

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health (DOH), pursuant to the authority set forth in §§ 5 and 21 of the Water Pollution Control Act of 1984, as amended, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.04 and 8-103.20), and Mayor's Order 98-50, April 15, 1998, hereby gives notice of final rulemaking action taken by DOH on October 4, 2005 to amend Chapter 11 of Title 21 of the District of Columbia Municipal Regulations (DCMR), (Water Quality Standards). This rulemaking replaces 21 DCMR Chapter 11, Water Quality Standards, §§ 1100 to 1106, 1158, and 1199. Ground water regulations at §§ 1151 to 1157 are not being amended.

The Environmental Health Administration, Water Quality Division, conducted a triennial review of the water quality standards as required by the Water Pollution Control Act of 1984 and the Federal Clean Water Act. On March 18, 2005, DOH published the Notice of Proposed Rulemaking in the D.C. Register (52 DCR 2744) which revised the criteria for the classes of beneficial uses of the District's waters by adding narrative criteria for Class C waters; added numeric criteria for an additional 34 constituents including E. coli; and updated the numeric criteria for over 100 constituents. The rulemaking also added several definitions.

Notice of the proposed rulemaking was sent directly to interested parties. On May 3, 2005, DOH conducted a public hearing to solicit comments on the rulemaking. DOH carefully considered the comments received from the public for this final rulemaking. The final version of these rules contains modifications that were not present in the Notice of Proposed Rulemaking. These modifications serve to clarify the intent, meaning or application of the rules, but no substantive alterations have been made to the proposed rulemaking.

These final rules will take effect upon publication of this notice in the D.C. Register.

Title 21 of the District of Columbia Municipal Regulations, Chapter 11, Water Quality Standards, is amended as follows:

A. Sections 1100 to 1106 are amended to read as follows:

1100 PURPOSE AND SCOPE

1100.1 This chapter establishes the revised Water Quality Standards (WQS) for the waters of the District of Columbia, as authorized by section 5 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.*).

1101 SURFACE WATERS

1101.1 For the purposes of the water quality standards, the surface waters of the District shall be classified on the basis of their (i) current uses, and (ii) future uses to which the waters will be restored. The categories of beneficial uses for the surface waters of the District shall be as follows:

Categories of Uses that

Determine Water Quality Standards

Classes of Water

Primary contact recreation	A
Secondary contact recreation and aesthetic enjoyment	B
Protection and propagation of fish, shellfish, and wildlife	C
Protection of human health related	D
to consumption of fish and shellfish	
Navigation	E

1101.2 The surface waters of the District are designated for beneficial use classes according to the categories delineated in subsection 1101.1 as follows:

CLASSIFICATION OF THE DISTRICT'S WATERS

<u>Surface Waters of the District</u>	USE CLASSES	
	<u>Current Use</u>	<u>Designated Use</u>
Potomac River	B, C, D, E	A, B, C, D, E
Potomac River tributaries (except as listed below)	B, C, D	A, B, C, D
Battery Kemble Creek	B, C, D	A, B, C, D
C & O Canal	B, C, D, E	A, B, C, D, E
Rock Creek	B, C, D, E	A, B, C, D, E
Rock Creek tributaries	B, C, D, E	A, B, C, D, E
Tidal Basin	B, C, D, E	A, B, C, D, E
Washington Ship Channel	B, C, D, E	A, B, C, D, E
Oxon Run	B, C, D	A, B, C, D
Anacostia River	B, C, D, E	A, B, C, D, E
Anacostia River tributaries (except as listed below)	B, C, D	A, B, C, D
Hickey Run	B, C, D	B, C, D

CLASSIFICATION OF THE DISTRICT'S WATERS

<u>Surface Waters of the District</u>	<u>USE CLASSES</u>	
	<u>Current Use</u>	<u>Designated Use</u>
Watts Branch	B, C, D	B, C, D
Wetlands	C, D	C, D

1101.3

The Director may remove a designated use, establish a partial use, or establish sub-categories of a use for a particular surface water segment or body if a use attainability analysis can demonstrate that attaining the designated use is not feasible because:

- (a) Naturally occurring pollutant concentrations prevent the attainment of the use;
- (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating the District's water conservation requirements to enable uses to be met;
- (c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
- (d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or, to operate the modification in a way that would result in the attainment of the use;
- (e) Physical conditions related to the natural features of the waterbody, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or
- (f) Controls more stringent than those required by sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread economic and social impact.

1101.4

A designated use specified in section 1101 may not be removed, and a partial use that involves the removal of the designated use, may not be established if:

- (a) The use is actually attained in the surface water segment or body on or

after November 28, 1975, unless a use requiring more stringent criteria is added; or

- (b) The uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Federal Clean Water Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

1101.5 If a permittee requests the Director to conduct a use attainability analysis and provides a reasonable basis for the need, the Director shall:

- (a) Conduct a public meeting in the watershed of the affected segment or waterbody to inform the public of the nature of the use change requested and the basis of the request, and solicit the opinions and views of the public prior to determining whether to conduct a use attainability analysis;
- (b) Inform the permittee and the public of the decision;
- (c) Inform the permittee of the approximate costs of the analysis and the schedule. The permittee shall pay the costs of performing the analysis, in the amount specified by the Director;
- (d) Not allow the permittee to perform the analysis;
- (e) Form an advisory group of citizens and affected parties who will meet periodically during the course of the study;
- (f) Hold a public hearing concerning the preliminary finding of the use attainability analysis prior to concluding the study;
- (g) Submit the analysis to the United States Environmental Protection Agency (EPA) for review and approval, if the Director determines that a modification or change in the uses of the segment or waterbody is justified; and
- (h) Modify or remove the use in accordance with federal and District procedures for revising water quality standards upon receipt of approval by the EPA.

