

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

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Cross References

This article cited in 25 Pa. Code § 78a.59c (relating to centralized impoundments); 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines); 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 § 250.9 (relating to interaction with other environmental statutes); 25 Pa. Code § 261a.6 (relating to requirements for recyclable materials); 25 Pa. Code § 266a.40 (relating to applicability); 25 Pa. Code § 266b.31 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 271.2 (relating to scope); 25 Pa. Code § 271.811 (relating to authorization for general permit); and 25 Pa. Code § 298.60 (relating to applicability).

CHAPTER 287. RESIDUAL WASTE MANAGEMENT—GENERAL PROVISIONS

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Authority

The provisions of this Chapter 287 issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Pennsylvania Used Oil Recycling Act (58 P.S. §§ 471—480); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20); and the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); amended under sections 5(b) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.302); section 408(e) of the Pennsylvania Used Oil Recycling Act (58 P.S. § 408(e)); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20); section 105(4) of the Waste Tire Recycling Act (35 P.S. § 6029.105(4)); sections 301 and 302 of the Radiation Protection Act (35 P.S. §§ 7110.301 and 7110.302); the Vehicle Code, 75 Pa.C.S. § 4909(e); 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; and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), unless otherwise noted.

Source

The provisions of this Chapter 287 adopted July 2, 1992, effective July 4, 1992, 22 Pa. B. 3389, unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 95.10 (relating to treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS)); 25 Pa. Code § 250.9 (relating to interaction with other environmental statutes); 25 Pa. Code § 252.3 (relating to scope); 25 Pa. Code § 261a.2 (relating to definition of “solid waste”); 25 Pa. Code § 266b.11 (relating to waste management for universal waste mercury-containing devices); 25 Pa. Code § 271.2 (relating to scope); 25 Pa. Code § 288.1 (relating to scope); 25 Pa. Code § 289.1 (relating to scope); 25 Pa. Code § 291.1 (relating to scope); 25 Pa. Code § 291.101 (relating to general); 25 Pa. Code § 293.1 (relating to scope); 25 Pa. Code § 293.101 (relating to general requirements); 25 Pa. Code § 293.201 (relating to basic limitations); 25 Pa. Code § 295.1 (relating to scope); 25 Pa. Code § 295.101 (relating to general requirements); 25 Pa. Code § 295.201 (relating to basic limitations); 25 Pa. Code § 297.1 (relating to scope); 25 Pa. Code § 297.101 (relating to general requirements); 25 Pa. Code § 297.201 (relating to basic limitations); 25 Pa. Code § 298.20 (relating to applicability); 25 Pa. Code § 298.45 (relating to waste oil storage at transfer facility); and 25 Pa. Code § 298.50 (relating to applicability).

Subchapter A. GENERAL

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Cross References

This subchapter cited in 25 Pa. Code § 287.601 (relating to scope); and 25 Pa. Code § 287.632 (relating to waiver and modification requirements).

§ 287.1. Definitions.

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

ASTM—The American Society for Testing and Materials.

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, Statewide health and risk-based standards as those terms are defined under this article.

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

Accumulated speculatively—A material that is accumulated before being recycled.

(i) The term does not include material if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period.

(A) In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type—for example, slags from a single smelting process—that is recycled in the same way (that is, from which the same material is recovered or that is used in the same way).

(B) Materials that are already defined as wastes also are not to be included in making the calculation.

(ii) Materials are no longer in this category once they are removed from accumulation for recycling.

(iii) The term does not include a waste pile if the waste is being mined and if one of the following is met:

(A) An approved waste closure plan allows mining of the waste.

(B) If waste was disposed prior to September 7, 1980, an approved mining permit allows mining of the waste.

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

Adjacent area—Contiguous and noncontiguous 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 residual waste management.

Adversely affect—In the context of water supplies, the term has the following meaning: to cause or contribute to a measurable increase in the concentration of one or more contaminants in a water supply above background levels, or to cause or contribute to a decrease in the quantity of the water supply.

Agricultural utilization—The land application of solid waste 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, aquacultural and silvicultural crops or commodities grown on what are usually recognized and accepted as farms, forests or other agricultural lands. The term also includes materials in liquid or solid form generated in the production and marketing of fish or fish hatcheries.

Airport—A 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.

Aquaculture—The practice of raising plants or animals, such as fish or shellfish, in manmade or natural bodies of water.

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.

Autofluff—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, if 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, if the use does not harm or threaten public health, safety, welfare or the environment.

By-product—A material that is not one of the primary products of a production process or a coproduct and is not solely or separately produced by the production process.

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

Captive residual waste facility—A residual waste processing or disposal facility that is located upon lands owned by the person or municipality that generated the residual waste and which is operated to provide for the processing or disposal solely of the generator’s residual waste.

Chemical Abstract Service Registry Number—A number assigned to a corresponding type of chemical or chemical category as referenced in regulations promulgated under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C.A. §§ 11001—11050). The list of Chemical Abstract Service Registry numbers is codified at 40 CFR 372.65 (relating to chemicals and chemical categories to which this part applies).

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

Clean Streams Law—35 P. S. §§ 691.1—691.1001.

Closure—The act of permanently ceasing to accept waste at a residual waste processing, storage or disposal facility, and limiting access to those activities necessary for postclosure care, maintenance and monitoring.

Coal ash—For purposes of Chapters 287 and 290, fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation. For purposes of Chapter 288 (relating to residual waste landfills), the term also includes fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is not and has not been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose.

Collateral bond—A penal bond agreement in a sum certain, payable to the Department, executed by the operator, and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority or a Commonwealth municipality, Commonwealth bank automatically renewable and assignable certificates of deposit, or irrevocable and standby Commonwealth bank letters of credit.

Commercial establishment—An establishment engaged in nonmanufacturing or nonprocessing business. The term includes stores, markets, office buildings, restaurants, shopping centers and theaters.

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 for processing solid waste by composting.

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

Confined aquifer—An aquifer in which the uppermost surface is at greater than atmospheric pressure.

Construction material—The engineered use of residual 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 residual waste as a road bed material, for pipe bedding, and in similar operations. The term does not include valley fills, the use of residual waste to fill open pits from coal or other fills, or the use of residual waste solely to level an area or bring the area to grade where a construction activity is not completed promptly after the placement of the solid waste.

Container—A portable device in which waste is stored or transported.

Coproduct—

- (i) A material generated by a manufacturing or production process, or a spent material, of a physical character and chemical composition that is

consistently equivalent to the physical character and chemical composition of an intentionally manufactured product or produced raw material, if the use of the material presents no greater threat of harm to human health and the environment than the use of the product or raw material. A material may not be compared, for physical character and chemical composition, to a material that is no longer determined to be waste in accordance with § 287.7 (relating to determination that a material is no longer a waste). A coproduct determination, which shall be made in accordance with § 287.8 (relating to coproduct determinations), only applies to materials that will be applied to the land or used to produce products that are applied to the land, including the placement of roadway aggregate, pipe bedding or construction materials, or that will be used for energy recovery as is with a minimum BTU value of 5,000/lb. as generated or as fired. If the proposed coproduct material is oil, a determination may only be made for oil refined from crude oil or synthetically produced oil, not contaminated by physical or chemical impurities, that will be used for energy recovery if the material has a minimum heat content (BTU value) comparable to the petroleum fuel it will replace.

(ii) The term only applies to one of the following:

(A) If the material is to be transferred in good faith as a commodity in trade, for use in lieu of an intentionally manufactured product or produced raw material, without processing that would not be required of the product or raw material, and the material is not accumulated speculatively. Sizing, shaping or sorting of the material will not be considered processing for the purpose of this definition.

(B) If the material is to be used by the manufacturer or producer of the material in lieu of an intentionally manufactured product or produced raw material, without processing that would not be required of the product or raw material, and the material is not accumulated speculatively. Sizing, shaping or sorting of the material will not be considered processing for the purpose of this definition.

(iii) If no product or produced raw material exists for purposes of chemical and physical comparison, the Department will review, upon request, information provided and determine whether the material is a coproduct because it is an effective substitute for an intentionally manufactured product or produced raw material, based on the criteria in subparagraph (ii) and whether the material presents a threat of harm to human health and the environment in accordance with § 287.8.

(iv) A waste may become a coproduct after processing if it would otherwise qualify as a coproduct.

(v) Persons producing, selling, transferring, possessing or using a material who claim that the material is a coproduct and not a waste shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of this definition and § 287.8. In doing so, they shall provide appropriate documentation, such as contracts showing that a second

person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste.

Crude material—A naturally occurring material in its unrefined or natural state.

Disposal—The deposition, injection, dumping, spilling, leaking, incineration 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 has occurred, 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.

Drill cuttings—Rock cuttings and related mineral residues created during the drilling of wells under the Oil and Gas Act (58 P. S. § 601.101—601.605) if the materials are disposed of at the well site and under section 206 of the Oil and Gas Act (58 P. S. § 601.206).

Environmental protection acts—The Clean Streams Law, the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31), 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 environmental protection or the protection of the public health, including statutes adopted or amended after July 4, 1992.

Exceptional value wetlands—Wetlands that exhibit one or more of the following characteristics:

(i) Wetlands which serve as habitat for fauna or flora listed as “threatened” or “endangered” under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402, and 1531—1543), the Wild Resource Conservation Act (32 P. S. §§ 5301—5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code).

(ii) Wetlands that are hydrologically connected to or located within 1/2-mile of wetlands identified under subparagraph (i) and that maintain the habitat of the threatened or endangered species within the wetland identified under subparagraph (i).

(iii) Wetlands that are located in or along the floodplain of the reach of a wild trout stream or waters listed as exceptional value under Chapter 93 (relating to water quality standards) and the floodplain of streams tributary thereto, or wetlands within the corridor of a watercourse or body of water that has been designated as a National wild or scenic river in accordance with

the Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287) or designated as wild or scenic under the Pennsylvania Scenic Rivers Act (32 P. S. §§ 820.21—820.29).

(iv) Wetlands located along an existing public or private drinking water supply, including both surface water and groundwater sources, that maintain the quality or quantity of the drinking water supply.

(v) Wetlands located in areas designated by the Department as “natural” or “wild” areas within State forest or park lands, wetlands located in areas designated as Federal wilderness areas under the Wilderness Act (16 U.S.C.A. §§ 1131—1136) or wetlands located in areas designated as National natural landmarks by the Secretary of the Interior under the Historic Sites Act of 1935 (16 U.S.C.A. §§ 461—467).

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

Facility—Land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place or where hazardous waste is treated, stored or disposed. The term includes land thereby used or affected during the lifetime of operations, including areas where solid waste management actually occurs, support facilities, 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, contiguous borrow areas and other activities in which the natural land surface has been disturbed or used as a result of or incidental to operation of the facility.

Failure—Actual or potential leakage, breach or overtopping of an impoundment.

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

Food processing sludge—A solid, semisolid or liquid waste generated by a food processing water treatment or wastewater treatment facility, containing food processing waste and additional materials. The additional materials may include detergents, dispersal agents, flocculants, disinfectants and biological agents.

Food processing waste—Residual materials in liquid and solid form generated in the slaughtering of poultry and livestock, or in processing and converting fish, seafood, milk, meat and eggs to food products. The term includes residual materials generated in the processing, converting or manufacturing of fruits, vegetables, crops and other commodities into marketable food items. The term also includes vegetative residuals from food processing activities that are usually recognizable as part of a plant or vegetable, including cabbage leaves, bean snips, onion skins, apple pomace and grape pomace.

Food processing wastes used for agricultural purposes—The use of food processing wastes in normal farming operations.

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

Friable asbestos-containing waste—Waste material 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.

Garbage—Solid waste.

General permit—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 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 residual 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—

(i) The term includes garbage, refuse or sludge from an industrial or other wastewater 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 these materials, which because of its quantity, concentration or physical, chemical or infectious characteristics may do one of the following:

(A) Cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population.

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

(ii) The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51— 30.101); 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; 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. §§ 1342) or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2394). The term is further defined in 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 incorporated in § 261a.1 (relating to incorporation by reference, purpose and scope).

IRIS—Integrated Risk Information System.

Impoundment—A facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials although it may be lined with synthetic materials, and which is designed to hold an accumulation of liquid wastes or wastes containing free liquids. The term includes holding, storage, settling and aeration pits, ponds and lagoons. The term does not include injection wells.

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

Incorporating—Injecting solid waste beneath the surface of the soil or mixing solid waste with the surface soil.

Industrial establishment—An establishment engaged in manufacturing or processing, including factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

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—The management of solid waste through agricultural utilization or land reclamation. The term does not include the disposal of solid waste in a landfill or disposal impoundment.

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

Land reclamation—The land application of solid waste for its plant nutrient value or as a soil conditioner to restore or enhance the soil to establish vegetative growth.

Leachate—A liquid, including suspended or dissolved components in the liquid, that has percolated through or drained from solid waste.

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—Residual 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.)

Local captive residual waste facility—A captive facility which is located at one of the following locations:

- (i) On the same tract of land where the waste was generated.
- (ii) On a tract of land that is contiguous to the tract where the waste was generated.
- (iii) On a tract of land that is connected to the tract where the waste was generated by a right-of-way controlled by the generator to which the public does not have access.
- (iv) On a tract of land that is separated from the tract where the waste was generated by only a public or private right-of-way and access between the two tracts is by crossing rather than traveling along the right-of-way.

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 engaged in the process.

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.

Monofill—A facility that disposes solely of waste which is generated by the same industrial or manufacturing process and which has the same, or substantially similar, physical and chemical characteristics and composition.

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

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, wastewater treatment plant or air pollution control facility.

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.

Noncaptive facility—A residual waste processing or disposal facility that is not a captive residual waste facility.

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 aquacultural crops and com-

modities, 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 processing wastes, screenings and sludges for animal feed, and the agricultural utilization of septic tank cleanings and sewage sludges which are generated offsite. The term includes the management, collection, storage, transportation, use or disposal of manure, other agricultural waste and food processing waste, screenings and sludges 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 being used on a regular or temporary basis for human habitation.

Operate—To construct a residual 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 uses or affects land at the facility; to conduct closure and postclosure activities at a facility.

Operator—A person or municipality engaged in solid waste processing or disposal by operating a facility. If more than one person is engaged in a single operation, all persons shall be deemed jointly and severally responsible for compliance with this article.

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

PCB—A chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or a substance which contains that substance.

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) 50 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.

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

Perched water table—The water table of a perched aquifer.

Perennial stream—A body of water flowing in a channel or bed composed of substrates associated with flowing waters and is 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.

Permanent water supply—A well, interconnection with a public water supply, extension of a public water supply, similar water supply or a treatment system determined by the Department to be capable of restoring the water supply to the quantity and quality of the original unaffected water supply.

Permit—A permit issued by the Department to operate a residual waste disposal or processing facility or to beneficially use residual 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 term includes areas which are or will be used or affected by the residual 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 § 287.102 (relating to permit-by-rule).

Person—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency, State institution and agency—including 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, or both, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

Pollution—The contamination of air, water, land or other natural resources of this Commonwealth which will create or is likely to create a public nuisance or 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.

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—

(i) The term includes one or more of the following:

(A) A method or technology used for the purpose of reducing the volume or bulk of municipal or residual waste or a method or technology used to convert part or all of the waste materials for offsite reuse.

(B) Transfer facilities, composting facilities and resource recovery facilities.

(ii) The term does not include a collection 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.

Product—A commodity that is the sole or primary intended result of a manufacturing or production process.

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.

Raw material—Material, including crude material, that can be converted by manufacture or processing into a product.

Rechanneling—The moving or relocation of a channel or stream and the reestablishment of the channel or stream to its former condition at a new location. The term does not include stream or channel enclosures, rock drains or the use of other materials to facilitate water flow under a facility.

Reclaimed—A material is “reclaimed” if it is processed to recover a useable product, or if it is regenerated.

Recycled—A material is “recycled” if it is used, reused or reclaimed.

Refuse—Solid waste.

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.

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 solid waste management facility.

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

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. 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.

Residual waste disposal impoundment—A facility for disposing of residual waste by impoundment.

Residual waste disposal or processing facility—A facility for disposing or processing of residual waste.

Residual waste landfill—A facility for disposing of residual waste. The term does not include a residual waste disposal impoundment or a facility for the land application of residual waste. The term also does not include a facility at which municipal waste, other than industrial lunchroom or office waste generated by the operator, construction/demolition waste generated by the operator, or certain special handling waste is disposed.

Risk-based standard—A risk-based abatement 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).

(i) For carcinogens, the standard represents a concentration associated with an excess lifetime cancer risk level between 1×10^{-4} and 1×10^{-6} , including the cumulative risk of all contaminants.

(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 of material from a solid waste processing or disposal facility.

Scrap metal—Bits and pieces of metal parts—for example—bars, turnings, rods, sheets and wire—or metal pieces that may be combined together with bolts or soldering—for example, radiators, scrap automobiles and railroad box cars—and which when worn or superfluous, can be reused.

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

Secondary contaminants—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 material derived from sewage sludge. The term does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screening generated during pre-

liminary 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 a residual waste processing or disposal facility is operated. If the operator has a permit to operate the facility, 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).

Soil additive or soil substitute—The land application of coal ash or residual waste, 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 coal ash or residual waste to fill open pits from coal or non-coal 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 waste, including solid, liquid, semisolid or contained gaseous materials. The term does not include coal ash that is beneficially used under chapter 290 (relating to beneficial use of coal ash) or drill cuttings.

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, waste reclamation or the use or reuse of waste.

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, waste oil that is not hazardous waste, fuel contaminated soil, waste tires and water supply treatment plant sludges.

Special nuclear material—The Federal definition for “special nuclear material” in 10 CFR 20.1003 is incorporated by reference.

- (i) The term “Commission” refers to the Nuclear Regulatory Commission.

(ii) The term “act” refers to the Atomic Energy Act (42 U.S.C.A. §§ 2011—2297h-13).

(iii) The term “Department” shall be substituted for the term “Commission” when the Department assumes agreement state status from the Nuclear Regulatory Commission.

Spent material—Material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

Standard Industrial Code Number—A number assigned to a corresponding type of industry, manufacture or product under the Standard Industrial Code prepared by the United States Office of Management and Budget.

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 groundwater pathway numeric values).

Steel slag—The uncontaminated, nonwater-soluble, solid material generated in the making of steel in an electric arc furnace, open hearth furnace, blast furnace or secondary steel-refining process.

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

Storage impoundment—An impoundment that is designed to hold an accumulation of liquid waste for storage, processing or treatment, but not disposal.

Structural fill—The engineered use of coal ash as a base or foundation for a construction activity that is completed promptly after the placement of the coal ash, including the use of coal ash as a backfill for retaining walls, foundations, ramps or other structures. The term does not include valley fills or the use of solid waste to fill open pits from coal or noncoal mining.

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 the Commonwealth and approved by the Department, which is supported by the guarantee of payment on the bond by the surety.

Surface land disposal—Application of solid waste to the land surface for purposes other than agricultural utilization or land reclamation.

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

Temporary water supply—Bottled water, a water tank supplied by a bulk water hauling system and similar water supplies in quantities sufficient to accommodate normal usage.

TENORM—Technologically enhanced naturally occurring radioactive materials. A technologically enhanced naturally occurring radioactive material is 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.

Topmost—The bedrock lithology unit closest to the surface of the earth.

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 collection 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 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 process designed to change the physical form or chemical composition of waste to render it neutral or nonhazardous.

Unconfined aquifer—An aquifer in which the uppermost surface is at atmospheric pressure.

Used or reused—A material that meets one of the following conditions:

(i) The material is employed as an ingredient, including use as an intermediate, in an industrial process to make a product. A material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials.

(ii) That material is employed in a particular function or application as an effective substitute for a commercial product.

Visible emissions—Emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

Waste—

(i) Discarded material which is recycled or abandoned. A waste is abandoned by being disposed of, burned or incinerated or accumulated, stored or processed before or in lieu of being abandoned by being disposed of, burned or incinerated. A discarded material includes contaminated soil, contaminated water, contaminated dredge material, spent material or by-product recycled in accordance with subparagraph (iii), processed or disposed.

(ii) Materials that are not waste when recycled include materials when they can be shown to be recycled by being:

(A) Used or reused as ingredients in an industrial process to make a product or employed in a particular function or application as an effective substitute for a commercial product, provided the materials are not being reclaimed. This includes materials from the slaughter and preparation of animals that are used as raw materials in the production or manufacture of products. Steel slag is not waste if used onsite as a waste processing liming agent in acid neutralization or onsite in place of aggregate. Sizing, shaping or sorting of the material will not be considered processing for the purpose of this subclause of the definition.

(B) Coproducts.

(C) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. When the original process to which the material is returned is a secondary process, the materials shall be managed so that there is no placement on the land and the secondary process takes place onsite.

