator. There may not be proration of the policy amount of coverage among facilities.

(5) The insurance policy shall provide that the insurer shall notify the Department by certified mail whenever a substantive change is made in the policy, including policy amounts, scope of coverage, tail period, claims procedures, definitions of occurrences or claims or another provision related to the requirements of this subchapter.

(6) The insurance coverage may be exclusive or inclusive of legal defense costs. When the coverage is inclusive of legal defense costs, the policy shall state that the amount reserved for payment of claims, exclusive of legal defense and claims administration expenses, is not less than the minimum coverage amount for property damage and bodily injury combined.

**Source**

The provisions of this § 271.372 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126159) to (126160).

**Cross References**

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 271.373 (relating to minimum insurance coverage); 25 Pa. Code § 271.377 (relating to insurance pool); 25 Pa. Code § 271.388 (relating to insurance pool—municipalities and municipal authorities); and 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities).

**§ 271.373. Minimum insurance coverage.**

For coverage described under § 271.372(a)(2) (relating to conditions of insurance), the following minimum amounts apply:

- (1) For coverage which is exclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined is \$500,000 per occurrence, with an annual aggregate of \$1 million.
- (2) For coverage which is inclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined is \$500,000 per occurrence, with an annual aggregate of \$1 million, which shall be reserved for the payment of claims. The minimum amounts of coverage reserved for the payment of claims may not be reduced for legal defense or claims administration costs.

**Source**

The provisions of this § 271.373 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126160) to (126161).

**Cross References**

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 271.377 (relating to insurance pool); 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements); and 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities).

**§ 271.374. Proof of insurance coverage.**

- (a) The operator shall submit proof of insurance coverage, which at a minimum shall consist of a certificate of liability insurance. The certificate shall:
  - (1) State the name of the insurance company, the insured operator and the facility covered by the policy.
  - (2) Identify the kinds of coverage provided by the policy and the amounts of coverage.
  - (3) Identify the beginning and ending dates for the policy.
  - (4) Specify that 60 days prior written notice shall be given by the insurer to the Department and the operator, by certified mail, before cancellation or

termination of the insurance policy becomes effective. The 60-day notice period does not apply for specific reasons for cancellation or termination if a shorter period of notice for cancellation or termination has been authorized by the Insurance Department.

(5) State that the insurance coverage provided by the policy is for the purpose of satisfying the requirements of this subchapter.

(6) State that the insurer is liable for payment on the policy without regard for the bankruptcy or insolvency of the insured.

(7) Be signed by an authorized agent of the insurance company.

(b) The operator shall also submit an authenticated copy of the public liability insurance policy.

(c) The Department will review the certificate of insurance coverage submitted by the operator to determine if the coverage provided satisfies the insurance coverage required by the Department under this subchapter for the facility. The Department may require additional proof, such as a copy of the policy, additional endorsements to the policy or statements of intent from the insurer on the scope of coverage, to establish to the Department's satisfaction that the coverage provided is that which is required under this subchapter.

(d) An operator shall be deemed to be without the required liability coverage in the event of bankruptcy or insolvency of the issuing institution, or a suspension or revocation of the issuing institution's license or authority to do business in this Commonwealth. The operator shall establish other liability coverage within 10 days after receiving notice that the issuing institution is bankrupt, insolvent or its license or authority to do business in this Commonwealth has been suspended or revoked.

#### Source

The provisions of this § 271.374 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126161) to (126162).

#### Cross References

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 271.376 (relating to maintenance of insurance coverage); 25 Pa. Code § 271.377 (relating to insurance pool); 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities); 25 Pa. Code § 273.313 (relating to annual operation report); 25 Pa. Code § 275.222 (relating to annual operation report); 25 Pa. Code § 277.312 (relating to annual operation report); 25 Pa. Code § 279.252 (relating to annual operation report); 25 Pa. Code § 281.272 (relating to annual operation report); and 25 Pa. Code § 283.262 (relating to annual operation report).

### § 271.375. Additional insurance coverage.

(a) The Department may require the operator to obtain and provide proof of coverage for additional liability insurance if one of the following applies:

- (1) The permit is renewed, reissued or is subject to a major permit modification.
- (2) The Department determines that additional amounts of insurance coverage are required to protect public health or safety, or public welfare or the environment from the risk of injury or damage from the operation of the facility.
- (b) The Department may review the adequacy of insurance requirements for applicable facilities and, if necessary, require additional amounts of insurance coverage.

**Source**

The provisions of this § 271.375 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**Cross References**

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 271.376 (relating to maintenance of insurance coverage); 25 Pa. Code § 271.377 (relating to insurance pool); and 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities).

**§ 271.376. Maintenance of insurance coverage.**

- (a) The operator shall maintain insurance policy coverage in full force continuously during operation of the municipal waste processing or disposal facility until final closure certification.
- (b) The operator shall submit proof of insurance under § 271.374 (relating to proof of insurance coverage) 30 days prior to the expiration of the current policy, or annually on the anniversary date of the issuance of a permit or other authorization to operate the facility, whichever is sooner. If the operator fails to submit adequate proof of insurance coverage, the Department may issue a notice of violation to the operator 30 days prior to the expiration date or anniversary date of the permit or other authorization, requiring submittal of proof of insurance under § 271.374 within 15 days of the notice.
- (c) The insurer may cancel or otherwise terminate an insurance policy by sending 60 days, or another period as may be authorized by the Insurance Department, prior written notice to the Department and the operator of the insurer's intention to cancel or otherwise terminate the insurance policy. The notice shall be sent to the Department and the insured by certified mail, return receipt requested. Prior to the cancellation or termination becoming effective, the operator shall provide the Department with proof of a replacement insurance policy sufficient to meet the requirements of this subchapter.
- (d) If the operator fails to submit acceptable proof of insurance under § 271.375 (relating to additional insurance coverage) or this section within the stated time periods, the Department may take the following actions:
  - (1) Issue a notice of violation of the requirement to maintain insurance.
  - (2) Issue an order requiring the operator to submit proof of insurance.

(3) Issue a cease order to the operator.

(4) Forfeit the existing bonds under § 271.351 (relating to forfeiture determination). The proceeds of the forfeited bonds will be held by the Department in an appropriate account established by the Department for the purposes of the insurance requirement under this subchapter, until the operator submits acceptable proof of insurance coverage or the insurance requirement does not apply, whichever is earlier. Upon submittal of proof of insurance acceptable to the Department, the operator may apply to the Department for return of the proceeds of the forfeited bonds held by the Department. Nothing in this subsection relieves the operator of its duty to maintain in full force a bond as required by this subchapter and acceptable proof of an insurance policy as required by this subchapter.

#### Source

The provisions of this § 271.376 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179. Immediately preceding text appears at serial pages (126162) to (126163).

#### Cross References

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement); 25 Pa. Code § 271.377 (relating to insurance pool); and 25 Pa. Code § 271.392 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities).

### § 271.377. Insurance pool.

An applicant which is a municipality or municipal authority may enter an insurance pool in accordance with 42 Pa.C.S. § 8564(d) (relating to liability insurance and self-insurance) which shall meet with the following requirements:

(1) If the insurance pool is such that the applicant is a co-insured under a master policy issued by a commercial insurer, the master policy shall meet the conditions of §§ 271.371—271.376.

(2) If the insurance pool is such that the applicant is a participant in a trust fund, established to meet the requirements of § 271.371 (relating to insurance requirement), the trust fund shall be established in accordance with 42 Pa.C.S. § 8564(d) and shall contain terms and conditions so that the coverage provided meets the requirements of § 271.373 (relating to minimum insurance coverage). §§ 691.5(a), 691.304 and 691.402); and sections 1917-A and 1920-A of the act of April 9, 1929 (P. L. 177, No. 175) (71 P. S. §§ 510-17 and 510-20).

#### Source

The provisions of this § 271.377 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement).



**§ 271.378. Self-insurance.**

(a) An applicant which is a municipality or municipal authority may self-insure by meeting the requirements of this subsection and subsections (b)—(f). The applicant may appropriate funds to establish a reserve to meet the requirements of § 271.371 (relating to insurance requirement). Funds so appropriated shall be placed in a special account, separate and distinct from all other funds and accounts, for the sole purpose of paying ordinary public liability claims to third parties for damage arising from the applicant's operation of a municipal waste processing or disposal facility.

(b) An applicant's self-insurance program shall provide procedures the applicant will make available to the public for processing claims filed for property damage and bodily injury. The procedures shall contain, at a minimum, the following:

(1) An initial contact point for claims information or the filing of a claim, located at each of the applicant's self-insured facilities.

(2) A mechanism to provide to a claimant necessary information to pursue the claim, including the information required of a claimant to document proof of loss.

(3) A mechanism for the acknowledgement of notification of a claim, in writing, within a reasonable time.

(4) A reasonable time for investigation of a claim with a referral mechanism to inform a claimant if the investigation cannot be completed within the initial investigation period.

(5) A reasonable time for acceptance or denial of a claim. A denial shall state the specific reasons for the denial.

(6) A mechanism for a claimant to challenge a denial of a claim.

(c) The applicant may not be self-insured until the applicant has appropriated and placed in a special account, an amount of \$1 million. A minimum of \$1 million shall be continuously maintained in the account, and may not be reduced by the payment of claims.

(d) The applicant shall provide the Department with a copy of the resolution or ordinance making the appropriation funding self-insurance and establishing the special account.

(e) An applicant may comply with this section by utilizing an existing self-insurance reserve, if the applicant can demonstrate to the satisfaction of the Department, that the existing self-insurance reserve contains an amount of \$1 million dedicated solely for the purpose of satisfying ordinary public liability claims to third parties for damages arising from the operation of the applicant's municipal waste processing or disposal facility and the applicant has in place the procedures required by subsection (b).

(f) An applicant may cancel or otherwise terminate the self-insurance coverage by sending a written notice of the termination or cancellation, by certified

mail, to the Department. The cancellation or termination may not take effect until 60 days of receipt of the notice to cancel or terminate by the Department, as evidenced by the return receipts.

(g) An applicant which is not a municipality or municipal authority may self-insure to meet the requirements of § 271.371 by complying with §§ 267.52—267.58 (Reserved).

#### Source

The provisions of this § 271.378 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.371 (relating to insurance requirement).

### § 271.379. Combination of financial assurance requirements.

An applicant may combine the financial assurance requirements of §§ 271.371, 271.381 and 271.393 (relating to insurance requirement; financial assurances requirements; and commercial insurance; coverage—persons other than municipalities and municipal authorities) by using the forms of financial assurance authorized by § 271.371(c) and §§ 271.382 and 271.391 (relating to forms of financial assurances—municipalities and municipal authorities; and forms of financial assurances—persons other than municipalities and municipal authorities), if appropriate. This section does not relieve the applicant of meeting the minimum insurance requirements of § 271.373, § 271.384 or § 271.393 (relating to minimum insurance coverage; commercial insurance; coverage—municipalities and municipal authorities; and commercial insurance; coverage—persons other than municipalities and municipal authorities).

#### Source

The provisions of this § 271.379 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

## ENVIRONMENTAL IMPAIRMENT LIABILITY FINANCIAL ASSURANCES

### § 271.381. Financial assurances requirements.

(a) A person or municipality that has not submitted proof of environmental impairment liability financial assurances under this subchapter may not operate a municipal waste landfill or resource recovery facility. After September 26, 1988, a municipal waste landfill or resource recovery facility may not accept wastes or initiate operation prior to receipt from the Department of approval of financial assurance. Initiation of operation will not be construed to mean activities associated with the planning, development or construction of the landfill or facility.

(b) An applicant for a permit to operate a municipal waste landfill or resource recovery facility shall submit proof of environmental impairment liability financial assurances for satisfying claims of bodily injury and property damage to third parties caused by or relating to pollution occurrences arising from the operation of a municipal waste landfill or a resource recovery facility.

(c) An applicant for a permit for a municipal waste processing or disposal facility owned and operated by a department or an agency of the United States or the Commonwealth may fulfill the requirement under this section by means of commercial insurance as specified in §§ 271.383—271.385 (relating to commercial insurance; general requirements—municipalities and municipal authorities; commercial insurance; coverage—municipalities and municipal authorities; and commercial insurance; proof of coverage—municipalities and municipal authorities) or §§ 271.392—271.394 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities; commercial insurance; coverage—persons other than municipalities and municipal authorities; and commercial insurance; proof of coverage—persons other than municipalities and municipal authorities); self-insurance allowed by Federal or State law; or additional means approved by the Department. The minimum amount of liability coverage for departments and agencies of the Commonwealth may not exceed the liability limits of 42 Pa.C.S. Chapter 85 (relating to matters affecting government units).

(d) Financial assurance shall be continuously maintained in full force from the date waste is first accepted or the initiation of operations until the effective date of closure certification under § 271.342 (relating to final closure certification). If, upon certification of closure, the Department determines the landfill or facility may continue to present a significant risk to public health, safety and welfare or to the environment, the Department will require the continuation of environmental impairment liability financial assurances, in full force, for a period beyond the effective date of closure as determined by the Department.

#### Source

The provisions of this § 271.381 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements); 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities); 25 Pa. Code § 271.386 (relating to environmental impairment trust funds; general—municipalities and municipal authorities); 25 Pa. Code § 271.388 (relating to insurance pool—municipalities and municipal authorities); 25 Pa. Code § 271.389 (relating to self-insurance—municipalities and municipal authorities); 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities); and 25 Pa. Code § 271.395 (relating to environmental impairment trust funds; general—persons other than municipalities and municipal authorities).

**§ 271.382. Forms of financial assurances—municipalities and municipal authorities.**

A permit applicant that is a municipality or a municipal authority shall satisfy the financial assurances requirement under § 271.381 (relating to financial assurances requirements) by using one or more of the following forms of financial assurance, either singly or in combination:

- (1) Commercial insurance, as specified in §§ 271.383—271.385 (relating to commercial insurance; general requirements—municipalities and municipal authorities; commercial insurance; coverage—municipalities and municipal authorities; and commercial insurance; proof of coverage—municipalities and municipal authorities).
- (2) A trust fund, as specified in §§ 271.386 and 271.387 (relating to environmental impairment trust funds; general—municipalities and municipal authorities; and trust fund; management—municipalities and municipal authorities).
- (3) An insurance pool, as specified in § 271.388 (relating to insurance pool—municipalities and municipal authorities).
- (4) Self-insurance, as specified in § 271.389 (relating to self-insurance—municipalities and municipal authorities).

**Source**

The provisions of this § 271.382 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**Cross References**

This section cited in 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements).

**§ 271.383. Commercial insurance; general requirements—municipalities and municipal authorities.**

(a) Commercial pollution liability insurance policies submitted as proof of financial assurance shall be issued by:

- (1) A primary insurer including coinsurers who have a certificate of authority to transact the business of insurance in this Commonwealth.
- (2) A registered Pennsylvania resident broker. The insurance may be provided by an excess or surplus lines insurer approved by the Insurance Department or by a risk retention group as defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C.A. §§ 3901—3906), amended by the Liability Risk Retention Act of 1986 (15 U.S.C.A. §§ 3901—3903). The primary insurer may reinsure with secondary insurers/reinsurers who are licensed or authorized to do business in any state of the United States, Canada, West Germany, Switzerland, Great Britain or France.

(b) The insurance policy shall provide coverage for bodily injury and property damage to third parties arising from sudden and nonsudden accidental pollution occurrences.

(c) The insurance policy shall have property damage and bodily injury combined within the per occurrence and aggregate minimum coverage amounts.

(d) The amount of coverage provided for bodily injury and property damage may be exclusive or inclusive of legal defense and claims administration costs.

(e) The insurance policy shall provide for the payment of claims up to the full amount of coverage required for bodily injury and property damage regardless of any deductible amount applicable to the policy. The policy shall provide the insurer is liable for the payment of any amount within a deductible which may apply to the policy, with a right of reimbursement by the insured or, in the alternative, the insurer includes within the policy a provision to pay on behalf of the insured any deductible amount.

(f) The policy shall:

(1) Provide that the full amount of coverage is applicable to each facility covered by the policy. There may be no proration of the coverage amounts among facilities.

(2) Specify the insurer shall give 60 days, or another period as required by the Insurance Department, prior written notice, by certified mail, return receipt requested, to the Department and the insured before cancellation, termination or expiration of the policy period, if upon expiration of the policy period the policy will not be renewed. The policy may not be canceled or terminated before the expiration of the 60 day or other notice period.

(3) Specify the beginning and ending dates, including retroactive or tail periods, for the policy.

(4) State that bankruptcy or insolvency of the insured does not relieve the insurer of its obligations under the policy.

(5) Be signed by an authorized agent of the insurer.

(6) State the facility covered by the policy.

(7) Provide that the insurer shall notify the Department, by certified mail, whenever a substantive change is made to the policy, including limits of liability, scope of coverage, coverage dates, claims procedure, definitions of occurrences or events or other provisions as may relate to the requirements of this section.

#### Source

The provisions of this § 271.383 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

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**Cross References**

This section cited in 25 Pa. Code § 271.381 (relating to financial assurances requirements); 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities); 25 Pa. Code § 271.384 (relating to commercial insurance; coverage—municipalities and municipal authorities); and 25 Pa. Code § 271.388 (relating to insurance pool—municipalities and municipal authorities).

**§ 271.384. Commercial insurance; coverage—municipalities and municipal authorities.**

For coverage described in § 271.383 (relating to commercial insurance; general requirements—municipalities and municipal authorities), the following minimum amounts apply:

- (1) For coverage which is exclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined shall be \$500,000 per occurrence, with an annual aggregate of \$2 million.
- (2) For coverage which is inclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined shall be \$500,000 per occurrence, with an annual aggregate of \$2 million and shall be reserved for the payment of claims. The minimum amounts of coverage reserved for the payment of claims may not be reduced for legal defense or claims administration costs.

**Source**

The provisions of this § 271.384 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**Cross References**

This section cited in 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements); 25 Pa. Code § 271.381 (relating to financial assurances requirements); and 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

**§ 271.385. Commercial insurance; proof of coverage—municipalities and municipal authorities.**

- (a) The applicant shall submit proof of insurance coverage which shall consist of an authenticated copy of the insurance policy, including endorsements thereto, evidencing the insurance coverage for the facilities.
- (b) The Department will review the authentication copy of the insurance policy submitted by the applicant to determine if the coverage provided satisfies the insurance coverage requirements of this section. The Department may require additional proof, such as additional endorsements to the policy, or statements of intent from the insurer on the scope of coverage, to establish to the Department's satisfaction that the coverage provided is that which is required under this section.

(c) An applicant shall be deemed to be without the required pollution liability coverage in the event of bankruptcy or insolvency of the issuing institution, or the suspension or revocation of the issuing institution's license or authorization to conduct the business of insurance in this Commonwealth, or in the case of risk retention groups, in the state which licensed, chartered or authorized the risk retention group. The applicant shall establish other pollution liability coverage within 30 days after receiving notice that its issuing institution is bankrupt, insolvent or its license or authorization to conduct the business of insurance, in this Commonwealth or in the state which licensed, chartered or authorized to conduct the business of insurance, has been suspended or revoked.