1102 ANTIDEGRADATION POLICY

- 1102.1 **TIER I:** Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- 1102.2 **TIER II:** If the water quality of the surface waters of the District exceeds the water quality criteria necessary to sustain the existing uses, those waters shall be maintained at that quality. The water quality will not be allowed to degrade unless the District finds, after full satisfaction of the intergovernmental coordination and public participation of the District's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing the degradation to lower water quality, the District shall ensure water quality adequate to protect existing uses fully. Further, the District shall ensure that the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for nonpoint source control.
- 1102.3 **TIER III:** Where high quality waters constitute an outstanding national resource, such as waters of the national and District parks and wildlife refuges and waters of exceptional recreational or ecological significance, those waters shall be designated Outstanding National Resource Waters (ONRW) and the water quality in the ONRW shall be maintained, protected and designated as below:
- (a) New point and nonpoint source discharges, treated or otherwise, shall be prohibited in these segments;
 - (b) Increases in loadings or new pollutants from existing point and nonpoint source discharges shall be prohibited in these segments;
 - (c) Short-term degradation of the water quality shall be permitted after the permittee provides an opportunity for public participation; and submits to the Department a report that describes the matter on which the public was consulted; summarizes the views, significant comments, criticisms and suggestions of the public and other local and federal government agencies; and sets forth the specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public and other local and federal government agencies. However, all practical means of minimizing the degradation shall be implemented; and
 - (d) Designation of ONRWs shall be adopted after full satisfaction of the intergovernmental coordination of the District's agencies and public participation provisions of the District's continuing planning process as required in 40 CFR Part 130.

- 1102.4 **SPECIAL WATERS OF THE DISTRICT OF COLUMBIA (SWDC):** Any segment or segments of the surface waters of the District that are of water quality better than needed for the current use or have scenic or aesthetic importance shall be designated as Special Waters of the District of Columbia (SWDC). The water quality in SWDC designated segments of the District's surface waters shall be maintained at or above the current level by implementing the following:
- (a) Existing nonpoint source discharges, storm water discharges and storm sewer discharges to SWDC segments shall be controlled through implementation of best management practices and regulatory programs;
 - (b) Construction or development projects, such as roads, bridges, and bank stabilization of the streams in which a SWDC designated segment is located, which may lead to pollution of the water, shall be permitted on a case-by-case basis to ensure that there are no long-term adverse water quality effects and that no impairment of the designated uses of the segment occurs; or
 - (c) Short term degradation of water quality in a SWDC segment due to construction projects may be permitted provided that prior notice is given to the public and other local and federal government agencies, and provided that the builder of the construction project submits a report to the Department which summarizes the views, significant comments, criticisms and suggestions of the public and other local and federal government agencies; and sets forth the specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public and other local and federal government agencies.
- 1102.5 The following waters of the District shall be designated as SWDC segments:
- (a) Rock Creek and its tributaries, and
 - (b) Battery Kemble Creek and its tributaries.
- 1103 **WETLANDS**
- 1103.1 In a wetland, the numerical and the narrative criteria shall be applied to the column of water above the wetland in accordance with the designated use.
- 1103.2 Wetlands with rooted vascular aquatic vegetation, except those specifically constructed or created as waste water treatment devices and except as provided in D.C. Official Code §§ 8-103.03(d) and 8-103.06(a)(3), shall be protected from significant adverse hydrologic modifications, excessive sedimentation, deposition of toxic substances in toxic amounts, nutrient imbalances, and other adverse anthropogenic impacts.

1104 STANDARDS

- 1104.1 The surface waters of the District shall be free from substances in amounts or combinations that do any one of the following:
- (a) Settle to form objectionable deposits;
 - (b) Float as debris, scum, oil, or other matter to create a nuisance;
 - (c) Produce objectionable odor, color, taste, or turbidity;
 - (d) Cause injury to, are toxic to, or produce adverse physiological or behavioral changes in humans, plants, or animals;
 - (e) Produce undesirable or nuisance aquatic life or result in the dominance of nuisance species; or
 - (f) Impair the biological community that naturally occurs in the waters or depends upon the waters for its survival and propagation.
- 1104.2 For the waters of the District with multiple designated uses, the most stringent standards or criteria shall govern.
- 1104.3 Class A waters shall be free of discharges of untreated sewage, litter and unmarked submerged or partially submerged man-made structures that would constitute a hazard to the users of Class A waters.
- 1104.4 The aesthetic qualities of Class B waters shall be maintained. Construction, placement or mooring of facilities not primarily and directly water oriented is prohibited in, on, or over Class B waters unless:
- (a) The facility is for the general public benefit and service, and
 - (b) Land based alternatives are not available.
- 1104.5 Class C streams shall be maintained to support aquatic life and shall not be placed in pipes.
- 1104.6 Within tidally influenced Class C waters, concentrations of chlorophyll *a* in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions or otherwise render tidal waters unsuitable for designated uses.