(iii) The following materials are wastes, even if the recycling involves use, reuse or return to the original process (as described as follows):

(A) Except for coproducts, materials used in a manner constituting disposal, or used to produce products that are applied to the land.

(B) Except for coproducts, materials burned for energy recovery, used to produce fuel or contained in fuel.

(C) Materials accumulated speculatively.

(iv) Discarded or recycled material may not be waste if a determination is made by the Department in accordance with § 287.7.

(v) In enforcement actions implementing the act, a person who claims that the material is not a waste in accordance with subparagraph (ii) shall demonstrate that there is a known market or disposition for the material, and that the terms of the exclusion have been met. In doing so, appropriate documentation shall be provided (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

Waste classification standard—For purposes of this article, the waste classification standard for a contaminant shall be:

(i) The final maximum contaminant level goal (MCLG) for the contaminant determined by the Department or the EPA under the Safe Drinking Water Acts (21 U.S.C.A. § 349; 42 U.S.C.A. §§ 300f—300j-25; and 35 P. S. §§ 721.1—721.17), if one exists, unless the MCLG is 0.

(ii) For contaminants for which no MCLG has been established, or for contaminants for which the MCLG has been established as 0, the final primary maximum contaminant level (MCL) for the contaminant determined by the Department or the EPA under the Safe Drinking Water Acts, if one exists.

(iii) For contaminants for which no MCLG has been established or for which the MCLG has been established as 0, and for which no MCL has been established, the final secondary maximum contaminant level (SMCL) for the contaminant determined by the Department or the EPA under the Safe Drinking Water Acts, if one exists.

(iv) For other contaminants, the more stringent of the following concentrations:

(A) For EPA Class A or Class B carcinogens, as specified in the EPA's IRIS or its successor, 0.000035 divided by the oral cancer slope factor of the contaminant in units of $(\text{mg/kg/day})^{-1}$ obtained from IRIS or its successor. The quotient shall be expressed in units of mg/l . Information about IRIS and access methods to IRIS may be obtained from IRIS user support (MS-190), Environmental Criteria and Assessment Office, Office of Research and Development, United States Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45286.

(B) For contaminants which produce noncarcinogenic effects, 35 times the oral chronic reference dose in units of mg/kg/day obtained from IRIS or its successor. The product shall be expressed in units of mg/l .

Waste oil—One of the following:

(i) Oil refined from crude oil or synthetically produced, used and, as a result of the use, contaminated by physical or chemical impurities.

(ii) A liquid, petroleum-based or synthetic oil, refined from petroleum stocks or synthetically produced which is used in an internal combustion engine as an engine lubricant, or as a product used 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.

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

Water supply—Existing, designated or planned sources of water or facilities or systems for the supply of water for human consumption or for agricultural, commercial, industrial or other legitimate use, protected by the applicable water supply provisions of § 93.3 (relating to protected water uses).

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.

Source

The provisions of this § 287.1 corrected February 25, 1994, effective July 4, 1992, 24 Pa.B. 1095; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873; amended March 21, 2008, effective March 22, 2008, 38 Pa.B. 1357; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (354402), (333623) to (333624), (354403) to (354404), (273373) to (273380), (354405) to (354406) and (354411).

Cross References

This section cited in 25 Pa. Code § 78a.1 (relating to definitions); 25 Pa. Code § 287.8 (relating to coproduct determinations); and 25 Pa. Code § 298.1 (relating to definitions).

§ 287.2. Scope.

(a) This chapter specifies general procedures and rules for persons or municipalities who generate, manage or handle residual waste. This article specifies the Department's requirements for residual waste processing, disposal, transportation, collection and storage.

(b) Management of the following types of residual waste is subject to Article VIII (relating to municipal waste) instead of this article, 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, as defined in § 271.1 (relating to definitions).
- (2) Regulated medical and chemotherapeutic waste. The terms shall have the same meaning for residual waste as set forth in § 271.1.
- (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 this article instead of Article VIII, 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 autofluff.
- (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 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) Friable asbestos-containing waste.

- (2) PCB-containing waste.
- (e) The following activities shall be regulated under Chapter 77 (relating to noncoal mining), instead of this article:
- (1) The short-term storage of residual waste generated by noncoal surface mining activities, as defined in § 77.1 (relating to definitions), under a permit under the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326), if the residual waste is being stored within the permit area of the site where it was generated.
- (2) The stockpiling and use of residual waste generated by noncoal surface mining activities, as defined in § 77.1, at the site where it is generated, to reclaim the land affected by the activities pursuant to a permit under the Noncoal Surface Mining Conservation and Reclamation Act.
- (f) The extraction, processing, handling and short-term storage of slag pursuant to a permit under the Noncoal Surface Mining Conservation and Reclamation Act shall be regulated under Chapter 77, if applicable, instead of this article, if the slag to be excavated, processed, handled or stored on a short-term basis is not hazardous waste and does not contain solid waste other than slag.
- (g) A pit, impoundment, method or facility employed for the disposal, storage or processing of residual waste which is generated by drilling or production of an oil or gas well, and is located on the well site as defined in section 603a of the Oil and Gas Act (58 P.S. § 601.603a), shall be regulated under Chapter 78 (relating to oil and gas wells), instead of this article, if the owner or operator of the well meets the conditions of section 603a of the Oil and Gas Act.
- (h) The management and disposal of low-level radioactive waste shall be regulated under Chapter 236 (relating to low-level radioactive waste management and disposal), instead of this article.
- (i) If residual waste is disposed, processed or treated at a permitted hazardous waste treatment, storage or disposal unit at a facility, it shall be managed as a hazardous waste at that unit under Article VII (relating to hazardous waste management) rather than as a residual waste under this article.
- (j) Action taken by the Department under this article will be subject to the Environmental Hearing Board Act (35 P.S. §§ 7511—7514) and Chapter 1021 (relating to practice and procedures).
- (k) The Department may waive or modify requirements in this article that would otherwise apply to a residual waste management facility that is permitted by the EPA under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2629).

Source

The provisions of this § 287.2 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; amended November 7, 2014, effective November 8, 2014, 44 Pa.B. 7021. Immediately preceding text appears at serial pages (354411) to (354412) and (336645).

Notes of Decisions*Waste Tires*

Waste tires are no longer “waste” once it can be shown that the tires *will be* recycled by being used or reused as an ingredient in an industrial process to make a product or by being employed in a particular function or application as an effective substitute for a commercial product. *Tire Jockey Service v. Department of Environmental Protection*, 836 A.2d 1026, 1030 (Pa. Cmwlth. 2003); affirmed 915 A.2d 1165 (Pa. 2007).

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).

Cross References

This section cited in 25 Pa. Code § 287.101 (relating to general requirements for permit).

§ 287.3. 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 carry out the act, the environmental protection acts and the regulations promulgated thereunder, including this article.

(b) The Department may, in issuing a permit under this article, impose terms and conditions the Department deems necessary to carry out the provisions and purposes of the act, the environmental protection acts and the regulations promulgated thereunder, including this article.

§ 287.4. 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 § 287.4 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226478).

§ 287.5. 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 § 287.621 (relating to 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.

§ 287.6. Consignment or other transfer of waste.

A person or municipality may not consign, assign, sell, entrust, give or in any way transfer residual waste which is at any time subsequently, by that person or municipality or another person or municipality:

(1) Dumped or deposited or discharged in any manner into the surface of the earth or underground or into the waters of this Commonwealth unless a permit for the dumping or depositing or discharging of the residual waste has first been obtained from the Department.

(2) Stored, treated, processed, disposed of or discharged by a residual waste management facility in this Commonwealth unless the facility is operated under a permit first obtained from the Department.

§ 287.7. Determination that a material is no longer a waste.

(a) *Beneficial use.* As a term or condition of a general permit for the beneficial use of residual waste, the Department will make a determination that the waste which is beneficially used under the permit ceases to be a waste if it is used in accordance with the terms and conditions of the permit and does not harm or present a threat of harm to public health, safety, welfare or the environment.

(b) *Processing.*

(1) As a term or condition of an individual or general permit for the processing of residual waste, or at the request of the owner or operator of a processing facility subject to a permit by rule, the Department may make a determination that, subsequent to the processing activity, the processed waste ceases to be a waste even if it does not meet the requirements for a coproduct.

(2) The Department will only make this determination if the applicant demonstrates the following to the Department's satisfaction:

(i) The waste will be used as an ingredient in a manufacturing or production process or as a substitute for a commercial product.

(ii) At a minimum, use of the waste will not:

(A) 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.

(B) Present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing.

(iii) The physical character and chemical composition of the residual waste contributes to the usefulness of the product, and nothing in the physical character or chemical composition of the waste interferes with the usefulness of the product.

(c) *Revocation of determination.* The determination under this section is automatically void, and the material is a waste, if the material is used in a manner inconsistent with the terms under which it was determined to no longer be a waste. The Department may revoke a determination under this section if the use of the material does not meet the requirements of this section.

Cross References

This section cited in 25 Pa. Code § 287.1 (relating to definitions); 25 Pa. Code § 295.233 (relating to sale, utilization or disposal of compost); 25 Pa. Code § 298.10 (relating to applicability); and 25 Pa. Code § 298.20 (relating to applicability).

§ 287.8. Coproduct determinations.

(a) In addition to meeting the conditions of the definition of “coproduct” in § 287.1 (relating to definitions), a person performing a coproduct determination shall evaluate chemical composition and threat of harm to the environment and public health in accordance with this section. A proposed coproduct may not present a greater threat of harm to human health and the environment than use of an intentionally manufactured product or produced raw material. A greater threat of harm is presented if one of the following is met:

(1) For comparison of the proposed coproduct with a product or produced raw material, hazardous or toxic constituents are present at elevated levels unless an assessment of hazardous and toxic constituents demonstrates that the constituents are not biologically available.

(2) For a proposed coproduct where no product or produced raw material will be replaced, an assessment of hazardous and toxic constituents demonstrates that the constituents are not biologically available.

(b) If the proposed coproduct is being compared to an intentionally manufactured product or produced raw material, a person performing a coproduct determination shall demonstrate that the use of a proposed coproduct does not present a greater threat of harm to human health and the environment by performing the following:

(1) An evaluation to determine which, if any, hazardous or toxic constituents are present in the proposed coproduct at levels exceeding those found in the material it is replacing.

(2) An evaluation of the total levels of hazardous or toxic constituents, including the constituents in 40 CFR Part 261, Appendix VIII (relating to hazardous constituents) as incorporated by reference in § 261a.1 (relating to incor-

poration by reference, purpose and scope), to determine whether the total levels of constituents contained in the proposed coproduct exceed the total levels found in the intentionally manufactured product or produced raw material it is replacing. Based on generator knowledge, if a hazardous or toxic constituent is not present evaluation of total levels is not required.

(3) An evaluation of the levels of leaching of hazardous or toxic constituents, including the constituents in 40 CFR Part 261, Appendix VIII as incorporated by reference in § 261a.1, to determine whether the levels of leaching from the proposed coproduct exceed the levels of leaching from the manufactured product or produced raw material it is replacing. A leaching procedure shall be performed that is appropriate for the intended use of the proposed product. Based on generator knowledge, if a hazardous or toxic constituent is not present evaluation of leaching levels is not required.

(4) The routes of exposure to humans and ecological receptors shall be identified. These routes of exposure shall include ingestion, inhalation, dermal contact, leaching to the groundwater, plant uptake and surface runoff potential. Mitigating circumstances, such as protective gear worn by workers to reduce exposure during processing or application of the proposed coproduct, shall be identified.

(5) The use of a 95% upper confidence interval, using the “*Test Methods for Evaluating Solid Waste*” (EPA SW-846), may be applied to the comparisons of constituent levels between the proposed coproduct and the intentionally manufactured product or produced raw material it is replacing.

(c) If the proposed coproduct is not being compared to an intentionally manufactured product or produced raw material, a person performing a coproduct determination shall demonstrate that the proposed coproduct does not present a threat of harm to human health and the environment and the hazardous or toxic constituents are not biologically available by performing the following:

(1) An evaluation of the total levels of hazardous or toxic constituents, including the constituents in 40 CFR Part 261, Appendix VIII as incorporated by reference in § 261a.1. Based on generator knowledge, if a hazardous or toxic constituent is not present evaluation of total levels is not required.

(2) An evaluation of the levels of leaching of hazardous or toxic constituents, including the constituents in 40 CFR Part 261, Appendix VIII as incorporated in § 261a.1. Based on generator knowledge, if a hazardous or toxic constituent is not present evaluation of leaching levels is not required.

(3) The routes of exposure to humans and ecological receptors shall be identified. These routes of exposure include ingestion, inhalation, dermal contact, leaching to the groundwater, plant uptake and surface runoff potential. Mitigating circumstances, such as protective gear worn by workers to reduce exposure during processing or application of the proposed coproduct, shall be identified.

(4) The use of a 95% upper confidence interval, using the “*Test Methods for Evaluating Solid Waste*” (EPA SW-846), may be applied to the analytical results of the constituents evaluated.

(d) A person who completes a coproduct determination shall maintain documentation supporting the determination. This documentation shall be available to the Department upon request.

(e) A person who completes a coproduct determination shall provide documentation supporting the determination to persons selling, transferring, possessing or using the material.

Source

The provisions of this § 287.8 adopted January 12, 2001, effective January 13, 2001, 31 Pa.B. 235.

Cross References

This section cited in 25 Pa. Code § 287.1 (relating to definitions); and 25 Pa. Code § 287.9 (relating to industry-wide coproduct determinations).

§ 287.9. Industry-wide coproduct determinations.

(a) Based on existing documentation for coproduct determinations, the Department may determine that, on an industry-wide basis, classes of materials are coproducts for specific uses if the following conditions are met:

(1) Chemical and physical characteristics of the material generated do not vary over time.

(2) Historical use of the material complies with industry standards and specifications.

(3) Historical use of the material over an extended time period has demonstrated that the material, when used as specified, performs as an effective substitute for an intentionally manufactured product or produced raw material.

(4) There is historical documentation that a market for the material and its use exists.

(5) Historical use of the material does not violate the Environmental Protection Acts or regulations thereunder and does not harm or present a threat of harm to public health, safety, welfare or the environment based on an evaluation under § 287.8 (relating to coproduct determinations).

(b) The Department may establish a list of approved coproducts that meet the requirements of subsection (a). The Department will publish notice of its intent to establish or modify the list in the *Pennsylvania Bulletin* and will establish a comment period of at least 30 days. After the close of the 30-day comment period, the Department will publish the final list or any modification to the final list in the *Pennsylvania Bulletin*.

(c) The Department may remove an approved coproduct from the list if it finds that one or more of the criteria used as a basis for the Department’s determination was incorrect, or new information has become available that invalidates the determination. Removal of an approved coproduct from the list will be pub-

lished in the *Pennsylvania Bulletin* with a comment period of at least 30 days. After the close of the comment period, the Department will publish any modification of the list in the *Pennsylvania Bulletin*.

Source

The provisions of this § 287.9 adopted January 12, 2001, effective January 13, 2001, 31 Pa.B. 235.

§ 287.10. Coproduct determination transition.

(a) A coproduct determination made after January 13, 2001, shall be performed in accordance with this chapter.

(b) A person may continue to operate under a coproduct determination made prior to January 13, 2001, provided that the person maintains documentation that demonstrates continuing compliance with the coproduct determination.

(c) After January 13, 2003, a person shall only operate under a coproduct determination that meets the requirements of this chapter.

Source

The provisions of this § 287.10 adopted January 12, 2001, effective January 13, 2001, 31 Pa.B. 235.

Subchapter B. DUTIES OF GENERATORS

Sec.

- 287.51. Scope.
- 287.52. Biennial report.
- 287.53. Source reduction strategy.
- 287.54. Chemical analysis of waste.
- 287.55. Retained recordkeeping.
- 287.56. Other responsibilities.

Cross References

This subchapter cited in 25 Pa. Code § 287.101 (relating to general requirements for permit); and 25 Pa. Code § 287.601 (relating to scope).

§ 287.51. Scope.

(a) A person or municipality that generates more than an average of 2,200 pounds of residual waste per generating location per month based on generation in the previous year shall comply with the biennial report and source reduction strategy requirements under §§ 287.52 and 287.53 (relating to biennial report; and source reduction strategy).

(b) A person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year shall comply with § 287.54 (relating to chemical analysis of waste). The Depart-

ment may waive or modify this requirement for individual types of waste that are generated in quantities of less than 2,200 pounds per month per generating location.

(c) Sections 287.52—287.54 (relating to biennial report; source reduction strategy; and chemical analysis of waste) do not apply to the following:

(1) Persons or municipalities that generate residual waste as a result of collecting the waste, including the collection of parts, machinery, vehicles and appliances from the repair or replacement of the parts, machinery, vehicles and appliances.

(2) Persons or municipalities that create waste from a spill, release, fire, accident or other unplanned event.

(3) Persons or municipalities that generate oil that has been 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.

Authority

The provisions of this § 287.51 issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Pennsylvania Used Oil Recycling Act (58 P. S. §§ 471—480); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20); and the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); amended under sections 5(b) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. § 4000.302); section 408(e) of the Pennsylvania Used Oil Recycling Act (58 P. S. § 408(e)); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20); section 105(4) of the Waste Tire Recycling Act (35 P. S. § 6029.105(4)); sections 301 and 302 of the Radiation Protection Act (35 P. S. §§ 7110.301 and 7110.302); the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6); and the Vehicle Code, 75 Pa.C.S. § 4909(e).

Source

The provisions of this § 287.51 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6190; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873. Immediately preceding text appears at serial pages (273394) to (273395).

Cross References

This section cited in 25 Pa. Code § 287.56 (relating to other responsibilities); 25 Pa. Code § 298.25 (relating to source reduction strategy); and 25 Pa. Code § 298.26 (relating to biennial report).

§ 287.52. Biennial report.

(a) By March 1 of each odd numbered year, a person or municipality subject to this subchapter shall file a report with the Department.

(b) The report, which shall be submitted on a form prepared by the Department, shall include the following:

(1) The name, mailing address, county and telephone number of the person or municipality that generated the waste.

(2) A generator identification number for the facility that generated the waste, which will be provided by the Department. If an EPA identification number has been assigned to the person or municipality, the EPA identification number shall be the generator number.

(3) The name and telephone number of a contact person who can answer questions about the report.

(4) A brief description of the nature of the business and up to four Standard Industrial Code (SIC) numbers which best reflect the principal products or services provided by the facility.

(5) The types of residual waste generated in the previous year, related SIC numbers and weight of each type of residual waste. For each type of residual waste, the report shall also state:

(i) Whether the waste was disposed or processed on the premises where it was generated or at a facility that is not on the premises where the waste was generated.

(ii) Whether the waste was liquid waste.

(iii) If the generating facility was required to file a Toxic Chemical Release Inventory (TRI) Reporting Form under section 313 of the Emergency Planning and Community Right to Know Act (42 U.S.C.A. § 11023), Chemical Abstract Service Registry numbers, as they appear in the Reporting Form, for up to five constituents that represent the most concentrated reportable constituents in the waste.

(6) A description of the generator's efforts to implement its source reduction strategy under § 287.53 (relating to source reduction strategy) and, to the extent the information is available for years before 1991, a description of changes in the weight or toxicity of waste achieved during the year compared to previous years.

(7) The name, location and permit identification number for each processing or disposal facility that has been authorized to receive the generator's waste.

(c) The report shall be signed by a responsible official for the person or municipality that generated the residual waste. If the person or municipality is a corporation, limited liability company or partnership, the report shall be signed by an officer of the corporation, manager of the limited liability company or a partner in the partnership, whichever is applicable.

Source

The provisions of this § 287.52 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (239011) to (239012).

Cross References

This section cited in 25 Pa. Code § 78.121 (relating to annual production report); 25 Pa. Code § 78a.121 (relating to production reporting); 25 Pa. Code § 287.51 (relating to scope); 25 Pa. Code § 287.56 (relating to other responsibilities); 25 Pa. Code § 287.413 (relating to assessment of penalties; minimum penalties); and 25 Pa. Code § 298.26 (relating to biennial report).

§ 287.53. Source reduction strategy.

(a) A person or municipality subject to this subchapter shall prepare a source reduction strategy in accordance with this section. Except as otherwise provided in this article, the strategy shall be maintained on the premises where the waste is generated, shall be available on the premises for inspection by a representative of the Department and shall be submitted to the Department upon request.

(b) For each type of waste generated, the strategy shall include:

(1) A description of the source reduction activities conducted by the person or municipality in the 5 years prior to the date that the strategy is required to be prepared. The description shall quantify reductions in the weight or toxicity of waste generated on the premises.

(2) A statement of whether the person or municipality has established a source reduction program.