#### Source

The provisions of this § 271.385 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.381 (relating to financial assurances requirements); and 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

### **§ 271.386. Environmental impairment trust funds; general— municipalities and municipal authorities.**

(a) A trust fund may be established by the applicant to provide for payment of third-party claims for bodily injury and property damage resulting from sudden and nonsudden accidental pollution occurrences arising from the operation of municipal waste landfills or resource recovery facilities, to comply with § 271.381 (relating to financial assurances requirements).

(b) The trust agreement shall be provided by the applicant to the trustee. The wording of the trust agreement shall be in a form prepared and approved by the Department. The applicant is not in compliance with this section until a fully executed original of the trust agreement has been submitted to the Department and the principal amount required by subsection (d) has been placed in the trust fund corpus. The trustee shall advise the Department, in writing, when the principal amount has been placed in the trust fund.

(c) The trust fund established under subsection (a) shall meet the following requirements:

(1) The trust fund shall be established for the express purpose of paying claims to third parties for bodily injury or property damage from sudden or nonsudden accidental pollution occurrences arising from the applicant's operation of a municipal waste landfill or resource recovery facility.

(2) The trustee shall be an entity whose trust activities are examined and regulated by a state or Federal agency.

(3) The trust shall be irrevocable and shall continue until termination at the written agreement of the applicant and the trustee, except that the trust may not

be terminated until 120 days after receipt by the Department of written notice to terminate the trust. The written notice shall be sent to the Department by certified mail, return receipt requested.

(4) The trust shall be established as a spendthrift trust and may not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, other legal process or to the claims of creditors.

(d) The trust fund shall be initially established in a principal amount of \$2 million, exclusive of trustee compensation, fees for legal services rendered to the trustee and other charges or expenses of the trustee in administering the trust fund. The trust fund shall be maintained at least \$2 million principal amount, and may not be reduced by the payment of claims.

(1) Payments made to establish the trust fund shall consist of cash or securities acceptable to the trustee.

(2) The trustee is not under a duty to collect from the applicant payments to establish the trust fund. The trustee is not responsible for the amount or adequacy of, nor is it the duty of the trustee to collect from the applicant, payments necessary to maintain the required principal amount in the trust fund.

(e) Money may not be paid out of the trust fund for third-party claims without the prior written order of the applicant. It is not the duty or responsibility of the trustee to determine the validity of a claim for which the applicant presents its written order to pay.

(f) The operator shall, without delay and with due diligence, investigate claims presented to or made against it by third parties for bodily injury or property damage from pollution occurrences arising out of the operation of the operator's municipal waste landfill or resource recovery facility. Upon the reduction of a claim to a final settlement or final judgment, the operator shall, without delay, give to the trustee its written order to pay.

(g) Claims made against or paid by the trust fund may not include the following:

(1) Administrative, investigative, legal defense or other costs incurred by the operator's investigating or settling third-party claims.

(2) Damage to the operator's property, whether or not damage arose from the pollution occurrence or from the operator's efforts to mitigate the damage and irrespective of whether the mitigation efforts were taken pursuant to the orders, demands or requests of a government or regulatory authority having jurisdiction.

(3) Bodily injury to operator's employees, to the extent that the bodily injury is covered by Workers' Compensation or other insurance.

#### Source

The provisions of this § 271.386 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.



**Cross References**

This section cited in 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

**§ 271.387. Trust fund; management—municipalities and municipal authorities.**

(a) The trustee shall invest and reinvest the principal and income of the trust fund and keep the fund invested as a single fund, without distinction between principal and income. In investing, reinvesting, exchanging, selling and otherwise managing the trust fund, the trustee shall discharge its duties solely in the interest of third-party claimants and with care to avoid loss or diminution of the trust fund capital. The trustee shall manage the trust fund with that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with these matters, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(b) For the purposes of investing or reinvesting the moneys in the trust fund, the trustee is authorized to:

(1) Purchase direct obligations of the United States Government, the Commonwealth, its municipalities, municipal authorities or school districts, the Pennsylvania Turnpike Commission, the General State Authority and the State Public School Building Authority.

(2) Invest in time or demand deposits of the trustee, to the extent insured by an agency of the Federal or a State government.

(3) Purchase shares in an investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(4) Purchase of prime commercial paper. Commercial paper is defined as unsecured promissory notes issued at a discount from par or on an interest bearing bond by an industrial, common carrier, public utility, finance company, real estate investment trust, commercial bank holding company or corporations whose credit shall have been approved by Moody's Investors Service Incorporated or their successors. The trustee may not purchase commercial paper under this provision unless the commercial paper proposed to be purchased is rated Prime-1 or Prime 1-LOC or Prime-2 by Moody's Investors Service Incorporated, A-1 or A-2 by Standard and Poor's Corporation or Fitch 1 by Fitch Investors Services, Incorporated.

(5) Hold cash awaiting investment or distribution for a reasonable period of time without liability for the payment of interest thereon.

(6) Transfer assets of the trust fund to a common, commingled or collective trust fund which may be created by the trustee.

(c) The trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the trust, furnish to the operator and the Department a state-

ment confirming the value of the trust fund. The trustee shall value securities in the trust fund at the lesser of market or face value as of no more than 60 days prior to the anniversary date of the establishment of the trust fund. If the results of the valuation require additional capital to be paid into the trust fund so that the principal amount of \$2 million may be maintained, the trustee shall require the operator, in writing, to make the payment by the anniversary date of the establishment of the trust fund. The trustee shall notify the Department, in writing, at the expiration of 30 days after the anniversary date, if no payments are received from the operator.

(d) The trustee may resign or the operator may replace the trustee, but the resignation or replacement may not be effective until the successor trustee has been appointed and the successor trustee has been approved by the Department and has accepted the appointment. In the event of resignation of the trustee and the operator or the Department failed to act, the trustee may apply to a court of competent jurisdiction for instructions.

(e) An operator may from time to time request and receive, on the written order of the Department, funds of the trust fund which are in excess of the principal amount required to be maintained in the trust fund. The Department will, in evaluating the request, consider the claims experience of the operator, the earnings and disbursement experience of the trust fund, losses and the need to maintain in the trust fund an amount in excess of the principal amount in order to meet third-party claims. The trustee may not disburse funds under this section without the written authorization of the Department. Nothing in this subsection relieves the operator of its duty to maintain at all times in the trust fund the principal amount required by this section.

(f) Under subsection (c), if the trustee notifies the Department that the operator has failed to make payments the trustee requested to maintain the principal amount of the trust fund, the Department will notify the operator that it will pay the trustee the amount required to maintain the principal amount of the trust fund within 15 days of the notification. If the operator fails or refuses to pay at the expiration of the 15 day period, the Department will proceed to collect the payment due in any manner provided by law.

#### Source

The provisions of this § 271.387 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

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**§ 271.388. Insurance pool—municipalities and municipal authorities.**

An applicant may enter an insurance pool in accordance with 42 Pa.C.S. § 8564(d) (relating to liability insurance and self-insurance) which meets the following requirements:

- (1) If the insurance pool is of the type that the applicant is coinsured under a master policy issued by a commercial insurer, the master policy shall meet the requirements of §§ 271.371 and 271.372 (relating to insurance requirement; and conditions of insurance).
- (2) If the insurance pool is of the type that the applicant is a participant in a trust fund, established to meet the requirements of § 271.381 (relating to financial assurances requirements), the trust fund shall be established in accordance with 42 Pa.C.S. § 8564(d) and shall contain terms and conditions so that the coverage provided meets the requirements of § 271.383 (relating to commercial insurance; general requirements—municipalities and municipal authorities).

**Source**

The provisions of this § 271.388 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**Cross References**

This section cited in 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

**§ 271.389. Self-insurance—municipalities and municipal authorities.**

- (a) An applicant which is a municipality or a municipal authority may self-insure by appropriating funds to establish a reserve to meet the requirements § 271.381 (relating to financial assurances requirements). Funds so appropriated shall be placed in a special account, separate and distinct from other funds and accounts, for the sole purpose of paying claims to third parties for bodily injury and property damage caused by or relating to pollution occurrences arising from the applicant's operation of a municipal waste landfill or resource recovery facility.
- (b) An applicant's self-insurance program shall provide procedures the applicant will make available to the public for processing claims filed for property damage and bodily injury. The procedures shall contain at a minimum the following:
  - (1) An initial contact point for claims information or the filing of a claim, located at each of the applicant's self-insured facilities.
  - (2) A mechanism to provide a claimant necessary information to pursue the claim, including the information required of a claimant to document proof of loss.

- (3) A mechanism to acknowledge notification of a claim, in writing, within a reasonable time.
- (4) A reasonable period of time for investigation of a claim with a referral mechanism to inform a claimant if the investigation cannot be completed within the initial investigation period.
- (5) A reasonable period of time for acceptance or denial of a claim. Denial shall state the specific reasons for the denial.
- (6) A mechanism for a claimant to challenge a denial of a claim.
- (c) The applicant may not be self-insured until the applicant has appropriated and placed in a special account, an amount of \$2 million.
- (d) The applicant shall provide the Department with a copy of the resolution or ordinance making the appropriation funding self-insurance and establishing the special account.
- (e) An applicant may comply with this section by utilizing an existing self-insurance reserve, if the applicant can demonstrate to the satisfaction of the Department, that the existing self-insurance reserve contains an amount of \$2 million dedicated solely for the purpose of satisfying claims to third parties for bodily injury and property damage from sudden and nonsudden accidental pollution occurrences arising from the operation of the municipal waste landfill or resource recovery facility.
- (f) An applicant may cancel or otherwise terminate the self-insurance coverage by sending a written notice of the termination or cancellation, by certified mail, to the Department. The cancellation or termination may not take effect until 60 days of receipt of the notice to cancel or terminate by the Department, as evidenced by the return receipts.

#### Source

The provisions of this § 271.389 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.382 (relating to forms of financial assurances—municipalities and municipal authorities).

### OTHER PERSONS

#### **§ 271.391. Forms of financial assurances—persons other than municipalities and municipal authorities.**

- (a) A permit applicant, other than a municipality or municipal authority or a department or agency of the United States or the Commonwealth, shall satisfy the financial assurances requirement under § 271.381 (relating to financial assurances requirements) by using one or more of the following forms of financial assurance, either singly or in combination:

(1) Commercial insurance, as specified in §§ 271.392—271.394 (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities; commercial insurance; coverage—persons other than municipalities and municipal authorities; and commercial insurance; proof of coverage—persons other than municipalities and municipal authorities).

(2) A trust fund, as specified in §§ 271.395 and 271.396 (relating to environmental impairment trust funds; general—persons other than municipalities and municipal authorities; and trust fund management—persons other than municipalities and municipal authorities).

(3) Self-insurance, as specified in § 271.397 (relating to self-insurance—persons other than municipalities and municipal authorities).

(b) A department or agency of the United States or the Commonwealth shall satisfy the financial assurances requirement under § 271.381 by using commercial insurance, as specified in §§ 271.392—271.394 or other means of financial assurance approved by the Department.

#### Source

The provisions of this § 271.391 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements).

### **§ 271.392. Commercial insurance; general requirements—persons other than municipalities and municipal authorities.**

(a) Commercial pollution liability insurance policies submitted as proof of financial assurance shall be issued by:

(1) A primary insurer including coinsurers who have a certificate of authority to transact the business of insurance in this Commonwealth.

(2) A registered Pennsylvania resident broker. The insurance may be provided by an excess or surplus lines insurer approved by the Insurance Department or by a Risk Retention Group as defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C.A. §§ 3901—3906), as amended by the Liability Risk Retention Act of 1986 (15 U.S.C.A. §§ 3901—3903). The primary insurer may reinsure with secondary insurers—reinsurers—who are licensed or authorized to do business in a state of the United States, Canada, West Germany, Switzerland, Great Britain or France.

(b) The requirements of this section shall be construed together with §§ 271.371—271.376 to provide coverage for bodily injury and property damage to third parties from both pollution and risks associated with the operation of municipal waste landfills and resource recovery facilities.

(c) The insurance policy shall provide coverage for bodily injury and property damage to third parties arising from sudden and nonsudden accidental pollution occurrences arising from the insured's operation of the landfill or resource recovery facility.

(d) The insurance policy shall have property damage and bodily injury combined within the per occurrence and aggregate minimum coverage amounts and may be either claims made or occurrence types.

(e) The amount of coverage provided for bodily injury and property damage may be exclusive or inclusive of legal defense and claims administration costs.

(f) The insurance policy shall provide for the payment of claims up to the full amount of coverage required for bodily injury and property damage regardless of any deductible amount applicable to the policy. The policy shall provide the insurer is liable for the payment of an amount within a deductible which may apply to the policy, with a right of reimbursement by the insured or, in the alternative, the insurer includes within the policy a provision to pay on behalf of the insured a deductible amount.

(g) The policy shall:

(1) Provide that the full amount of coverage is applicable to each facility covered by the policy. There may be no proration of the coverage amounts among facilities.

(2) Specify the insurer shall give 60 days, or another period as required by the Insurance Department, prior written notice, certified mail, return receipt requested, to the Department and the insured before cancellation, termination or expiration of the policy period, if upon expiration of the policy period the policy will not be renewed. The policy may not be canceled or terminated before the expiration of the 60-day notice period.

(3) Specify the beginning and ending dates, including retroactive or tail periods, for the policy.

(4) State that bankruptcy or insolvency of the insured does not relieve the insurer of its obligations under the policy.

(5) Be signed by an authorized agent of the insurer.

(6) State the facility covered by the policy.

(7) Provide that the insurer shall notify the Department, by certified mail, whenever a substantive change is made to the policy, including limits of liability, scope of coverage, dates, claims procedure, definitions of occurrences or events, or other provisions as may relate to this section.

#### Source

The provisions of this § 271.392 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

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**Cross References**

This section cited in 25 Pa. Code § 271.381 (relating to financial assurances requirements); 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities); and 25 Pa. Code § 271.393 (relating to commercial insurance; coverage—persons other than municipalities and municipal authorities).

**§ 271.393. Commercial insurance; coverage—persons other than municipalities and municipal authorities.**

For coverage described in § 271.392(d) (relating to commercial insurance; general requirements—persons other than municipalities and municipal authorities), the following minimum amounts apply:

- (1) For coverage which is exclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined shall be \$500,000 per occurrence, with an annual aggregate of \$2 million.
- (2) For coverage which is inclusive of legal defense costs, the minimum amount of coverage for property damage and bodily injury combined shall be \$500,000 per occurrence, with an annual aggregate of \$2 million which shall be reserved for the payment of claims. The minimum amounts of coverage reserved for the payment of claims may not be reduced for legal defense or claims administration costs.

**Source**

The provisions of this § 271.393 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

**Cross References**

This section cited in 25 Pa. Code § 271.379 (relating to combination of financial assurance requirements); 25 Pa. Code § 271.381 (relating to financial assurances requirements); and 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities).

**§ 271.394. Commercial insurance; proof of coverage—persons other than municipalities and municipal authorities.**

(a) The applicant shall submit proof of insurance coverage which shall consist of an authenticated copy of the insurance policy, including endorsements thereto, evidencing the insurance coverage for the facility.

(b) The Department will review the authentication copy of the insurance policy submitted by the applicant to determine if the coverage provided satisfies the insurance coverage requirements of this section. The Department may require additional proof, such as additional endorsements to the policy, or statements of intent from the insurer on the scope of coverage, to establish to the Department's satisfaction that the coverage provided is that which is required under this section.

(c) An applicant will be deemed to be without the required pollution liability coverage in the event of bankruptcy or insolvency of the issuing institution, or the

suspension or revocation of the issuing institution's license or authorization to conduct the business of insurance in this Commonwealth, or in the case of risk retention groups, in the state which licensed, chartered or authorized the risk retention group. The applicant shall establish other pollution liability coverage within 30 days after received notice that its issuing institution is bankrupt, insolvent or its license or authorization to conduct the business of insurance, in this Commonwealth or in the state which licensed, chartered or authorized to conduct the business of insurance, has been suspended or revoked.

#### Source

The provisions of this § 271.394 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.381 (relating to financial assurances requirements); and 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities).

### **§ 271.395. Environmental impairment trust funds; general—persons other than municipalities and municipal authorities.**

(a) A trust fund may be established by the applicant to provide for payment of third party claims for bodily injury and property damage resulting from sudden and nonsudden accidental pollution occurrences arising from the operation of municipal waste landfills or resource recovery facilities, in compliance with § 271.381 (relating to financial assurances requirements).

(b) The trust agreement shall be provided by the applicant to the trustee. The wording of the trust agreement shall be in a form prepared and approved by the Department. The applicant will not be in compliance with this subchapter until a fully executed original of the trust agreement has been submitted to the Department and the principal amount required by this subchapter has been placed in the trust fund. The trustee shall advise the Department, in writing, when the principal amount has been placed in the trust fund.

(c) The trust fund established in subsection (a) shall meet the following requirements:

(1) The trust fund shall be established for the express purpose of paying claims to third parties for bodily injury or property damage from sudden or nonsudden accidental pollution occurrences arising from the operation of the municipal waste landfill or resource recovery facility.

(2) The trustee shall be an entity whose trust activities are examined and regulated by a State or Federal agency.

(3) The trust shall be irrevocable and shall continue until terminated at the written agreement of the operator and the trustee, except that the trust may not be terminated until 120 days after receipt by the Department of written notice



to terminate the trust. The written notice shall be sent to the Department by certified mail, return receipt requested.

(4) The trust shall be established as a spendthrift trust and may not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, other legal process or to the claims of creditors.

(d) The trust fund shall be initially established in a principal amount of \$2 million, exclusive of trustee compensation, fees for legal services rendered to the trustee and other charges or expenses of the trustee in administering the trust fund. The trust fund shall be thereafter maintained at not less than the \$2 million principal amount.

(1) Payments made to establish the trust fund shall consist of cash or securities acceptable to the trustee.

(2) The trustee is not under a duty to collect from the applicant payments to establish the trust fund. The trustee is not responsible for the amount or adequacy of, nor is it the duty of the trustee to collect from the applicant, payments necessary to maintain the required principal amount in the trust fund.

(e) Money may not be paid out of the trust fund for third-party claims without the prior written order of the operator. It is not the duty or responsibility of the trustee to determine the validity of a claim for which the operator presents its written order to pay.

(f) The operator shall, without delay and with due diligence, investigate claims presented to or made against it by third parties for bodily injury or property damage from pollution occurrences arising out of the operation of the operator's municipal waste landfill or resource recovery facility. Upon the reduction of a claim to a final settlement or judgment, the operator shall, without delay, give to the trustee its written order to pay.

(g) Claims made against or paid from the trust fund may not include the following:

(1) Administrative, investigative, legal defence or other costs incurred by the application investigating and settling third-party claims.