- 1104.7 Class E waters shall be free of unmarked submerged or partially submerged man-made objects that pose a hazard to users of these waters.
- 1104.8 Unless otherwise stated, the numeric criteria that shall be met to attain and maintain designated uses are as follows (Tables 1 through 3):

Table 1

Constituent	Criteria for Classes		
	A	B	C
Bacteriological (MPN/100 mL)			
E. coli ¹			
Geometric Mean (Maximum 30 day geometric mean for 5 samples)	126		
Single Sample Value	410		
Fecal coliform ² (Maximum 30 day geometric mean for 5 samples)	200	1000	
Physical			
Dissolved oxygen ³ (mg/L)			
February 1 through May 31			
7-day mean			6.0
Instantaneous minimum			5.0
June 1 through January 31			
30-day mean			5.5
7-day mean			4.0
Instantaneous minimum ⁴			3.2
Temperature (°C)			
Maximum			32.2
Maximum change above ambient			2.8
PH			
Greater than	6.0	6.0	6.0
And less than	8.5	8.5	8.5
Turbidity increase above ambient (NTU)	20	20	20
Secchi Depth ^{3,5} (m)(seasonal segment average)			
April 1 through October 31			0.8
Total dissolved gases (maximum % saturation)			110
Hydrogen sulfide (maximum µg/L)			2.0
Oil & grease (mg/L)			10.0
Biological			
Chlorophyll <i>a</i> ^{3,5} (µg/L)(seasonal segment average)			
July 1 through September 30			25

Notes:

¹ This criterion shall apply to E. coli bacteria determined by the Director to be of non-

wildlife origin based on best scientific judgment using available information. The geometric mean criterion shall be used for assessing water quality trends and for permitting. The single sample value criterion shall be used for assessing water quality trends only.

² Fecal coliform shall continue to be used as a standard until December 31, 2007.

³ Attainment of the dissolved oxygen, water clarity and Chlorophyll *a* water quality criteria that apply to tidally influenced Class C waters will be determined following the guidelines documented in the 2003 United States Environmental Protection Agency publication: Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll *a* for the Chesapeake Bay and its Tidal Tributaries, EPA-903-R-03-002, April 2003.

⁴ At temperatures greater than 29°C, in tidally influenced waters, an instantaneous minimum dissolved oxygen concentration of 4.3 mg/L shall apply.

⁵ Shall apply to tidally influenced waters only.

Table 2

Constituent ¹	Criteria for Classes		
	C		D ²
	CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Trace metals and inorganics in µg/L, except where stated otherwise (see Notes below)			
Ammonia, total mg N/L	See Note 7	See Note 8	
Antimony, dissolved			640
Arsenic ³ , dissolved	150	340	0.14c
Cadmium ^{4,5} , dissolved	[I] ^{CF}	[I.A] ^{CF}	
Chlorine, total residual	11	19	
Chromium ⁴ , hexavalent, dissolved	11 ^{CF}	16 ^{CF}	
Chromium ^{4,5} , trivalent, dissolved	[II] ^{CF}	[II.A] ^{CF}	
Copper ^{4,5} , dissolved	[III] ^{CF}	[III.A] ^{CF}	
Cyanide, free	5.2	22	140
Iron, dissolved	1000		
Lead ^{4,5} , dissolved	[IV] ^{CF}	[IV.A] ^{CF}	
Mercury ⁴ , total recoverable	0.77	1.4	0.15
Methylmercury (mg/kg, fish tissue residue)			0.3
Nickel ^{4,5} , dissolved	[V] ^{CF}	[V.A] ^{CF}	4600
Selenium, total recoverable	5	20	4200
Silver ^{4,5} , dissolved		[VI] ^{CF}	65000
Thallium, dissolved			0.47
Zinc ^{4,5} , dissolved	[VII] ^{CF}	[VII] ^{CF}	26000

Notes:

¹ For constituents without numerical criteria, standards have not been developed at this time. However, the National Pollutant Discharge Elimination System (NPDES) permitting authority shall address constituents without numerical standards in NPDES permit actions by using the narrative criteria for toxics contained in these water quality standards.

² The Class D Human Health Criteria for metals will be based on Total Recoverable metals.

³ The letter "c" after the Class D Human Health Criteria numeric value means that the criteria is based on carcinogenicity of 10^{-6} risk level.

⁴ The superscript "CF" means that the criterion derived from the formula under Note 5 is multiplied by the conversion factor in **Table 2a** as specified in subsection 1105.10:

Table 2a. Conversion Factors

Constituent	CCC	CMC
Cadmium	$1.101672 - [(\ln \text{hardness})(0.041838)]$	$1.136672 - [(\ln \text{hardness})(0.041838)]$
Chromium III	0.860	0.316
Chromium VI	0.962	0.982
Copper	0.960	0.960
Lead	$1.46203 - [(\ln \text{hardness})(0.145712)]$	$1.46203 - [(\ln \text{hardness})(0.145712)]$
Mercury	0.85	0.85
Nickel	0.997	0.998
Silver	--	0.85
Zinc	0.986	0.978

⁵ The formulas for calculating the criterion for the hardness dependent constituents indicated above are as follows:

[I] The numerical CCC criterion for cadmium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.7409[\ln(\text{hardness})]-4.719)}$$

[I.A] The numerical CMC criterion for cadmium in $\mu\text{g/L}$ shall be given by:

$$e^{(1.0166[\ln(\text{hardness})]-3.924)}$$

[II] The numerical CCC criterion for trivalent chromium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8190[\ln(\text{hardness})]+0.6848)}$$

[II.A] The numerical CMC criterion for trivalent chromium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8190[\ln(\text{hardness})]+3.7256)}$$

[III] The numerical CCC criterion for copper in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8545[\ln(\text{hardness})]-1.702)}$$

[III.A] The numerical CMC criterion for copper in $\mu\text{g/L}$ shall be given by:

$$e^{(0.9422[\ln(\text{hardness})]-1.700)}$$

[IV] The numerical CCC criterion for lead in $\mu\text{g/L}$ shall be given by:

$$e^{(1.2730[\ln(\text{hardness})]-4.705)}$$

[IV.A] The numerical CMC criterion for lead in $\mu\text{g/L}$ shall be given by:

$$e^{(1.2730[\ln(\text{hardness})]-1.460)}$$

[V] The numerical CCC criterion for nickel in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8460[\ln(\text{hardness})]+0.0584)}$$