(3) If the person or municipality has established a source reduction program as described in paragraph (2), the strategy shall identify the methods and procedures that the person or municipality will implement to achieve a reduction in the weight or toxicity of the waste generated on the premises, quantify the projected reduction in weight or toxicity of waste to be achieved by each method or procedure and specify when each method or procedure will be implemented.

(4) If the person or municipality has not established a source reduction program as described in paragraph (2), the strategy shall include the following:

(i) A waste stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.

(ii) A description of potential source reduction options.

(iii) A description of how the options were evaluated.

(iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when one or more of the following occur:

(1) There is a significant change in a type of waste generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes, in writing, a different period for the person or municipality that generated the waste.

(d) If residual waste generated by a person or municipality will be processed or disposed of at a solid waste management facility which has applied to the

Department for approval to process or dispose of the waste, the person or municipality that generated the residual waste shall submit the source reduction strategy required by this section to the facility upon the request of the facility. If residual waste generated by a person or municipality is processed or disposed of at a solid waste management facility which has received written approval from the Department to process or dispose of the waste, the person or municipality shall submit the source reduction strategy required by this section to the facility whenever the Department requires the person or municipality to update the strategy.

(e) The strategy shall be signed by a responsible official for the person or municipality that generated the waste. If the person or municipality is a corporation, limited liability company or partnership, the report shall be signed by an officer of the corporation, manager of the limited liability company or a partner in the partnership, whichever is applicable.

(f) The Department may in writing waive or modify the requirements of this section for research and development activities.

Source

The provisions of this § 287.53 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (239012) and (255095).

Cross References

This section cited in 25 Pa. Code § 271.612 (relating to source reduction strategy); 25 Pa. Code § 287.51 (relating to scope); 25 Pa. Code § 287.52 (relating to biennial report); 25 Pa. Code § 287.56 (relating to other responsibilities); 25 Pa. Code § 287.133 (relating to source reduction strategy); and 25 Pa. Code § 298.25 (relating to source reduction strategy).

§ 287.54. Chemical analysis of waste.

(a) In accordance with subsection (b), a person or municipality subject to this subchapter shall:

(1) Perform a detailed analysis that fully characterizes the physical properties and chemical composition of each type of waste that is generated. 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.

(2) Make a determination of whether the waste is a hazardous waste 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 incorporated in § 261a.1 (relating to incorporation by reference, purpose and scope).

(3) Submit a copy of the analysis, determination and a record of laboratory quality control procedures and the use of those procedures to the Department on forms prepared by the Department and to each solid waste management facility which accepts or proposes to accept the waste from the person or municipality for processing or disposal in accordance with written approval

from the Department. The information which shall be submitted to a solid waste management facility may be limited to information pertaining to the particular types of waste which the facility receives in accordance with Departmental approval. The submittal of quality control procedures and procedure information may be waived by the Department if the information has been previously submitted to the Department.

(b) A person or municipality shall comply with subsection (a) in accordance with the following timetable:

(1) If residual waste generated by the person or municipality will be processed or disposed of at a solid waste management facility which has applied to the Department for approval to process or dispose of the waste, the person or municipality shall comply with subsection (a) upon the request of the solid waste management facility.

(2) If residual waste generated by the person or municipality is processed or disposed of at a solid waste management facility which has received written approval from the Department to process or dispose of the waste, the person or municipality shall comply with subsection (a) for the wastes annually, on or before the anniversary date of the Department's approval. In addition, the annual submission to the Department shall identify the permit numbers of each solid waste management facility that receives residual waste from the person or municipality in accordance with Departmental approval, and the weight or volume of the waste received in the previous year at each facility.

(3) If residual waste generated by the person or municipality is processed or disposed of at a solid waste management facility in this Commonwealth which lacks a permit under the act, or which is not located in this Commonwealth, the person or municipality that generated the waste shall comply with subsection (a) for the wastes on or before March 1 of each year. In addition, the annual submission to the Department shall identify the name, address and telephone number of each solid waste management facility that receives residual waste from the person or municipality, a permit number assigned to the facility by the applicable regulatory agency for facilities not located in this Commonwealth and the weight or volume of the waste received in the previous year at each facility.

(c) 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) The person taking the samples and the laboratory performing the analysis required by subsection (a) shall employ the quality assurance/quality control pro-

cedures 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).

(e) A record of the analyses and certifications required by this section, as well as a record of the laboratory's quality control procedures and use of those procedures, shall be kept on the premises where the residual waste was generated and shall be available to the Department for inspection.

(f) If a person or municipality has submitted an initial analysis for residual waste that meets the requirements of subsection (a)(1), in lieu of annually performing the analysis required by subsection (b), an authorized representative of the person or municipality may sign and submit to the Department and to the solid waste management facility that receives the waste from the person or municipality, a certification that the physical and chemical properties of the waste, and the process by which the waste was generated, have not changed from those set forth for the previous year, if the permit for the facility authorizes the certification or that the waste is processed or disposed of at a solid waste management facility that is not located in this Commonwealth.

(g) Notwithstanding the certification permitted in subsection (f), a chemical analysis that meets the requirements of subsections (a), (c) and (d) shall be completed every 5 years.

(h) The Department may, in writing, waive or modify the requirements of this section for special handling waste.

Source

The provisions of this § 287.54 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (255095) to (255096) and (239015).

Cross References

This section cited in 25 Pa. Code § 78a.58 (relating to onsite processing); 25 Pa. Code § 271.611 (relating to chemical analysis of waste); 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 § 287.51 (relating to scope); 25 Pa. Code § 287.56 (relating to other responsibilities); 25 Pa. Code § 287.132 (relating to chemical analysis of waste); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 291.222 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); 25 Pa. Code § 297.262 (relating to annual operation report); and 25 Pa. Code § 298.25 (relating to source reduction strategy).

§ 287.55. Retained recordkeeping.

(a) A person or municipality that generates any quantity of residual waste shall:

(1) Maintain records that include the types and amounts of waste generated, the date on which the waste was generated, the date on which the waste

was disposed of or processed onsite, the name, address and telephone number of a person or municipality that transported the waste and the name, address and phone number of the processing or disposal facility or other destination to which the waste was transported.

(2) Retain the records on the premises where the residual waste was generated for 5 years after the waste was generated.

(3) Make the records available for inspection upon request to a representative of the Department.

(b) This section does not apply to residual waste generated in a house or residence.

Authority

The provisions of this § 287.55 issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Pennsylvania Used Oil Recycling Act (58 P.S. §§ 471—480); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20); and the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); amended under sections 5(b) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b) and 691.402); section 302 of the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. § 4000.302); section 408(e) of the Pennsylvania Used Oil Recycling Act (58 P.S. § 408(e)); sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20); section 105(4) of the Waste Tire Recycling Act (35 P.S. § 6029.105(4)); sections 301 and 302 of the Radiation Protection Act (35 P.S. §§ 7110.301 and 7110.302); the Infectious and Chemotherapeutic Waste Law (35 P.S. §§ 6019.1—6019.6); and the Vehicle Code, 75 Pa.C.S. § 4909(e).

Source

The provisions of this § 287.55 amended November 28, 1997, effective November 29, 1997, 27 Pa.B. 6190; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (239015) to (239016).

Cross References

This section cited in 25 Pa. Code § 287.56 (relating to other responsibilities); and 25 Pa. Code § 298.26 (relating to biennial report).

§ 287.56. Other responsibilities.

Nothing in §§ 287.51—287.55 limits or modifies other responsibilities of persons or municipalities that generate residual waste for disposing, processing, storing or transporting of residual waste under this article or the environmental protection acts.

Subchapter C. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS**GENERAL**

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Cross References

This subchapter cited in 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 288.111 (relating to basic requirements); and 25 Pa. Code § 289.111 (relating to basic requirements).

GENERAL

§ 287.101. General requirements for permit.

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

(b) A person or municipality is not required to obtain a permit under this article, comply with the bonding or insurance requirements of Subchapter E (relating to bonding and insurance requirements) or comply with Subchapter B (relating to duties of generators) for one or more of the following:

(1) Agricultural waste produced in the course of normal farming operations, if the waste is not hazardous. An agricultural waste will be presumed to be produced in the course of normal farming operations if its application is consistent with that for normal farming operations. A person managing mushroom waste shall implement best management practices. The Department will prepare a manual for the management of mushroom waste which identifies best management practices and may approve additional best management practices on a case-by-case basis. If a person fails to implement best management practices for mushroom waste, the Department may require compliance with the land application, composting and storage operating requirements of Chapters 291, 295 and 299 (relating to land application of residual waste; composting facilities for residual waste; storage and transportation of residual waste).

(2) The use of food processing waste or food processing sludge in the course of normal farming operations if the waste is not hazardous. A person managing food processing waste shall implement best management practices. The Department will prepare a manual for the management of food processing

waste which identifies best management practices and may approve additional best management practices on a case-by-case basis. If a person fails to implement best management practices for food processing waste, the Department may require compliance with the land application, composting and storage operating requirements of Chapters 291, 295 and 299.

(3) The beneficial use of coal ash under Chapter 290 (relating to beneficial use of coal ash).

(4) The activities described in § 287.2(e)—(h) (relating to scope).

(5) The processing or disposal of residual waste described in § 287.2(b) that is subject to a permit issued by the Department under Article VIII (relating to municipal waste).

(6) The use as clean fill of the materials in subparagraphs (i) and (ii) if they are separate from other waste. The person using the material as clean fill has the burden of proof to demonstrate that the material is clean fill.

(i) The following materials, if they are 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.

(7) Processing that results in the beneficial use of scrap metal.

(c) Subsection (b) does not relieve a person or municipality of the requirements of the environmental protection acts or regulations promulgated thereto. 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.

(d) The Department will not require a permit under this article for cleanup or other remediation at the site of a spill, release, fire, accident or other unplanned event, unless the site is part of a permit area for an active facility or the proposed permit area in an application. In requiring cleanup or other remediation at the site, the Department may require compliance with only those provisions of this article that the Department determines necessary to protect human health, safety, welfare and the environment.

(e) The Department will not require a permit under this article for the movement of waste encountered when performing a site remediation under Chapter 250 (relating to administration of land recycling program) where the site-specific standard is specified as the remediation goal for contamination of soil and groundwater, provided the following conditions are met:

(1) The response to the release of regulated substances is being conducted pursuant to the site-specific standard in Chapter 250, Subchapter D (relating to site-specific standards).

(2) The area containing the waste unit is part of the site, as identified under the notice of intent to remediate (NIR), and the notice includes identification of the waste types.

(3) The excavation, movement and placement onsite of the waste shall be incorporated as part of the remedial investigation report which shall be approved by the Department prior to the initiation of remediation activities. The report shall include plans for grading, construction and management of the wastes. The disturbance of a waste disposal unit that is not part of an approved remedial investigation report is not covered under this permit waiver.

(4) The excavation, movement and placement of waste materials onsite may not increase the potential for onsite or offsite runoff of water or dispersal of waste.

(5) The excavation, movement and placement of waste onsite may not adversely affect or endanger public health, safety, welfare, or the environment or cause a public nuisance.

(6) Waste may not be stored or placed in waters of the Commonwealth or in a manner that will cause groundwater or surface water degradation.

Source

The provisions of this § 287.101 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273402) and (284491) to (284492).

Cross References

This section cited in 25 Pa. Code § 287.121 (relating to application contents); and 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits).

§ 287.102. Permit-by-rule.

(a) Purpose.

(1) This section sets forth classes of facilities that are subject to permit-by-rule. A facility will not be deemed to have a permit-by-rule if it causes or allows violations of the act, the regulations promulgated thereunder, the terms or conditions of a permit issued by the Department or causes a public nuisance. A facility that is subject to permit-by-rule under this section is not required to apply for a permit under this article or comply with the operating requirements of Chapters 288, 289, 291, 293, 295 and 297, if that facility operates in accordance with this section.

(2) A facility is not subject to permit-by-rule under this section unless it meets the following:

- (i) The facility complies with Chapter 299 (relating to storage and transportation of residual waste), except as provided in subsections (b)(7), (c)(3) and (i).

(ii) 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 the permits.

(3) A facility is not subject to permit-by-rule under this section unless the operator prepares and maintains the following at the facility in a readily accessible place:

(i) A copy of a Preparedness, Prevention and Contingency (PPC) plan that is consistent with the Department's most recent guidelines for the development and implementation of PPC plans.

(ii) 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.

(4) Subchapter E (relating to bonding and insurance requirements) is not applicable to facilities which are deemed to have a permit under this section.

(5) Subchapter F (relating to civil penalties and enforcement) is applicable to facilities subject to this section.

(6) The Department may require a person or municipality subject to 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.

(b) *Captive processing facility.* A facility that processes residual waste that is generated solely by the operator shall be deemed to have a residual waste processing permit under this article if, in addition to subsection (a), the following conditions are met:

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

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

(3) Processing occurs at the same manufacturing or production facility where some or all of the waste is generated.

(4) The operator performs the analyses required by §§ 287.131—287.133 (relating to scope; chemical analysis of waste; and source reduction strategy), and maintains these analyses at the facility. These analyses are not required to be submitted to the Department except upon written request.

(5) If the waste is burned, it meets the following:

(i) The waste is burned in an enclosed device using controlled flame combustion and is directed through a flue as defined in § 121.1 (relating to definitions).

(ii) The waste has more than 5,000 BTUs per pound.

(iii) The combustion unit recovers, exports and delivers for use at least 50% of the energy contained in the waste.

(iv) The amount of energy recovered, exported and delivered by the process exceeds the amount of energy expended in the combustion of the waste.

(6) If processing is part of an industrial or other wastewater treatment process permitted by the Department under The Clean Streams Law, one of the following applies:

(i) The facility discharges into a water of the Commonwealth under the NPDES permit or a permit issued under The Clean Streams Law, and is in compliance with the permit.

(ii) The facility discharges into a publicly owned treatment work and is in compliance with applicable pretreatment standards.

(7) If a wastewater treatment process includes the use of storage impoundments that are not in compliance with Chapter 299, the following shall be met:

(i) A water quality monitoring plan that meets the requirements of §§ 289.261—289.268 (relating to water quality monitoring) shall be submitted to the Department for review and approval by July 25, 1997. The Department may waive or modify the requirements of §§ 289.261—289.268 for storage impoundments included under this section as part of a captive facility on a case-by-case basis, based on conditions such as the size and location of the impoundment.

(ii) A water quality monitoring plan shall be implemented within 6 months of the Department's approval of the plan, unless the implementation schedule approved by the Department provides for a longer period. A water quality monitoring plan shall be implemented by July 4, 2002.

(iii) If, after implementation of the water quality monitoring plan, groundwater degradation is found that can reasonably be attributed to the storage impoundment, the operator shall comply with one of the following:

(A) Within 6 months of the Department's determination that degradation exists, the operator shall file a closure plan and closure schedule. After approval of the closure plan and closure schedule, the operator shall implement the closure plan and closure schedule as approved by the Department.

(B) Within 6 months of the Department's determination that degradation exists, the operator shall submit a schedule to upgrade and operate the impoundment under Chapter 299; provided that with respect to a storage impoundment that was permitted and constructed on or before July 4, 1992, the Department may modify the liner and leachate collection system requirements if the operator demonstrates that the conditions of § 287.112(f)(1) (relating to storage impoundments and storage facilities) are met. The schedule to upgrade and operate the impoundment under Chapter 299 may not exceed 5 years.

(8) 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.

(c) *Wastewater treatment facility.* A noncaptive processing facility, other than a transfer or composting facility, shall be deemed to have a residual waste processing permit under this article if, in addition to subsection (a), the following apply:

(1) The operator performs the analyses required by §§ 287.131—287.134 (relating to waste analysis) and maintains the analyses at the facility. These analyses are not required to be submitted to the Department except upon written request.

(2) Processing is solely part of an industrial or other wastewater treatment process permitted by the Department under The Clean Streams Law and one of the following apply:

(i) The facility discharges into a water of the Commonwealth under an NPDES permit, and is in compliance with the permit.

(ii) The facility discharges into a publicly owned treatment work and is in compliance with applicable pretreatment standards.

(3) If a wastewater treatment process includes the use of storage impoundments that are not in compliance with Chapter 299, the following shall be met:

(i) A water quality monitoring plan that meets the requirements of §§ 289.261—289.268 shall be submitted to the Department for review and approval by July 25, 1997. The Department may waive or modify the requirements of §§ 289.261—289.268 for storage impoundments included under this section as part of a wastewater treatment process on a case-by-case basis, based on conditions such as the size and location of the impoundments.

(ii) A water quality monitoring plan shall be implemented within 6 months of the Department's approval of the plan, unless the implementation schedule approved by the Department provides for a longer period. A water quality monitoring plan shall be implemented by July 4, 2002.

(iii) If, after implementation of the water quality monitoring plan, groundwater degradation is found that can reasonably be attributed to the storage impoundments, the operator shall comply with one of the following:

(A) Within 6 months of the Department's determination that degradation exists, the operator shall file a closure plan and closure schedule. After approval of the closure plan and closure schedule, the operator shall implement the closure plan and closure schedule as approved by the Department.

(B) Within 6 months of the Department's determination that degradation exists, the operator shall submit a schedule to upgrade and operate the impoundment in accordance with Chapter 299; provided that with respect to a storage impoundment that was permitted and constructed on or before July 4, 1992, the Department may modify the liner and leachate collection

system requirements if the operator demonstrates that the conditions of § 287.112(f)(1) are met. The schedule to upgrade and operate the impoundment under Chapter 299 may not exceed 5 years.

(4) 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.

(d) *Incinerator.* A residual waste incinerator located at the generation site shall be deemed to have a residual waste permit under this article if, in addition to the requirements of subsection (a), it processes waste that is generated solely by the operator, processing occurs at the same production facility where some or all of the waste is generated and it 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 per hour and is permitted under the Air Pollution Control Act.

(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.

(e) *Beneficial use.* The beneficial use of residual waste which the Department has approved, in writing, prior to July 4, 1992, shall be deemed to have a residual waste processing or disposal permit if the person or municipality uses the residual waste in accordance with the terms and conditions of the written approval and the Department has not revoked the approval. The expiration date for permits issued pursuant to this subsection is July 4, 2002, unless a specific permit term is written as a condition of the prior written approval.

(f) *Mechanical processing facility.* A facility for the processing of residual waste only by mechanical or manual sizing or separation for prompt reuse shall be deemed to have a residual waste processing permit-by-rule if it meets the requirements of subsection (a) and 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 waste and the facility. A noncaptive processing facility that separates waste oil and water does not qualify for a permit-by-rule. A facility for the processing of waste tires may be deemed to have a residual waste permit by rule under this paragraph if the following are met in addition to the requirements in this subsection and in subsection (a):

(1) The mechanical or manual sizing or separation is conducted solely for the purpose of remediating an existing tire pile.

(2) The mechanical or manual sizing or separation is part of a remediation plan that has been approved by the Department.

(3) No additional tires are brought to the site.

(4) The processed tires are promptly removed for offsite reuse or disposal.

(g) *Container processing facility.* A facility that processes, by cleaning or rinsing, empty containers for refill and reuse shall be deemed to have a residual waste processing permit if the containers are reused for their originally intended purpose, the facility meets the requirements of subsection (a), any rinsate or containers not reused are managed in accordance with the applicable waste management regulations and the operator of the facility submits 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 waste and the facility.

(h) *Empty drum reconditioning.* A facility that processes, by cleaning or rinsing, empty drums for reconditioning and reuse shall be deemed to have a residual waste processing permit-by-rule if it meets the requirements of subsection (a) and submits a written notice to the Department that includes the name, address and the phone number of the facility, the individual responsible for operating the facility and a description of the waste and the facility.

(i) *Temporary storage of residual waste at a hazardous waste transfer facility.* A facility that receives and temporarily stores residual waste at a hazardous waste transfer facility and that facilitates the transportation or transfer of that waste to a processing or disposal facility shall be deemed to have a residual waste processing permit under this article if, in addition to the requirements in subsection (a), the following are met:

(1) The residual waste is stored in accordance with the hazardous waste transfer facility requirements in 40 CFR 263.12 (relating to transfer facility requirements) as incorporated by reference in § 263a.10 (relating to incorporation by reference and scope) and modified in § 263a.12 (relating to transfer facility requirements). The management of residual waste shall be included in the PPC plan submitted under § 263a.12.

(2) Residual waste may not be stored unless there is secondary containment around the containers.

(3) The residual waste remains in its original container and is not mixed with other waste.

(4) The containers that store residual waste are clearly labeled with the words "residual waste."

(5) Residual waste is stored separately from hazardous waste.

(6) Nonputrescible residual waste is stored in accordance with the time periods specified in § 263a.12(1). Putrescible residual waste may not be stored for more than 24 hours.

(7) The bond required under § 263a.32 (relating to bonding) includes coverage for the processing of residual waste.

(8) 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.