(2) Damage to the operator's property, whether or not the damage arose from the pollution occurrence or from the operator's efforts to mitigate the damage and irrespective of whether the mitigation efforts were taken under the orders, demands or requests of a governmental or regulatory authority having jurisdiction.

(3) Bodily injury to operator's employees, to the extent that the bodily injury is covered by Workers' Compensation or other insurance.

#### Source

The provisions of this § 271.395 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

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**Cross References**

This section cited in 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities).

**§ 271.396. Trust fund management—persons other than municipalities and municipal authorities.**

(a) The trustee may invest and reinvest the principal and income of the trust fund and keep the fund invested as a single fund, without distinction between principal and income. In investing, reinvesting, exchanging, selling and otherwise managing the trust fund, the trustee shall discharge its duties solely in the interest of third-party claimants and with care to avoid loss or diminution of the trust fund capital. The trustee shall manage the trust fund with that degree of judgement, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence, who are familiar with such matters, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(b) For purposes of investing or reinvesting the moneys in the trust fund, the trustee is authorized to do the following:

(1) Purchase direct obligations of the United States Government, the Commonwealth, its municipalities, municipal authorities or school districts, the Turnpike Commission, the General State Authority and the State Public School Building Authority.

(2) Invest in time or demand deposits of the trustee, to the extent insured by an agency of the Federal or a State government.

(3) Purchase shares in an investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(4) Purchase prime commercial paper. Commercial paper is defined as unsecured promissory notes issued at a discount from par or on an interest bearing bond by an industrial, common carrier, public utility, finance company, real estate investment trust, commercial bank holding company or corporations whose credit shall have been approved by Moody's Investors Service Incorporated or their successors. The trustee may not purchase commercial paper under this provision unless the commercial paper proposed to be purchased is rated Prime-1 or Prime 1-LOC or Prime-2 by Moody's Investors Service Incorporated, A-1 or A-2 by Standard and Poor's Corporation or Fitch 1 by Fitch Investors Services, Incorporated.

(5) Purchase repurchase agreements with respect to direct obligation of the United States or its agencies or instrumentalities backed by the full faith and credit of the United States and obligations of an agency or instrumentality of the United States if entered into with a bank, trust company or a broker or dealer—as defined by section 3 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c.) The broker or dealer shall be a dealer in government bonds

who reports to, trades with, is recognized as a primary dealer by a Federal reserve bank and is a member of the Securities Investors Protection Corporation. Obligations that are the subject of repurchase agreements under this subsection shall meet the following criteria:

(i) The obligations that are the subject of the repurchase agreement shall be either delivered to the trustee or supported by a safekeeping receipt issued by a depository satisfactory to the trustee.

(ii) The repurchase agreement shall provide that the value of the underlying obligation shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the purchase price of the obligation.

(iii) The trustee has been granted a prior perfected security interest in the obligation.

(iv) The obligation shall be free and clear of adverse third-party claims.

(6) Hold cash awaiting investment or distribution for a reasonable period of time.

(7) Transfer assets of the trust fund to a common, commingled or collective trust fund which may be created by the trustee.

(c) The trustee shall annually, at least 30 days prior to the anniversary date of the establishment of the trust, furnish to the operator and the Department a statement confirming the value of the trust fund. The trustee shall value securities in the trust fund at the lesser of market or face value as of no more than 60 days prior to the anniversary date of the establishment of the trust fund. If the results of the valuation require additional capital to be paid into the trust fund so that the principal amount of \$2 million may be maintained, the trustee shall request the operator, in writing, to make payment by the anniversary date of the establishment of the trust fund. The trustee shall notify the Department, in writing, at the expiration of 30 days after the anniversary date, if no payments are received from the operator.

(d) The trustee may resign or the operator may replace the trustee, but the resignation or replacement will not be effective until the successor trustee has been appointed and the successor trustee has been approved by the Department and has accepted the appointment. If the trustee resigns and the operator or the Department fails to act, the trustee may apply to a court of competent jurisdiction for instructions.

(e) An operator may from time to time request of the Department and receive, on the written order of the Department, funds of the trust fund which are in excess of the principal amount required to be maintained in the trust fund. The Department will, in evaluating a request, consider the claims experience of the operator, the earnings and disbursement experience of the trust fund, losses and the need to maintain in the trust fund an amount in excess of the principal amount to meet third-party claims. The trustee may not disburse funds under this subsection without the written authorization of the Department. Nothing in this subsection

tion relieves the operator of its duty to maintain in the trust fund the principal amount required by this section.

(f) Under subsection (d), if the trustee notifies the Department that the operator has failed to make payments as the trustee requested to maintain the principal amount of the trust fund, the Department will notify the operator that it shall pay the trustee the amount required to maintain the principal amount of the trust fund within 15 days of the notification. If the operator fails or refuses to pay at the expiration of the 15-day period, the Department will, and the trustee may, proceed to collect the payment due in a manner provided by law.

#### Source

The provisions of this § 271.396 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities).

### **§ 271.397. Self-insurance—persons other than municipalities and municipal authorities.**

An applicant that is not a municipality or municipal authority may use self-insurance to meet the environmental impairment liability financial assurance requirements of this subchapter. An applicant may qualify for self-insurance by complying with §§ 267.52—267.58 (Reserved).

#### Source

The provisions of this § 271.397 adopted September 13, 1991, effective September 14, 1991, 21 Pa.B. 4179.

#### Cross References

This section cited in 25 Pa. Code § 271.391 (relating to forms of financial assurances—persons other than municipalities and municipal authorities).

## **Subchapter E. CIVIL PENALTIES AND ENFORCEMENT**

### **GENERAL**

Sec.  
271.401. Scope.

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**CIVIL PENALTIES**

- 271.411. When a penalty will be assessed.
- 271.412. Assessment of penalties—general.
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**ENFORCEMENT**

- 271.421. Administrative inspections.
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**SEIZURE OF VEHICLES AND CONVEYANCES**

- 271.431. Forfeiture and seizure of property.
- 271.432. Forfeiture proceedings.
- 271.433. Disposition of forfeited property.
- 271.434. Responsibility for costs.

**Cross References**

This subchapter cited in 25 Pa. Code § 271.502 (relating to relationship to other requirements); 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); 25 Pa. Code § 284.2 (relating to permits-by-rule for regulated medical or chemotherapeutic waste processing facilities; qualifying facilities; general requirements); and 25 Pa. Code § 284.122 (relating to waiver or modification of certain requirements).

**GENERAL****§ 271.401. Scope.**

This subchapter is applicable to the assessment of civil penalties and to certain other enforcement actions under the act for municipal waste management facilities.

**Source**

The provisions of this § 271.401 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**CIVIL PENALTIES****§ 271.411. When a penalty will be assessed.**

- (a) The Department will assess a civil penalty for a violation which is included as a basis for a cessation order.
- (b) The Department will assess a civil penalty for a violation that occurs after the release by the Department of a bond under Subchapter D (relating to financial assurances requirements).

(c) The Department will assess a civil penalty if a person or municipality operates a municipal waste disposal or processing facility in the following manner:

- (1) Without a permit from the Department or outside the boundaries of a permit, including final elevations.
- (2) Accepts waste for processing or disposal that was not approved by the Department in the permit.
- (3) Causes or allows open burning at the facility.
- (4) Causes or allows surface water or groundwater pollution.

(d) In addition to the circumstances in subsection (c), the Department will assess a civil penalty if a person or municipality operates a municipal waste landfill or construction/demolition waste landfill in the following manner:

- (1) Fails to install or maintain soil erosion and sedimentation controls, under applicable regulations and the approved operation plan.
- (2) Fails to apply, grade or revegetate final cover in a manner and within the time required by applicable regulations and the approved operation plan.
- (3) Fails to install the liner system, or groundwater monitoring system, or fails to comply with the approved operation plan concerning sequence of operations, under applicable regulations and the permit.
- (4) Fails to submit phased deposit of collateral payments for bonds within 60 days after the due date.

(e) In addition to the circumstances in subsection (c), the Department will assess a civil penalty for operations involving the land application of sewage sludge if:

- (1) Sewage sludge is applied in excess of the application rate approved in the permit.
- (2) Sewage sludge is applied in volume, composition or source that is not approved in the permit.
- (3) Sewage sludge is applied without daily incorporation into soil when required by Chapter 275 (relating to land application of sewage sludge).
- (4) The operator does not submit an annual report required by § 275.222 (relating to annual operation report).

(f) This section does not prevent the Department from assessing a civil penalty for a violation not in this section.

#### Source

The provisions of this § 271.411 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### § 271.412. Assessment of penalties—general.

(a) The Department will use the system described in this section and § 271.413 (relating to assessment of penalties—minimum penalties) to determine the amount of the penalty. Unless otherwise indicated in this section, the penalty may be set at an amount up to the maximum amount specified in this section.

(b) Civil penalties shall be assessed as follows:

(1) Up to the statutory maximum shall be assessed based on the seriousness of the violation, including the following:

- (i) Damage or injury to the land or waters of this Commonwealth or other natural resources or their uses.
- (ii) Cost of restoration.
- (iii) Hazards or potential hazards to the health or safety of the public.
- (iv) Property damage.
- (v) Interference with a person's right to the use or enjoyment of property.
- (vi) Other relevant factors.

(2) A penalty of up to the statutory maximum may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include, without limitation:

- (i) Administrative costs.
- (ii) Costs of inspection.
- (iii) Costs of the collection, transportation and analysis of samples.
- (iv) Costs of abatement, remedial and preventive measures taken to prevent or lessen the threat of damage or injury to property or waters of this Commonwealth or other natural resources or their uses or to a person.

(3) A penalty of up to the statutory maximum may be assessed by calculating the costs that the operator avoided by incurring the violation.

(4) A penalty of up to the statutory maximum may be assessed based on the willfulness of the violation.

(5) In determining a penalty for a violation, the Department will increase the civil penalty by 5% for each violation of the applicable laws for which the person or municipality has been found responsible in a prior adjudicated proceeding, agreement, consent order or decree which became final within the previous 5-year period. A violation will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision of the previous violation has not expired.

(6) A civil penalty of up to the maximum amount may be assessed based on other relevant factors.

(c) Each day of continuing violation is considered a separate violation for purposes of this subchapter. The cumulative effect of a continuing violation will be considered in assessing the penalty for each day of the violation.

(d) If the system described in this section would yield a penalty in excess of the statutory maximum for a violation, the maximum penalty will be imposed for that violation. Separate violations occurring on the same day may each be assessed a penalty of up to the maximum. If violations may be attributed to two or more persons or municipalities, a penalty of up to the statutory maximum may be assessed against each person or municipality.

#### Source

The provisions of this § 271.412 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

#### Cross References

This section cited in 25 Pa. Code § 271.413 (relating to assessment of penalties—minimum penalties).

### § 271.413. Assessment of penalties—minimum penalties.

(a) This section sets forth minimum civil penalties for certain violations of the act and regulations thereunder. The Department will assess a civil penalty under § 271.412 (relating to assessment of penalties—general) only if a civil penalty calculated under § 271.412 is greater in amount than the civil penalty calculated under this section.

(b) If a person or municipality operates a permitted municipal waste landfill on an area for which the person or municipality was not permitted to operate the facility, or in excess of final permitted elevations, the Department will assess a minimum civil penalty of \$5,000 per half acre, or portion thereof. Intermediate acreages will be assessed at the next highest half acre.

(c) If a person or municipality operates a construction/demolition waste landfill on an area for which the person or municipality was not permitted to operate the facility, or in excess of final permitted elevations, the Department will assess a minimum civil penalty of \$500 per half acre, or a portion thereof. Intermediate acreages will be assessed at the next highest half acre.

(d) If a person or municipality applies sewage sludge to an area for which the person or municipality was not permitted to apply the sludge, the Department will assess a minimum civil penalty of \$1,000 per acre or portion thereof.

(e) If a person or municipality applies sewage sludge under a permit, and the sewage sludge does not meet the physical, chemical or biological quality specified in the permit, the Department may assess a minimum civil penalty of \$1,000 per occurrence.



(f) If a person or municipality transporting residential septage fails to submit the notice to the Department required by § 285.225 (relating to transportation of residential septage), the Department may assess a minimum civil penalty of \$500 for the first offense and a minimum civil penalty of \$1,000 for each subsequent offense.

(g) If a person or municipality fails to provide notification on a timely basis of an incident for which a reporting requirement exists in the act, regulations thereunder, the terms or conditions of a permit or order of the Department, the Department will assess a minimum civil penalty of \$1,000.

(h) If a person or municipality refuses, hinders, obstructs, delays or threatens an agent or employe of the Department in the course of performance of a duty under the act, including, but not limited to, entry and inspection under any circumstances, the Department will assess a minimum civil penalty of \$2,000.

(i) If a person or municipality is applying sewage sludge and has not complied with the training requirements in § 271.915(j) (relating to management practices), the Department may assess a minimum civil penalty of \$1,000.

(j) If a violation is included as a basis for an administrative order requiring cessation of solid waste management operations, or for another abatement order, and if the violation has not been abated within the abatement period set in the order, a minimum civil penalty of at least \$1,000 will be assessed for each day during which the failure continues. Nothing in this subsection limits the Department's authority to assess an appropriate civil penalty for violations that formed the basis for issuing an order, and that occurred prior to the issuance of the order or prior to a date for compliance in the order.

#### Source

The provisions of this § 271.413 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (234800) to (234801) and (226021).

#### Cross References

This section cited in 25 Pa. Code § 271.412 (relating to assessment of penalties—general).

### § 271.414. Procedures for assessment of civil penalties.

(a) The Department will serve, by mail or personal service, a copy of the civil penalty assessment on the person or municipality responsible for a violation. Service shall be by registered or certified mail, or by personal service. If the service is tendered at the address of the person set forth in the application for a permit under the act or regulations thereunder, or at an address at which the person is in fact located, and the person refuses to accept delivery of or to collect the mail, the requirements of this subsection will be deemed to have been complied with upon this tender.

(b) The Department may upon its own motion prior to assessment, or will upon written request of the person to whom the assessment was issued, arrange for a conference to review the assessment or proposed assessment.

(c) The assessment conference will not be governed by requirements for formal adjudicatory hearings, and may be held at the convenience of the parties.

(d) The Department may terminate the conference if it determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(e) The time for appeal from an assessment will not be stayed by the request for, or convening of, an assessment conference.

#### Source

The provisions of this § 271.414 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

### ENFORCEMENT

#### § 271.421. Administrative inspections.

(a) The Department and its agents and employees will:

(1) Have access to, and require the production of, books and papers, documents and physical evidence pertinent to a matter under investigation.

(2) Require a person or municipality engaged in the storage, transportation, processing, treatment or disposal of municipal waste to establish and maintain records and make reports and furnish information as the Department may prescribe.

(3) Enter a building, property, premises or place where municipal waste is generated, stored, processed, treated, collected, transported or disposed for the purpose of making an investigation or inspection necessary to ascertain the compliance or noncompliance by the person or municipality with the act and regulations thereunder. In connection with an inspection or investigation, samples may be taken of solid, semisolid, liquid or contained gaseous material for analysis. If an analysis is made of the samples, a copy of the results of the analysis shall be furnished within 5 business days after receiving the analysis from the laboratory to the person having apparent authority over the building, property, premises or place.

(b) The Department, its employees and agents will conduct routine inspections as follows:

(1) For municipal waste landfills and construction/demolition waste landfills, at least 12 times per year.

(2) For resource recovery facilities, at least 12 times per year.

(3) For transfer facilities, composting facilities and other processing facilities, at least 4 times per year.

(4) For facilities for the utilization of sewage sludge for land reclamation, at least twice per year.

(c) The Department, its employees and agents intend to conduct inspections under the act of:

(1) Facilities for the agricultural utilization of sewage sludge operating under a permit issued under Chapter 275 (relating to land application of sewage sludge) or a beneficial use order issued prior to January 25, 1997, at least two times per year.

(2) Municipal waste processing facilities other than resource recovery facilities, which process or incinerate regulated medical or chemotherapeutic waste, at least two times per year.

(3) Municipal waste processing facilities other than resource recovery facilities, which do not process or incinerate regulated medical or chemotherapeutic waste, at least once per year.

(4) Hospitals where regulated medical or chemotherapeutic waste is generated, at least two times per year.

(5) Locations other than hospitals where regulated medical or chemotherapeutic waste is generated, at least once per year.

(6) Facilities subject to permit-by-rule under § 271.102 (Reserved) at least once per year.

(7) Facilities and beneficial use areas subject to permit-by-rule under § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements), a general permit for beneficial use or processing, or both, under Subchapter I (relating to beneficial use), or a permit for the land application of sewage sludge under Subchapter J (relating to beneficial use of sewage sludge by land application), at least once per year.

(d) The Department, its employees and agents may conduct additional inspections, including follow-up inspections, of municipal waste processing, treatment, disposal, storage, collection and transportation facilities to observe a practice or condition related to public health, safety, welfare or the environment, compliance with the act, the environmental protection acts, this title, the terms or conditions of a permit or a requirement of an order.

(e) The Department, its employees and agents may also conduct inspections of municipal waste processing, treatment, disposal, storage, collection or transportation facilities, if a person or municipality presents information to the Department which gives the Department reason to believe that:

(1) A person or municipality may have engaged in unlawful conduct under the act.

(2) A person or municipality may have violated an environmental protection act.

(3) A condition exists which may pose a threat to public health, safety, welfare or the environment.

**Source**

The provisions of this § 271.421 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272886) to (272888).

**§ 271.422. Permit suspension or revocation.**

(a) The Department may hold a public hearing or informal conference prior to suspending or revoking a permit. The requirements for hearings or conferences are those for permit applications in § 271.143 (relating to public comments).

(b) The Department will publish in the *Pennsylvania Bulletin* notice of the revocation or suspension of a permit.

**Source**

The provisions of this § 271.422 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**SEIZURE OF VEHICLES AND CONVEYANCES****§ 271.431. Forfeiture and seizure of property.**

(a) Sections 271.432—271.434 and this section apply to actions of the Department under section 1715 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1715) regarding forfeiture of vehicles used for unlawful transportation or disposal of solid waste. These provisions may be used by other law enforcement officials at their election.

(b) A vehicle or conveyance used for the transportation or disposal of solid waste in the commission of an offense under section 610(1) of the act (35 P. S. § 6018.610(1)) shall be deemed contraband.

(c) Property subject to forfeiture may be seized by an agent or employe of the Department, upon issuance of process by a court of common pleas with jurisdiction over the property, or under a search warrant.

(d) Seized property shall be placed under seal and removed to an appropriate location pending adjudication of the forfeiture action by the court of common pleas in the judicial district where the property is located. The property seized will be deemed to be in the custody of the seizing official, is subject only to orders of the court of common pleas having jurisdiction over the property and is subject to replevin.

**Source**

The provisions of this § 271.431 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105.

**Cross References**

This section cited in 25 Pa. Code § 271.434 (relating to responsibility for costs).