[V.A] The numerical CMC criterion for nickel in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8460[\ln(\text{hardness})]+2.255)}$$

[VI] The numerical CMC criterion for silver in $\mu\text{g/L}$ shall be given by:

$$e^{(1.7200[\ln(\text{hardness})]-6.590)}$$

[VII] The numerical CCC criterion for zinc in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8473[\ln(\text{hardness})]+0.884)}$$

[VII.A] The numerical CMC criterion for zinc in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8473[\ln(\text{hardness})]+0.884)}$$

⁶ Hardness in the equations (I) through (VII.A) in Note 5 above shall be measured as mg/L of Calcium Carbonate (CaCO_3). The minimum hardness allowed for use in those equations shall not be less than 25 mg/L, as CaCO_3 , even if the actual ambient hardness is less than 25 mg/L as CaCO_3 . The maximum hardness value allowed for use in those equations shall not exceed 400 mg/L, as CaCO_3 , even if the actual ambient hardness is greater than 400 mg/L as CaCO_3 .

⁷ Criteria Continuous Concentration (CCC) for Total Ammonia:

- (a) The CCC criterion for ammonia (in mg N/L) (i) shall be the thirty (30)-day average concentration for total ammonia computed for a design flow specified in subsection 1105.5; and (ii) shall account for the influence of the pH and temperature as shown in Table 2b and Table 2c. The highest four (4)-day average within the thirty (30)-day period shall not exceed 2.5 times the CCC.
- (b) The CCC criterion in **Table 2b** for the period March 1st through June 30th was calculated using the following formula, which shall be used to calculate unlisted values: $\text{CCC} = [(0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))] \times \text{MIN}(2.85, 1.45)$

$X 10^{0.028 \times (25-T)}$], where MIN indicates the lesser of the two values (2.85, $1.45 \times 10^{0.028 \times (25-T)}$) separated by a comma.

- (c) The CCC criterion in **Table 2c** for the period July 1st through February 28/29th, was calculated using the following formula, which shall be used to calculate unlisted values: $CCC = [(0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))] \times [1.45 \times 10^{0.028 \times (25-MAX(T,7))}]$, where MAX indicates the greater of the two values (T,7) separated by a comma.

Table 2b. Total Ammonia (in milligrams of Nitrogen per liter) CCC criterion for various pH and temperatures for March 1st through June 30th:

pH	Temperature (°C)									
	0	14	16	18	20	22	24	26	28	30
6.50	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.60	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.70	6.44	6.44	5.86	5.15	4.52	3.98	3.42	3.00	2.64	2.32
6.80	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.90	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.00	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.10	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.20	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.30	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.40	4.73	4.73	4.30	3.97	3.49	3.06	2.69	2.37	2.08	1.83
7.50	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.60	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.70	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.80	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.90	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.00	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.10	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.20	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.30	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.40	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.50	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.60	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.70	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.80	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.208
8.90	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.00	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

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Table 2c. Total Ammonia (in milligrams of Nitrogen per liter) CCC criterion for various pH and temperatures for July 1st through February 28th/29th:

pH	Temperature (°C)									
	0-7	8	9	10	11	12	13	14	15*	16*
6.50	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.60	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.70	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.80	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.90	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.00	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.10	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.20	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.30	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.40	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.50	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.60	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.70	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.80	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.90	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.00	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.10	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.20	2.91	2.73	2.56	2.4	2.25	2.11	1.98	1.85	1.74	1.63
8.30	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.40	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.50	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.990
8.60	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.70	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.80	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.90	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.00	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

*At 15°C and above, the criterion for July 1st through February 28th/29th is the same as the criterion for March 1st through June 30th.

⁸ Criteria Maximum Concentration (CMC) for Total Ammonia:

- (a) The CMC criterion for total ammonia (in mg N/L) (i) shall be the one (1)-hour average concentration for total ammonia, computed for a design flow specified in subsection 1105.5; and (ii) shall account for the influence of the pH as shown in Table 2d.
- (b) The CMC criterion was calculated using the following formula, which shall be used to calculate unlisted values: $CMC = [(0.411/(1+10^{7.204-pH})) + [58.4/(1+10^{pH-7.204})]]$.

Table 2d. Total Ammonia (in milligrams of Nitrogen per liter) CMC criterion for various pH:

pH	CMC	pH	CMC	pH	CMC	pH	CMC
6.50	48.8	7.20	29.5	7.90	10.1	8.60	2.65
6.60	46.8	7.30	26.2	8.00	8.40	8.70	2.20
6.70	44.6	7.40	23.0	8.10	6.95	8.80	1.84
6.80	42.0	7.50	19.9	8.20	5.72	8.90	1.56
6.90	39.1	7.60	17.0	8.30	4.71	9.00	1.32
7.00	36.1	7.70	14.4	8.40	3.88		
7.10	32.8	7.80	12.1	8.50	3.20		