Source

The provisions of this § 287.102 corrected October 23, 1992, effective July 4, 1992, 22 Pa.B. 5249; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; amended June 1, 2001, effective June 2, 2001, 31 Pa.B. 2873; corrected September 28, 2001, effective June 2, 2001, 31 Pa.B. 5447. Immediately preceding text appears at serial pages (273404) to (273406) and (280225) to (280228).

Cross References

This section cited in 25 Pa. Code § 287.1 (relating to definitions); 25 Pa. Code § 287.421 (relating to administrative inspections); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.103. Emergency disposal or processing.

(a) Notwithstanding any provision of this article or a term or condition of a permit for a solid waste processing or disposal facility, the Department may allow the prompt disposal or processing of waste at a permitted facility if the following are met:

(1) The waste was created, spilled or released during or as a result of an emergency. For purposes of this section, the term “emergency” means a fire, spill, accident or other sudden and unplanned event that harms or threatens public health and safety, public welfare, the environment or causes or threatens to cause personal injury. The term does not include increases in concentrations of contaminants in groundwater from background levels from a solid waste management facility, materials storage tank or similar source.

(2) The compliance status of the operator or a related party under section 503(c) and (d) of the act (35 P. S. § 6018.503(c) and (d)) does not require or allow denial of an application for permit modification, if a permit modification were sought.

(3) Disposal or processing of the waste at the facility, based on accurate and sufficient information about the waste:

(i) Is generally consistent with the types of waste that are permitted to be disposed or processed at the facility, as well as the design of the facility.

(ii) Would not harm or threaten public health and safety, public welfare or the environment or cause personal injury.

(iii) Would not adversely affect the ability of the liner system to prevent groundwater degradation.

(4) Disposal or processing of the waste at the facility is not prohibited by Article VII (relating to hazardous waste management).

(b) In approving the emergency disposal or processing of residual waste under this section, the Department may modify the facility’s permit under section 503(e) of the act (35 P. S. § 6018.503(e)) to impose terms and conditions which are necessary to implement the provisions and purposes of the act, the environmental protection acts and the regulations promulgated thereunder, including this article.

(c) Waste may be stored pending processing or disposal under § 299.117 (relating to emergency storage).

Cross References

This section cited in 25 Pa. Code § 299.117 (relating to emergency storage); and 25 Pa. Code § 299.218 (relating to wastes from accidents and spills).

TRANSITION SYSTEM FOR EXISTING FACILITIES**§ 287.111. Notice by impoundments and unpermitted processing or disposal facilities.**

(a) By January 4, 1993, each operator of one or more of the following types of facilities shall file with the Department a notice that is consistent with this section for each facility.

(1) A residual waste storage or disposal impoundment, regardless of whether the facility is authorized by a permit issued by the Department.

(2) A residual waste processing or disposal facility that meets the following requirements:

(i) The facility was not authorized by a permit issued by the Department under the act on July 4, 1992.

(ii) The facility received waste for processing or disposal on or after July 4, 1992, regardless of whether the facility is currently receiving waste.

(b) The notice, which shall be on a form prepared by the Department, shall include the following:

(1) A brief description of the type and weight or volume of waste being processed, stored or disposed annually at the facility, the type and weight or volume of waste previously processed, stored or disposed at the facility, and the process that generated the waste.

(2) A brief description of the facility, including size and capacity, and the number, type and design of liners that are placed at the facility.

(3) For each type of waste stored, processed or disposed at the facility, an analysis of the waste that meets the requirements of § 287.132 (relating to chemical analysis of waste), and the results of other chemical or leaching analyses that have been performed on the waste. The Department may approve alternative methods of waste analysis for types of waste which were previously disposed of at the facility if the type of waste is not currently being disposed of at the facility and it is not possible to conduct an analysis of the waste that meets the requirements of § 287.132.

(4) A description of leachate collection and treatment systems at the facility.

- (5) The results of surface water or groundwater monitoring, sampling and analysis that have been performed for the facility.
- (6) If the facility is an impoundment:
- (i) A description of the manner in which solid materials are managed in the impoundment, including the frequency of removal of solids, the frequency with which the impoundment is emptied and an estimate of the volume of solids removed from the impoundment annually.
- (ii) A statement of whether the facility is a storage impoundment or a disposal impoundment under § 299.113 (relating to duration of storage), including data or information to support the statement.
- (7) A statement of whether the operator plans to file a permit application consistent with this article or a closure plan consistent with this article, or, for storage impoundments, whether the operator plans to upgrade a storage impoundment to comply with this article as part of a permit under The Clean Streams Law.
- (8) For processing and disposal facilities, a bond which meets the requirements of § 287.312 (relating to existing facilities).
- (9) Except for residual waste storage impoundments, a water quality monitoring plan that meets the requirements of this article. The plan shall include at least one quarter of data, which does not need to be highest local groundwater levels. Groundwater monitoring data for each subsequent quarter shall be submitted to the Department as soon as the data is available. An operator of a residual waste storage impoundment may submit a water quality monitoring plan that meets the requirements of this article with this notice.
- (10) A description of the types of actual or potential air emissions from the facility.
- (11) A statement of whether the facility is covered by another permit issued under the act or the environmental protection acts, and the type of permit, permit number, and issuing agency, if applicable.
- (12) If the facility was not permitted under the act or The Clean Streams Law on July 4, 1992, information showing whether the siting of the facility is prohibited by §§ 288.422, 288.522, 288.622, 289.422, 289.522, 291.202, 293.202, 295.202, 297.202 or 299.144(a)(8), whichever is applicable.
- (c) A person or municipality operating a facility subject to this section that has not filed the notice required by this section by January 4, 1993, shall immediately cease accepting waste or processing or disposing of waste at the facility and shall file a closure plan under § 287.117 (relating to closure plan) by July 5, 1993, or by an earlier date specified by the Department in writing.
- (d) The Department may require operators of facilities subject to this section to file a closure plan under § 287.117 and to cease receiving, processing, storing or disposing of solid waste at the facility if one of the following conditions is met:

(1) The Department finds, based upon the notice required by this section or other information, that the siting of an unpermitted facility is prohibited by §§ 288.422, 288.522, 288.622, 289.422, 289.522, 291.202, 293.202, 295.202, 297.202 or 299.144(a)(8), whichever is applicable.

(2) The Department finds, based upon the notice required by this section or other information, that closure of the facility is necessary to protect public health, safety, welfare or the environment, or to prevent or abate a nuisance.

Cross References

This section cited in 25 Pa. Code § 287.112 (relating to storage impoundments and storage facilities); 25 Pa. Code § 287.117 (relating to closure plan); 25 Pa. Code § 287.118 (relating to Departmental responsibilities); 25 Pa. Code § 287.312 (relating to existing facilities); 25 Pa. Code § 287.411 (relating to when a penalty will be assessed); 25 Pa. Code § 287.413 (relating to assessment of penalties; minimum penalties); 25 Pa. Code § 288.123 (relating to groundwater quality description); and 25 Pa. Code § 289.123 (relating to groundwater quality description).

§ 287.112. Storage impoundments and storage facilities.

(a) The Department will modify each permit for a residual waste storage impoundment that was issued under the act or The Clean Streams Law before July 4, 1992, to require that the facility will be cleaned out and emptied in accordance with the schedule that the operator of the facility described in the notice required by § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities).

(b) Within 6 months after receiving written notification from the Department, an operator of a residual waste storage impoundment that has not submitted a water quality monitoring plan with the notice required by § 287.111 shall submit the plan to the Department.

(c) The operator of a residual waste storage impoundment shall implement a water quality monitoring plan that meets the requirements of this article within 6 months after the Department approves the plan.

(d) By July 4, 2002, a person or municipality may not store waste in a residual waste storage impoundment unless the operator of the facility has implemented a water quality monitoring plan that has been approved by the Department and that meets the requirements of this article.

(e) Each operator of a residual waste storage impoundment shall comply with the operating requirements of this article prior to receiving a permit from the Department under this article, except § 299.144(a)(10) and (11) (relating to operating requirements). Nothing in this subsection prevents the Department from requiring the operator of a residual waste storage impoundment to take measures to abate offsite leachate migration, groundwater degradation, offsite air emissions, or another public nuisance or threat of harm to public health, safety, welfare or the environment caused by the operator's failure to comply with § 299.144(a)(10) and (11) prior to receiving a permit from the Department.

(f) Modification of operating requirements on repermitting are as follows:

(1) For residual waste storage impoundments permitted and constructed on or before July 4, 1992, the Department may waive or modify the liner system and leachate treatment system requirements that would otherwise be applicable under this article if the following conditions are met:

(i) The Department has approved a groundwater monitoring system for the facility and the system has been installed.

(ii) The operator demonstrates based on sampling and analysis data taken by the operator or the Department that groundwater degradation from the facility does not exceed one of the following for any contaminant:

(A) The Statewide health standard for the contaminant at the property boundary.

(B) The background standard for the contaminant at the property boundary.

(2) For residual waste storage impoundments permitted under the act or The Clean Streams Law before July 4, 1992, the Department may modify the impoundment design requirements that are otherwise applicable under § 299.144(a)(6) after an approval of a complete application for permit modification, if the operator demonstrates that the existing design is structurally as sound as the design required by § 299.144(a)(6).

(3) The Department may revoke action taken under this subsection if conditions at the site no longer meet the requirements in that paragraph.

(4) Nothing in this subsection prevents the Department from requiring the operator of a storage impoundment subject to this subsection to take measures to abate offsite leachate migration, groundwater degradation, or another public nuisance or threat of harm to public health, safety, welfare or the environment caused by the failure of the operator to install or maintain the liner system and leachate treatment system that would otherwise be required by this article.

(g) A residual waste disposal impoundment that is authorized by a permit issued by the Department under the act or The Clean Streams Law before July 4, 1992, shall comply with §§ 287.115 and 287.116 (relating to filing by permitted facilities; and interim operational requirements), instead of this section.

(h) A residual waste disposal impoundment that is not authorized by a permit issued by the Department under the act or The Clean Streams Law before July 4, 1992, shall comply with §§ 287.113 and 287.114 (relating to permitting procedure for unpermitted processing or disposal facilities; and interim operational requirements for unpermitted processing or disposal facilities), instead of this section.

(i) The Department may waive or modify the requirements of Chapter 299, Subchapter A (relating to standards for storage of residual waste) for a residual waste storage pile or a residual waste storage container that was authorized by a permit issued by the Department under The Clean Streams Law prior to July 4, 1992. Nothing in this subsection prevents the Department from requiring the operator of a facility that is subject to that subsection to take measures to abate

groundwater degradation or any other public nuisance or threat of harm to public health, safety, welfare or the environment caused by the operator's failure to comply with Chapter 299, Subchapter A.

Source

The provisions of this § 287.112 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226497) to (226499).

Cross References

This section cited in 25 Pa. Code § 287.102 (relating to permit-by-rule); and 25 Pa. Code § 287.118 (relating to Departmental responsibilities).

§ 287.113. Permitting procedure for unpermitted processing or disposal facilities.

(a) Residual waste processing or disposal facilities, including disposal impoundments and facilities subject to general permit, that meet the following requirements are subject to this section:

(1) The facility was not authorized by a permit issued by the Department under the act or, for disposal impoundments, under The Clean Streams Law, on or before July 4, 1992.

(2) The facility received waste for processing or disposal on or after the effective date of these regulations, regardless of whether the facility is currently receiving waste.

(b) An impoundment which stores residual waste for more than 1 year without regularly removing the waste is presumed to be a disposal impoundment in accordance with § 299.113 (relating to duration of storage).

(c) Within 6 months after receiving written notification from the Department, or by July 4, 1995, if the Department does not provide written notification, a person or municipality that operates a residual waste disposal or processing facility that is subject to this section shall file one of the following with the Department:

(1) A closure plan consistent with § 287.117 (relating to closure plan).

(2) A complete permit application consistent with this article, including a closure plan consistent with § 287.117 for any portion of the facility that will be closed.

(d) Within 6 months after the Department has made an initial request to a person or municipality that is subject to this section to make substantive corrections or changes to the application under § 287.203 (relating to review period), or within an alternative time period specified by the Department in the request under § 287.203 the person or municipality shall cease accepting, processing, storing or disposing of solid waste at the facility unless the person or municipality has been issued a permit for the facility under this article. The 6-month time period, or alternate time period specified by the Department in the request under § 287.203, does not include periods beginning with the date that the Department

receives the applicant's reply to the Department's request and ending with the date that the Department makes a subsequent request for corrections or changes under § 287.203.

(e) By July 4, 1995, a person or municipality operating a facility subject to this section may not dispose or process waste at the facility unless one of the following applies:

(1) The person or municipality possesses a permit for the facility issued under this article.

(2) A complete application for a permit is filed, including a general permit or a notice under § 287.644(b) (Reserved) under this article and the Department has not yet rendered a decision with respect to the application.

(f) When the Department denies a permit application for a facility subject to this section, the operator of the facility shall immediately cease accepting, processing or disposing solid waste at the facility and shall file a closure plan consistent with § 287.117 with the Department within 6 months from the date of the permit denial, unless an alternative time period is specified by the Department in writing in the permit denial.

(g) When the Department issues a permit to a facility subject to this section, the owner or operator of the facility shall construct the facility and begin accepting waste within 1 year after the permit is issued, unless a different time period is set forth in the permit.

Cross References

This section cited in 25 Pa. Code § 287.112 (relating to storage impoundments and storage facilities); 25 Pa. Code § 287.114 (relating to interim operational requirements for unpermitted processing or disposal facilities); 25 Pa. Code § 287.117 (relating to closure plan); 25 Pa. Code § 287.118 (relating to Departmental responsibilities); 25 Pa. Code § 287.141 (relating to permit application fee); 25 Pa. Code § 287.411 (relating to when a penalty will be assessed); 25 Pa. Code § 287.413 (relating to assessment of penalties; minimum penalties); 25 Pa. Code § 288.123 (relating to groundwater quality description); and 25 Pa. Code § 289.123 (relating to groundwater quality description).

§ 287.114. Interim operational requirements for unpermitted processing or disposal facilities.

(a) Each operator of a facility subject to § 287.113 (relating to permitting procedure for unpermitted processing or disposal facilities) shall comply with the operating requirements of this article prior to receiving a permit from the Department under this article, except the following:

(1) Sections 288.431—288.440 and 288.451—288.457 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment).

(2) Sections 288.531—288.539 and 288.551—288.557 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment) and leachate treatment requirements for Class II landfills).

(3) Sections 289.271—289.273 (relating to general requirements; inside slopes; and outside slopes and terraces).

(4) Sections 289.431—289.439 and 289.451—289.457 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment).

(5) Sections 289.531—289.538 and 289.551—289.557 (relating to additional operating requirements—liner systems; and additional operating requirements—leachate treatment).

(b) Nothing in subsection (a) prevents the Department from requiring the operator of a facility subject to § 287.113 to take measures to abate offsite leachate migration, groundwater degradation or another public nuisance or threat of harm to public health, safety, welfare or the environment caused by the operator's failure to comply with §§ 288.431—288.440, 288.451—288.457, 288.531—288.539, 288.551—288.557, 289.271—289.273, 289.431—289.439, 289.451—289.457, 289.531—289.538, 289.551—289.557 or prior to receiving a permit from the Department.

(c) It shall be a significant violation of the act or this article for the operator of a facility subject to § 287.113 prior to receiving a permit from the Department to do one or more of the following:

(1) Process or dispose of a type of solid waste that was not processed or disposed at the facility prior to July 4, 1992.

(2) Dispose of solid waste on an area where solid waste was not disposed as of July 4, 1992.

(3) For impoundments, enlarge the capacity of the facility beyond the capacity that existed as of July 4, 1992.

(4) Expand the capacity of the facility beyond the capacity that existed as of July 4, 1992.

(5) For disposal facilities, increase the average daily volume of waste accepted at the facility beyond the average daily volume that was accepted at the facility as of July 4, 1992.

Cross References

This section cited in 25 Pa. Code § 287.112 (relating to storage impoundments and storage facilities); and 25 Pa. Code § 287.118 (relating to Departmental responsibilities).

§ 287.115. Filing by permitted facilities.

(a) *Preliminary application.* By July 4, 1994, each operator of a residual waste disposal or processing facility that is authorized by a permit issued by the Department under the act, or, for disposal impoundments, The Clean Streams Law, before July 4, 1992, shall file with the Department a preliminary application for permit modification under this section or a closure plan under § 287.117 (relating to closure plan).

(b) *Differences.* The preliminary application for permit modification for a residual waste processing or disposal facility shall describe differences between the existing permit and the requirements of this article, including the following areas:

- (1) Surface water drainage design.
- (2) Sedimentation pond design.
- (3) Waste analysis.
- (4) Surface water and groundwater monitoring.
- (5) Bonding and insurance.
- (6) For residual waste landfills and residual waste disposal impoundments:
 - (i) Cap and drainage layer requirements.
 - (ii) Liner system requirements.
 - (iii) Leachate treatment requirements.
- (7) For residual waste disposal impoundments, waste solidification requirements.

(c) *Modification.*

(1) For residual waste landfills permitted under the act before July 4, 1992, and residual waste disposal impoundments permitted under the act or The Clean Streams Law before July 4, 1992, the Department may waive or modify the liner system and leachate treatment requirements that would otherwise be applicable under this article after approval of a complete application for permit modification, if the following conditions are met:

(i) The Department approves, and the operator implements, a groundwater monitoring plan that meets the requirements of this article.

(ii) The operator demonstrates one of the following in the preliminary application:

(A) Groundwater degradation from the facility, based on sampling and analysis data for a 1-year period that meets the requirements of this article, does not exceed the background or Statewide health standard for a contaminant at the property boundary.

(B) The operator has complied and will continue to comply with the applicable requirements for groundwater assessment and groundwater abatement in this article and has demonstrated that the abatement will result in restoration of the groundwater to levels that are at least equivalent to the background or Statewide health standards for a contaminant at the property boundary. It is not necessary, for purposes of this demonstration, that restoration of groundwater to these levels occur before closure. However, this paragraph in no way alters the operator's obligations for final closure certification under § 287.342 (relating to final closure certification) or as otherwise provided in Subchapter E (relating to bonding and insurance requirements).

(iii) The physical properties and chemical composition of the waste have not changed since the permit was issued based on continued sampling and analysis of the waste that is consistent with the permit.

(2) For residual waste disposal impoundments permitted under the act or The Clean Streams Law before July 4, 1992, the Department may modify the impoundment design requirements that are otherwise applicable under §§ 289.271—289.273 (relating to general requirements; inside slopes; and outside slopes and terraces) after an approval of a complete application for permit modification, if the operator demonstrates that the existing design is structurally as sound as the design required in §§ 289.271—289.273.

(3) The Department may revoke action taken under this subsection if the conditions at the site no longer meet the requirements in this subsection.

(4) The liner system and leachate treatment system requirements may not be modified or waived for areas identified in an application for a new permit or permit modification submitted after January 13, 2001.

(d) *Complete application.* Within a period not to exceed 9 months after receiving notice from the Department, a person or municipality that filed a preliminary application for permit modification shall file with the Department a complete application for permit modification to correct differences between the existing permit and the requirements of this chapter. The Department's notice may specify a period of less than 9 months.

(e) *Deadline for allowing interim operation.* By July 4, 1994, a person or municipality that operates a facility subject to this section may not dispose or process waste at the facility unless a preliminary application for permit modification or a closure plan is filed under this section.

(f) *Deadline for allowing continued operation.* By July 4, 1997, a person or municipality that operates a facility subject to this section may not store, dispose or process waste at the facility unless one of the following applies:

(1) A complete application for permit modification is filed under this section, and the Department has not yet rendered a decision with respect to the application.

(2) The person or municipality possesses a permit for the facility that is consistent with this article.

(g) *Closure plan.* A person or municipality that is required under subsection (e) or (f) to cease storage, disposal or processing of waste shall submit a closure plan under § 287.117 (relating to closure plan). An application for a new permit shall be filed in accordance with this article to receive, process or dispose of solid waste.

Source

The provisions of this § 287.115 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226501) to (226503).

Cross References

This section cited in 25 Pa. Code § 287.112 (relating to storage impoundments and storage facilities); 25 Pa. Code § 287.116 (relating to interim operational requirements); 25 Pa. Code § 287.117 (relating to closure plan); 25 Pa. Code § 287.118 (relating to Departmental responsibilities); 25 Pa. Code § 287.141 (relating to permit application fee); 25 Pa. Code § 287.221 (relating to permit reissuance); 25 Pa. Code § 287.222 (relating to permit notification); and 25 Pa. Code § 287.312 (relating to existing facilities).

§ 287.116. Interim operational requirements.