**§ 271.432. Forfeiture proceedings.**

(a) The proceedings for the forfeiture of property shall be in rem, with the Department, the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation, containing the following:

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner of the property, if known.
- (4) The persons in possession of the property at the time of seizure, if known.
- (5) An allegation that the property is subject to forfeiture under section 1715(a) of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.1715(a)).
- (6) An averment of the material facts upon which the forfeiture action is based.
- (7) A prayer for an order of forfeiture that the property be adjudged forfeited to the Department and ordered sold according to law, unless cause is shown to the contrary.

(b) A copy of the petition shall be served personally on the owner of the property or upon the person in possession of the property at the time of seizure.

- (1) The petition shall have endorsed thereon a notice as follows:

“To the Claimant of Within Described Property: You are required to file an answer to this petition, setting forth your title in and right to possession of said property, within 15 days from the service hereof; and you are also notified that if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.”

- (2) The notice shall be signed by the petitioner or the petitioner’s attorney.

(c) If the owner of the property is unknown, or the owner is outside the jurisdiction of the court and there was no person in possession of the property when seized, or the person in possession cannot be found within the jurisdiction of the court, notice of the petition shall be given by advertisement in a newspaper of general circulation published in the county where the property was seized once a week for 2 consecutive weeks. The notice shall contain a statement that the property was seized, a description of the property, the time and place of seizure, and shall direct claimants to the property to file a claim with the court on or before a date given in the notice, which date shall be 10 days after the date of the final publication of the notice. If no claims are filed on or before the date given in the notice, the property shall be summarily forfeited to the Department.

(d) Upon the filing of a timely claim setting forth a right to possession, the case shall be deemed at issue and a time fixed for a hearing.

(e) At the hearing, if the Department presents evidence that the property in question was possessed or used to transport or dispose of solid waste in the com-

mission of an offense under section 610(1) of the act (35 P. S. § 6018.610(1)), the burden shall shift to the claimant to show that:

- (1) The claimant is the owner of the property.
  - (2) The claimant lawfully acquired the property.
  - (3) The property was not unlawfully possessed and was not used to transport or dispose of solid waste in the commission of an offense under section 610(1) of the act.
- (f) The Department will be entitled to a forfeiture order if the Court finds that the property was unlawfully possessed or was used to transport or dispose of solid waste in the commission of an offense under section 610(1) of the act.

#### Source

The provisions of this § 271.432 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105.

#### Cross References

This section cited in 25 Pa. Code § 271.431 (relating to forfeiture and seizure of property); and 25 Pa. Code § 271.434 (relating to responsibility for costs).

### § 271.433. Disposition of forfeited property.

Upon issuance of a forfeiture order by the court, the Department will have the property sold at public auction according to law, with the proceeds of the sale paid to the Solid Waste Abatement Fund. If the property is subject to valid secured interests of a financial institution which is regularly in the business of making loans for this kind of property, the court will determine the value of the secured interests as of the time of seizure, and order that the value will be paid to the secured lienholder at time of sale.

#### Source

The provisions of this § 271.433 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105.

#### Cross References

This section cited in 25 Pa. Code § 271.431 (relating to forfeiture and seizure of property); and 25 Pa. Code § 271.434 (relating to responsibility for costs).

### § 271.434. Responsibility for costs.

The operator of a vehicle or conveyance forfeited under §§ 271.431—271.433 and this section is responsible for costs incurred in properly disposing of waste in the vehicle or conveyance, or which was illegally disposed.

#### Source

The provisions of this § 271.434 adopted October 9, 1992, effective October 10, 1992, 22 Pa.B. 5105.

**Cross References**

This section cited in 25 Pa. Code § 271.431 (relating to forfeiture and seizure of property).

**Subchapter F. DEMONSTRATION FACILITIES**

Sec.

- 271.501. Scope.
- 271.502. Relationship to other requirements.
- 271.503. Application requirements.
- 271.504. Operating requirements.
- 271.505. Public notice of analysis.
- 271.506. Departmental evaluation of analysis.

**Cross References**

This subchapter cited in 25 Pa. Code § 271.231 (relating to equivalency review procedure); and 25 Pa. Code § 271.801 (relating to scope).

**§ 271.501. Scope.**

This subchapter applies to municipal waste processing or disposal facilities, or parts of these facilities, that are based on a new or unique technology for processing or disposing of municipal waste. For purposes of this subchapter, a technology is considered new or unique if it has not previously been demonstrated in this Commonwealth or another comparable area. The Department may approve in writing, as a permit modification, the demonstration of new or unique technology for the processing or disposal of municipal waste at permitted municipal waste processing or disposal facilities if the requirements of this subchapter are met.

**Source**

The provisions of this § 271.501 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226026) to (226027).

**§ 271.502. Relationship to other requirements.**

(a) An operation that is approved under this subchapter is subject to the requirements of this article.

(b) For an operation that is approved under this subchapter, the Department may waive or modify any application and operating requirements in this article. The Department may not waive or modify Subchapter A, §§ 271.124, 271.125, 271.141 and 271.129, and Subchapter D, E or H (Reserved).

**Source**

The provisions of this § 271.502 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (226027).

**§ 271.503. Application requirements.**

In addition to applicable application requirements in this article, an application for a demonstration facility permit shall include the following:

- (1) An economic analysis indicating benefits to the Commonwealth and the applicant from the proposed facility, including an economic analysis of the benefits of alternative methods of processing or disposal.
- (2) A technical analysis of the proposed facility in comparison to the existing state-of-the-art for processing or disposal of the waste that shall be received by the facility.
- (3) A complete operational plan, including design details and a timetable for completing various phases of the facility from initiation of construction to completion of the project.
- (4) An evaluation of the anticipated contribution of the facility to the field of solid waste management.
- (5) An evaluation of the potential applicability to this Commonwealth of the technology to be demonstrated.
- (6) A demonstration that the applicant has the financial ability to remove the facility and clean up the affected area in the event of pollution.
- (7) A plan for corrective action utilizing conventional technology in the event of pollution.
- (8) A statement of the optimal size and capacity for a facility using the proposed technology.
- (9) A plan for assessing the effectiveness and environmental effect of the proposed facility.

**Source**

The provisions of this § 271.503 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

**Cross References**

This section cited in 25 Pa. Code § 271.504 (relating to operating requirements).

**§ 271.504. Operating requirements.**

In addition to applicable operating requirements in this article, a person or municipality that operates a demonstration facility shall comply with the following:

- (1) The facility may not be larger than the area needed to adequately test the new or unique technology.
- (2) No waste may be processed or disposed at the facility after 2 years from the initial processing or disposal of waste at the facility, unless a different period is stated in the permit. The permittee may request permit renewal under § 271.223 (relating to permit renewal).
- (3) The operator shall submit periodic reports to the Department concerning the effectiveness and environmental effect of the facility.



(4) The operator shall immediately cease operations and begin cleanup and removal actions if the Department determines that the facility is causing or is likely to cause harm to public health, safety or welfare or to the environment.

(5) Within 90 days from the expiration of the term of the permit, or within another period approved in the permit, the permittee shall submit to the Department an analysis of the effectiveness of the technology, taking into consideration the factors in § 271.503 (relating to application requirements).

(6) If one of Chapter 273, 275, 277, 279, 281 or 283 is not clearly applicable to the facility, the permittee shall annually submit to the Department a nonrefundable permit administration fee of an amount set forth in the approved permit, but not more than \$1,800, in the form of a check payable to the “Commonwealth of Pennsylvania.”

#### Source

The provisions of this § 271.504 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (226028).

#### Cross References

This section cited in 25 Pa. Code § 271.505 (relating to public notice of analysis); and 25 Pa. Code § 271.506 (relating to Departmental evaluation of analysis).

### § 271.505. Public notice of analysis.

The Department will publish in the *Pennsylvania Bulletin* notice of the availability of the analysis submitted under § 271.504(5) (relating to operating requirements). The notice will request public comment on the analysis and the utility of the analysis in permitting future facilities using the same or similar technology. The Department will also provide written notice of the availability of the analysis to the municipalities in which the facility is located.

#### Source

The provisions of this § 271.505 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226028) to (226029).

### § 271.506. Departmental evaluation of analysis.

(a) The Department will review the analysis submitted under § 271.504(5) (relating to operating requirements) and other relevant data to determine if the facility satisfactorily achieved its objectives and if the facility adequately protected public health, safety, welfare and the environment.

(b) If the Department determines that the facility adequately achieved its objectives and satisfactorily protected public health, safety, welfare and the envi-

ronment, the Department subsequently may grant a permit for the technology under the applicable provisions of this article without reference to this subchapter.

#### Source

The provisions of this § 271.506 adopted April 8, 1988, effective April 9, 1988, 18 Pa.B. 1681.

### Subchapter G. RESIDUAL WASTE

#### GENERAL PROVISIONS

Sec.

271.601. Scope.

#### ADDITIONAL APPLICATION REQUIREMENTS

- 271.611. Chemical analysis of waste.
- 271.612. Source reduction strategy.
- 271.613. Waste analysis plan.

#### ADDITIONAL OPERATION REQUIREMENTS

- 271.621. Frequency of analysis.
- 271.622. Additional analysis.

#### Cross References

This subchapter cited in § 271.801 (relating to scope).

#### GENERAL PROVISIONS

##### § 271.601. Scope.

(a) This subchapter applies to municipal waste processing or disposal facilities that apply to receive residual waste for processing or disposal. Section 271.611 (relating to chemical analysis of waste) also applies to an application for a general permit for the beneficial use or processing of municipal waste under Subchapter I (relating to beneficial use). This subchapter does not apply to:

- (1) Transfer facilities except as otherwise required in writing by the Department.
- (2) The disposal at permitted municipal waste landfills of residual waste from a person or municipality that generates a total quantity of 2,200 pounds

or less of residual waste per generating location in each month, if the application demonstrates to the Department's satisfaction that the waste is not hazardous.

(3) The disposal at permitted municipal waste landfills of an individual type of residual waste from a person or municipality that generates a total of 2,200 pounds or less of that type of residual waste per generating location in each month, if approved by the Department in writing.

(b) The requirements of this subchapter are in addition to the application and operating requirements in this article.

(c) The Department may require analyses under this subchapter for special handling waste other than sewage sludge, regulated medical waste, chemotherapeutic waste and ash residue from a resource recovery facility.

#### Source

The provisions of this § 271.601 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272894) to (272895).

### ADDITIONAL APPLICATION REQUIREMENTS

#### § 271.611. Chemical analysis of waste.

(a) *Application form.*

(1) Except as provided in subsection (f), an application for the processing or disposal of residual waste or special handling waste, an application for a general permit for the beneficial use or processing of municipal waste under Subchapter I (relating to beneficial use), or an application or registration under § 271.831 (relating to contents of general permits) for inclusion in a general permit issued under Subchapter I, shall contain the following information for each waste on a form provided by the Department:

(i) The name and location of the generator of the waste.

(ii) A detailed analysis that fully characterizes the physical properties and chemical composition of the waste. This analysis shall include available information from material safety data sheets or similar sources that may help characterize the physical properties and chemical composition of the waste.

(iii) An evaluation of the ability of the waste and the constituents in the waste to leach into the environment.

(iv) A determination of whether the waste is hazardous under Chapter 261, Subchapters A—D (Reserved).

(v) If the waste will be disposed at a municipal waste landfill or construction/demolition waste landfill, a demonstration that the waste meets the requirements for disposal at the facility.

(2) More than one type of waste from a single generator may be included on a single application, if the information required by this section is separately included for each type of waste.

(3) The analysis required by this subsection shall include a waste sampling plan, including quality assurance and quality control procedures. The plan shall ensure an accurate and representative sampling of the waste.

(4) The Department may, in writing, waive or modify the evaluation required by this subsection for waste to be received at permitted facilities if the following conditions are met:

(i) The applicant has submitted a description of the process by which the waste was generated, a physical description of the waste and a certification that the waste is not hazardous.

(ii) The applicant has demonstrated to the Department's satisfaction that additional analysis is not necessary to determine that waste can be received at the facility without adversely affecting the effectiveness of waste processing operations and established emission and wastewater discharge limits.

(iii) The applicant has demonstrated to the Department's satisfaction that additional analysis is not necessary to determine that waste can be received at the facility without adversely affecting the effectiveness of the liner or leachate treatment systems at a landfill, the attenuating soil base at a construction/demolition waste landfill or established emission and wastewater discharge limits.

(b) *Waste generation.* Except as provided in subsection (e), an application shall also include a description of the waste generation process, including a description of the raw materials used in the process, the primary chemical reactions which occur during the process, the sequence of events which occur during the process, the points of waste generation in the process and the manner in which each of the wastes is managed subsequent to its generation. A schematic drawing of the process shall be included.

(c) *Methodologies.* The analytical methodologies used to meet the requirements of subsection (a) shall be those in the most recent edition of the EPA's "Test Methods for Evaluating Solid Waste" (SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA 600/4-79-020), "Standard Methods for Examination of Water and Wastewater," prepared and published jointly by the American Public Health Association, American Waterworks Association, and Water Pollution Control Federation or a comparable method subsequently approved by the EPA or the Department.

(d) *Quality control.* The person taking the samples and the laboratory performing the analysis required by subsection (a) shall employ the quality assurance/quality control procedures described in the EPA's "Handbook for Analytical Quality Control in Water and Wastewater Laboratories" (EPA 600/4-79-019) or "Test Methods for Evaluating Solid Waste" (SW-846). The laboratory's

quality control procedures, as well as the documentation of the use of those procedures, shall be included in the application unless waived by the Department.

(e) *Generator information.* An applicant may submit information received from a person or municipality under § 287.54 (relating to chemical analysis of waste) to meet the corresponding requirements of this section.

(f) *Waiver.* The Department may, in writing, waive the requirements of this section for special handling waste, waive or modify the requirements of this section for general permits issued under Subchapter I and waive or modify the chemical analysis requirements under § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements).

#### Source

The provisions of this § 271.611 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272895) to (272897).

#### Cross References

This section cited in 25 Pa. Code § 271.103 (relating to permit-by-rule for municipal waste processing facilities other than for regulated medical or chemotherapeutic waste; qualifying facilities; general requirements); 25 Pa. Code § 271.601 (relating to scope); 25 Pa. Code § 271.613 (relating to waste analysis plan); 25 Pa. Code § 271.821 (relating to application for general permit); and 25 Pa. Code § 271.841 (relating to inclusion in a general permit).

### § 271.612. Source reduction strategy.

An application for the processing or disposal of residual waste shall contain a copy of the source reduction strategy required by § 287.53 (relating to source reduction strategy) for each residual waste to be received at the facility.

#### Source

The provisions of this § 271.612 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (226032).

### § 271.613. Waste analysis plan.

(a) The application shall include a waste analysis plan for each type of waste proposed to be received at the permitted facility. The plan shall take into account the waste analysis required by § 271.611 (relating to chemical analysis of waste). The plan shall include:

- (1) The parameters for which each residual waste will be analyzed and the rationale for the selection of these parameters.
- (2) The test methods that will be used to test for these parameters. The test methods shall be the same as those used under § 271.611.

(3) An explanation of the sampling methods that will be used to obtain an accurate and representative sample of the waste to be analyzed, including quality assurance and quality control procedures.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date. The rationale for the frequency shall also be explained.

(b) The application shall also include a plan for screening and managing incoming waste to ensure that the management of the waste is consistent with the permit and this article. Except as otherwise required by the Department, the application shall include at a minimum a plan for checking each load of waste received at the facility for color, odor, texture, physical state and phases of waste.

(c) The application shall describe how rejected waste will be managed, including responsible persons or municipalities and the method by which an alternative processing or disposal facility will be selected.

#### Source

The provisions of this § 271.613 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226032) to (226033).

#### Cross References

This section cited in 25 Pa. Code § 271.621 (relating to frequency of analysis); 25 Pa. Code § 271.622 (relating to additional analysis); 25 Pa. Code § 273.140a (relating to radiation protection action plans); 25 Pa. Code § 277.140 (relating to radiation protection action plan); 25 Pa. Code § 279.110 (relating to radiation protection action plan); 25 Pa. Code § 281.119 (relating to radiation protection action plan); and 25 Pa. Code § 283.113 (relating to radiation protection action plan).

## ADDITIONAL OPERATION REQUIREMENTS

### § 271.621. Frequency of analysis.

The operator shall conduct and maintain analyses of the waste under § 271.613 (relating to waste analysis plan) onsite for a minimum of 5 years after the analyses are performed. These records shall be made available to representatives of the Department on request.

#### Source

The provisions of this § 271.621 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389.

### § 271.622. Additional analysis.

A person or municipality shall submit to the Department additional analyses under § 271.613 (relating to waste analysis plan) if there is a significant change in the quality of the waste.

#### Source

The provisions of this § 271.622 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389.

**Subchapter H. [Reserved]** **§§ 271.711 and 271.712. [Reserved].****Source**

The provisions of these §§ 271.711 and 271.712 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; reserved and renumbered December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226035) to (226036).

 **§§ 271.721—271.725. [Reserved].****Source**

The provisions of these §§ 271.721—271.725 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; reserved and renumbered December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226036) to (226041).

 **§§ 271.731 and 271.732. [Reserved].****Source**

The provisions of these §§ 271.731 and 271.732 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; reserved and renumbered December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226041) to (226043).

 **§§ 271.741—271.743. [Reserved].****Source**

The provisions of these §§ 271.741—271.743 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; reserved and renumbered December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226043) to (226046).

 **§ 271.744. [Reserved].****Source**

The provisions of this § 271.744 adopted August 7, 1992, effective August 8, 1992, 22 Pa.B. 4185; reserved December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226046) and (268559).

**Subchapter I. BENEFICIAL USE****SCOPE**

Sec.

271.801. Scope

**GENERAL PERMIT FOR PROCESSING OR BENEFICIAL USE, OR  
BOTH, OF MUNICIPAL WASTE; AUTHORIZATION AND  
LIMITATIONS**

271.811. Authorization for general permit.

271.812. Nature of a general permit.

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### ISSUANCE OF GENERAL PERMITS

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- 271.843. Registration.

### COMPLIANCE

- 271.851. Investigations and corrective action.
- 271.852. Compliance with permit conditions, regulations and laws.

#### Source

The provisions of this Subchapter I adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521, unless otherwise noted.

#### Cross References

This subchapter cited in 25 Pa. Code § 271.1 (relating to definitions); 25 Pa. Code § 271.126 (relating to requirement for environmental assessment); 25 Pa. Code § 271.421 (relating to administrative inspections); 25 Pa. Code § 271.601 (relating to scope); 25 Pa. Code § 271.611 (relating to chemical analysis of waste); 25 Pa. Code § 281.234 (relating to sale or utilization of compost); and 25 Pa. Code § 287.611 (relating to authorization for general permit).

### SCOPE

#### § 271.801. Scope.

(a) This subchapter sets forth requirements for general permits for the processing and beneficial use of municipal waste, except as follows:

(1) This subchapter does not set forth requirements for general permits for the processing or beneficial use of regulated medical or chemotherapeutic waste.