Table 3

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics ($\mu\text{g/L}$)				
Acrolein	107028	10.0		290
Acrylonitrile	107131	700.0		0.25,c
Aldrin	309002	0.4	3.0	0.000050,c
Benzene	71432	1000		51.0,c
Carbon Tetrachloride	56235	1000		1.6,c
Chlordane	57749	0.0043	2.4	0.00081,c
Chlorinated benzenes (except Di)		25.0		
Chlorobenzene	108907			1600
1,2-Dichlorobenzene	95501	200		1300
1,3-Dichlorobenzene	541731	200		960
1,4-Dichlorobenzene	106467	200		190
Hexachlorobenzene	118741			0.00029,c
Pentachlorobenzene	608935			1.5
1,2,4,5-Tetrachlorobenzene	95943			1.1
1,2,4-Trichlorobenzene	120821			70
Chlorinated ethanes		50		
1,2-Dichloroethane	107062			37.0,c
Hexachloroethane	67721			3.3,c
1,1,2,2-Tetrachloroethane	79345			4.0,c
1,1,2-Trichloroethane	79005			16.0,c
Chlorinated naphthalene				
2-Chloronaphthalene	91587	200		1600
Chlorinated phenols				
2-Chlorophenol	95578	100		150

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics ($\mu\text{g/L}$)				
2,4-Dichlorophenol	120832	200		290.0
Pentachlorophenol ³	87865	[I]	[I.A]	3.0,c
2,4,5-Trichlorophenol	95954			3600
2,4,6-Trichlorophenol	88062			2.4,c
Chloroalkyl ethers		1000		
Bis(2-Chloroethyl)Ether	111444			0.53,c
Bis(2-Chloroisopropyl)Ether	108601			65,000
Bis(Chloromethyl)Ether	542881			0.00029
3,3-Dichlorobenzidine	91941	10		0.028,c
Dichloroethylenes		1000		
1,1-Dichloroethylene	75354			7,100,c
1,2-Trans-Dichloroethylene	156605			10,000
1,2-Dichloropropane	78875	2000		15,c
Dichloropropenes		400		
1,3-Dichloropropene	542756			21
Dieldrin	60571	0.056	0.24	0.000054,c
2,4-Dimethylphenol	105679	200		850
2,4-Dinitrotoluene	121142	33		3.4,c
Dioxin (2,3,7,8-TCDD)	1746016			0.0000000051,c
1,2-Diphenylhydrazine	122667	30		0.20,c
Endosulfan		0.056	0.22	89
Alpha-Endosulfan	959988	0.056	0.22	89
Beta-Endosulfan	33213659	0.056	0.22	89
Endosulfan sulfate	1031078			89
Endrin	72208	0.036	0.086	0.060
Endrin aldehyde	7421934			0.30
Ethylbenzene	100414	40		2,100
Halomethanes		1000		
Bromoform	75252			140,c
Chloroform	67663	3000		470.0,c
Chlorodibromomethane	124481			13.0,c
Dichlorobromomethane	75274			17.0,c
Methyl Bromide	74839			1,500
Methyl Chloride	74873			
Methylene chloride	75092			590,c
Heptachlor	76448	0.0038	0.52	0.000079,c
Heptachlor epoxide	1024573	0.0038	0.52	0.000039,c
Hexachlorobutadiene	87683	10		18.0,c

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics ($\mu\text{g/L}$)				
Hexachlorocyclohexane				
alpha-BHC	319846			0.0049,c
beta-BHC	319857			0.017,c
gamma-BHC (Lindane)	58899	0.08	0.95	1.8,c
Hexachlorocyclopentadiene	77474	0.5		1,100
Isophorone	78591	1000		960,c
Manganese	7439965			100
Methoxychlor	72435	0.03		
Mirex	2385855	0.001		
Naphthalene	91203	600		
Nitrobenzene	98953	1000		690
Nitrophenols		20		
2-Methyl-4,6- Dinitrophenol	534521			280
2,4-Dinitrophenol	51285			5,300
Dinitrophenols	25550587			5,300
Nitrosamines		600		1.24
N-Nitrosodibutylamine	924163			0.22
N-Nitrosodiethylamine	55185			1.24
N-Nitrosodimethylamine	62759			3.0,c
N-Nitrosodi-n-Propylamine	621647			0.51,c
N-Nitrosodiphenylamine	86306			6.0,c
N-Nitrosopyrrolidine	930552			34,c
Organochlorides				
4,4'-DDD	72548	0.001	1.1	0.00031,c
4,4'-DDE	72559	0.001	1.1	0.00022,c
4,4'-DDT	50293	0.001	1.1	0.00022,c
Organophosphates				
Guthion	86500	0.01		
Malathion	121755	0.1		
Parathion	56382	0.013	0.065	
Phenol	108952			1,700,000
Phthalate esters		100		
Bis(2-Ethylhexyl) Phthalate	117817			2.2,c
Butylbenzyl Phthalate	85687			1,900
Diethyl Phthalate	84662			44,000
Dimethyl Phthalate	131113			1,100,000
Di-n-Butyl Phthalate	84742			4,500
Polychlorinated biphenyls ⁴		0.014		0.000064,c

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics ($\mu\text{g/L}$)				
Polynuclear aromatic hydrocarbons				
Acenaphthene	83329	50		990
Acenaphthylene	208968			
Anthracene	120127			40,000
Benzidine	92875	250		0.00020,c
Benzo(a)Anthracene	56553			0.018,c
Benzo(a)Pyrene	50328			0.018,c
Benzo(b)Fluoranthene	205992			0.018,c
Benzo(k)Fluoranthene	207089			0.018,c
Chrysene	218019			0.018,c
Dibenzo(a,h) Anthracene	53703			0.018,c
Fluoranthene	206440	400		140.0
Fluorene	86737			5,300
Indeno(1,2,3-cd) Pyrene	193395			0.018,c
Phenanthrene	85018			
Pyrene	129000			4,000
Tetrachloroethylene	127184	800		3.3,c
Toluene	108883	600		15000
Toxaphene	8001352	0.0002	0.73	0.00028,c
Tributyltin (TBT)	--	0.072	0.46	
Trichloroethylene	79016	1000		30.0,c
Vinyl chloride	75014			2.4,c

Notes:

¹ For constituents without numerical criteria, standards have not been developed at this time. However, permit writers shall address these constituents in NPDES permit actions using the narrative criteria for toxics contained in these water quality standards.