(a) Each operator of a residual waste disposal or processing facility subject to § 287.115 (relating to filing by permitted facilities) shall comply with the operating requirements of this article prior to receiving a permit from the Department under this article, except the following:

(1) Sections 288.431—288.440 and 288.451—288.457 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment).

(2) Sections 288.531—288.539 and 288.551—288.557 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment).

(3) Sections 289.271—289.273 (relating to general requirements; inside slopes; and outside slopes and terraces).

(4) Sections 289.431—289.439 and 289.451—289.457 (relating to additional operating requirements—liner system; and additional operating requirements—leachate treatment).

(5) Sections 289.531—289.538 and 289.551—289.557 (relating to additional operating requirements—liner systems; and additional operating requirements—leachate treatment).

(b) Nothing in subsection (a) prevents the Department from requiring the operator of a facility subject to § 287.115 to take measures to abate offsite leachate migration, groundwater degradation, offsite air emissions, or another public nuisance or threat of harm to public health, safety, welfare or the environment caused by the operator's failure to comply with §§ 288.431—288.440, 288.451—288.457, 288.531—288.539, 288.551—288.557, 289.271—289.273, 289.431—289.439, 289.451—289.457, 289.531—289.538, 289.551—289.557 or prior to receiving a permit from the Department under this article.

(c) Prior to receiving a permit from the Department under this article, the operator of a facility subject to § 287.115 may not do the following:

(1) Dispose of solid waste on an area where solid waste was not authorized to be disposed under the permit as of July 4, 1992.

(2) For impoundments, expand or enlarge the capacity of the facility beyond the capacity that existed as of July 4, 1992.

(3) Increase the average daily volume of waste accepted at the facility beyond the average daily volume that was accepted as of July 4, 1992, without the written authorization of the Department.

- (4) Change the method or the technology used to process solid waste at the facility from the method or technology employed by the facility on July 4, 1992 without the written authorization of the Department.

Cross References

This section cited in 25 Pa. Code § 287.112 (relating to storage impoundments and storage facilities); and 25 Pa. Code § 287.118 (relating to Departmental responsibilities).

§ 287.117. Closure plan.

(a) A closure plan for a residual waste processing or disposal facility submitted under § 287.113 or 287.115 (relating to permitting procedure for unpermitted processing or disposal facilities; and filing by permitted facilities) shall show how the operator plans to close in a manner that will protect public health, safety and the environment. Except as provided in subsections (c) and (d), the closure plan shall be consistent, at a minimum, with the applicable regulations for the type of facility concerning the following:

- (1) Sedimentation and erosion control.
- (2) Revegetation.
- (3) Water quality monitoring.
- (4) Bonding and insurance.
- (5) For residual waste landfills and residual waste disposal impoundments:
 - (i) Final cover and grading.
 - (ii) Leachate management.
 - (iii) Gas venting and monitoring.
- (6) For residual waste disposal impoundments, waste solidification.

(b) The Department may waive or modify the applicable regulations concerning subsection (a) if a person or municipality can demonstrate that an existing system or design performs at a level that is equivalent to the applicable regulations.

(c) A person or municipality that has submitted a water quality monitoring plan and bonding as part of the notice required by § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities) is not required to resubmit the information as part of the closure plan.

(d) A person or municipality may propose, as part of the closure plan submitted under subsection (a), to remove standing liquids, waste and waste residues, liners, and underlying and surrounding contaminated soil, and to dispose of the waste material at a solid waste management facility that is permitted to accept the waste. The person or municipality may request final closure certification under § 287.342 (relating to final closure certification) upon completion of a closure plan approved under this section.

(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) A person or municipality that submitted a closure plan to the Department under § 287.113 shall cease receiving waste at the facility and begin implementation of the closure plan on the earliest of the following dates:

- (1) The date stated in the closure plan approved by the Department under this section.
- (2) By July 4, 1995.

(h) A person or municipality that submitted a closure plan to the Department under § 287.115 shall cease receiving waste at the facility and begin implementation of the closure plan on the earliest of the following dates:

- (1) The date stated in the closure plan approved by the Department under this section.
- (2) By July 4, 1997.
- (3) When the facility reaches final permitted capacity.

(i) The Department may require a person or municipality that closed a residual waste processing or disposal facility after September 7, 1980, to submit a closure plan under this section. The person or municipality shall submit the closure plan within 6 months after receiving written notice.

(j) Groundwater degradation at a solid waste facility that ceased receiving waste after September 7, 1980, shall be remediated in accordance with one of the following:

- (1) An approved closure plan, permit or any administrative consent order, consent adjudication, judicially approved consent order or other settlement agreement entered into with the Department prior to January 13, 2001.
- (2) Section 287.342 (relating to final closure certification), if paragraph (1) is not applicable or if a remediation is conducted under a document in paragraph (1) that has been so modified and approved.

Source

The provisions of this § 287.117 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226505) to (226506).

Cross References

This section cited in 25 Pa. Code § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities); 25 Pa. Code § 287.113 (relating to permitting procedure for unpermitted processing or disposal facilities); 25 Pa. Code § 287.115 (relating to filing by permitted facilities); 25 Pa. Code § 287.118 (relating to Departmental responsibilities); 25 Pa. Code § 287.312 (relating to existing facilities); and 25 Pa. Code § 287.371 (relating to insurance requirement).

§ 287.118. Departmental responsibilities.

(a) Nothing in §§ 287.111—287.117 prevents the Department from taking action necessary or appropriate to enforce the act, the environmental protection acts or the regulations promulgated thereunder, to protect public health, safety, welfare or the environment, or to prevent or abate a public nuisance.

(b) Notwithstanding any deadline in §§ 287.111—287.117, the Department may require an operator to conduct groundwater monitoring or another activity

required by this article that the Department believes is necessary or useful to determine the effect or potential effect of a residual waste processing or disposal facility on public health, safety, welfare or the environment.

(c) Nothing in §§ 287.111—287.117, or a permit issued by the Department to a facility subject to §§ 287.111—287.117, relieves a facility of its responsibility to secure a plan approval and operating permit under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and Subpart C, Article III (relating to air resources), or to comply with a requirement of another environmental protection act or the regulations promulgated thereunder.

GENERAL APPLICATION REQUIREMENTS

§ 287.121. Application contents.

Persons or municipalities submitting permit applications under § 287.101 (relating to general requirements for permit) shall include with their permit applications the applicable information required by this chapter and:

- (1) Chapter 288 (relating to residual waste landfills).
- (2) Chapter 289 (relating to residual waste disposal impoundments).
- (3) Chapter 291 (relating to land application of residual waste).
- (4) Chapter 293 (relating to transfer facilities for residual waste).
- (5) Chapter 295 (relating to composting facilities for residual waste).
- (6) Chapter 297 (relating to incinerators and other processing facilities).

§ 287.122. Form of application.

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

(b) Each 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) Each 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 this Commonwealth.

Source

The provisions of this § 287.122 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226507).

§ 287.123. Right of entry.

(a) Each application shall contain a description of the documents upon which the applicant bases his legal right to enter and operate a residual 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 residual 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 residual waste processing or disposal facility and an abstract of title relating the documents to the current landowner.

(c) Each application shall include, upon a form prepared and furnished by the Department, the irrevocable written consent of the landowner to the Commonwealth 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 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 291 (relating to land application of residual waste).

(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 § 287.123 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226507) to (226508).

Cross References

This section cited in 25 Pa. Code § 287.632 (relating to waiver and modification requirements).

§ 287.124. Identification of interests.

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

(1) The name, 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 their relationship to the applicant.
- (2) The names and addresses of the owners of record of surface and sub-surface areas within, and contiguous to, any part of the proposed permit area.
- (3) The names and addresses of the holders of record of any leasehold interest of surface and subsurface areas within, and contiguous to, any part of the proposed permit area.
- (b) Each 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 all 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 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) Each 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 any 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 if applicable, the expiration date.

(e) Each 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 party 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 § 287.124 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226508) to (226511).

Cross References

This section cited in 25 Pa. Code § 287.125 (relating to compliance information); 25 Pa. Code § 287.212 (relating to conditions of permits—general and right of entry); 25 Pa. Code § 287.221 (relating to permit reissuance); 25 Pa. Code § 287.331 (relating to bond amount determination); 25 Pa. Code § 287.502 (relating to relationship to other requirements); 25 Pa. Code § 287.632 (relating to waiver of requirements); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); and 25 Pa. Code § 297.262 (relating to annual operation report).

§ 287.125. Compliance information.

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 related party concerning the act, the environmental protection acts, a regulation or order of the Department or of 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 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 was not described under paragraph (3), in which the applicant or a related party has been 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 § 287.124 (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 one or more of 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 applicant 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 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 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.

Source

The provisions of this § 287.125 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226509) to (226511).

Cross References

This section cited in 25 Pa. Code § 287.212 (relating to conditions of permits—general and right of entry); 25 Pa. Code § 287.221 (relating to permit reissuance); 25 Pa. Code § 287.331 (relating to bond amount determination); 25 Pa. Code § 287.502 (relating to relationship to other requirements); 25 Pa. Code § 287.632 (relating to waiver of requirements); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); and 25 Pa. Code § 297.262 (relating to annual operation report).

§ 287.126. Requirement for environmental assessment.

(a) Except as provided in subsection (b), an application for a residual 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 agricultural utilization of residual waste.
- (2) Permit applications for land reclamation facilities for residual waste.
- (3) Permit modification applications that are not for major modifications under § 287.154 (relating to public notice and public hearings for permit modifications).
- (4) Permitted mobile processing facilities for which a permit modification is sought for a new processing site and for which an environmental assessment has already been approved by the Department.

(c) For facilities which have previously been subject to the environmental assessment process, the Department may 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.

Cross References

This section cited in 25 Pa. Code § 288.138 (relating to daily volume); 25 Pa. Code § 289.137 (relating to daily volume); 25 Pa. Code § 293.110 (relating to daily volume); 25 Pa. Code § 295.119 (relating to daily volume); and 25 Pa. Code § 297.112 (relating to daily volume).

§ 287.127. Environmental assessment.

(a) *Impacts.* Each environmental assessment in a permit application shall include 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 and land use. The applicant shall consider environmental 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) *Noncaptive landfills, disposal impoundments and incinerators.* If the application is for the proposed operation of a noncaptive landfill, disposal impoundment or incinerator, 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) *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.

(g) *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 § 287.127 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226511) to (226512).

Notes of Decisions

Constitutionality

The Environmental Quality Board's regulations adopting a Harms/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 Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) indicates that the General Assembly 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); appeal granted 835 A.2d 706 (Pa. 2003); affirmed 884 A.2d 867 (Pa. 2005).

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).

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).

Cross References

This section cited in 25 Pa. Code § 287.201 (relating to criteria for permit issuance or denial); 25 Pa. Code § 288.138 (relating to daily volume); 25 Pa. Code § 289.137 (relating to daily volume); 25 Pa. Code § 293.110 (relating to daily volume); 25 Pa. Code § 295.119 (relating to daily volume); and 25 Pa. Code § 297.112 (relating to daily volume).

§ 287.128. Verification of application.

Applications for permits 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.

Cross References

This section cited in 25 Pa. Code § 287.502 (relating to relationship to other requirements); and 25 Pa. Code § 287.632 (relating to waiver of requirements).

WASTE ANALYSIS**§ 287.131. Scope.**

(a) Sections 287.132—287.135 apply to residual waste management facilities that apply to receive residual waste. Sections 287.132—287.134 do not apply to:

(1) Captive transfer facilities, except as otherwise required in writing by the Department.

(2) The disposal at permitted Class I or Class II residual 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 applicant demonstrates to the Department's satisfaction that the waste is not hazardous.

(3) The disposal at permitted Class I or Class II residual 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 these sections are in addition to the application and operating requirements in this article.

Source

The provisions of this § 287.131 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226512) and (255099).

§ 287.132. Chemical analysis of waste.

(a) *Application.*

(1) An application 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 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 incorporated in § 261a.1 (relating to incorporation by reference, purpose and scope).

(v) If the waste will be disposed of at a residual waste landfill or residual waste disposal impoundment, a demonstration that the waste meets the requirements for disposal at the facility without adversely affecting the effectiveness of the liner or leachate treatment system or attenuating soil at a Class III residual waste landfill.

(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 conditions in subparagraph (i) are met and the conditions in subparagraph (ii) or (iii) 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 no additional analysis is necessary to determine if the waste can be received at the facility without adversely affecting the effectiveness of the liner or leachate treatment systems or attenuating soil at a Class III residual waste landfill and established emission and wastewater discharge limits.

(iii) The applicant has demonstrated to the Department's satisfaction that no additional analysis is necessary to determine if the waste can be received at the facility without adversely affecting the effectiveness of waste processing operations and 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 set forth 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 Waste 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.

Source

The provisions of this § 287.132 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (255099) to (255100).

Cross References

This section cited in 25 Pa. Code § 287.102 (relating to permit-by-rule); 25 Pa. Code § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities); 25 Pa. Code § 287.131 (relating to scope); 25 Pa. Code § 287.134 (relating to waste analysis plan); 25 Pa. Code § 287.621 (relating to application for general permit); 25 Pa. Code § 287.641 (relating to inclusion in a general permit); 25 Pa. Code § 288.123 (relating to groundwater quality description); 25

Pa. Code § 288.254 (relating to sampling and analysis); 25 Pa. Code § 288.523 (relating to minimum requirements for acceptable waste); 25 Pa. Code § 288.623 (relating to minimum requirements for acceptable waste); 25 Pa. Code § 289.123 (relating to groundwater quality description); 25 Pa. Code § 289.264 (relating to sampling and analysis); 25 Pa. Code § 289.523 (relating to minimum requirements for acceptable waste); 25 Pa. Code § 291.104 (relating to soils description); and 25 Pa. Code § 291.222 (relating to annual operation report).

§ 287.133. 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 § 287.133 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226515).

Cross References

This section cited in 25 Pa. Code § 287.131 (relating to scope).

§ 287.134. 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 § 287.132 (relating to chemical analysis of waste). At a minimum, the plan shall include:

(1) The parameters for which each residual waste will be analyzed and the rationale for the selection of these parameters. For the land application of residual waste under Chapter 291 (relating to land application of residual waste), the parameters shall include total nitrogen, organic nitrogen and ammonium.

(2) The test methods that will be used to test for these parameters. The test methods shall be the same as those used under § 287.132.

(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 disposal or processing 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, 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 § 287.134 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226515).

Cross References

This section cited in 25 Pa. Code § 287.131 (relating to scope); 25 Pa. Code § 288.139 (relating to radiation protection action plan); 25 Pa. Code § 288.203 (relating to waste analysis); 25 Pa. Code § 289.138 (relating to radiation protection action plan); 25 Pa. Code § 289.211 (relating to waste analysis); 25 Pa. Code § 291.208 (relating to waste analysis); 25 Pa. Code § 293.111 (relating to radiation protection action plan); 25 Pa. Code § 293.203 (relating to waste analysis); 25 Pa. Code § 295.120 (relating to radiation protection action plan); 25 Pa. Code § 295.203 (relating to waste analysis); 25 Pa. Code § 297.113 (relating to radiation protection action plan); and 25 Pa. Code § 297.203 (relating to waste analysis).

§ 287.135. Transition period for radiation monitoring.

A person or municipality possessing a permit for a noncaptive residual waste disposal or processing facility which was issued by the Department prior to January 13, 2001, shall file with the Department an application for permit modification to bring the facility operation into compliance with the following requirements for radioactive material monitoring and detection that became effective on January 13, 2001, according to the following schedule, unless the Department imposes in writing an earlier date, in a specific situation for reasons of public health, safety or environmental protection:

(1) *Noncaptive residual waste landfill.* An application for a permit modification addressing the requirements of §§ 288.133(a)(14) and 288.139 (relating to map and grid requirements and radiation protection action plan) shall be filed by January 13, 2002.

(2) *Noncaptive residual waste disposal impoundment.* An application for a permit modification addressing the requirements of §§ 289.133(a)(13) and 289.138 (relating to map and grid requirements and radiation protection action plan) shall be filed by January 13, 2002.

(3) *Noncaptive residual waste transfer facility.* An application for a permit modification addressing the requirements of §§ 293.103(a)(13) and 293.111 (relating to maps and related information and radiation protection action plan) shall be filed by January 13, 2002.

(4) *Noncaptive residual waste composting facilities.* An application for a permit modification addressing the requirements of §§ 295.112(a)(20) and 295.120 (relating to maps and related information and radiation protection action plan) shall be filed by January 13, 2002.

(5) *Noncaptive residual waste incinerator or other processing facilities.* An application for a permit modification addressing the requirements of §§ 297.103(a)(20) and 297.113 (relating to maps and related information and radiation protection action plan) shall be filed by January 13, 2002.

Source

The provisions of this § 287.135 adopted January 12, 2001, effective January 13, 2001, 31 Pa.B. 235.

Cross References

This section cited in 25 Pa. Code § 287.131 (relating to scope).

FEES**§ 287.141. Permit application fee.**

(a) Each application for a new permit and each application for permit modification under § 287.115 (relating to filing by permitted facilities) shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for the following amount:

- (1) Twenty-five thousand nine hundred dollars for residual waste landfills.
- (2) Eight thousand five hundred dollars for residual waste disposal impoundments.
- (3) Five thousand one hundred dollars for the agricultural utilization of residual waste.
- (4) Five thousand one hundred dollars for the utilization of residual waste for land reclamation.
- (5) Five thousand two hundred dollars for residual waste transfer facilities.
- (6) For residual waste processing facilities other than transfer facilities:
 - (i) Eight thousand three hundred dollars for noncaptive residual waste incinerators.
 - (ii) Two thousand two hundred dollars for captive residual waste incinerators.
 - (iii) Five thousand two hundred dollars for other residual waste processing facilities.
- (7) Eight thousand five hundred dollars for demonstration facilities.

(b) Each application for a permit modification under § 287.154 (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) Six hundred dollars for the addition of types of waste not approved in the permit.
- (2) Seven thousand eight hundred dollars for residual waste landfills.

- (3) Six hundred dollars for the agricultural utilization of residual waste.
 - (4) One thousand nine hundred dollars for the utilization of residual waste for land reclamation.
 - (5) Four thousand six hundred dollars for residual waste disposal impoundments.
 - (6) For residual waste processing facilities:
 - (i) One thousand five hundred dollars for incinerators.
 - (ii) Seven hundred dollars for other residual waste processing facilities.
 - (7) Five thousand eight hundred dollars for demonstration facilities.
- (c) An application for a minor permit modification, including a minor permit modification under § 287.222 (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) Each application for a permit reissuance under § 287.221 (relating to permit reissuance) shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$400.
- (e) Each application for a permit renewal under § 287.223 (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.
- (f) A fee is not required for closure plans submitted under § 287.113 (relating to permitting procedure for unpermitted processing or disposal facilities) or § 287.115.

Source

The provisions of this § 287.141 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226516) to (226517).

Cross References

This section cited in 25 Pa. Code § 287.222 (relating to permit modification).

PUBLIC NOTICE AND COMMENTS

§ 287.151. Public notice by applicant.

(a) An applicant for a new permit, major permit modification, permit renewal, 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) The notice shall include a brief description of the location and proposed operation or closure of the facility, and shall 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 pro-

poses to utilize the site-specific 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) The notice shall 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 reason described in the comments.

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

(4) The notice shall state if the applicant proposes a design alternative under § 287.231 (relating to equivalency review procedure) and shall briefly describe the alternative design.

(5) If the application is for a new residual waste landfill, residual waste disposal impoundments, transfer facility or incinerator or for a major modification of a residual waste landfill or residual waste disposal impoundment permit, the notice 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 design alternative under § 287.231, the notice shall so state and shall 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 site-specific 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. The notice shall state if the applicant

proposes a design alternative under § 287.231, and shall 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 this notice unless each municipality to which this 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.

(f) For new or expanded residual waste landfills or residual waste disposal impoundments for which the Phase I and Phase II applications are submitted separately, the notice required by this section shall be provided only for the Phase I application.

Source

The provisions of this § 287.151 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226517) to (226518).

Cross References

This section cited in 25 Pa. Code § 287.154 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 287.221 (relating to permit reissuance); 25 Pa. Code § 287.502 (relating to relationship to other requirements); 25 Pa. Code § 288.422 (relating to areas where Class I residual waste landfills are prohibited); 25 Pa. Code § 288.522 (relating to areas where Class II residual waste landfills are prohibited); 25 Pa. Code § 288.622 (relating to areas where Class III residual waste landfills are prohibited); 25 Pa. Code § 289.422 (relating to areas where Class I residual waste disposal impoundments are prohibited); 25 Pa. Code § 289.522 (relating to areas where Class II residual waste disposal impoundments are prohibited); 25 Pa. Code § 291.202 (relating to areas where the land application of residual waste is prohibited); 25 Pa. Code § 293.202 (relating to areas where transfer facilities are prohibited); 25 Pa. Code § 295.202 (relating to areas where composting facilities are prohibited); and 25 Pa. Code § 297.202 (relating to areas where incinerators and other processing facilities are prohibited).