(2) This subchapter does not set forth requirements for general permits for the beneficial use of sewage sludge by land application, except as provided in § 271.821(b)(6) (relating to application for general permit). A general or individual permit for the beneficial use of sewage sludge not mixed with residual



waste will be issued only under Subchapter J (relating to beneficial use of sewage sludge by land application).

(b) An operation that is approved under this subchapter does not require an individual processing or disposal permit under this article. The requirements of Subchapters A—G and Chapters 273, 277, 279, 281, 283 and 285 are applicable to the extent required in § 271.832 (relating to waiver and modification of requirements).

#### Source

The provisions of this § 271.801 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272900) to (272901).

### GENERAL PERMIT FOR PROCESSING OR BENEFICIAL USE, OR BOTH, OF MUNICIPAL WASTE; AUTHORIZATION AND LIMITATIONS

#### § 271.811. Authorization for general permit.

(a) Under §§ 271.812 and 271.821—271.825, the Department may issue general permits on a regional or Statewide basis for a category of processing when processing is necessary to prepare the waste for beneficial use, or for a category of beneficial use, or both, of municipal waste, if the following are met:

(1) The wastes included in the category are generated by the same or substantially similar operations and have the same or substantially similar physical character and chemical composition. If wastes are not the same or substantially similar and are blended for use, the blend shall be consistently reproduced with the same physical character and chemical composition.

(2) The wastes included in the category are proposed for the same or substantially similar beneficial use or processing operations.

(3) The activities in the category can be adequately regulated utilizing standardized conditions without harming or presenting a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth. The Department will not issue a general permit if the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product presents a greater harm or threat of harm than the use of the produce or ingredient which the waste is replacing.

(b) The Department may issue a general permit upon its own motion under § 271.825 (relating to Department initiated general permits) or upon an application from a person or municipality under §§ 271.821—271.824.

(c) The Department may modify, suspend, revoke, issue or reissue a general permit or coverage under a general permit under this subchapter as it deems necessary to prevent harm or the threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(d) The Department may modify, suspend, revoke, issue or reissue a general permit or coverage under a general permit under this subchapter as it deems necessary to prevent violation of or interference with the laws or solid waste management plans of any state, county or municipality.

(e) The Department may issue a general permit for processing combinations of municipal and residual wastes when processing is necessary to prepare a waste for beneficial use, or for beneficial use of combinations of municipal and residual wastes, or both, under this article or Article IX (relating to residual waste management), whichever the Department determines is appropriate. The Department will determine which article is appropriate based on factors including whether the facility is captive or noncaptive, and the proportions of municipal and residual wastes. A general permit for processing or beneficial use of combinations of sewage sludge and residual waste will be issued only under this subchapter.

(f) The requirements in this subchapter that apply to municipal waste also apply to residual waste when residual waste is mixed with municipal waste.

(g) The Department will not issue a general permit under this subchapter for the following:

(1) A municipal waste landfill, the use of municipal waste to fill open pits from coal or noncoal mining, or the use of municipal waste solely to level an area or bring the area to grade unless construction activity is completed on the area promptly after placement of the waste.

(2) A facility or activity which should be covered under the individual permitting process required in this article because of its size and potential to affect the environment adversely or because of its relationship to municipal waste management plans.

(3) The processing or beneficial use of regulated medical or chemotherapeutic waste.

(4) The beneficial use of sewage sludge by land application for sewage sludge that is not mixed with residual waste.

(5) The use of a waste for construction or operations at a resource recovery facility or disposal facility.

#### Source

The provisions of this § 271.811 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (272901) to (272903).

**Cross References**

This section cited in 25 Pa. Code § 271.824 (relating to approval or denial of an application); 25 Pa. Code § 271.825 (relating to Department initiated general permits); 25 Pa. Code § 271.831 (relating to contents of general permits).

**§ 271.812. Nature of a general permit.**

(a) When the Department issues a general permit for a specified category of beneficial use or processing of municipal waste on either a regional or Statewide basis, persons or municipalities may beneficially use or process municipal waste in accordance with the terms and conditions of the general permit and this subchapter without filing an individual application for, and first obtaining, an individual permit, if the persons or municipalities comply with this section and this subchapter.

(b) The use of an applicable general permit for the beneficial use or processing of municipal waste satisfies the permit requirements in § 271.101(a) (relating to permit requirement) if the following are met:

(1) The beneficial use or processing activities are conducted in accordance with the terms and conditions of the applicable general permit.

(2) The person or municipality conducting the beneficial use or processing activities is the permittee identified in the general permit or is otherwise authorized to operate under the applicable general permit in accordance with § 271.841 (relating to inclusion in a general permit).

(c) Notwithstanding subsections (a) and (b), the Department may require a person or municipality operating under a general permit to apply for, and obtain, an individual permit when the person or municipality is not in compliance with the conditions of the general permit or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

**Cross References**

This section cited in 25 Pa. Code § 271.811 (relating to authorization for general permit); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**ISSUANCE OF GENERAL PERMITS****§ 271.821. Application for general permit.**

(a) A person or municipality may apply to the Department for the issuance of a general permit for a category of beneficial use of municipal waste or for a category of processing of municipal waste when processing is necessary to prepare the waste for beneficial use.

(b) An application for the issuance of a general permit shall be submitted on a form prepared by the Department and shall contain the following:

(1) A description of the waste to be covered by the general permit, including the physical and chemical characteristics of the waste. The chemical

description shall contain an analysis meeting the requirements of § 271.611 (relating to chemical analysis of waste) for a sufficient number of samples of the waste to represent accurately the range of physical properties and chemical characteristics of the waste.

(2) A description of the proposed type of beneficial use or processing activity to be covered by the general permit.

(3) For beneficial use general permits, proposed concentration limits for contaminants in the waste which is to be beneficially used, and a rationale for those limits.

(4) For general permits that involve beneficial use of a processed or unprocessed waste, a detailed demonstration of the efficacy of the waste for the proposed beneficial use, which shall include:

(i) If the waste is to be used as a substitute for a commercial product, a demonstration that the waste is capable of performing the desired functions of the commercial product, and that the waste meets or exceeds applicable ASTM, Department of Transportation or other applicable National, State, local or industry standards or specifications for the material for which the waste is being substituted.

(ii) If the waste is to be used as a raw material for a product with commercial value, a demonstration that the waste will contribute significant properties or materials to the end product, and that the waste meets or exceeds applicable ASTM, Department of Transportation or other applicable National, State, local or industry standards or specifications for the material for which the waste is being substituted.

(iii) If the waste is to be used in general roadway application or highway construction, a demonstration that approval has been granted by the Department of Transportation Product Evaluation Board, if applicable, for the use of the waste for the intended application.

(iv) If the waste is to be used as a construction material, soil substitute, soil additive or antiskid material, or is to be otherwise placed directly onto the land, an evaluation of the potential for adverse public health and environmental impacts from the proposed use of the municipal waste. The evaluation shall identify the particular constituents of the waste which present the potential for adverse public health and environmental impacts, and the potential pathways of human exposure to those constituents, including exposure through groundwater, surface water, air and the food chain. This requirement does not apply to general permits for the land application of sewage sludge. The Department may waive or modify this requirement in writing.

(v) If the waste is to be used without reclamation as a construction material, soil additive, soil substitute or antiskid material or is to be otherwise placed directly onto the land, a demonstration that the leaching analysis of the municipal waste to be beneficially used is no greater than 25 times the

primary maximum contaminant level (MCL) for metals and other cations and the primary MCL for contaminants other than metals and cations.

(5) If wastes are blended for use, a demonstration that each waste results in a beneficial contribution to the use of the mixed waste and that the consistency of the blend will be maintained. The applicant shall specify the quantities and proportions of all materials included in the blended waste and the mixture shall meet appropriate standards for use.

(6) For a mixture of sewage sludge and residual waste, a demonstration that the following requirements are met in addition to the other requirements of this subchapter:

(i) The person who prepares the sewage sludge has one of the following:

(A) A permit for operation of the facility issued by the Department under the procedures and requirements of Chapter 91 or 92 (relating to general provisions; and National Pollutant Discharge Elimination System) or this chapter, as applicable.

(B) A permit for operation of the facility in which the sewage sludge is prepared, that is issued or modified by the State in which the facility is located or by the EPA, from which the Department may determine that the sewage sludge and residual waste mixture to be land applied will meet the standards in 40 CFR Part 503 (relating to standards for the use or disposal of sewage sludge).

(ii) The requirements of the following sections are met: §§ 271.902(g), 271.904—271.907, 271.911, 271.913—271.919 and 271.931—271.933.

(c) Except as provided in subsection (d), an application for the issuance of a general permit under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$1,000.

(d) An application for issuance of a general permit that involves the mixture of residual waste and municipal waste under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$2,000.

(e) The Department may not waive bonding and insurance requirements in Subchapter D (relating to financial assurances requirements) for composting facilities, construction/demolition waste processing facilities, facilities that process municipal waste to produce refuse derived fuel and for other general permit activities if the waste managed is potentially harmful or large quantities of waste are stored.

(f) An applicant for a general permit shall provide written notice to each municipality in which the applicant intends to operate under a general permit, if a location is known. Proof of this notice, including a copy of the notice and certified or registered mail returned receipt, shall be submitted to the Department.

**Source**

The provisions of this § 271.821 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226051) to (226053).

**Cross References**

This section cited in 25 Pa. Code § 271.5 (relating to public records and confidential information); 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 271.811 (relating to authorization for general permit); 25 Pa. Code § 271.824 (relating to approval or denial of an application); 25 Pa. Code § 271.832 (relating to waiver and modification of requirements); and 25 Pa. Code § 271.841 (relating to inclusion in a general permit).

**§ 271.822. Completeness review.**

(a) After receipt of an application for the issuance of a general permit, or an application for a determination of applicability under § 271.842 (relating to determination of applicability), the Department will determine whether the application is administratively complete. For purposes of this subchapter, an application is administratively complete if it contains the necessary analyses, fees, documents and information, regardless of whether the analyses, fees, documents and information would be sufficient for the issuance of the permit, or the determination of applicability.

(b) If the application is not administratively complete, the Department will, within 30 days of receipt of the application, return it to the applicant, along with a written statement of the specific analyses, fees, documents or other information that is required to make the application administratively complete.

(c) The Department will deny the incomplete application if the applicant fails to provide the analyses, fees, documents or information within 90 days of receipt of the notice in subsection (b).

**Cross References**

This section cited in 25 Pa. Code § 271.811 (relating to authorization for general permit); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**§ 271.823. Public notice and review period.**

(a) The Department will publish notice of receipt of an application for a general permit in the *Pennsylvania Bulletin* when the Department determines that the application is administratively complete.

(b) The notice will include:

(1) A brief description of the category of waste and the category of beneficial use or processing of municipal waste which is identified in the application.

(2) The Department address and telephone number at which interested persons or municipalities may obtain further information and review a copy of the application for the general permit.

(3) A brief description of the procedures for public comment on the general permit application in accordance with this subchapter.

(4) A statement that interested persons or municipalities may submit comments to the Department within 60 days of the publication of the notice, and may recommend conditions upon, revisions to, approval or disapproval of the general permit application.

(c) The Department may hold a public meeting or public hearing on the application for a general permit.

(d) The Department will approve or deny an application for a general permit within 6 months from the last day of the comment period established in subsection (b)(4). Failure by the Department to comply with this timetable will not result in grounds for issuance of a general permit.

(e) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit.

#### Cross References

This section cited in 25 Pa. Code § 271.811 (relating to authorization for general permit); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

### § 271.824. Approval or denial of an application.

The Department will not issue a general permit for a category of beneficial use or processing of municipal waste unless the applicant has affirmatively demonstrated the following:

(1) The application for the general permit is accurate and complete and the requirements of §§ 271.811, 271.812, 271.821—271.826, 271.831, 271.832, 271.841—271.843, 271.851 and 271.852 have been complied with.

(2) The proposed beneficial use or processing activities will be conducted in a manner that will not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth through exposure to constituents of the waste during or after the proposed beneficial use or processing activities. Use of the waste as an ingredient in an industrial process or as a substitute for a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing.

(3) For beneficial use general permits, the physical character and chemical composition of the municipal waste which is proposed to be covered by the general permit contributes to the proposed beneficial use, and the physical character and chemical composition of the municipal waste does not interfere with the proposed beneficial use.

#### Cross References

This section cited in 25 Pa. Code § 271.811 (relating to authorization for general permit).

**§ 271.825. Department initiated general permits.**

(a) The Department may issue or modify a general permit for a category of beneficial use or processing of municipal waste upon its own motion in accordance with this section.

(b) At least 60 days prior to the issuance or modification of a general permit under this section, the Department will publish a notice in the *Pennsylvania Bulletin* of intent to issue or modify a general permit under this section.

(c) The notice required by subsection (b) will include the following:

(1) A clear and specific description of the category of waste and the category of beneficial use or processing of municipal waste eligible for coverage under the proposed general permit or affected by the modification.

(2) The standards in § 271.811(a) (relating to authorization for general permit), and a brief description of the reasons for the Department's determination that the category of beneficial use or processing is eligible for coverage under a general permit in accordance with these standards.

(3) A brief description of the terms and conditions of the proposed general permit or modification.

(4) A brief description of the procedures for public comment on the general permit or modification in accordance with this subchapter.

(5) The Department address and telephone number at which interested persons or municipalities may obtain further information and review a copy of the proposed general permit or modification.

(6) A statement that interested persons or municipalities may submit comments to the Department within 60 days of the publication of the notice and may recommend conditions upon, revisions to and approval or disapproval of the proposed general permit or modification.

(d) The Department may hold a public meeting or public hearing on the proposed general permit or proposed modification.

(e) Upon issuance or modification of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the new or modified general permit.

**Cross References**

This section cited in 25 Pa. Code § 271.811 (relating to authorization for general permit); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**§ 271.826. Permit renewal.**

(a) A person or municipality that plans to process or beneficially use municipal waste after the expiration of the term in the general permit shall file a complete application for permit renewal on forms provided by the Department at least 180 days before the expiration date of the permit. A permit renewal shall authorize persons or municipalities that have applied for renewal within the time period provided in this subsection to operate under the renewal permit.



(b) A person or municipality that does not file an application for permit renewal within the time period in subsection (a) shall be required either to register or obtain a determination of applicability, whichever is applicable, under a renewed general permit.

(c) A general permit renewal shall be for a period of time not to exceed the length of the term of the original permit.

(d) An application for permit renewal shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$300.

#### Cross References

This section cited in 25 Pa. Code § 271.824 (relating to approval or denial of an application).

### CONTENT OF GENERAL PERMITS AND WAIVERS

#### § 271.831. Contents of general permits.

(a) A general permit issued by the Department will include, at a minimum:

(1) A clear and specific description of the category of waste and the category of beneficial use or processing of municipal waste eligible for coverage under the general permit.

(2) The standards in § 271.811(a) (relating to authorization for general permit), and a brief description of the reasons for the Department’s determination that the category of beneficial use or processing is eligible for coverage under a general permit in accordance with these standards.

(3) A specification of registration or determination of applicability requirements established in accordance with § 271.841 (relating to inclusion in a general permit) and the fee imposed on registrants or applicants for coverage under the general permit.

(4) A set of terms and conditions governing the beneficial use or processing of municipal waste covered by the general permit as are necessary to assure compliance with the act, this article and the environmental protection acts, including provisions for the protection of groundwater. At a minimum, the conditions shall include:

(i) The limits on the physical and chemical properties of waste that may be beneficially used or processed. The permit shall also include a requirement that persons or municipalities that conduct activities authorized by the general permit shall immediately notify the Department, on forms provided by the Department, of a change in the physical properties or chemical characteristics of the municipal waste, including leachability, or of a change in the information required by § 271.841(f).

(ii) A requirement that persons or municipalities that conduct activities authorized by the general permit shall allow authorized representatives of the

Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which the activities covered by the general permit will be, are being or have been conducted to ensure compliance with the act, regulations promulgated thereunder and a permit, license or order issued by the Department under the act.

(iii) A requirement that the activities authorized by the general permit will not harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth. At a minimum, for beneficial use of municipal waste, the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing.

(iv) An effective date and a fixed permit term, which may not exceed 10 years from the effective date. If the Department renews a general permit, the term may not exceed the term of the original permit.

(v) A requirement that a person or municipality operating under the permit shall immediately notify the Department within the time stated in the permit and if no time is stated no later than 45 days, in writing, of any changes in the following:

(A) The company's name, address, owners, operators and responsible officials.

(B) Land ownership of land at the permitted facility.

(C) The physical and chemical characteristics of the municipal waste.

(D) The generators of the municipal waste.

(E) The status of any permit issued to the permittee or any agent of the permittee engaged in activities under the permit by the Department or Federal government under the environmental protection acts.

(vi) A requirement that the activities conducted under the authorization of a general permit shall be conducted in accordance with the permittee's application. Except to the extent that a general permit states otherwise, the permittee shall operate as described within the permit application.

(5) A requirement that a person or municipality that registers for coverage under a general permit or applies to the Department for a determination of applicability under a general permit shall submit a copy of the registration or application to each municipality in which processing activities or the primary beneficial use activities will be located, prior to initiating operations. If additional locations are identified during the term of the permit that were not known at the time of a registration or application, including an application by the original applicant, written notice shall be provided to the municipalities.

(b) A general permit may include a requirement that persons or municipalities who conduct activities authorized by the general permit shall submit periodic

reports, analyses of waste and other information to ensure that the quality of the waste to be beneficially used or processed does not change.

#### Cross References

This section cited in 25 Pa. Code § 271.611 (relating to chemical analysis of waste); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

### § 271.832. Waiver and modification of requirements.

(a) An operation that is approved under this subchapter is subject to this article.

(b) For an operation that is approved under this subchapter, the Department may waive or modify any application and operating requirements in this article, except the Department may not waive § 271.123 and may not waive or modify Subchapter A, §§ 271.124, 271.125 and 271.129, Subchapter D in accordance with § 271.821(d) or Subchapter E.

#### Source

The provisions of this § 271.832 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial page (226058).

#### Cross References

This section cited in 25 Pa. Code § 271.801 (relating to scope); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

## REGISTRATION AND DETERMINATION OF APPLICABILITY

### § 271.841. Inclusion in a general permit.

(a) A person or municipality is authorized to operate under a general permit if one of the following occurs:

(1) The applicable general permit requires persons or municipalities to register with the Department prior to operating under the general permit, and the person or municipality has registered in accordance with the terms of the general permit.

(2) The applicable general permit requires persons or municipalities to apply for and obtain a determination of applicability from the Department prior to operating under the general permit, and the Department has made this determination.

(b) Except as provided in subsections (c) and (d), as a condition of each general permit, the Department will require persons or municipalities who intend to operate under the general permit to register with the Department within a specified time period prior to conducting the activity authorized by the general permit.