² The letter "c" after the Class D Human Health Criteria numeric value means that the criterion is based on carcinogenicity of 10^{-6} risk level.

³ The formulas for calculating the concentrations of substances indicated above are as follows:

[I] The numerical CCC criterion for pentachlorophenol in $\mu\text{g/L}$ shall be given by:

$$e^{(1.005(\text{pH}) - 5.134)}$$

[I.A] The numerical CMC criterion for pentachlorophenol in $\mu\text{g/L}$ shall be given by:

$$e^{(1.005(\text{pH}) - 4.869)}$$

⁴ The polychlorinated biphenyls (PCB) criterion applies to total PCBs (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)

1105 IMPLEMENTATION AND APPLICABILITY

- 1105.1 Where the discharge of pollutants in quantities that prevent the attainment of, or violates, the surface water quality standards, the Director may grant a variance from a water quality standard that is the basis of a water quality-based effluent limitation included in a National Pollutant Discharge Elimination System (NPDES) permit. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect, or require the Director to modify, the corresponding water quality standard for the waterbody as a whole. A variance may be granted only if the discharger can justify every three (3) years through a public hearing process that attaining the water quality standard is not feasible because at least one (1) of the following conditions exists:
- (a) Irretrievable and irreversible conditions that prevent the attainment of the standards;
 - (b) The application of technology sufficient to attain the standards is more stringent than that required by sections 301(b) and 306 of the Federal Clean Water Act, and the application of the technology would result in substantial and widespread adverse economic and social impacts; or
 - (c) One or more of the reasons specified in subsection 1101.3.
- 1105.2 The Director shall not grant a variance from the water quality standards if:
- (a) The variance will result in loss of protection for an existing use, or
 - (b) The permittee fails to make the demonstrations required under subsection 1105.1.
- 1105.3 Variances approved by the Director shall include all permit conditions needed to implement those parts of the variance so approved. The permit conditions shall, at a minimum, require:
- (a) Compliance with an initial effluent limitation that, at the time the variance is granted, represents the level currently achievable by the permittee, and that is no less stringent than that achieved under the previous permit;
 - (b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions; and

- (c) A provision that allows the permitting authority to reopen and modify the permit based upon any triennial water quality standards revisions to the variance.

1105.4 The Director shall establish and incorporate into the water quality certification of the permittee's discharge permit, all conditions needed to implement the variance as determined pursuant to this section. A variance may be renewed, subject to the requirements of this section. As part of any renewal application, the permittee shall again demonstrate that attaining water quality standards is not feasible based on the requirements of subsection 1105.1. The permittee's application shall also contain information concerning the permittee's compliance with the conditions incorporated into its permit as part of the previous variance pursuant to this section. The Director may deny renewal of a variance if the permittee did not substantively comply with the conditions of the previous variance.

1105.5 The design flow to be used for establishing permit limitations for discharges to the District waters shall be as follows:

- (a) The numerical criteria for classes A, B, and C(CCC), as delineated in subsection 1104.8, shall not apply at flows less than the average seven-day (7-day) low flow, which has a probability of occurrence of once in ten (10) years;
- (b) The numerical criteria for class C(CMC), as delineated in subsection 1104.8, shall not apply at flows less than the average one-day (1-day) low flow, which has a probability of occurrence of once in ten (10) years;
- (c) For carcinogenic pollutants under class D, as delineated in subsection 1104.8, the design flow shall be the harmonic mean flow, and for noncarcinogenic pollutants under class D the design flow shall be the average thirty-day (30-day) low flow, which has the probability of occurrence of once in five (5) years. The categorization of pollutants to be carcinogenic or non carcinogenic is shown under the Class D column for Human Health Criteria;
- (d) The numerical criteria for clarity shall not apply at flows greater than the long-term seasonal average flow; and
- (e) For chlorophyll *a*, the design flow shall be the average seasonal flow for July 1 through September 30.

1105.6 High flow conditions in the District of Columbia waters are defined as follows:

- (a) For the Potomac River, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory to the Potomac River, or
 - (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (b) For the Anacostia River, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory to the Anacostia River, or
 - (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (c) For Rock Creek and tributaries, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory to Rock Creek, or
 - (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (d) For other tributaries to the Potomac and Anacostia Rivers, a flow equivalent to a five hundred percent (500%) increase in flow during a twenty-four (24) hour period, shall be considered a high flow.

1105.7

The Director may allow mixing zones for point source discharges of pollutants on a case-by-case basis, where it is demonstrated that allowing a small area impact will not adversely affect the waterbody as a whole. The following conditions shall apply:

- (a) In the nontidal waters, the permissible size of the mixing zone shall be determined by the ability of organisms to pass through the mixing zone and the size of the receiving waterbody;

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- (b) Mixing zones shall be free from discharged substances that will settle to form objectionable deposits; float to form unsightly masses; or produce objectionable color, odor, or turbidity;
- (c) A mixing zone, or two (2) or more mixing zones, shall not form a barrier to the movements of aquatic life, nor cause significant adverse impact on aquatic life in shallow areas that serve as a nursery;
- (d) The concentration of a substance in the mixing zone shall not be lethal to passing organisms, as determined by the appropriate EPA method;
- (e) Mixing zones shall be positioned in a manner that provides the greatest protection to aquatic life and the designated uses of the water;
- (f) Within the estuary, the cross-sectional area occupied by a mixing zone shall not exceed ten percent (10%) of the numerical value of the cross-sectional area of the waterway, and the width of the mixing zone shall not occupy more than one third (1/3) of the width of the waterway;
- (g) Within the estuary, mixing zones may move with the prevailing hydraulic and meteorological conditions;
- (h) The numerical standards for Criteria Continuous Concentration (CCC) in subsection 1104.8 must be met at the edge of the mixing zone and therefore the CMC criteria will be met within some portions of the mixing zone;
- (i) The mixing zone shall be implemented in accordance with the EPA Technical Support Document for Water Quality-Based Toxics Control, EPA-505-2-90-001, March 1991; and
- (j) The mixing zone shall be approved by the Director.