§ 287.152. Public notice by Department.

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

(1) Receipt of an application for a new permit, permit reissuance, permit renewal or major permit modification. For new or expanded residual waste landfills or residual waste disposal impoundments for which the Phase I and Phase II applications are submitted separately, this notice shall be provided only for the Phase I application.

(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 site-specific 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) Issuance or denial of 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 each application for a new permit, permit reissuance, permit renewal or major permit modification, and each 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. For new or expanded residual waste landfills or residual waste disposal impoundments for which the Phase I and Phase II applications are submitted separately, copies of the Phase I and Phase II applications will be submitted.

(c) The Department will provide written notice of each final action taken on an application for a new permit, permit reissuance, permit renewal or permit modification, and each 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 § 287.152 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226518) to (226519).

Cross References

This section cited in 25 Pa. Code § 287.154 (relating to public notice and public hearings for permit modifications); and 25 Pa. Code § 287.202 (relating to receipt of application and completeness review).

§ 287.153. Public comments.

(a) The Department may conduct one or more public hearings for the purpose of receiving information on an application for a new permit, permit reissuance, permit renewal or major permit modification, or a closure plan, whenever there is a 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) When 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.

Cross References

This section cited in 25 Pa. Code § 287.154 (relating to public notice and public hearings for permit modifications); and 25 Pa. Code § 287.422 (relating to permit suspension or revocation).

§ 287.154. Public notice and public hearings for permit modifications.

(a) An application for a permit modification for a residual waste landfill or residual waste disposal impoundment shall be considered an application for a major permit modification under §§ 287.151—287.153 (relating to public notice by applicant; public notice by Department; and public comments) if the application involves one or more of the following:

- (1) A change in site volume or waste capacity.
- (2) A change in the average or maximum daily waste volume.
- (3) A change in excavation contours or final contours, including final elevations and slopes, if the change results in increased disposal or storage capacity or impacts groundwater isolation distances or groundwater quality.
- (4) A change in permitted acreage.
- (5) A change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters, or a change in the groundwater monitoring plan for a facility permitted prior to the effective date of these regulations to comply with the requirements of this article.
- (6) A change in approved leachate collection and treatment method.
- (7) A change in gas monitoring or management plan, or both, except where installation of additional wells or improvements to the collection systems are proposed.
- (8) A change in the approved closure plan.
- (9) The acceptance for disposal of types of waste not approved in the permit.
- (10) A change in approved design under § 287.231 (relating to equivalency review procedure) if the design has not been previously approved through an equivalency review.
- (11) The submission of an abatement plan.

- (12) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 287.221 (relating to permit reissuance).
 - (13) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 287.221.
 - (14) The disposal of waste in areas that have reached final permitted elevations.
 - (15) Submission of a radiation protection action plan.
- (b) An application for a permit modification for a residual waste processing facility shall be considered an application for a major permit modification under §§ 287.151—287.153 if the application involves one or more of the following:
- (1) A change in specifications or dimensions of waste storage or residue storage areas if the change results in an increase in processing or storage capacity.
 - (2) A change in the approved groundwater monitoring plan, except for the addition or replacement of wells or parameters.
 - (3) A change in an approved closure plan.
 - (4) The acceptance for processing of types of waste not approved in the permit.
 - (5) A change in residue disposal area, if applicable.
 - (6) A change in approved design under § 287.231 if the design has not been previously approved through an equivalency review.
 - (7) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 287.221.
 - (8) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 287.221.
 - (9) Change in the maximum daily waste volume.
 - (10) Submission of a radiation protection action plan.
- (c) An application for a permit modification for the land application of residual waste shall be considered an application for a major permit modification under §§ 287.151—287.153 if the application involves one or more of the following:
- (1) A change in the approved maximum application rates.
 - (2) The acceptance of residual waste from generators not approved in the permit.
 - (3) A change in the approved groundwater monitoring plan, if groundwater monitoring is required, except for the addition of wells or parameters.
 - (4) Change in ownership, unless the owner is the permittee, in which case permit reissuance is required under § 287.221.
 - (5) Change in operator, unless the operator is the permittee, in which case permit reissuance is required under § 287.221.
- (d) 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.

(e) 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 § 287.154 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226520) and (250863).

Cross References

This section cited in 25 Pa. Code § 287.126 (relating to requirement for environmental assessment); 25 Pa. Code § 287.141 (relating to permit application fee); and 25 Pa. Code § 287.212 (relating to conditions of permits—general and right of entry).

Subchapter D. PERMIT REVIEW PROCEDURES AND STANDARDS

PERMIT REVIEW

Sec.

- 287.201. Criteria for permit issuance or denial.
- 287.202. Receipt of application and completeness review.
- 287.203. Review period.

GENERAL PERMIT RESTRICTIONS

- 287.211. Term of permits.
- 287.212. Conditions of permits—general and right of entry.

PERMIT REISSUANCE, MODIFICATION AND RENEWAL

- 287.221. Permit reissuance.
- 287.222. Permit modification.
- 287.223. Permit renewal.

OTHER PERMITTING PROVISIONS

- 287.231. Equivalency review procedure.

Cross References

This subchapter cited in 25 Pa. Code § 287.601 (relating to scope).

PERMIT REVIEW

§ 287.201. Criteria for permit issuance or denial.

(a) A permit application will not be approved unless the applicant affirmatively demonstrates to the Department's satisfaction that the following conditions are met:

- (1) The permit application is complete and accurate.

(2) Residual waste management operations can be feasibly accomplished pursuant to the application as required by the act, the environmental protection acts and this title.

(3) The requirements of the act, the environmental protection acts, this title and PA. CONST. Art. I, § 27 have been complied with.

(4) The mitigation plans required by § 287.127 (relating to environmental assessment) are implemented if required by the Department.

(5) Residual waste management operations under the permit will not cause air pollution, or water pollution, except that the Department may approve an application for permit modification to control or abate groundwater degradation 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 compliance status of the applicant or a related party under section 503(c) and (d) of the act (35 P. S. § 6018.503(c) and (d)) does not require or allow permit denial.

(b) Failure by the Department to comply with a timetable in § 287.202 or § 287.203 (relating to completeness review; and review period) will not be construed or understood to constitute grounds for issuance of a permit.

Source

The provisions of this § 287.201 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (250864).

§ 287.202. 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 noncaptive residual waste landfill, disposal impoundment or

incinerator 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 § 287.152 (relating to public notice by the 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 following definitions apply in this section:

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

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.

Municipal officials—Representatives of local municipalities with whom the Department will coordinate prepermit application and early permit application review.

Source

The provisions of this § 287.202 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (250864) and (226523).

Cross References

This section cited in 25 Pa. Code § 287.201 (relating to criteria for permit issuance or denial); 25 Pa. Code § 287.203 (relating to review period); 25 Pa. Code § 288.422 (relating to areas where Class I residual waste landfills are prohibited); 25 Pa. Code § 288.522 (relating to areas where Class II residual waste landfills are prohibited); 25 Pa. Code § 288.622 (relating to areas where Class III residual waste landfills are prohibited); 25 Pa. Code § 289.422 (relating to areas where Class I residual waste disposal impoundments are prohibited); 25 Pa. Code § 289.522 (relating to areas

where Class II residual waste disposal impoundments are prohibited); 25 Pa. Code § 293.202 (relating to areas where transfer facilities are prohibited); and 25 Pa. Code § 297.202 (relating to areas where incinerators and other processing facilities are prohibited).

§ 287.203. Review period.

(a) The Department will issue or deny permit applications under this article within the following periods of time:

(1) For captive residual waste landfills and disposal impoundments, within 12 months from the date of the Department's determination under § 287.202 (relating to receipt of application and completeness review) that the application is administratively complete.

(2) For noncaptive residual waste landfills, disposal impoundments and incinerators, within the period established in the alternative project timeline developed under § 287.202 (relating to receipt of application and completeness review).

(3) For other permits, within 6 months from the date of the Department's determination under § 287.202 that the application is administratively complete.

(b) The time periods set forth in subsection (a) do 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 the corrections or changes to the Department's satisfaction.

Source

The provisions of this § 287.203 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226523).

Cross References

This section cited in 25 Pa. Code § 287.113 (relating to permitting procedure for unpermitted processing or disposal facilities); and 25 Pa. Code § 287.201 (relating to criteria for permit issuance or denial).

GENERAL PERMIT RESTRICTIONS

§ 287.211. Term of permits.

(a) A permit issued under this article 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 term under § 287.223 (relating to permit renewal).

(b) The Department may grant a longer fixed term if the following are met:

(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) Residual waste may not 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, the regulations promulgated 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 the latest major permit modification was approved.

(e) If no residual 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.

Source

The provisions of this § 287.211 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226523) to (226524).

Cross References

This section cited in 25 Pa. Code § 287.223 (relating to permit renewal).

§ 287.212. Conditions of permits—general and right of entry.

Each permit issued by the Department will ensure and contain the following conditions:

- (1) Except to the extent that the permit states otherwise, the permittee shall operate the facility 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 the solid waste management facility will be, is being, or has been operated to ensure compliance with the act, regulations promulgated under the act, and a permit, license or order issued by the Department under the act.
- (3) The permittee shall affect by solid waste management operations only those lands specifically approved in the permit and for which a bond has been filed with the Department under Subchapter E (relating to bonding and insurance requirements).
- (4) The permittee shall notify the Department within the time stated in the permit and if no time is stated not later than 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 § 287.154 (relating to public notice and public hearings for permit modifications) or a permit reissuance under § 287.221 (relating to permit reissuance). The notification shall contain the same information relating to the person who obtained the controlling interest in the owner or operator as is required of a permit applicant in a permit application under §§ 287.124 and 287.125 (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 § 287.212 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226524).

**PERMIT REISSUANCE, MODIFICATION
AND RENEWAL**

§ 287.221. 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, all 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) For applications for the reissuance of permits that were issued prior to July 4, 1992, a complete application for permit modification to correct deficiencies identified under § 287.115 (relating to filing by permitted facilities).
 - (4) 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 § 287.124 (relating to identification of interests) and the compliance information required in § 287.125 (relating to compliance information).
 - (B) For residual waste disposal permits, 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 bond and insurance in the amount specified by the Department under Subchapter E (relating to bonding and insurance requirements).
- (E) Proof of public notice as required by § 287.151 (relating to public notice by applicant).
- (F) Departmental approval of permit reissuance under this section will not be deemed to limit the original permittee's responsibility, liability, duty or obligation under law.

Source

The provisions of this § 287.221 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226525).

Cross References

This section cited in 25 Pa. Code § 287.141 (relating to permit application fee); 25 Pa. Code § 287.154 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 287.212 (relating to conditions of permits—general and right of entry); and 25 Pa. Code § 287.362 (relating to reissuance of permit).

§ 287.222. Permit modification.

- (a) A permittee shall file with the Department an application for permit modification, and obtain Departmental approval of the permit modification:
 - (1) Prior to making a change in the design or operational plans set forth 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) When required by the Department under § 287.115 (relating to filing by permitted facilities).
 - (4) Prior to conducting solid waste processing or disposal activities that are not approved in this permit.
 - (5) If otherwise required by the Department.
- (b) 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 permit modification for the construction of liner systems or of erosion and sedimentation control devices if it is impracticable to comply with subsections (a) and (b) and if 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 § 287.141(c) (relating to permit application fee).

Source

The provisions of this § 287.222 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226526).

Cross References

This section cited in 25 Pa. Code § 287.141 (relating to permit application fee); 25 Pa. Code § 288.256 (relating to groundwater assessment plan); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 288.292 (relating to closure); 25 Pa. Code § 288.414 (relating to modification of leachate treatment plan); 25 Pa. Code § 288.435 (relating to leachate detection zone); 25 Pa. Code § 288.514 (relating to modifications of leachate treatment plan); 25 Pa. Code § 288.534 (relating to leachate detection zone); 25 Pa. Code § 289.266 (relating to groundwater assessment plan); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 289.312 (relating to closure); 25 Pa. Code § 289.414 (relating to modification of leachate treatment plan); 25 Pa. Code § 289.435 (relating to leachate detection zone); 25 Pa. Code § 289.514 (relating to modifications of leachate treatment plan); 25 Pa. Code § 289.534 (relating to leachate detection zone); and 25 Pa. Code § 299.117 (relating to emergency storage).

§ 287.223. Permit renewal.

(a) A permittee that plans to dispose of or process residual waste after the expiration of the term set under § 287.211 (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 or land application permit shall be filed at least 270 days before the expiration date of the permit term and for a disposal permit at least 1 year before the expiration date of the permit term.

(1) For a processing facility with a permit term that expires on or before October 10, 2001, the application for permit renewal shall be filed at least 180 days prior to the expiration date of the permit term.

(2) For a disposal facility with a permit term that expires on or before January 4, 2002, 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 residual 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 terms and conditions of the permit. An applicant that seeks to add permitted acreage or change the 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.

(e) A permit may not be renewed except under this article for facilities permitted after July 4, 1992.

Source

The provisions of this § 287.223 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226526) to (226527).

Cross References

This section cited in 25 Pa. Code § 287.141 (relating to permit application fee); 25 Pa. Code § 287.211 (relating to term of permits); and 25 Pa. Code § 287.504 (relating to operating requirements).

OTHER PERMITTING PROVISIONS

§ 287.231. Equivalency review procedure.

(a) This section authorizes the Department, in approving a permit application under this article, to authorize, in writing, alternatives to the design requirements in this article. The alternative requirements may be authorized 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 set forth in that section, and will do so in a manner that is equivalent or superior to the design requirements in that section.

(c) An equivalency alternative will not 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 set forth 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 G (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 § 287.231 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226527) to (226528).

Cross References

This section cited in 25 Pa. Code § 287.151 (relating to public notice by applicant); 25 Pa. Code § 287.154 (relating to public notice and public hearings for permit modifications); 25 Pa. Code § 288.233 (relating to intermediate cover and slopes); 25 Pa. Code § 288.234 (relating to final cover and grading); 25 Pa. Code § 288.433 (relating to subbase); 25 Pa. Code § 288.434 (relating to secondary liner); 25 Pa. Code § 288.435 (relating to leachate detection zone); 25 Pa. Code § 288.436 (relating to primary liner); 25 Pa. Code § 288.437 (relating to protective cover); 25 Pa. Code § 288.438 (relating to leachate collection system within protective cover); 25 Pa. Code § 288.439 (relating to surface mined areas); 25 Pa. Code § 288.533 (relating to subbase); 25 Pa. Code § 288.534 (relating to leachate detection zone); 25 Pa. Code § 288.535 (relating to liner); 25 Pa. Code § 288.536 (relating to protective cover); 25 Pa. Code § 288.537 (relating to leachate collection system within protective cover); 25 Pa. Code § 288.538 (relating to surface mined areas); 25 Pa. Code § 288.624 (relating to attenuating soil); 25 Pa. Code § 289.242 (relating to cover); 25 Pa. Code § 289.433 (relating to subbase); 25 Pa. Code § 289.434 (relating to secondary liner); 25 Pa. Code § 289.435 (relating to leachate detection zone); 25 Pa. Code § 289.436 (relating to primary liner); 25 Pa. Code § 289.437 (relating to protective cover); 25 Pa. Code § 289.438 (relating to leachate collection system within protective cover); 25 Pa. Code § 289.533 (relating to subbase); 25 Pa. Code § 289.534 (relating to leachate detection zone); 25 Pa. Code § 289.535 (relating to liner); 25 Pa. Code § 289.536 (relating to protective cover); and 25 Pa. Code § 289.537 (relating to leachate collection system within protective cover).

Subchapter E. BONDING AND INSURANCE REQUIREMENTS

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BONDING REQUIREMENTS

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requirements); 25 Pa. Code § 293.103 (relating to maps and related information); 25 Pa. Code § 295.112 (relating to maps and related information); and 25 Pa. Code § 297.103 (relating to maps and related information).

SCOPE

§ 287.301. Scope.

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

(b) Except as otherwise expressly provided, this subchapter applies to the permit applicant, permittee or 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. This subchapter will not be construed or understood to relieve or excuse the applicant or permittee from complying with the requirements of this subchapter.

BONDING REQUIREMENTS

§ 287.311. New facilities.

(a) The Department will not approve a new, reissued, renewed or modified permit for the processing or disposal of residual waste, unless the applicant first submits to the Department a bond in accordance with 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 § 287.331 (relating to bond amount determination).

Cross References

This section cited in 25 Pa. Code § 287.333 (relating to failure to maintain adequate bond).

§ 287.312. Existing facilities.

(a) Each person or municipality operating a residual waste processing or disposal facility and which has not filed a bond under the act shall, by January 4, 1993, file a bond with the Department in accordance with this subchapter. For facilities subject to § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities), the bond shall be filed as part of the notice required under that section. The minimum amount of the bond shall be \$10,000. This section will not be construed to prevent the Department from requiring bonds to be posted in addition to the bond originally posted in compliance with

this section. This section will not be construed to prevent the Department from requiring bonds to be posted as required by the act for another facility operating on or after July 4, 1992.

(b) Prior to the approval by the Department of a closure plan submitted under § 287.117 (relating to closure plan) or to the issuance by the Department of an approval of a completed application for permit modification submitted under § 287.115 (relating to filing by permitted facilities), each person or municipality operating a residual waste processing or disposal facility under permit subject to § 287.115 shall submit an updated bond in an amount approved by the Department.

(c) The bond required by this section shall be submitted under this subchapter, containing terms and conditions required by the Department, and shall be on a form prepared and approved by the Department. The bond 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 § 287.331 (relating to bond amount determination).

Source

The provisions of this § 287.312 corrected October 23, 1992, effective July 4, 1992, 22 Pa.B. 5249. Immediately preceding text appears at serial pages (170728) to (170729).

Cross References

This section cited in 25 Pa. Code § 287.111 (relating to notice by impoundments and unpermitted processing or disposal facilities).

§ 287.313. Form, terms and conditions of the bond.

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

(1) A surety bond as provided in § 287.321 (relating to special terms and conditions for surety bonds).

(2) A collateral bond as provided in §§ 287.322—287.325.

(3) A combination of surety and collateral bonds as provided in § 287.326 (relating to phased deposit of collateral).

(4) For a facility with a permit term of at least 10 years, a phased deposit of collateral bond as provided in § 287.326.

(5) A department or agency of the United States or the Commonwealth which owns or operates a residual waste processing or disposal facility may satisfy the requirements of this section by other means of financial assurance approved by the Department which satisfies the terms and conditions for bonds under this subchapter.

(b) Each person or municipality submitting a bond shall comply with Department guidelines establishing minimum criteria for execution and completion of the bond forms and related documents and on calculation of total bond liability.

(c) Bonds submitted under this subchapter shall be conditioned on compliance with the act and regulations promulgated thereunder, the environmental pro-

tection acts, the terms and conditions of the permit and Departmental orders relating thereto which include orders relating to the operation of the facility. The liability of the operator under the bond is absolute and unconditional to ensure compliance by the operator with all requirements for the operation of a residual waste processing or disposal facility.

(d) Liability on the bond shall cover the operation of residual 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 requirements of this subchapter. A bond executed by an operator who is not the permittee or permit applicant does not meet the requirement of this subchapter if liability on the bond is limited to the residual waste management activities conducted by that operator.

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

§ 287.314. Duration of bond liability.

The liability under a bond filed with the Department under this subchapter shall continue for the period of operation of the facility, and for 10 years after final closure certification of the facility under § 287.342 (relating to final closure certification), unless released in whole or in part by the Department in writing, prior thereto as provided by § 287.341 (relating to release of bonds).

TYPES OF BONDS

§ 287.321. Special terms and conditions for surety bonds.

(a) The Department will not accept the bond of a surety company that has failed or unduly 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 January 13, 2001, and modifications issued after January 13, 2001, 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 by the surety 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 shall take effect 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 § 287.361 (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 all 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 § 287.351 (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 a part of the facility is located. The Department may provide copies of notices of violation, cessation orders and other relevant correspondence regarding the surety cancellation, to governmental units.

(f) The Department will not accept surety bonds from a surety company when the total bond liability to the Department on the 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 shall be 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 will not be affected by the bankruptcy, insolvency or other financial incapacity of the operator or principal on the bond.

(j) Monies collected on bonds posted under this section shall be deposited with the Treasurer of the Commonwealth, who shall hold it in the name of the Commonwealth in trust as cash collateral until the Department determines one of the following:

(1) Bonds would otherwise be released under § 287.341 (relating to release of bonds).