(c) For beneficial use general permits where the municipal waste is to be used as a construction material, antiskid material or otherwise placed directly onto the land, as a condition of the general permit, the Department will require persons or municipalities who intend to operate under the general permit to apply for and obtain a determination of applicability from the Department prior to conducting the activity authorized by the general permit. The Department may require persons or municipalities who intend to operate under a general permit for land application either to apply for and obtain a determination of applicability or register with the Department.

(d) The Department may impose the determination of applicability condition described in subsection (c) on general permits for beneficial use or processing activities other than those described in that subsection if the Department determines that the condition is necessary to prevent harm or a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(e) Registration or application requirements and time limits, if any, shall be set forth in the general permit governing each category of beneficial use or processing of municipal waste.

(f) At a minimum, the registration or application shall include:

(1) The name and address of the person or municipality conducting the activity covered by the general permit.

(2) A description of each waste which will be beneficially used or processed in accordance with the general permit.

(3) A description of the proposed method of processing or beneficial use of waste.

(4) If a general permit requires a registrant or applicant to chemically analyze each waste to be processed or beneficially used, an analysis that is in accordance with § 271.611 (relating to chemical analysis of waste).

(5) For beneficial use general permits for which an evaluation was submitted under § 271.821(b)(4)(iv) (relating to application for general permit), a supplemental evaluation that meets the requirements of that section if the waste contains constituents at levels not reviewed as part of the general permit, or if the proposed beneficial use would be at a type of location not reviewed as part of the general permit.

(6) The name or number of the general permit being utilized for the activity.

(7) A demonstration that the activities which the person or municipality intends to conduct are authorized by the general permit.

(8) A signed and notarized statement by the person or municipality conducting the activity authorized by the general permit, on a form prepared by the Department, which states that the person or municipality agrees to accept the conditions imposed by the general permit for beneficial use or processing of municipal waste under the general permit.

(g) A person or municipality that registers for coverage under a general permit, or applies to the Department for a determination of applicability of a general permit, shall submit a copy of the registration or application to the host municipality and the host county at the same time that the person or municipality files the registration or application with the Department. The host municipality and host county shall be determined by the location of the person's or municipality's primary or first beneficial use or processing operation under the general permit.

#### Cross References

This section cited in 25 Pa. Code § 271.812 (relating to nature of a general permit); 25 Pa. Code § 271.824 (relating to approval or denial of an application); 25 Pa. Code § 271.831 (relating to contents of general permits); 25 Pa. Code § 271.842 (relating to determination of applicability); and 25 Pa. Code § 271.843 (relating to registration).

### § 271.842. Determination of applicability.

(a) This section sets forth standards and procedures that are applicable to general permits which require persons or municipalities to apply for and obtain a determination of applicability from the Department prior to conducting the activity authorized by the general permit. The requirements in this section are in addition to the applicable requirements of § 271.841 (relating to inclusion in a general permit).

(b) An application for a determination of applicability under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$500.

(c) The Department will provide notice in the *Pennsylvania Bulletin* of each application for a determination of applicability for a general permit which the Department has determined to be administratively complete. For applications for determinations of applicability for a general permit for construction materials, the notice will indicate that interested persons or municipalities may submit comments to the Department within 60 days recommending revisions to and approval or disapproval of the application, unless the 60-day notice requirement is waived by the Department. The Department may hold a public meeting or public hearing on an application for determination of applicability for a general permit for construction materials.

(d) The Department will make a determination that a general permit is or is not applicable to an activity for which an application for determination of applicability is filed under § 271.841 within 60 days from the publication of the notice under subsection (c) or for construction materials when a 60-day comment period is provided, within 120 days after publication of the notice under subsection (c). The time period does not include periods beginning with the date that the Department in writing has requested the applicant to make substantive corrections or changes to the application and ending with the date that the applicant submits corrections or changes to the Department's satisfaction. Failure by the Depart-

ment to comply with this timetable will not be construed or understood to constitute grounds for a determination that the general permit applies to the proposed activity.

(e) The Department will determine that the general permit does not apply to the proposed beneficial use or processing activity and will deny coverage under the general permit if the applicant fails to demonstrate to the Department's satisfaction that the proposed activity is consistent with the terms and conditions of the general permit, and does not have the potential to harm or present a threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(f) The Department will provide written notice of its determination that a general permit is or is not applicable to an activity for which a determination of applicability is required to the host municipality and the appropriate county, county planning agency and county health department, if one exists, for the applicant's proposed primary or first beneficial use or processing operation under the general permit and will publish notice of its decision in the *Pennsylvania Bulletin*.

(g) The Department may amend, suspend or revoke coverage under a general permit if a person or municipality authorized to conduct solid waste activities under a general permit is not in compliance with the permit conditions or for one or more of the reasons in subsection (e).

#### Cross References

This section cited in 25 Pa. Code § 271.822 (relating to completeness review); and 25 Pa. Code § 271.824 (relating to approval or denial of an application).

### § 271.843. Registration.

(a) This section sets forth standards and procedures that are applicable to general permits which require persons or municipalities to register with the Department prior to operating under the general permit. The requirements of this section are in addition to the applicable requirements of § 271.841 (relating to inclusion in a general permit).

(b) A registration to operate under a general permit under this subchapter shall be accompanied by a nonrefundable fee in the form of a check payable to the "Commonwealth of Pennsylvania" for \$250.

(c) The Department will provide notice in the *Pennsylvania Bulletin* of each registration for coverage under a general permit.

(d) Persons or municipalities may operate under a general permit upon registering with the Department under § 271.841 and the terms of the general permit.

(e) The Department may amend, suspend or revoke coverage under a general permit if the waste or activity is not covered by the terms and conditions of the general permit.

(f) A person or municipality operating under a registration has the burden of proving, by clear and convincing evidence, that the waste and activity are consistent with the general permit.

**Cross References**

This section cited in 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**COMPLIANCE**

**§ 271.851. Investigations and corrective action.**

(a) Upon notification by a person or municipality beneficially using or processing municipal waste under a general permit that there has been a change in the physical properties or chemical characteristics of the municipal waste being beneficially used or processed, including leachability, the Department will conduct an investigation and order necessary corrective action. Notice to the Department under this section does not, by itself, suspend continued beneficial use or processing after a change has occurred.

(b) Upon receipt of a signed, written complaint of a person whose health, safety or welfare may be adversely affected by a physical or chemical change in the properties of the municipal waste to be beneficially used or processed under a general permit, including leachability, the Department will determine the validity of the complaint and take appropriate action.

**Cross References**

This section cited in 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**§ 271.852. Compliance with permit conditions, regulations and laws.**

A person or municipality that beneficially uses or processes municipal waste under a general permit shall comply with the terms and conditions of the general permit, with this article and with the environmental protection acts to the same extent as if the activity were covered by an individual permit.

**Cross References**

This section cited in 25 Pa. Code § 271.824 (relating to approval or denial of an application).

**Subchapter J. BENEFICIAL USE OF SEWAGE SLUDGE  
BY LAND APPLICATION**

**GENERAL**

Sec.

- 271.901. Purpose and applicability.
- 271.902. Permits and direct enforceability.
- 271.903. Operation under existing permits and beneficial use orders.
- 271.904. Additional or more stringent requirements.
- 271.905. Requirement for a person who prepares sewage sludge.
- 271.906. Sampling and analysis.
- 271.907. Special definitions.

**OPERATING REQUIREMENTS**

- 271.911. Special requirements.
- 271.912. Assistance of county conservation district.
- 271.913. General requirements.
- 271.914. Pollutant limits.
- 271.915. Management practices.
- 271.916. Operational standards—pathogens and vector attraction reduction.
- 271.917. Frequency of monitoring.
- 271.918. Recordkeeping.
- 271.919. Reporting.
- 271.920. Inspection.
- 271.921. Sewage sludge quality enhancement plan.

**PATHOGENS AND VECTOR ATTRACTION REDUCTION**

- 271.931. Special definitions.
- 271.932. Pathogens.
- 271.933. Vector attraction reduction.

**Source**

The provisions of this Subchapter J adopted January 24, 1997, effective May 27, 1997, with the exception of §§ 271.902(e) and (f) and 271.903 which are effective January 25, 1997, 27 Pa.B. 521, unless otherwise noted.

**Cross References**

This subchapter cited in 25 Pa. Code § 271.1 (relating to definitions); 25 Pa. Code § 271.123 (relating to right of entry); 25 Pa. Code § 271.421 (relating to administrative inspections); 25 Pa. Code § 271.801 (relating to scope); 25 Pa. Code § 281.234 (relating to sale or utilization of compost); and 25 Pa. Code § 291.201 (relating to general provisions).

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**GENERAL****§ 271.901. Purpose and applicability.**(a) *Purpose.*

(1) This subchapter establishes standards for general and individual land application of sewage sludge permits for the beneficial use of sewage sludge by land application. The standards consist of general requirements, pollutant limits, management practices and operational standards. This subchapter also includes pathogen and alternative vector attraction reduction requirements.

(2) In addition, the standards in this subchapter include reporting requirements and the frequency of monitoring and recordkeeping requirements when sewage sludge is applied to the land for beneficial use.

(b) *Applicability.*

(1) This subchapter applies to a person who prepares sewage sludge that will be sold or given away in a bag or other container or that will be land applied, and to a person who applies sewage sludge to the land.

(2) This subchapter applies to sewage sludge applied to the land.

**§ 271.902. Permits and direct enforceability.**

(a) *Permits.* The requirements in this subchapter may be implemented through an individual land application of sewage sludge permit or a land application of sewage sludge general permit. An individual land application of sewage sludge permit will be issued to, and a land application of sewage sludge general permit will provide coverage for, persons who prepare sewage sludge or persons who land apply residential septage, or both. For a land application of sewage sludge permit to be issued to or provide coverage for a person who prepares sewage sludge other than residential septage, that person shall have one or more of the following:

(1) A permit for operation of the facility issued by the Department under the procedures and requirements of Chapter 91 or 92 (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) or this chapter, as applicable.

(2) A permit for operation of the facility issued or modified by the state in which the facility is located or by the EPA, from which the Department may determine that the sewage sludge to be land applied will meet the standards in 40 CFR Part 503 (relating to standards for the use or disposal of sewage sludge).

(b) *Direct enforceability.* A person may not land apply sewage sludge through any practice for which requirements are established in this subchapter except in accordance with these requirements.

(c) Persons seeking to land apply sewage sludge shall obtain a land application of sewage sludge permit under the procedures and requirements in Chapters 91 and 92, as applicable, and this subchapter.

(d) A land application of sewage sludge permit requires compliance with Chapters 91 and 92, as applicable, this subchapter, and the terms and conditions of the permit.

(e) The Department is authorized to issue a land application of sewage sludge general permit if the permit meets the applicable requirements in §§ 92.81—92.83 (relating to NPDES permits), as modified by subsection (f). The Department may issue a land application of sewage sludge general permit for an activity related to the land application of sewage sludge which may result in a discharge of pollutants to waters of this Commonwealth. The site specific review and approval requirements of §§ 92.81—92.83 are not applicable to general permits issued under this subchapter.

(f) The restrictions contained in §§ 92.81(a)(8) and 92.83(b)(8) are not applicable to the land application of sewage sludge to the extent the restrictions would prohibit general permit coverage in watersheds designated as “high quality waters” under Chapter 93 (relating to water quality standards).

(g) A person may not apply sewage sludge in a way that will cause surface or groundwater pollution, cause or allow the attraction, harborage or breeding of vectors, cause or allow emissions of any malodorous air contaminants under § 123.31(b) (relating to limitations), adversely affect private or public water supplies, or cause any public nuisance.

(h) Applications for individual land application of sewage sludge permits issued under this subchapter, or for coverage under land application of sewage sludge general permits issued under this subchapter, shall be accompanied by a nonrefundable fee of \$500 made payable to the “Commonwealth of Pennsylvania.”

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

### § 271.903. Operation under existing permits and beneficial use orders.

(a) A person that possesses an existing individual permit or beneficial use order for the land application of sewage sludge, or a sewage sludge distribution program permit, issued by the Department shall either:

(1) Cease operations.

(2) Continue operations under the permit or beneficial use order until it expires or until the person obtains coverage under a land application of sewage sludge permit.

(b) When the Department makes an affirmative decision under subsection (a)(2), the terms and conditions of the land application of sewage sludge permit will supersede the terms and conditions of the existing permit or beneficial use order.

(c) Existing beneficial use orders issued by the Department under former § 271.232 (Reserved) expire on January 25, 2002.

(d) Existing permits identified in subsection (a), which do not contain an express expiration date, will be deemed to expire on January 25, 2002.

(e) The interim guidelines for the use of sewage sludge for agricultural utilization or land reclamation will remain in effect for the limited purposes of providing guidance for persons operating under, and for the enforcement of, individual solid waste permits issued prior to May 27, 1997, under Chapter 275 (relating to land application of sewage sludge) and beneficial use orders issued prior to May 27, 1997, under § 271.232 (Reserved).

#### § 271.904. Additional or more stringent requirements.

On a case-by-case basis, the Department may impose requirements in addition to or more stringent than the requirements in this subchapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

##### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

#### § 271.905. Requirement for a person who prepares sewage sludge.

A person who prepares sewage sludge shall ensure that the applicable requirements in this subchapter are met when the sewage sludge is applied to the land.

##### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

#### § 271.906. Sampling and analysis.

(a) *Sampling.* Representative samples of sewage sludge that is applied to the land shall be collected and analyzed.

(b) *Methods.* Methods in the materials listed in this subsection, or in any later amendments published in the *Federal Register*, are incorporated by reference and shall be used to analyze samples of sewage sludge. Other methods may be approved by the Department.

(1) *Enteric viruses.* ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses from Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11—Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103-1187.

(2) *Fecal coliform.* Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW., Washington, DC 20005.

(3) *Helminth Ova.* Yanko, W. A. "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (PB 88-154273/AS).

(4) *Inorganic pollutants*. “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (PB-87-120-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street, NE., Washington, DC 20002 (Document Number 955-001-00000-1).

(5) *Salmonella SP. Bacteria*. Part 9260 D., “Standard Methods for the Examination of Water and Wastewater,” 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW., Washington, DC 20005; or Kenner, B. A. and H. P. Clark, “Detection and Enumeration of *Salmonella* and *Pseudomonas Aeruginosa*,” Journal of the Water Pollution Control Federation, Vol. 46, No. 9, September 1974, pp. 2163- 2171. Water Environment Federation, 601 Wythe Street, Alexandria, Virginia 22314.

(6) *Specific oxygen uptake rate*. Part 2710 B., “Standard Methods for the Examination of Water and Wastewater,” 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW., Washington, DC 20005.

(7) *Total, fixed and volatile solids*. Part 2540 G., “Standard Methods for the Examination of Water and Wastewater,” 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW., Washington, DC 20005.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

### § 271.907. Special definitions.

The following words and terms have the following meanings and apply only to this subchapter; other definitions may be found in § 271.1 (relating to definitions):

*Agricultural land*—Land on which a food crop, a feed crop, a fiber crop, a silvicultural crop or a horticultural crop is grown. The term includes range land and land used as pasture.

*Agronomic rate*—The annual whole sludge application rate (dry weight basis) designed to do the following:

- (1) Provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, silvicultural crop, cover crop, horticultural crop or vegetation grown on the land.
- (2) Minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

*Annual whole sludge application rate*—The maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

*Apply sewage sludge or sewage sludge applied to the land or land apply*—Land application of sewage sludge.

*Bag or other container*—Either an open or closed receptacle. The term includes, but is not limited to, a bag, bucket, box, container, vehicle or trailer, with a load capacity of 1.1 tons (or 1.0 metric ton) or less.

*Cover crop*—A small grain crop, such as oats, wheat or barley, not grown for harvest.

*Cumulative pollutant loading rate*—The maximum amount of a pollutant that can be applied to an area of land.

*Domestic sewage*—Waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

*Dry weight basis*—Calculated on the basis of having been dried at 221°F (or 105°C) until reaching a constant mass (that is, essentially 100% solids content).

*Feed crops*—Crops produced primarily for consumption by animals.

*Fiber crops*—Crops such as flax and cotton.

*Food crops*—Crops consumed by humans. The term includes, but is not limited to, fruits, vegetables and tobacco.

*Forest*—A tract of land thick with trees and underbrush.

*Frozen ground*—Ground frozen to a depth of at least 2 inches for a period of 72-consecutive hours.

*Industrial wastewater*—Wastewater generated in a commercial or industrial process.

*Land application*—The spraying or spreading of sewage sludge onto the land surface for beneficial use; the injection of sewage sludge below the land surface for beneficial use; or the incorporation of sewage sludge into the soil for beneficial use so that the sewage sludge can either condition the soil or fertilize crops for vegetation grown in the soil.

*Land application of sewage sludge general permit*—A regionwide or Statewide land application of sewage sludge permit that is issued by the Department under the procedures and requirements in Chapters 91 and 92 (relating to general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance) and this subchapter, as applicable, for a clearly described category of activities which may involve a discharge to surface or groundwaters, when the activities are substantially similar in nature and do not have the potential to cause significant adverse environmental impact.

*Land application of sewage sludge permit*—A permit that is issued for an activity related to the land application of sewage sludge which may result in a discharge of pollutants to waters of this Commonwealth.

*Municipality*—A city, town, borough, county, township or an authority created by any of the foregoing under State law, including an intermunicipal agency of two or more of the foregoing entities.

*Pasture*—Land on which animals feed directly on feed crops such as legumes, grasses, grain stubble or stover.

*Person*—An individual, corporation, partnership, association, municipality, political subdivision or an instrumentality of State, Federal or local government, or an agent or employe thereof; or any other legal entity.

*Person who prepares sewage sludge*—Either the person who generates sewage sludge during the treatment or processing of domestic sewage in a treatment works or the person who derives a material from sewage sludge. The term includes a composting facility that composts sewage sludge.

*Pollutant*—An organic substance, an inorganic substance, a combination of organic substances, a pathogenic organism or another substance identified by the Department that, after discharge and upon exposure, ingestion, inhalation or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the Department cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

*Pollutant limit*—A numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (for example, milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (for example, pounds per acre or kilograms per hectare); or the volume of a material that can be applied to a unit area of land (for example, gallons per acre or liters per hectare).

*Public contact site*—Land with a high potential for contact by the public. The term includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms and golf courses.

*Range land*—Open land with indigenous vegetation.

*Reclamation site*—Drastically disturbed land that is reclaimed using sewage sludge. The term includes, but is not limited to, active and abandoned coal and noncoal surface mines and construction sites.

*Residential septage*—Liquid or solid material removed from a septic tank, cesspool or similar treatment works that receives only waste or wastewater from humans or household operations. The term includes processed residential septage from a residential septage treatment facility. The term does not include liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III Marine Sanitation Device or similar treatment works, that receives either commercial wastewater or industrial wastewater, and does not include grease removed from grease traps at a restaurant.

*Runoff*—Rainwater, leachate or other liquid that drains overland on any part of a land surface and runs off of the land surface.

*Treat or treatment of sewage sludge*—The preparation of sewage sludge for land application. The term includes, but is not limited to, thickening, stabilization and dewatering of sewage sludge. The term does not include storage of sewage sludge.