1105.8 Any permit issued pursuant to section 7 of the Water Pollution Control Act of 1984 (D.C. Official Code § 8-103.06) shall be based on the designated uses and other provisions of these water quality standards.

1105.9 When the Director requires a new water quality standard-based effluent limitation in a discharge permit, the permittee shall have no more than three (3) years to achieve compliance with the limitation, unless the permittee can demonstrate that a longer compliance period is warranted. A compliance schedule shall be included in the permit.

1105.10 The numerical criteria for dissolved cadmium, hexavalent chromium, trivalent

chromium, copper, lead, nickel, silver, and zinc shall be calculated by multiplying the criteria for these metals as specified in Table 2 of subsection 1104.8 by the EPA Conversion Factors specified in Appendix B of the EPA National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047, November 2002. This conversion is required because the numerical values for these metals in Table 2 of this Chapter were established for total recoverable metals, but are being used for dissolved metals.

1106 SITE-SPECIFIC STANDARDS

- 1106.1 If requested, the Director may allow a person to conduct a site-specific study to change the numerical criteria when at least one (1) of the following conditions exists:
- (a) The species, or endangered species, at the site are more or less sensitive than those included in the national criteria data set; or
 - (b) Physical or chemical characteristics of the site alter the biological availability or toxicity of the chemical.
- 1106.2 If the criteria in subsection 1104.8 are found to be unsuitable for the District waters based upon the conditions described in subsection 1106.1, when requested to do so, the Director may adopt site-specific criteria for Class C waters, except for mercury and selenium, or for Class D waters, only when a site-specific study necessitates.
- 1106.3 When requested to do so, based upon the conditions described in subsection 1106.1 and, if warranted, the Director shall allow site-specific studies to generate scientific information regarding:
- (a) The Water Effect Ratio for metals specific to the District waters;
 - (b) The sensitivities of the aquatic organisms prevalent in the District;
 - (c) The toxicity of chemicals to the fish in the District waters and related human health effects; and
 - (d) Any other compelling factors that merit consideration for changing the numerical standards in subsection 1104.8.
- 1106.4 A person or persons planning to conduct a site-specific study shall submit a complete plan of study to the Director for approval, and the site-specific study shall be carried out only after the Director approves the study in writing, subject to the requirements set forth in this section.

- 1106.5 The Director shall provide advance notice to all discharge permittees and applicants for discharge permits prior to the initiation of any site-specific study.
- 1106.6 All site-specific studies and adoption of site-specific criteria shall be subject to the following requirements:
- (a) Once the Director has approved the study, it shall be concluded in accordance with the approved plan;
 - (b) A person or persons conducting a site-specific study subject to subsection 1106.3 shall submit to the Director for review and approval all data, analyses, findings, reports, and other information the Director deems necessary;
 - (c) The Director shall seek review of the findings of the site-specific studies and other relevant information by the public, as well as by appropriate local and federal government agencies and consider their concerns before adopting any less stringent site-specific criterion based on those findings; and
 - (d) If the study concludes that a more stringent criterion is needed for Class C or D waters than provided in subsection 1104.8, then the Director shall modify the standards to reflect the more stringent level of protection.
- 1106.7 If a study is conducted to determine the Water Effect Ratio (WER) for metals and the criteria are in the dissolved form, the WER must be based on the dissolved fraction of the metals. If the study is conducted to determine the WER for metals and the criteria are in the total recoverable form, the WER must be based on the total recoverable fraction of the metals. If WERs are to be developed, EPA guidance Interim Guidance on Determination and Use of Water Effect Ratios for Metals, EPA-823-B-94-001, February 1994, shall be used and at a minimum, the following conditions shall be met unless the Director approves a deviation or alternate method:
- (a) If a WER study concludes that an existing criterion is not stringent enough, then the criterion shall be made more stringent;
 - (b) At least two (2) sensitive indicator species, a fish and at least one (1) invertebrate, shall be used to determine toxicity in laboratory water and water collected from the site;
 - (c) The LC₅₀ in the laboratory water must be comparable to the LC₅₀ data developed by EPA;
 - (d) Water samples collected from the site shall be representative of critical

low flow. A minimum of eight (8) samples per location per season shall be evaluated;

- (e) Samples shall be taken at the edge of the mixing zone unless multiple discharges are involved. At least one (1) sample shall be reasonably well mixed with the flow of the receiving water, or the sample shall be well outside the regulatory mixing zone;
- (f) Laboratory water shall be same as the water used by EPA and adjusted for site water characteristics and hardness;
- (g) The trace metal shall be added in the form of a highly soluble inorganic salt;
- (h) The chemical and physical characteristics, both dissolved and total recoverable metal concentrations, hardness, pH, alkalinity, suspended solids, organic carbon, temperature, and specific metal binding ligands (where known to be important), and any other water quality characteristic that affects bioavailability and toxicity of the water should be monitored during the toxicity tests;
- (i) A WER that is large or that is based on highly variable tests may be rejected;
- (j) The WER shall be the geometric mean of the two (2) species; and
- (k) All chemical, biochemical, biological, and other appropriate analyses shall be conducted using EPA-approved methods.