- (2) There are other grounds for forfeiture under § 287.351 or collection under the terms and conditions of the bond.
- (3) Other bonds or collateral acceptable to the Department have been posted.
- (k) If the bonds are releasable under § 287.341, 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 § 287.351, the Department will deposit the collected moneys into the Solid Waste Abatement Fund for the purposes specified in § 287.352 (relating to forfeiture procedures).

Source

The provisions of this § 287.321 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226532) and (250867) to (250868).

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond).

§ 287.322. 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 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.
 - (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 stand-by 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 the 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 in this Commonwealth.
- (c) The Department will place collateral submitted under this subchapter with the Treasurer, who shall be responsible for its custody and safekeeping until released or collected and deposited in the Solid Waste Abatement Fund by the Department under this chapter.
- (d) Collateral shall be in the name of the operator, and shall be pledged and assigned to the Department clear of claims or rights. The pledge or assignment will vest in the Department a property interest in the collateral which will remain

until release under the terms of this subchapter, and will not be affected by the bankruptcy, insolvency or other financial incapacity of the operator.

(e) The Department will ensure its ownership interest in collateral posted on a bond under this section such 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 necessary to ensure its ownership interest is fully protected and may take actions under the law as it deems necessary to protect the ownership interest.

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond).

§ 287.323. Collateral bonds; letters of credit.

(a) Letters of credit submitted as collateral for collateral bonds shall be 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 monies 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 both of 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 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 its 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 may 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 shall be subject to 13 Pa.C.S. §§ 5105—5117 (relating to letters of credit) or the equivalent Article or Division of 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 may 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 rights of set-off 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.

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond).

§ 287.324. Collateral bonds; certificates of deposit.

Certificates of deposit submitted as collateral for collateral bonds shall be 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 such 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 chartered or 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 that 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 of the Commonwealth or an authority of the 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 provisions of 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 (72 P. S. § 3836-3). A certificate of deposit is not 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 all 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 their face that they are automatically renewable. If the operator is a political subdivision of the Commonwealth or an authority of a political subdivision, the certificate of deposit may be established for a term and need not be automatically renewable at the expiration of the term. The political subdivision or authority shall provide to the Department, at least 60 days prior to the expiration of the term, written notice of the expiration of the term of the certificate of deposit. If the political subdivision or authority fails to replace the certificate of deposit with another certificate of deposit or other bond guarantee acceptable to the Department within 20 days of the expiration of the term, the Department may collect an amount under the certificate of deposit and hold the proceeds as cash collateral as provided by this subchapter.

(6) The operator shall submit certificates of deposit in amounts and containing terms and conditions 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 may not accept certificates of deposit from banks which have failed or 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.

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond).

§ 287.325. Collateral bonds; negotiable bonds.

Negotiable bonds submitted and pledged as collateral for collateral bonds shall be 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 securities for bond deposit.
- (2) The current market value as determined by the Department shall be at least equal to the amount of the required bond.
- (3) The Department may periodically revalue the securities and shall 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 Corporation (25 Broadway, New York, New York 10004-1064) or "A" by Moody's Investor Service (99 Church Street, New York, New York 10007-2787).
- (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.

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond).

§ 287.326. Phased deposit of collateral.

(a) If the Department determines, based upon the approved facility operation plan, that the facility will be accepting residual waste for at least 10 years from the date of permit issuance or the commencement of acceptance of residual 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 as 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 shall be grounds for forfeiture of the bond.

(5) The Department may require additional bonding in an amount determined under § 287.331 (relating to bond amount determination) 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 an 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 residual 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 bonds 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 the accumulated interest if the return of the accumulated interest does not reduce the amount of collateral below the required bond amount.

Cross References

This section cited in 25 Pa. Code § 287.313 (relating to form, terms and conditions of the bond); and 25 Pa. Code § 287.333 (relating to failure to maintain adequate bond).

§ 287.327. Surety/collateral combination bond.

The Department may accept a bond which is comprised of surety and collateral bond instruments otherwise allowed by this subchapter. These instruments will 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 otherwise does not meet the purposes of the act, this article or orders of the Department.

Cross References

This section cited in 25 Pa. Code § 287.332 (relating to bond amount adjustments).

BOND AMOUNT

§ 287.331. Bond amount determination.

(a) A person or municipality shall calculate the proposed amount of total bond liability 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 the bond is released as provided by this subchapter.

(b) A person or municipality that is required to file a bond under this subchapter, shall prepare a written estimate of the cost of closing the facility under this subchapter, and all other related costs necessary to comply with the requirements of this subchapter, for the purpose of determining the bond 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 effects 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 at any time 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 effects 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 of 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 of 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 amount shall be calculated using guidelines prepared by the Department and shall be based on factors which include the following:
- (1) The costs to the Commonwealth to conduct closure and postclosure care activities as determined by the cost estimate for closure and postclosure care under this section, as well as costs of monitoring, sampling and analysis, and 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 §§ 287.124 and 287.125 (relating to identification of interests; and compliance information).
- (d) The bond amount shall cover areas where residual waste disposal or processing activities are to be conducted.
- (e) The minimum bond amount is \$10,000.

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

Cross References

This section cited in 25 Pa. Code § 287.311 (relating to new facilities); 25 Pa. Code § 287.312 (relating to existing facilities); 25 Pa. Code § 287.326 (relating to phased deposit of collateral); 25 Pa. Code § 287.332 (relating to bond amount adjustments); 25 Pa. Code § 287.341 (relating to release of bonds); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); and 25 Pa. Code § 297.262 (relating to annual operation report).

§ 287.332. Bond 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 according to § 287.333 (relating to failure to maintain adequate bond), or whenever additional bond amounts are required under this chapter, including §§ 287.327 and 287.331 (relating to surety/collateral combination bond; and bond amount determination).

(b) The Department will require an operator to deposit additional bond amounts determined under § 287.331 when the existing bond does not meet the requirements of this subchapter for any reason, including 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, reissued, 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 a bond was required to be submitted under this subchapter, the Department may determine the adequacy of bond amount requirements for residual waste processing or disposal facilities and, if necessary, require additional bond amounts.

(d) A request for reduction of the required bond shall be considered a request for bond release under § 287.341 (relating to release of bonds).

Source

The provisions of this § 287.332 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226542) and (250869).

Cross References

This section cited in 25 Pa. Code § 287.341 (relating to release of bonds).

§ 287.333. 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 in accordance with the schedule submitted under § 287.326 (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 residual waste processing and disposal activities conducted by the operator. The Department may take additional actions that may be 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 State Treasurer who shall hold it in trust in the name of the Commonwealth until the Department determines that the bonds would otherwise be released under § 287.341 (relating to release of bonds), or that there are other grounds for forfeiture under § 287.351 (relating to forfeiture determination).

(1) If the bonds are releasable, the monies may be returned to the surety or operator, as appropriate, in a manner and under conditions as 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 § 287.352 (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 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 according to this subchapter. If the operator fails to correct the violation within 45 days of this notice, the Department will issue a cessation order for the operator's and related parties' permits. The Department may take other action as may be 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 operating a residual waste disposal or processing facility under § 287.311 (relating to new facilities).

Cross References

This section cited in 25 Pa. Code § 287.332 (relating to bond amount adjustments).

BOND RELEASE**§ 287.341. Release of bonds.**

(a) An operator seeking a release of a bond previously submitted to the Department shall file a written request with the Department for release of all or part of the bond amount posted for the facility as part of a request for bond adjustment under § 287.332 (relating to bond amount adjustments), or after certification of final closure of the facility.

(b) The written request for bond release shall contain the following:

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

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

(3) A detailed explanation why bond release is requested. The explanation shall include, but is not limited to, details relating 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, final closure certification 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 § 287.331 (relating to bond amount determination).

(5) Other information that may be required by the Department.

(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 bond release by the operator, as required by § 287.342 (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 § 287.331. If the new bond amount determination would require less bond 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 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 this chapter, 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 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 shall be 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 may be 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 now or hereafter existing in equity or under criminal and civil common law or statutory law. The release of a bond 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.

(3) The Department may grant bond releases immediately upon final closure, for facilities other than landfills, and disposal impoundments 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 § 287.341 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (250870) and (226545) to (226546).

Cross References

This section cited in 25 Pa. Code § 287.314 (relating to duration of bond liability); 25 Pa. Code § 287.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 287.332 (relating to bond amount adjustments); and 25 Pa. Code § 287.333 (relating to failure to maintain adequate bond).

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§ 287.342. Final closure certification.

(a) If the operator of a residual waste processing or disposal facility believes that all 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 final closure certification request shall be accompanied by a nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" for the following amount:

(1) Eight thousand eight hundred dollars for residual waste landfills and residual waste disposal impoundments.

(2) Six hundred dollars for all other residual waste processing or disposal facilities.

(c) 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) One of the following 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 § 288.256(c)(1) or § 289.266(c)(1) (relating to groundwater assessment plan).

(iii) The site-specific standard at and beyond the property boundary.

(3) 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.

(4) The facility is not causing adverse effects on the environment, and is not causing a nuisance.

(d) For measuring compliance with secondary contaminants, under subsection (c)(2)(i) or (iii), the Department may approve a compliance point beyond the property boundary up to a water source.

(e) Upon a request for final closure certification, the Department will inspect the facility to verify that closure, postclosure and final closure have been completed as provided in this section (c).

(f) 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.

(g) The final closure certification will not be construed as a guarantee of future performance nor will 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 at the time of the certification or at a future time, for

which the operator shall remain 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.

(h) If subsequent to the issue 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 the applicable requirements of this article.

(i) 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.

(j) 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 § 287.342 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226546) to (226547).

Cross References

This section cited in 25 Pa. Code § 287.115 (relating to filing by permitted facilities); 25 Pa. Code § 287.117 (relating to closure plan); 25 Pa. Code § 287.314 (relating to duration of bond liability); 25 Pa. Code § 287.341 (relating to release of bonds); 25 Pa. Code § 288.292 (relating to closure); 25 Pa. Code § 289.172 (relating to closure plan); 25 Pa. Code § 289.312 (relating to closure); 25

Pa. Code § 293.262 (relating to cessation of operations); 25 Pa. Code § 295.282 (relating to cessation of operations); and 25 Pa. Code § 297.272 (relating to cessation of operations).

BOND FORFEITURE

§ 287.351. Forfeiture determination.

The Department will forfeit a collateral or surety bond when it determines that one or more of the following has occurred:

- (1) The operator has violated or continues to violate a term or condition 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 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 the 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 without obtaining final closure certification, or has otherwise failed to properly achieve final closure of the facility under the requirements of 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 closure, postclosure or final closure measures according to schedules or plans approved by the Department.
- (9) The operator or financial institution has become insolvent, 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 the act, the environmental protection acts, this title, the terms and conditions of the permit or orders of the Department.

Cross References

This section cited in 25 Pa. Code § 287.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 287.321 (relating to special terms and conditions for surety bonds); 25 Pa. Code § 287.333 (relating to failure to maintain adequate bond); and 25 Pa. Code § 287.375 (relating to maintenance of insurance coverage).

§ 287.352. 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) 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 same to the Office of Attorney General which will proceed to enforce and collect the amount forfeited, which amount will, upon collection, be paid into the Solid Waste Abatement Fund.

(d) Monies 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 residual 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.

Cross References

This section cited in 25 Pa. Code § 287.321 (relating to special terms and conditions for surety bonds); and 25 Pa. Code § 287.333 (relating to failure to maintain adequate bond).

MISCELLANEOUS PROVISIONS**§ 287.361. 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 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 residual 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.

Cross References

This section cited in 25 Pa. Code § 287.321 (relating to special terms and conditions for surety bonds).

§ 287.362. Reissuance of permit.

Before an existing permit is reissued under § 287.221 (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.

§ 287.363. 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 if the following occur:

(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.

(2) An action asserting 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.

§ 287.364. Preservation of remedies.

Remedies provided or authorized by law for violation of statutes, including the act, the applicable environmental protection acts, this title, and the terms and

conditions of permits, and orders of the Department, are expressly preserved. This subchapter will not be construed as an exclusive penalty or remedy for the violations. Action taken under this subchapter does not waive or impair another remedy or penalty provided in law or equity.

PUBLIC LIABILITY INSURANCE REQUIREMENTS

§ 287.371. Insurance requirement.

(a) A person or municipality that has not submitted proof of insurance under the act may not dispose or process residual waste unless the person or municipality has submitted proof of a commercial policy of liability insurance covering third-party claims for property damage and bodily injury as provided by this section.

(b) An applicant for a permit to operate a residual waste processing or disposal facility, and every person or municipality that submits a closure plan under § 287.117 (relating to closure plan), shall submit to the Department proof of a commercial policy of liability insurance covering third party claims for property damage and bodily injury.

(1) The insurance policy shall be effective prior to the initiation of residual waste processing or disposal operations under the permit, or, for a closure plan submitted under § 287.117, prior to the initiation of the closure plan.

(2) The Department may accept as proof of insurance an insurance policy issued to a person 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) Permit applications for new facilities shall certify that the operator has in force, or will, prior to initiation of operations, an insurance policy that complies with the requirements of this subchapter.

(d) A department or agency of the United States or the Commonwealth which owns or operates a residual waste processing or disposal facility may satisfy the requirements of this section by other means of financial assurance approved by the Department which satisfy the terms and conditions for insurance under this subchapter.

Source

The provisions of this § 287.371 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226551).

Cross References

This section cited in 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 291.222 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); and 25 Pa. Code § 297.262 (relating to annual operation report).

§ 287.372. Conditions of insurance.

(a) Except for operators of residual waste land application sites under Chapter 291 (relating to land application of residual waste), the operator shall maintain a comprehensive general liability insurance policy during operation of the facility and until the Department issues a final closure certification under this chapter which satisfies the following conditions:

(1) The commercial insurance provided to satisfy the public liability insurance 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.

(i) 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 \$1,000,000.

(ii) 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 \$1,000,000 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.

(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 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 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 shall be liable for payment of the deduct-

ible amounts. If the policy does not provide the insurer with a right of reimbursement or similar method of recoupment, the insured shall provide additional coverage amounts to meet the requirements of this subsection by the purchase of excess coverage for the deductible amounts.

(b) The operator of a residual waste land application facility for agricultural utilization or land reclamation under Chapter 291, 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 residual waste land application operations, which include vehicular activities. The certificate shall provide for third-party personal injury and property damage protection. Minimum coverage for combined personal injury and property damage shall be \$500,000. Coverage provided under this paragraph 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 the 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 this subchapter.

(6) The amount of coverage provided for property damage and bodily injury 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.

§ 287.373. 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 where shorter periods of notice for cancellation or termination have been authorized by the Insurance Department.
- (5) State that the insurance coverage provided by the policy is for the purpose of satisfying 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 or insurance policy 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 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.

Cross References

This section cited in 25 Pa. Code § 287.375 (relating to maintenance of insurance coverage); 25 Pa. Code § 288.283 (relating to annual operation report); 25 Pa. Code § 289.303 (relating to annual operation report); 25 Pa. Code § 291.222 (relating to annual operation report); 25 Pa. Code § 293.252 (relating to annual operation report); 25 Pa. Code § 295.272 (relating to annual operation report); and 25 Pa. Code § 297.262 (relating to annual operation report).

§ 287.374. 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 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 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.

§ 287.375. Maintenance of insurance coverage.

(a) The operator shall maintain insurance coverage continuously in full force during operation of the residual waste processing or disposal facility until final closure certification.

(b) The operator shall submit proof of insurance under § 287.373 (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 conduct residual waste processing or disposal operations at 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 § 287.373 within 15 days of the notice.

(c) The insurer may cancel or otherwise terminate an insurance policy by sending 60 days or other period prior written notice as may be authorized by the Insurance Department, 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 § 287.373 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 cessation order to the operator.

(4) Forfeit the existing bonds under § 287.351 (relating to forfeiture determination). The proceeds of the forfeited bonds shall 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 accept-

able 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. This subsection will not be construed to relieve the operator of its duty to maintain in full force and effect a bond as required by this subchapter and acceptable proof of an insurance policy as required by this subchapter.

Subchapter F. CIVIL PENALTIES AND ENFORCEMENT

SCOPE

Sec.
287.401. Scope.

CIVIL PENALTIES

287.411. When a penalty will be assessed.
287.412. Assessment of penalties; general.
287.413. Assessment of penalties; minimum penalties.
287.414. Procedures for assessment of civil penalties.

ENFORCEMENT

287.421. Administrative inspections.
287.422. Permit suspension or revocation.

Cross References

This subchapter cited in 25 Pa. Code § 287.102 (relating to permit-by-rule); 25 Pa. Code § 287.502 (relating to relationship to other requirements); 25 Pa. Code § 287.601 (relating to scope); and 25 Pa. Code § 287.632 (relating to waiver and modification requirements).

SCOPE

§ 287.401. Scope.

This subchapter applies to the assessment of civil penalties and to other enforcement actions under the act for residual waste management.

CIVIL PENALTIES

§ 287.411. When a penalty will be assessed.

- (a) The Department will assess a civil penalty for each 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 E (relating to bonding and insurance requirements).

(c) The Department will assess a civil penalty when a person or municipality operates a residual 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, except for facilities operating without a permit on July 4, 1992, that are in compliance with §§ 287.111 and 287.113 (relating to notice by impoundments and unpermitted processing or disposal facilities; and permitting procedure for unpermitted processing or disposal facilities). For these facilities, the Department may assess a civil penalty.

(2) Accepts waste for processing or disposal that was not approved by the Department in the permit.

(3) Causes, contributes to or allows open burning at the facility.

(4) Causes, contributes to or allows water pollution.

(d) In addition to the circumstances in subsection (c), the Department will assess a civil penalty if a person or municipality operates a residual waste land-fill or residual waste disposal impoundment in the following manner:

(1) Fails to install or maintain soil erosion and sedimentation controls, in accordance with 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, in accordance with 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 set forth in subsection (c), the Department will assess a civil penalty for operations involving the land application of residual waste if:

(1) Residual waste is applied in excess of the application rate approved in the permit.

(2) Residual waste is applied in volume, composition or source that is not approved in the permit.

(3) Residual waste is applied without daily incorporation into soil when required by Chapter 291 (relating to land application of residual waste).

(4) The operator does not submit an annual report as required by § 291.222 (relating to annual operation report).

(f) This section will not be construed to prevent the Department from assessing a civil penalty for a violation not set forth in this section.

§ 287.412. Assessment of penalties; general.

(a) The Department will use the system described in this section and § 287.413 (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 up to the maximum amount specified in this section.

(b) Civil penalties will be assessed as follows:

(1) Up to the statutory maximum may be assessed based on one or more of the following factors:

- (i) The willfulness of the violation.
- (ii) The costs that the operator avoided by incurring the violation.
- (iii) The damage or injury to the land or waters of this Commonwealth or other natural resources or their uses.
- (iv) The cost of restoration or 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 prevent or reduce injury to a person.
- (v) The hazards or potential hazards to the health or safety of the public.
- (vi) The property damage.
- (vii) Interference with a person's right to the enjoyment of life or property.
- (viii) The costs expended by the Commonwealth as a result of the violation, including administrative costs, costs of inspection, and costs of collection, transportation and analysis of samples.
- (ix) Other relevant factors.

(2) Consideration of the factors set forth in paragraph (1) are solely to determine the amount of a civil penalty. Levying a civil penalty does not preclude the Department from recovering actual costs or damages through available legal or equitable means.

(3) In determining a penalty for a violation, the Department will increase the civil penalty by at least 5% for each violation of the applicable laws for which the same 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 the previous violation has not expired.

(c) Each day of continuing violation shall be considered a separate violation for purposes of this subchapter. The cumulative effect of a continuing violation shall 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 shall 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.

Notes of Decisions*Automatic Penalties*

The Department of Environmental Protection abused its discretion by assessing civil penalties for violations of a compliance order based solely on an “automatic civil penalties” provision in the order, rather than considering the factors required under the Solid Waste Management Act, act of July 7, 1980 (P. L. 380), as amended, 35 P. S. §§ 6018.101—6018.1003 (Solid Waste Management Act), and its own regulations. *Stull v. Department of Environmental Protection*, 1999 Pa. Environ. LEXIS 65, (September 2, 1999).

Cross References

This section cited in 25 Pa. Code § 287.413 (relating to assessment of penalties; minimum penalties).

§ 287.413. Assessment of penalties; minimum penalties.

(a) This section sets forth minimum civil penalties for certain violations of the act and the regulations promulgated thereunder. The Department will assess a civil penalty under § 287.412 (relating to assessment of penalties; general) only if a civil penalty calculated under § 287.412 is greater in amount than the civil penalty calculated under this section.

(b) If a person or municipality operates a residual waste landfill or residual waste disposal impoundment 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 1/2 acre, or portion thereof. Intermediate acreages will be assessed at the next highest 1/2 acre. This subsection does not require the imposition of a civil penalty on persons or municipalities operating without a permit on July 4, 1992, if the persons or municipalities are in compliance with §§ 287.111 and 287.113 (relating to notice by impoundments and unpermitted processing or disposal facilities; and permitting procedure for unpermitted processing or disposal facilities).