*Treatment works*—Either a Federally owned, publicly owned or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

*Wetlands*—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs and similar areas.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

### OPERATING REQUIREMENTS

#### § 271.911. Special requirements.

(a) *Application*. This section applies to sewage sludge that meets the criteria in subsection (b).

(b) *Exceptional quality sewage sludge*.

(1) The general requirements in § 271.913 (relating to general requirements) and the management practices in § 271.915 (relating to management practices), do not apply when sewage sludge is applied to the land if, prior to use, the sewage sludge continuously meets the pollutant concentrations in § 271.914(b)(3) (relating to pollutant limits), the Class A pathogen requirements in § 271.932(a) (relating to pathogens) and one of the vector attraction reduction requirements in § 271.933(b)(1)—(8) (relating to vector attraction reduction), and is nonliquid and nonrecognizable as human waste.

(2) Sewage sludge that meets the requirements of paragraph (1) or (3) may not be applied at a rate that is greater than the agronomic rate, unless a greater application rate is approved by the Department for land reclamation activities. For land reclamation, sewage sludge shall be incorporated within 24 hours after application.

(3) Sewage sludge sold, given away or otherwise distributed, in a bag or other container for application to the land shall continuously meet the pollutant concentrations in § 271.914(b)(3), the Class A pathogen requirements in § 271.932(a) and one of the vector attraction reduction requirements in § 271.933(b)(1)—(8), and shall be nonliquid and nonrecognizable as human waste.

(c) *Label or information sheet.* Either a label shall be affixed to the bag or other container in which sewage sludge is sold, given away or otherwise distributed, for application to the land, or an information sheet shall be provided to the person who receives sewage sludge sold, given away or otherwise distributed, in a bag or other container for application to the land. The label or information sheet shall contain the following information:

- (1) The name and address of the person who prepared the sewage sludge that is sold, given away or otherwise distributed, in a bag or other container for application to the land.
- (2) A statement that application of the sewage sludge to the land is prohibited except in accordance with the instructions on the label or information sheet.
- (3) A description of the restrictions or limitations and the nutrient value of the sewage sludge.

(d) *Application by Department.* The Department may apply any or all of the general requirements in § 271.913 and the management practices in § 271.915 to the sewage sludge in subsection (b)(1) on a case-by-case basis after determining that some or all of the general requirements or management practices in those sections are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the sewage sludge.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit); 25 Pa. Code § 271.914 (relating to pollutant limits); 25 Pa. Code § 271.918 (relating to recordkeeping); 25 Pa. Code § 271.921 (relating to sewage sludge quality enhancement plan); and 25 Pa. Code § 271.932 (relating to pathogens).

### § 271.912. Assistance of county conservation district.

The Department may enter into an agreement with a county conservation district with the approval of the State Conservation Commission to authorize the county conservation district to:

- (1) Provide site evaluation and permit application review of land application of sewage sludge permits.
- (2) Provide information and written materials to the general public, the regulated community and the agricultural community concerning the land application of sewage sludge.
- (3) Conduct education sessions with interested parties on the land application of sewage sludge.
- (4) Conduct inspections of permitted land application facilities and those areas where sewage sludge is applied under land application of sewage sludge permits.
- (5) Take samples of sewage sludge delivered to land application sites.



**§ 271.913. General requirements.**

(a) A person may not apply sewage sludge to the land except in accordance with this subchapter.

(b) A person may not apply sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) (relating to pollutant limits) to agricultural land, forest, a public contact site or a reclamation site if any of the cumulative pollutant loading rates in § 271.914(b)(2) have been reached.

(c) A person may not apply residential septage to agricultural land, forest or a reclamation site during a 365-day period if the annual application rate in § 271.914(c) has been reached during that period.

(d) A person may not apply sewage sludge to a reclamation site unless the reclamation activity is permitted or otherwise approved by the Department.

(e) A person who operates under a land application of sewage sludge permit issued under this subchapter shall obtain written consent of the owner of the land upon which the sewage sludge will be land applied, on a form prepared by the Department, prior to land applying the sewage sludge.

(f) A person who operates under a land application of sewage sludge permit issued under this subchapter shall, at least 7 days prior to land applying sewage sludge for the first time at a location, provide the occupant of the land with a user instruction sheet prepared by the person operating under the permit that describes the acceptable uses and limitations of the sewage sludge.

(g) Notification requirements are as follows:

(1) A person who prepares sewage sludge that is land applied at a location and a person who land applies residential septage at a location for agricultural, forest or land reclamation purposes shall send or otherwise provide written notification to the adjacent landowner, the county conservation district and the Department at least 30 days prior to the first application of the sewage sludge at that location. The notification shall:

(i) Include a brief description of the operation, any site restrictions, the name of the person land applying the sewage sludge and the applicable permit number.

(ii) Be sent by personal delivery or first class mail and, for an adjacent landowner, shall also be given by posting at the property line in a manner sufficient to notify the adjacent landowner of the items in subparagraph (i).

(iii) For the county conservation district and the Department, include the location of the fields on a United States Geological Survey map and on a Natural Resources Conservation Service Soils Map.

(iv) For the Department, be sent to the Department's regional office that has jurisdiction for the location where the sewage sludge will be applied.

- (2) The Department may modify these requirements for purposes of land reclamation where the activity is part of another permit or approval issued by the Department and public notice has been provided as part of the permit or approval.
- (h) Prior to the first time a site is used for land application, the first person who prepares sewage sludge or the first person who land applies residential septage shall obtain, at a minimum, one representative soil chemical analysis for each field on which sewage sludge is land applied, for pH and those constituents listed in the tables in § 271.914(b).
- (i) The person who prepares sewage sludge that is applied to agricultural land, forest, a public contact site or a reclamation site shall provide the person who applies the sewage sludge written notification of the concentration of total nitrogen (as nitrogen on a dry weight basis) in the sewage sludge.
- (j) Land application information requirements are as follows:
- (1) The person who applies sewage sludge to the land shall obtain information needed to comply with the requirements in this subchapter.
- (2) Before sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) is applied to the land, the person who proposes to apply the sewage sludge shall contact the Department's regional office that has jurisdiction for the site where the sewage sludge will be applied to determine, based on existing and readily available information, whether sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) has been applied to the site. The information will result in the following:
- (i) If sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) has not been applied to the site, the cumulative amount for each pollutant listed in Table 2 of § 271.914 may be applied to the site in accordance with § 271.914(a)(2).
- (ii) If sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) has been applied to the site, and the cumulative amount of each pollutant applied to the site in the sewage sludge is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site under § 271.914(a)(2).
- (iii) If sewage sludge subject to the cumulative pollutant loading rates in § 271.914(b)(2) has been applied to the site, and the cumulative amount of each pollutant applied to the site in the sewage sludge is not known, an additional amount of each pollutant may not be applied to the site in accordance with § 271.914(a)(2).
- (k) When a person who prepares sewage sludge provides the sewage sludge to a person who applies the sewage sludge to the land, the person who prepares the sewage sludge shall provide the person who applies the sewage sludge notice and necessary information to comply with this subchapter.

(l) When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who provides the sewage sludge shall provide the person who receives the sewage sludge notice and necessary information to comply with this subchapter.

(m) The person who applies sewage sludge to the land shall provide the legal or equitable owner, or lease holder, of the land on which the sewage sludge is applied notice and necessary information to comply with this subchapter.

#### Cross References

This section cited in 25 Pa. Code § 271.281 (relating to application for general permit); 25 Pa. Code § 271.911 (relating to special requirements); 25 Pa. Code § 271.915 (relating to management practices); and 25 Pa. Code § 271.918 (relating to recordkeeping).

### § 271.914. Pollutant limits.

(a) *Sewage sludge other than residential septage.*

(1) Sewage sludge may not be applied to the land if the concentration of any pollutant in the sewage sludge exceeds the ceiling concentration for the pollutant in Table 1.

(2) If sewage sludge, other than sewage sludge that meets the criteria of § 271.911(b)(1) or (3) (relating to special requirements), is applied to agricultural land, forest, a public contact site or a reclamation site, the cumulative loading rate for each pollutant may not exceed the cumulative pollutant loading rate for the pollutant in Table 2.

(3) If sewage sludge is applied to a lawn or a home garden, the concentration of each pollutant in the sewage sludge may not exceed the concentration for the pollutant in Table 3.

(4) If sewage sludge is sold, given away or otherwise distributed, in a bag or other container for application to the land, the concentration of each pollutant in the sewage sludge may not exceed the concentration for the pollutant in Table 3.

(b) *Tables.*

(1) *Ceiling concentrations.*

**TABLE 1—CEILING CONCENTRATIONS**

<i>Pollutant</i>	<i>Ceiling Concentration (Milligrams per Kilogram)<sup>1</sup></i>
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840

<i>Pollutant</i>	<i>Ceiling Concentration (Milligrams per Kilogram)<sup>1</sup></i>
Mercury	57
Molybdenum	75
Nickel	420
PCBs	8.6
Selenium	100
Zinc	7,500

<sup>1</sup> Dry weight basis

(2) *Cumulative pollutant loading rates.*

**TABLE 2—CUMULATIVE POLLUTANT LOADING RATES**

<i>Pollutant</i>	<i>Cumulative Pollutant Loading Rate (Kilograms per Hectare)</i>	<i>English Units (Pounds per Acre)</i>
Arsenic	41	36
Cadmium	39	34
Copper	1,500	1,320
Lead	300	264
Mercury	17	15
Nickel	420	370
Selenium	100	88
Zinc	2,800	2,464

(3) *Pollutant concentrations.*

**TABLE 3—POLLUTANT CONCENTRATIONS**

<i>Pollutant</i>	<i>Monthly Average Concentrations (Milligrams per Kilogram)<sup>1</sup></i>
Arsenic	41
Cadmium	39

<i>Pollutant</i>	<i>Monthly Average Concentrations (Milligrams per Kilogram)<sup>1</sup></i>
Copper	1,500
Lead	300
Mercury	17
Nickel	420
PCBs	4
Selenium	100
Zinc	2,800

<sup>1</sup> Dry weight basis.

(4) *Revisions to concentrations or loading rates.* A new or revised pollutant concentration or loading rate published in the *Federal Register* as a modification to 40 CFR 503.13(b) (relating to pollutant limits) is incorporated by reference.

(c) *Residential septage.* The annual application rate for residential septage applied to agricultural land, forest or a reclamation site may not exceed the annual application rate calculated using Equation (1).

$$\text{AAR} = \frac{N}{0.0026} \quad \text{Equation (1)}$$

Where:

AAR = Annual Application Rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre (kilograms per hectare) per 365-day period needed by the crop or vegetation grown on the land.

#### **Cross References**

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit); 25 Pa. Code § 271.911 (relating to special requirements); 25 Pa. Code § 271.913 (relating to general requirements); 25 Pa. Code § 271.917 (relating to frequency of monitoring); 25 Pa. Code § 271.918 (relating to recordkeeping); and 25 Pa. Code § 271.919 (relating to reporting).

#### **§ 271.915. Management practices.**

(a) Sewage sludge may not be applied to the land if it is likely to adversely affect a Federal or Pennsylvania threatened or endangered species, or its designated critical habitat, listed under or pursuant to section 4 of the Endangered Species Act (16 U.S.C.A. § 1533), 30 Pa.C.S. § 2305 (relating to threatened and endangered species) or 34 Pa.C.S. (relating to game and wildlife code).

(b) Sewage sludge may not be applied to agricultural land, forest, a public contact site or a reclamation site that is flooded, frozen or snow-covered, except as expressly provided in a permit issued under Chapter 91, 92 or 105 (relating to

general provisions; National Pollutant Discharge Elimination System; and dam safety and waterway management), as applicable.

(c) Sewage sludge may not be applied to agricultural land, forest or a reclamation site that is:

(1) Within 100 feet (or 30.5 meters) or less of a perennial stream or within 33 feet (or 10 meters) of an intermittent stream.

(2) Within 100 feet (or 30.5 meters) of the edge of a sink hole.

(3) Within 300 feet (or 91 meters) from an occupied dwelling unless the current owner there has provided a written waiver consenting to activities closer than 300 feet (or 91 meters). The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner. This paragraph does not apply to features that may come into existence after the date upon which adjacent landowner notification is given under Chapter 275 or § 271.913(g) (relating to land application of sewage sludge; and general requirements).

(4) In an area without an implemented erosion and sedimentation control plan or a farm conservation plan.

(5) Within 300 feet (or 91 meters) of a water source unless the current owner has provided a written waiver consenting to the activities closer than 300 feet (or 91 meters). This paragraph does not apply to features that may come into existence after the date upon which adjacent landowner notification is given under Chapter 275 or § 271.913(g).

(6) Within 100 feet (or 30.5 meters) of an exceptional value wetland, as defined in § 105.17 (relating to wetlands).

(7) Within 11 inches (or 28 centimeters) of the seasonal high water table, nor within 3.3 feet (or 1 meter) of the regional groundwater table. For purposes of this section, the depths to seasonal high water table and to regional groundwater table shall be based on the most recent soil mapping as published by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, or more detailed mapping data as mapped by an expert in soil science using standard and acceptable mapping procedures as developed by the USDA Natural Resources Conservation Service.

(d) A person may not apply sewage sludge when sewage sludge is to be land applied for:

(1) Agricultural utilization on slopes that exceed 25%, unless otherwise approved in writing by the Department.

(2) Land reclamation on slopes that exceed 35%, unless otherwise approved in writing by the Department.

(e) A person may not apply sewage sludge unless the soil pH is 6.0 or greater prior to land application unless the Department allows the increase of pH by application of sewage sludge or other material in which case the soil pH shall be 6.0 or greater within 6 months following the application of sewage sludge, or unless otherwise approved in writing by the Department.

(f) Sewage sludge may not be applied at a rate that is greater than the agronomic rate, unless a greater application rate is approved by the Department for land reclamation activities.

(g) If the nitrogen available from the manure produced by animals at the farm satisfies the nutrient needs of the farm for realistic expected crop yields, the sewage sludge may not be applied at that farm, unless a management plan is implemented that allows for uses of the manure other than land application on that farm.

(h) A person that operates under an individual or general land application of sewage sludge permit issued under this subchapter shall comply with the EPA and the Department guidance documents on the land application of sewage sludge pertaining to conducting sampling and analyses, and calculating the agronomic rate and the cumulative pollutant loading rate.

(i) A person that operates under an individual or general permit issued under this subchapter shall comply with applicable sections of Chapter 285 (relating to storage, collection and transportation of municipal waste) prior to land application, unless the applicant proposes to store sewage sludge on drying beds or structures under a solid waste permit from the Department.

(j) The Department will require persons land applying sewage sludge to complete training courses sponsored by the Department in a timely and satisfactory manner. Satisfactory completion means attendance at all sessions of training, and attainment of a minimum grade of 70% on tests given as part of the training courses. In the case of a person who prepares sewage sludge that will be land applied, and a person who land applies residential septage, at least one person with responsibility for the land application of sewage sludge shall satisfactorily complete the training in a timely fashion. The Department may suspend or revoke the individual permit issued under Chapter 275, the individual land application of sewage sludge permit, or coverage under a land application of sewage sludge general permit to land apply sewage sludge, if the person does not satisfactorily complete the training courses within the following time periods:

(1) Two years for a person conducting land application operations as of January 25, 1997.

(2) One year for a person that begins conducting land application operations after January 25, 1997.

(k) When land applying sewage sludge, a person shall display the permit number of the individual permit issued under Chapter 275, or the individual or general land application of sewage sludge permit, under which the person is operating on the sides and rear of each vehicle which is used in the land application of sewage sludge, in numbers at least 3 inches (or 7.6 centimeters) high in a color contrasting to the background.

(l) A person that land applies residential septage shall also ensure that non-organic objects are removed prior to spreading.

(m) For land reclamation, sewage sludge shall be incorporated within 24 hours after application.

#### Source

The provisions of this § 271.915 adopted January 24, 1997, effective May 27, 1997, 27 Pa.B. 521; amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6685. Immediately preceding text appears at serial pages (226075) to (226078).

#### Cross References

This section cited in 25 Pa. Code § 271.413 (relating to assessment of penalties—minimum penalties); 25 Pa. Code § 271.821 (relating to application for general permit); 25 Pa. Code § 271.911 (relating to special requirements); and 25 Pa. Code § 271.918 (relating to recordkeeping).

### § 271.916. Operational standards—pathogens and vector attraction reduction.

(a) *Pathogens—sewage sludge other than residential septage.*

(1) The Class A pathogen requirements in § 271.932(a) (relating to pathogens) or the Class B pathogen requirements and site restrictions in § 271.932(b) shall be met when sewage sludge is applied to agricultural land, forest, a public contact site or a reclamation site.

(2) The Class A pathogen requirements in § 271.932(a) shall be met when sewage sludge is applied to a lawn or a home garden.

(3) The Class A pathogen requirements in § 271.932(a) shall be met when sewage sludge is sold, given away or otherwise distributed, in a bag or other container for application to the land.

(b) *Pathogens—residential septage.* The requirements in § 271.932(c) shall be met when residential septage is applied to agricultural land, forest or a reclamation site.

(c) *Vector attraction reduction—sewage sludge other than residential septage.*

(1) One of the vector attraction reduction requirements in § 271.933(b) (1)—(10) (relating to vector attraction reduction) shall be met when sewage sludge is applied to agricultural land, forest, a public contact site or a reclamation site.

(2) One of the vector attraction reduction requirements in § 271.933(b) (1)—(8) shall be met when sewage sludge is applied to a lawn or a home garden.

(3) One of the vector attraction reduction requirements in § 271.933(b) (1)—(8) shall be met when sewage sludge is sold, given away or otherwise distributed, in a bag or other container for application to the land.

(d) *Vector attraction reduction—residential septage.* The vector attraction reduction requirements in § 271.933(b)(9), (10) or (11) shall be met when residential septage is applied to agricultural land, forest or a reclamation site.



**Cross References**

This section cited in 25 Pa. Code § 271.281 (relating to application for general permit).

**§ 271.917. Frequency of monitoring.**

(a) *Sewage sludge other than residential septage.*

(1) The frequency of monitoring for the pollutants listed in Table 1, Table 2 and Table 3 of § 271.914 (relating to pollutant limits); the pathogen density requirements in § 271.932(a) and (b)(2)—(4) (relating to pathogens); and the vector attraction reduction requirements in § 271.933(b)(1)—(8) (relating to vector attraction reduction) shall be the frequency in Table 1 of this section.

**TABLE 1—FREQUENCY OF MONITORING—LAND APPLICATION**

*Amount of Sewage Sludge<sup>1</sup>  
(Tons/Or Metric Tons  
Per 365 Day Period)*

<i>Amount of Sewage Sludge<sup>1</sup> (Tons/Or Metric Tons Per 365 Day Period)</i>	<i>Frequency</i>
Greater than zero but less than 319 (290)	Once per year
Equal to or greater than 319 (290) but less than 1,650 (1,500)	Once per quarter (4 times per year)
Equal to or greater than 1,650 (1,500) but less than 16,500 (15,000)	Once per 60 days (6 times per year)
Equal to or greater than 16,500 (15,000)	Once per month (12 times per year)

<sup>1</sup> Either the amount of sewage sludge applied to the land or the amount of sewage sludge received by a person who prepares sewage sludge that is sold, given away or otherwise distributed, in a bag or other container for application to the land (dry weight basis).