(c) If a person or municipality applies residual waste to an area for which the person or municipality was not permitted to apply the residual waste, the Department will assess a minimum civil penalty of \$500 per acre, or portion thereof.

(d) 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, the regulations promulgated thereunder, the terms or conditions of a permit, or order of the Department, the Department will assess a minimum civil penalty of \$1,000.

(e) If a person or municipality generating residual waste fails to provide notice to the Department as required by § 287.52 (relating to biennial report), the Department will assess a minimum civil penalty of \$300.

(f) 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 entry and inspection, the Department will assess a minimum civil penalty of \$1,000.

(g) If a violation is included as a basis for an administrative order requiring cessation of solid waste management operations, or for any other 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 shall be assessed for each day during which the failure continues. This subsection does not limit 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 § 287.413 adopted July 2, 1992, effective July 4, 1992, 22 Pa.B. 3389; amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 235; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226559) to (226560)

Source

The provisions of this § 287.413 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199695) to (199696).

Cross References

This section cited in 25 Pa. Code § 287.412 (relating to assessment of penalties; general).

§ 287.414. 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 will be by registered or certified mail, or by personal service. If the service is tendered at the address of that person set forth in the application for a permit under the act or the regulations promulgated thereunder, or at an address at which that 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 the 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 when 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.

ENFORCEMENT

§ 287.421. 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 matters under investigation.

(2) Require a person or municipality engaged in the storage, transportation, processing, treatment or disposal of a residual waste to establish and maintain the records and make reports and furnish information as the Department may prescribe.

(3) Enter a building, property, premises or place where residual waste is generated, stored, processed, treated 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 provisions of the act, the environmental acts and the regulations thereunder.

(4) 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 will 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 employes and agents may conduct routine inspections as follows:

(1) For residual waste landfills and residual waste disposal impoundments, at least 12 times per year.

(2) For residual waste incinerators and resource recovery facilities, at least 2 times per year.

(3) For transfer facilities, composting facilities and processing facilities, at least 4 times per year.

(4) For facilities for the agricultural utilization of residual waste, or for utilization of residual waste for land reclamation, at least 2 times per year.

(5) For facilities and beneficial use areas subject to permit-by-rule under § 287.102 (relating to permit-by-rule), general permit for beneficial use or processing, or both, under §§ 287.611, 287.612, 287.621—287.625, 287.631, 287.632, 287.641—287.644, 287.651 and 287.652 and beneficial use areas under §§ 287.661—287.665, at least once per year.

(c) The Department, its employes and agents may conduct additional inspections, including follow-up inspections, of residual waste processing, treatment, disposal, storage, collection and transportation facilities or to observe practices or conditions 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.

(d) The Department, its employes and agents may also conduct inspections of residual waste processing, treatment, disposal, storage, collection or transportation activities or facilities, if the 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.
- (e) This section does not create a duty on the Department to conduct a minimum number of inspections per year at a facility.
- (f) This section does not create defenses to Department actions.

Source

The provisions of this § 287.421 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226560) to (226561).

§ 287.422. 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 the hearings or conferences are those set forth for permit applications in § 287.153 (relating to public comments).
- (b) The Department will publish in the *Pennsylvania Bulletin* notice of the revocation or suspension of a permit.

Subchapter G. DEMONSTRATION FACILITIES

- Sec.
- 287.501. Scope.
 - 287.502. Relationship to other requirements.
 - 287.503. Application requirements.
 - 287.504. Operating requirements.
 - 287.505. Public notice of analysis.
 - 287.506. Departmental evaluation of analysis.

Cross References

This subchapter cited in 25 Pa. Code § 287.601 (relating to scope); and 25 Pa. Code § 287.231 (relating to equivalency review procedure).

§ 287.501. Scope.

This subchapter applies to applications for residual waste processing or disposal facilities or parts of facilities, that are based on a new or unique technology for processing or disposing of residual waste. For purposes of this subchapter, a technology is 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 residual waste at permitted residual waste processing or disposal facilities provided the requirements of this subchapter are met.

Source

The provisions of this § 287.501 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226562).

§ 287.502. Relationship to other requirements.

(a) An operation that is approved under this subchapter is subject to this article.

(b) The Department may waive or modify any application and operating requirements in this article. The Department will not waive or modify subchapter A, §§ 287.124, 287.125, 287.151 and 287.128, Subchapter E or Subchapter F.

Source

The provisions of this § 287.502 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226562).

§ 287.503. Application requirements.

In addition to applicable application requirements set forth in this article, each 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 will 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 the 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.

Cross References

This section cited in 25 Pa. Code § 287.504 (relating to operating requirements).

§ 287.504. Operating requirements.

In addition to applicable operating requirements set forth in this article, each 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) Waste may not 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 § 287.223 (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 permittee shall immediately cease operations and begin clean up and removal actions if the Department determines that the facility is causing or likely to cause harm to public health, safety, welfare or to the environment.
- (5) Within 90 days from the expiration of the term of the permit, the permittee shall submit to the Department an analysis of the effectiveness of the technology, taking into consideration the factor set forth in § 287.503 (relating to application requirements).
- (6) If Chapter 288, 289, 291, 293, 295, 297 or 299 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." The fee will be based on the administrative costs of the Department under section 104 of the act (35 P. S. § 6018.104(8)).

Source

The provisions of this § 287.504 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226563) to (226564).

Cross References

This section cited in 25 Pa. Code § 287.505 (relating to public notice of analysis); and 25 Pa. Code § 287.506 (relating to Departmental evaluation of analysis).

§ 287.505. Public notice of analysis.

The Department will publish in the *Pennsylvania Bulletin* notice of the availability of the analysis submitted under § 287.504(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.

§ 287.506. Departmental evaluation of analysis.

(a) The Department will review the analysis submitted under § 287.504(4) (relating to operating requirements) and other relevant data to determine whether the facility satisfactorily achieved its objectives and whether 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 environment, the Department subsequently may grant a permit for the technology under this article without reference to this subchapter.

Subchapter H. BENEFICIAL USE**SCOPE**

Sec.

287.601. Scope.

**GENERAL PERMITS FOR PROCESSING OR BENEFICIAL USE,
OR BOTH, OF RESIDUAL WASTE OTHER THAN CERTAIN
USES OF COAL ASH AUTHORIZATION AND LIMITATIONS**

287.611. Authorization for general permit.

287.612. Nature of a general permit; substitution for individual applications and permits.

ISSUANCE OF GENERAL PERMITS

287.621. Application for general permit.

287.622. Completeness review.

287.623. Public notice and review period.

287.624. Approval or denial of an application.

287.625. Department initiated general permits.

287.626. Permit renewal.

CONTENT OF GENERAL PERMITS AND WAIVERS

287.631. Contents of general permits.

287.632. Waiver and modification of requirements.

REGISTRATION AND DETERMINATION OF APPLICABILITY

287.641. Inclusion in a general permit.

287.642. Determination of applicability.

287.643. Registration.

287.644. [Reserved].

COMPLIANCE

- 287.651. Investigations and corrective action.
287.652. Compliance with permit conditions, regulations and laws.

BENEFICIAL USE OF COAL ASH

- 287.661. [Reserved].
287.662. [Reserved].
287.663. [Reserved].
287.664. [Reserved].
287.665. [Reserved].
287.666. [Reserved].

Cross References

This subchapter cited in 25 Pa. Code § 290.2 (relating to scope); and 25 Pa. Code § 295.233 (relating to sale, utilization or disposal of compost).

SCOPE**§ 287.601. Scope.**

(a) This subchapter sets forth requirements for the processing and beneficial use of residual waste. Sections 287.611, 287.612, 287.621—287.625, 287.631, 287.632, 287.641—287.643, 287.651 and 287.652 establish procedures and standards for general permits for the beneficial use or processing of residual waste.

(b) An operation that is approved by or under this subchapter does not require an individual processing or disposal permit under this article. The requirements of Chapter 287, Subchapters A—G and Chapters 288, 289, 291, 293, 295, 297 and 299 are applicable to the extent required in § 287.632 (relating to waiver and modification of requirements).

Source

The provisions of this § 287.601 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial page (273490).

Cross References

This section cited in 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits).

**GENERAL PERMITS FOR PROCESSING OR BENEFICIAL USE,
OR BOTH, OF RESIDUAL WASTE OTHER THAN CERTAIN
USES OF COAL ASH AUTHORIZATION AND LIMITATIONS**

§ 287.611. Authorization for general permit.

(a) In accordance with §§ 287.612, 287.621—287.625, 287.631, 287.632, 287.641—287.644, 287.651 and 287.652 and this section, 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 residual waste when 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. At a minimum, 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.

(b) The Department may issue a general permit upon its own motion under § 287.625 (relating to Department initiated general permits) or upon an application from a person or municipality under §§ 287.621—287.624.

(c) The Department may modify, suspend, revoke or reissue general permits or coverage under a general permit under this subchapter as it deems necessary to prevent harm or threat of harm to the health, safety or welfare of the people or environment of this Commonwealth.

(d) 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 Article VIII (relating to municipal waste) or this article, whichever the Department determines appropriate. The Department will determine which article is appropriate based on factors including whether the facility is captive or noncaptive, and the proportion of municipal and residual waste. The requirements in this subchapter that apply to residual waste also apply to municipal waste when mixed with residual waste. A general permit for processing or beneficial use of combinations of sewage sludge and residual waste will be issued only under Chapter 271, Subchapter I (relating to beneficial use).

(e) The Department will not issue a general permit for the following:

- (1) A residual waste disposal impoundment.
 - (2) A residual waste landfill, a valley fill or other fill.
 - (3) The use of residual waste to fill open pits from coal or noncoal mining except for coal ash mixed with residual waste when the use does not present a safety hazard, will improve the overall quality of the area, is limited to the filling to natural contours of the land and does not present a threat to public health or the environment.
 - (4) The use of residual 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. A general permit may be issued for the beneficial use of waste as a construction material.
 - (5) The placement of waste oil or asbestos-containing waste on roads in this Commonwealth.
 - (6) Surface land disposal activities.
 - (7) The use of residual waste for construction or operations at a disposal facility.
- (f) The Department may issue a general permit on a regional or Statewide basis for a category of processing when processing is necessary to prepare a residual waste for beneficial use, or for a category of beneficial use, or both, for coal ash mixed with other residual waste.
- (g) The Department may issue a general permit on a regional or Statewide basis for the use, as construction material, of soil and other materials that do not meet the clean fill criteria.

Source

The provisions of this § 287.611 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (244318) and (226567).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); 25 Pa. Code § 287.625 (relating to Department initiated general permits); 25 Pa. Code § 287.631 (relating to contents of general permits); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.612. Nature of a general permit; substitution for individual applications and permits.

- (a) When the Department issues a general permit for a specified category of beneficial use or processing of residual waste on either a regional or Statewide basis, persons or municipalities who intend to beneficially use or process residual waste in accordance with the terms and conditions of the general permit and this subchapter may do so without filing an individual application for, and first obtaining, an individual permit, if the persons or municipalities comply with

§§ 287.601, 287.611, 287.621—287.625, 287.631, 287.632, 287.641—287.644, 287.651, 287.652 and this section.

(b) The use of an applicable general permit for the beneficial use or processing of residual waste shall satisfy the permit requirements set forth in § 287.101 (relating to general requirements for permit) 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 authorized to operate under the applicable general permit in accordance with § 287.641 (relating to inclusion in a general permit).

(c) Notwithstanding subsections (a) and (b), the Department may require a person or municipality authorized by 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 § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

ISSUANCE OF GENERAL PERMITS

§ 287.621. 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 residual waste or for a category of processing of residual waste, where 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 type of residual waste to be covered by the general permit, including physical and chemical characteristics of the waste. The chemical description shall contain an analysis meeting the requirements of § 287.132 (relating to chemical analysis of waste) for a sufficient number of samples of residual waste in the waste type to accurately represent the range of physical and chemical characteristics of the waste type.

(2) A description of the proposed type of beneficial use or processing activity to be covered by the general permit.

(3) A detailed narrative and schematic diagram of the production or manufacturing process from which the waste to be covered by the general permit is generated.

(4) 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.

(5) 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 all 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 all 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 residual 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. 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 residual waste to be beneficially used meets, at a minimum, the requirements of § 288.623(a) (relating to minimum requirements for acceptable waste). The Department may waive the requirements of § 288.623(a) that relate to secondary MCLs for this demonstration. The Department may waive or modify this provision for the use of oil and gas brines for road stabilization.

(vi) If the waste is to be used as a construction material, a description of the construction activities and detailed timelines for the prompt completion of the construction activities.

(6) If residual 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.

(c) An application for the issuance of a general permit shall be accompanied by a nonrefundable fee in the form of a check payable to the “Commonwealth of Pennsylvania” for \$2,000.

(d) The Department will not waive the bonding and public liability insurance requirements in Subchapter E (relating to bonding and insurance requirements) for waste tire operations, waste oil operations and contaminated soil operations, and for other general permit activities if the waste managed is potentially harmful or large quantities of waste are stored.

(e) An applicant for a general permit shall provide written notice to each municipality in which the applicant intends to operate, if a location is known, under a general permit. Proof of this notice, including a copy of the notice and a certified or registered mail returned receipt, shall be submitted to the Department. For mobile facilities, written notice shall be provided to the municipality where the primary processing or beneficial use activity is located.

Source

The provisions of this § 287.621 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial pages (226568) to (226570).

Cross References

This section cited in 25 Pa. Code § 287.5 (relating to public records and confidential information); 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); 25 Pa. Code § 287.632 (relating to waiver and modification requirements); 25 Pa. Code § 287.641 (relating to inclusion in a general permit); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.622. Completeness review.

(a) After receipt of an application for the issuance of a general permit, or an application for a determination of applicability under § 287.642 (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 60 days of receipt of the application, return it to the applicant, along with

a written statement of the specific analyses, fees, documents or 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).

Source

The provisions of this § 287.622 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199706) to (199707).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.623. 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 shall include:

(1) A brief description of the category of waste and the category of beneficial use or processing of residual waste which is identified in the application.

(2) The Departmental 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). Failure by the Department to comply with this timetable will not be construed to constitute 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.

Source

The provisions of this § 287.623 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199707) to (199708).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.624. Approval or denial of an application.

The Department may not issue a general permit for a category of beneficial use or processing of residual waste unless the applicant has affirmatively demonstrated the following:

(1) The application for the general permit is accurate and complete and the requirements of §§ 287.611, 287.612, 287.621—287.625, 287.631, 287.632, 287.641—287.644, 287.651 and 287.652 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 the proposed beneficial use or processing activities and afterwards. At a minimum, 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.

(3) For beneficial use general permits, the physical character and chemical composition of the residual 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 residual waste does not interfere with the proposed beneficial use.

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.625. Department initiated general permits.

(a) The Department may issue or modify a general permit for a category of beneficial use or processing of residual 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) shall include the following:

(1) A clear and specific description of the category of waste and the category of beneficial use or processing of residual waste eligible for coverage under the proposed general permit.

- (2) The standards in § 287.611(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.
 - (4) A brief description of the procedures for public comment on the general permit in accordance with this subchapter.
 - (5) The Departmental address and telephone number at which interested persons or municipalities may obtain further information and review a copy of the proposed general permit.
 - (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.
- (d) The Department may hold a public meeting or public hearing on the proposed general permit or proposed modifications to the general permit.
 - (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.

Source

The provisions of this § 287.625 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199708) to (199709).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.626. Permit renewal.

- (a) A person or municipality that plans to process or beneficially use residual waste after the expiration of the term set forth 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.
- (b) A permit renewal may include all persons or municipalities that have applied for renewal within the time period provided in subsection (a). A person or municipality that does not meet the time period provided 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.

Source

The provisions of this § 287.626 adopted January 24, 1997, effective January 25, 1997, 27 Pa.B. 521.

CONTENT OF GENERAL PERMITS AND WAIVERS

§ 287.631. Contents of general permits.

(a) Each 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 residual waste eligible for coverage under the general permit.

(2) The standards in § 287.611(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 § 287.641 (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 residual 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) 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 who conduct activities authorized by the general permit shall immediately notify the Department, on forms provided by the Department, of a change in the physical or chemical properties of the residual waste, including leachability, or of a change in the information required by § 287.641(f).

(ii) A requirement that persons or municipalities who 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 under the act 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 residual 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 residual waste.

(D) The generators of the residual waste and the manufacturing process that generates the residual 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. For mobile facilities, written notice shall be provided to the municipality where the primary processing or beneficial use activity is located.

(b) A general permit may include a requirement that persons or municipalities that conduct activities authorized by the general permit shall submit to the Department 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.

Source

The provisions of this § 287.631 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199709) to (199711).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.632. Waiver and modification requirements.

(a) An operation that is approved under this subchapter is subject to this article.

(b) The Department may waive or modify any application and operating requirements in this article, except the Department will not waive § 287.123 (relating to right of entry) and will not waive or modify Subchapter A, §§ 287.124, 287.125 and 287.128, Subchapter E in accordance with Section 287.621(d) or Subchapter F.

Source

The provisions of this § 287.632 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235. Immediately preceding text appears at serial page (226576).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

REGISTRATION AND DETERMINATION OF APPLICABILITY**§ 287.641. 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 residual 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 that 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 residual 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 the 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 § 287.132 (relating to chemical analysis of waste).

(5) For beneficial use general permits for which an evaluation was submitted under § 287.621(b)(5)(iv) (relating to application for general permit), a supplemental evaluation that meets the requirements of that subsection 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 residual 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 appropriate county, county planning agency and county health department, if one exists, 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.

Source

The provisions of this § 287.641 amended January 24, 1997, effective January 25, 1997, 26 Pa.B. 521. Immediately preceding text appears at serial pages (199712) to (199713).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); 25 Pa. Code § 287.631 (relating to contents of general permits); 25 Pa. Code § 287.642 (relating to determination of applicability); 25 Pa. Code § 287.643 (relating to registration); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.642. 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 § 287.641 (relating to inclusion in a general permit).

(b) An application for a determination of applicability 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 shall 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 § 287.641 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 Department 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).

Source

The provisions of this § 287.642 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199713) to (199715).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.622 (relating to completeness review); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.643. 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 § 287.641 (relating to inclusion in a general permit).

(b) A registration to operate under a general permit 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 in accordance with § 287.641 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.

Source

The provisions of this § 287.643 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial page (199715).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.644. [Reserved].

Source

The provisions of this § 287.644 reserved January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199715) to (199717).

Cross References

This section cited in 25 Pa. Code § 287.113 (relating to permitting procedure for unpermitted processing or disposal facilities); 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

COMPLIANCE

§ 287.651. Investigations and corrective action.

(a) Upon notification by a person beneficially using or processing residual waste under a general permit that there has been a change in the physical or

chemical properties of the residual 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 residual 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.

Source

The provisions of this § 287.651 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial page (199717).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

§ 287.652. Compliance with permit conditions, regulations and laws.

A person or municipality that beneficially uses or processes residual 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.

Source

The provisions of this § 287.652 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521. Immediately preceding text appears at serial pages (199717) to (199718).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections); 25 Pa. Code § 287.601 (relating to scope); 25 Pa. Code § 287.611 (relating to authorization for general permit); 25 Pa. Code § 287.612 (relating to nature of a general permit; substitution for individual applications and permits); 25 Pa. Code § 287.624 (relating to approval or denial of an application); and 25 Pa. Code § 297.1 (relating to scope).

BENEFICIAL USE OF COAL ASH

§ 287.661. [Reserved].

Authority

The provisions of this § 287.661 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.661 amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273506) to (273508).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections).

§ 287.662. [Reserved].**Authority**

The provisions of this § 287.662 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.662 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; amended January 12, 2001, effective January 13, 2001, 31 Pa.B. 235; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273508) to (273510).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections).

§ 287.663. [Reserved].**Authority**

The provisions of this § 287.663 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.663 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273510) to (273513).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections).

§ 287.664. [Reserved].**Authority**

The provisions of this § 287.662 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.644 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273514) to (273515).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections).

§ 287.665. [Reserved].**Authority**

The provisions of this § 287.665 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.665 amended January 24, 1997, effective January 25, 1997, 27 Pa.B. 521; reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial pages (273515) to (273516).

Cross References

This section cited in 25 Pa. Code § 287.421 (relating to administrative inspections).

§ 287.666. [Reserved].**Authority**

The provisions of this § 287.666 reserved under section 105(a) of the Solid Waste Management Act (35 P. S. § 6018.105(a)).

Source

The provisions of this § 287.666 reserved December 10, 2010, effective December 11, 2010, 40 Pa.B. 7062. Immediately preceding text appears at serial page (273516).

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