(2) After the sewage sludge has been monitored for 2 years at the frequency in Table 1, the Department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in § 271.932(a)(5)(ii) and (iii). However, the frequency of monitoring may not be less than once per year when sewage sludge is applied to the land.

(b) *Residential septage.* If either the pathogen requirements in § 271.932(c) or the vector attraction reduction requirements in § 271.933(b)(11) are met when residential septage is applied to agricultural land, forest or a reclamation site, each container of residential septage applied to the land shall be monitored for compliance with those requirements.

**Cross References**

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

**§ 271.918. Recordkeeping.**

(a) *Sewage sludge other than residential septage.*

(1) The person who prepares or derives the sewage sludge in § 271.911(b)(1) or (3) (relating to special requirements) shall develop the following information and shall retain the information for 5 years:

(i) The concentration of each pollutant listed in Table 3 of § 271.914 (relating to pollutant limits) in the sewage sludge.

(ii) The following certification statement:

“I certify, under penalty of law, that the Class A pathogen requirements in § 271.932(a) and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in § 271.933(b)(1) through § 271.933(b)(8)] have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(iii) A description of how the Class A pathogen requirements in § 271.932(a) (relating to pathogens) are met.

(iv) A description of how one of the vector attraction reduction requirements in § 271.933(b)(1)—(8) (relating to vector attraction reduction) is met.

(2) If sewage sludge other than sewage sludge that meets the criteria in § 271.911(b)(1) or (3) is applied to agricultural land, forest, a public contact site or a reclamation site, the following apply:

(i) The person who prepares the sewage sludge shall develop the following information and shall retain the information for 5 years.

(A) The concentration of PCBs and each pollutant listed in Table 1 of § 271.914 in the sewage sludge.

(B) The following certification statement:

“I certify, under penalty of law, that the pathogen requirements in [insert either § 271.932(a) or § 271.932(b)] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in § 271.933(b)(1) through (b)(8) if one of those requirements is met] have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements have been met. I

am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(C) A description of how the pathogen requirements in § 271.932(a) or (b) are met.

(D) When one of the vector attraction requirements in § 271.933(b) (1)—(8) is met, a description of how the vector attraction requirement is met.

(ii) The person who applies the sewage sludge shall develop the following information, retain the information in clauses (A)—(G) indefinitely, and retain the information in clauses (H)—(M) for 5 years.

(A) The location, by either street address or latitude and longitude, of each site on which sewage sludge is applied.

(B) The number of acres (or hectares) in each site on which sewage sludge is applied.

(C) The date and time sewage sludge is applied to each site.

(D) The cumulative amount of each pollutant (in, pounds or kilograms) listed in Table 2 of § 271.914 in the sewage sludge applied to each site, including the amount in § 271.913(j)(2)(ii) (relating to general requirements).

(E) The amount of sewage sludge (in, tons or metric tons) applied to each site.

(F) The following certification statement:

“I certify, under penalty of law, that the requirements to obtain information in § 271.913(j)(2) have been met for each site on which sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements to obtain information have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

(G) A description of how the requirements to obtain information in § 271.913(j)(2) are met.

(H) The following certification statement:

“I certify, under penalty of law, that the management practices in § 271.915 have been met for each site on which sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

(I) A description of how the management practices in § 271.915 (relating to management practices) are met for each site on which sewage sludge is applied.

(J) The following certification statement when the sewage sludge meets the Class B pathogen requirements in § 271.932(b):

“I certify, under penalty of law, that the site restrictions in § 271.932(b)(5) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site restrictions have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

(K) A description of how the site restrictions in § 271.932(b)(5) are met for each site on which Class B sewage sludge is applied.

(L) The following certification statement when the vector attraction reduction requirement in either § 271.933(b)(9) or (10) is met:

“I certify, under penalty of law, that the vector attraction reduction requirement in [insert either § 271.933(b)(9) or § 271.933(b)(10)] has been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the vector attraction reduction requirement has been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(M) If the vector attraction reduction requirements in § 271.933(b)(9) or (10) are met, a description of how the requirements are met.

(b) *Residential septage*. When residential septage is applied to agricultural land, forest or a reclamation site, the person who applies the residential septage shall develop the following information and shall retain the information for 5 years:

(1) The location, by either street address or latitude and longitude, of each site on which residential septage is applied.

(2) The number of acres (or hectares) in each site on which residential septage is applied.

(3) The date and time residential septage is applied to each site.

(4) The nitrogen requirement for the crop or vegetation grown on each site during a 365-day period.

(5) The rate, in gallons per acre (or liters per hectare) per 365-day period, at which residential septage is applied to each site.

(6) The following certification statement:

“I certify, under penalty of law, that the pathogen requirements in § 271.932(c) and the vector attraction reduction requirements in [insert either § 271.933(b)(9), § 271.933(b)(10), or § 271.933(b)(11)] have been

met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”

(7) A description of how the pathogen requirements in § 271.932(c) is met.

(8) A description of how the vector attraction reduction requirements in § 271.933(b)(9), (10) or (11) are met.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit); and 25 Pa. Code § 271.919 (relating to reporting).

### § 271.919. Reporting.

A person who prepares sewage sludge and a person that land applies residential septage, shall submit the following information to the Department:

(1) The information in § 271.918(a) and (b) (relating to recordkeeping), for the appropriate requirements, when requested by the Department.

(2) Notification that 90% or more of any of the cumulative pollutant loading rates in Table 2 of § 271.914 (relating to pollutant limits) is reached at a site. When this figure is reached, the Department may require submission of the information in § 271.918(a)(2)(ii)(A)—(G).

(3) Notification of the date, time and location at which land application will occur, when requested by the Department, for the purpose of inspection or investigation to ascertain compliance or noncompliance with the permit and with applicable statutes, rules and regulations.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

### § 271.920. Inspection.

A person operating under a land application of sewage sludge permit shall allow authorized representatives of the Commonwealth, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have access to areas in which the activities covered by the land application of sewage sludge permit will be, are being or have been conducted to ensure compliance with The Clean Streams Law, the act, regulations promulgated under The Clean Streams Law or under the act, and a permit issued under this subchapter. Samples may be taken of solid, semisolid, liquid or contained gaseous material for analysis.

**§ 271.921. Sewage sludge quality enhancement plan.**

(a) A person that generates sewage sludge, except a person that generates residential septage or a person that generates sewage sludge meeting the requirements of § 271.911(b)(1) (relating to special requirements), shall prepare a sewage sludge quality enhancement plan in accordance with this section.

(b) The plan shall include:

(1) A physical, chemical and biological analysis and characterization of the sewage sludge.

(2) An evaluation of the impact industrial discharges have on the quality of the sewage sludge.

(3) A description of the measures taken by the generator of the sewage sludge to determine whether industrial discharges are in compliance with existing State and Federal pretreatment laws.

(4) A description of options to improve the physical, chemical or biological quality of the sewage sludge.

(5) A description of how the options were evaluated.

(6) An explanation of why each option was selected or rejected.

(7) A description of the methods to be used to analyze, evaluate and address potential sources or changes which may affect the quality of sewage sludge.

(c) The generator shall review the plan required by this section every 5 years and update it as necessary to address significant changes.

(d) The Department may, in writing, waive or modify the requirements of this section for generators of sewage sludge that meet the requirements of § 271.911(b)(1).

**PATHOGENS AND VECTOR ATTRACTION REDUCTION****§ 271.931. Special definitions.**

The following words and terms have the following meanings and are applicable to §§ 271.932 and 271.933 (relating to pathogens; and vector attraction reduction):

*Aerobic digestion*—The biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

*Anaerobic digestion*—The biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

*Density of microorganisms*—The number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

*Land with a high potential for public exposure*—Land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (for example, a construction site located in a city).

*Land with a low potential for public exposure*—Land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest and a reclamation site located in an unpopulated area (for example, a surface mine located in a rural area).

*Pathogenic organisms; disease-causing organisms*—These include, but are not limited to, certain bacteria, protozoa, viruses and viable helminth ova.

*pH*—The logarithm of the reciprocal of the hydrogen ion concentration

*Specific oxygen uptake rate (SOUR)*—The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

*Total solids*—The materials in sewage sludge that remain as residue when the sewage sludge is dried at 103° to 105°C.

*Unstabilized solids*—Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

*Vector attraction*—The characteristic of sewage sludge that attracts rodents, flies, mosquitoes or other organisms capable of transporting infectious agents.

*Volatile solids*—The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 1022°F (or 550°C) in the presence of excess air.

#### Cross References

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit).

### § 271.932. Pathogens.

(a) *Sewage sludge other than residential septage—Class A.*

(1) The requirement in paragraph (2) and the requirements in paragraph (3), (4), (5), (6), (7) or (8) shall be met for a sewage sludge to be classified Class A with respect to pathogens.

(2) The Class A pathogen requirements in paragraphs (3)—(8) shall be met either prior to meeting or at the same time the vector attraction reduction requirements in § 271.933 (relating to vector attraction reduction), except the vector attraction reduction requirements in § 271.933(b)(6)—(8), are met.

(3) *Class A—Alternative 1.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella sp. bacteria in the sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or mate-

rial derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3) (relating to special requirements).

(ii) The temperature of the sewage sludge that is used shall be maintained at a specific value for a period of time.

(A) When the percent solids of the sewage sludge is 7% or higher, the temperature of the sewage sludge shall be 122°F (or 50°C) or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using Equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400T}} \quad \text{Equation (2)}$$

Where,

D = Time in days

T = Temperatures in degrees Celsius

(B) When the percent solids of the sewage sludge is 7% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 122°F (or 50°C) or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using Equation (2).

(C) When the percent solids of the sewage sludge is less than 7% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using Equation (2).

(D) When the percent solids of the sewage sludge is less than 7%; the temperature of the sewage sludge is 122°F (or 50°C) or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using Equation (3).

$$D = \frac{50,070,000}{10^{0.1400t}} \quad \text{Equation (3)}$$

Where,

D = Time in days

T = Temperatures in degrees Celsius

(4) *Class A—Alternative 2.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella sp. bacteria in the sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other con-



tainer for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3).

(ii) pH adjustment as follows:

(A) The pH of the sewage sludge that is used shall be raised to above 12 and shall remain above 12 for 72 hours.

(B) The temperature of the sewage sludge shall be above 125°F (or 52°C) for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(C) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

(5) *Class A—Alternative 3.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella sp. bacteria in sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3).

(ii) Virus monitoring requirements are as follows:

(A) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(B) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one plaque-forming unit per 4 grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(C) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one plaque-forming unit per 4 grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one plaque-forming unit per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(D) After the enteric virus reduction in clause (C) is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (C).

(iii) Helminth monitoring requirements are as follows:

(A) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(B) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(C) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per 4 grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(D) After the viable helminth ova reduction in clause (C) is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (C).

(6) *Class A—Alternative 4.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella sp. bacteria in the sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3).

(ii) The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3), unless otherwise specified by the Department.

(iii) The density of viable helminth ova in the sewage sludge shall be less than 1 per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage

sludge is prepared to meet the requirements in § 271.911(b)(1) or (3), unless otherwise specified by the Department.

(7) *Class A—Alternative 5.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella, sp. bacteria in the sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3).

(ii) Sewage sludge that is used shall be treated in one of the processes to further reduce pathogens described in Appendix A.

(8) *Class A—Alternative 6.*

(i) Either the density of fecal coliform in the sewage sludge shall be less than 1,000 most probable number per gram of total solids (dry weight basis), or the density of salmonella, sp. bacteria in the sewage sludge shall be less than three most probable number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used; at the time the sewage sludge is prepared for sale, give away or other distribution, in a bag or other container for application to the land; or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in § 271.911(b)(1) or (3).

(ii) Sewage sludge that is used shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the EPA.

(b) *Sewage sludge other than residential septage—Class B.*

(1) *Additional requirements.*

(i) The requirements in subsection (b)(2), (3) or (4) shall be met for a sewage sludge to be classified Class B with respect to pathogens.

(ii) The site restrictions in subsection (b)(5) shall be met when sewage sludge that meets the Class B pathogen requirements in subsection (b)(2), (3) or (4) is applied to the land.

(2) *Class B—Alternative 1.*

(i) Seven samples of the sewage sludge shall be collected at the time the sewage sludge is used.

(ii) The geometric mean of the density of fecal coliform in the samples collected in subparagraph (i) shall be less than either 2 million most probable number per gram of total solids (dry weight basis) or 2 million colony forming units per gram of total solids (dry weight basis).

- (3) *Class B—Alternative 2.* Sewage sludge that is used shall be treated in one of the processes to significantly reduce pathogens described in Appendix A.
- (4) *Class B—Alternative 3.* Sewage sludge that is used shall be treated in a process that is equivalent to a process to significantly reduce pathogens, as determined by the EPA.
- (5) *Site restrictions.*
- (i) Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface may not be harvested for 14 months after application of sewage sludge.
  - (ii) Food crops with harvested parts below the surface of the land may not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
  - (iii) Food crops with harvested parts below the surface of the land may not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
  - (iv) Food crops, feed crops and fiber crops may not be harvested for 30 days after application of sewage sludge.
  - (v) Animals may not be allowed to graze on the land for 30 days after application of sewage sludge.
  - (vi) Turf grown on land where sewage sludge is applied may not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the Department.
  - (vii) Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.
  - (viii) Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- (c) *Residential septage.* Residential septage shall be stabilized to meet processes to significantly reduce pathogens or processes to further reduce pathogens prior to land application, and the site restrictions in subsection (b)(5)(i)—(iv) shall be met. For alkali stabilization, the pH of residential septage applied to agricultural land, forest or a reclamation site shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes and the site restrictions in subsection (b)(5)(i)—(iv) shall be met.

**Cross References**

This section cited in 25 Pa. Code § 271.281 (relating to application for general permit); 25 Pa. Code § 271.911 (relating to special requirements); 25 Pa. Code § 271.916 (relating to operational standards—pathogens and vector attraction reduction); 25 Pa. Code § 271.917 (relating to frequency of monitoring); 25 Pa. Code § 271.918 (relating to recordkeeping); and 25 Pa. Code § 271.931 (relating to special definitions).

**§ 271.933. Vector attraction reduction.****(a) Options.**

(1) One of the vector attraction reduction requirements in subsection (b)(1)—(10) shall be met when sewage sludge is applied to agriculture land, forest, a public contact site or a reclamation site.

(2) One of the vector attraction reduction requirements in subsection (b)(1)—(8) shall be met when sewage sludge is applied to a lawn or a home garden.

(3) One of the vector attraction reduction requirements in subsection (b)(1)—(8) shall be met when sewage sludge is sold, given away or otherwise distributed, in a bag or other container for application to the land.

(4) One of the vector attraction reduction requirements in subsection (b)(9), (10) or (11) shall be met when residential septage is applied to agricultural land, forest or a reclamation site.

**(b) Standards.**

(1) The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38% (see calculation procedures in “Environmental Regulations and Technology—Control of Pathogens and Vector Attraction in Sewage Sludge,” EPA-625/R-92/013, 1992, United States Environmental Protection Agency, Cincinnati, Ohio 45268).

(2) When the 38% volatile solids reduction requirement in paragraph (b)(1) cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 86° and 98°F (or 30° and 37°C). When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

(3) When the 38% volatile solids reduction requirement in paragraph (1) cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 68°F (or 20°C). When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

(4) The SOUR for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 68°F (or 20°C).

(5) Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 104°F (or 40°C) and the average temperature of the sewage sludge shall be higher than 113°F (or 45°C).

(6) The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 2 hours and then at 11.5 or higher for an additional 22 hours.

(7) The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

(8) The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

(9) Sewage sludge shall be injected below the surface of the land. No significant amount of the sewage sludge may be present on the land surface within 1 hour after the sewage sludge is injected. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within 8 hours after being discharged from the pathogen treatment process.

(10) Sewage sludge applied to the land surface shall be incorporated into the soil within 6 hours after application to the land. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied within 8 hours after being discharged from the pathogen treatment process.

(11) The pH of residential septage shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for 30 minutes.

#### **Cross References**

This section cited in 25 Pa. Code § 271.821 (relating to application for general permit); 25 Pa. Code § 271.911 (relating to special requirements); 25 Pa. Code § 271.916 (relating to operational standards—pathogens and vector attraction reduction); 25 Pa. Code § 271.917 (relating to frequency of monitoring); 25 Pa. Code § 271.918 (relating to recordkeeping); 25 Pa. Code § 271.931 (relating to special definitions); 25 Pa. Code § 271.932 (relating to pathogens); and 25 Pa. Code § 273.513 (relating to sewage sludge).

## APPENDIX A

## PATHOGEN TREATMENT PROCESSES

## A. Processes to significantly reduce pathogens (PSRP)

1. *Aerobic Digestion*—Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 68°F (or 20°C) and 60 days at 59°F (or 15°C).

2. *Air Drying*—Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of 3 months. During 2 of the 3 months, the ambient average daily temperature is above 32°F (or 0°C).

3. *Anaerobic Digestion*—Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 95° to 131°F (or 35° to 55°C) and 60 days at 68°F (or 20°C).

4. *Composting*—Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 104°F (or 40°C) or higher and remains at 104°F (or 40°C) or higher for 5 days. For 4 hours during the 5 days, the temperature in the compost pile exceeds 131°F (or 55°C).

5. *Lime Stabilization*—Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after 2 hours of contact.

## B. Processes to further reduce pathogens (PFRP)

1. *Composting*—Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 131°F (or 55°C) or higher for 3 days.

Using the windrow composting method, the temperature of the sewage sludge is maintained at 131°F (or 55°C) or higher for 15 days or longer. During the period when the compost is maintained at 131°F (or 55°C) or higher, there shall be a minimum of five turnings of the windrow.

2. *Heat Drying*—Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10% or lower. Either the temperature of the sewage sludge particles exceeds 176°F (or 80°C) or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 176°F (or 80°C).

3. *Heat Treatment*—Liquid sewage sludge is heated to a temperature of 356°F (or 180°C) or higher for 30 minutes.

4. *Thermophilic Aerobic Digestion*—Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 131° to 140°F (or 55° to 60°C).

5. *Beta Ray Irradiation*—Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (CA. 68°F or 20°C).

6. *Gamma Ray Irradiation*—Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (CA. 68°F or 20°C).

7. *Pasteurization*—The temperature of the sewage sludge is maintained at 158°F (or 70°C) or higher for 30 minutes or longer.

#### Source

The provisions of this Appendix A adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521.

#### Cross References

This appendix cited in 25 Pa. Code § 273.513 (relating to sewage sludge).

[Next page is 272-1.]

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