1106.8 If a site-specific study is conducted to determine the Class D Human Health Criteria and related human health effects, at a minimum, the study shall incorporate the following information:

- (a) Bioconcentration factors of the substances in the commonly consumed fish in the District;
- (b) Percent lipids in the commonly consumed fish in the District; and
- (c) Information regarding the consumption by the public of fish caught from the District waters.

1106.9 The determination of subsection 1106.8 (a) and (b) shall be made using EPA-approved methods.

1106.10 The criteria, based upon a site-specific study and information collected through

the study, shall be calculated using relations developed by EPA Technical Support Document for Water Quality-Based Toxics Control, EPA-505-2-90-001, March 1991, minus the component for drinking water, as follows:

- (a) For noncarcinogens:

$$\text{NEW CRITERIA} = (\text{RfD} \times \text{WT}) / (\text{FC} \times \text{L} \times \text{FM} \times \text{BCF})$$

where RfD is the reference dose from the EPA Integrated Risk Information System (IRIS) database, WT is seventy (70) kilograms, FC is the daily fish consumption by the exposed population in kilograms per day, L is the ratio of lipid fraction of fish tissue consumed to three percent (3%), FM is the food chain multiplier and BCF is the bioconcentration factor for fish with three percent (3%) lipid.

- (b) For carcinogens:

$$\text{NEW CRITERIA} = (\text{RL} \times \text{WT}) / (\text{q1}^* \times \text{FC} \times \text{L} \times \text{FM} \times \text{BCF})$$

where WT, FC, L, FM, and BCF are as stated above; RL is 10^{-6} and $q1^*$ is the carcinogenic potency factor from the EPA IRIS database.

1106.11

If the effluent limitation for a metal in a discharge permit is specified as "total recoverable", and the criterion for it in subsection 1104.8 is specified as "dissolved", either of the following two (2) approaches based on The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion, EPA-823-B-96-007, June 1996, may be used, subject to prior review and approval by the Director:

- (a) The criterion may be used as total recoverable for the purpose of establishing effluent limitations; or
- (b) A site-specific ratio between the dissolved and total recoverable metal may be developed by systematic monitoring and analysis of the effluent and of the receiving water at the edge of the mixing zone during periods that reflect the environmental conditions upon which the permit was issued. This ratio shall incorporate considerations to avoid toxicity to aquatic organisms from deposition to the sediment outside of the mixing zone. The ratio of dissolved to total recoverable metal shall then be used to determine the total recoverable effluent limits based on the dissolved metal criterion.

1106.12

The Director may establish additional requirements for adopting site-specific water quality standards.

B. Section 1158 is amended to read as follows:**1158 ENFORCEMENT**

- 1158.1.1 This chapter shall be enforced pursuant to the Water Pollution Control Act of 1984, as amended, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.15, 8-103.16, and 8-103.17), and the Water Pollution Enforcement Regulations, (21 DCMR Chapter 22).
- 1158.2 All laboratory examinations of samples collected to determine compliance with these water quality standards shall be performed in accordance the procedures approved by the United States Environmental Protection Agency.
- 1158.3 All field analyses and measurements of water to determine compliance with these water quality standards shall be conducted in accordance with standard procedures specified by the Director.
- 1158.4 Nothing in these water quality standards shall be interpreted as alleviating any discharger from meeting more stringent water quality standards of downgradient jurisdictions.
- 1158.5 Primary contact recreation shall be prohibited in the Potomac and Anacostia Rivers and Rock Creek until such time as the standards in subsection 1104.8 for Class A beneficial use are consistently maintained.

C. Section 1199 is amended to read as follows:**1199 DEFINITIONS**

- 1199.1 When used in this chapter, the following terms shall have the meanings ascribed:

Acute toxic - the concentration of a substance that is lethal to fifty percent (50%) of the test organisms within ninety-six (96) hours, also referred to as the LC₅₀.

Adverse natural conditions - an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Ambient - those conditions existing before or upstream of a source or incidence of pollution.

Anadromous fish - fish that spend most of their lives in saltwater but migrate into freshwater tributaries to spawn.

Aquatic Life - all animal and plant life including, but not limited to, rooted underwater grasses found in the District waters.

Background water quality - the levels of chemical, physical, biological, and radiological constituents or parameters in the water upgradient of a facility, practice, or activity and which have not been affected by that facility, practice, or activity.

Best management practices (BMPs) – schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the waters of the District. BMPs also include practices found to be the most effective and practical means of preventing or reducing point and non-point source pollution to levels that are compatible with water quality goals.

Contamination - an impairment of water quality by biological, chemical, physical, or radiological materials which lowers the water quality to a degree that creates a potential hazard to the environment or public health or interferes with a designated use.

Criteria - any of the group of physical, chemical, biological, and radiological water quality parameters and the associated numerical concentrations or levels that compose the numerical standards of the water quality standards and that define a component of the quality of the water needed for a designated use.

CCC or Criteria Continuous Concentration - the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (four-day (4-day) average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

CMC or Criteria Maximum Concentration - the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (one-hour (1-hour) average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

Consumption of Fish and Shellfish - the human ingestion of fish and shellfish, that are not chemically contaminated at a level that will cause a significant adverse health impact, caught from the District's waters.

Current use - the use that is generally and usually attained based upon the water quality in the waterbody.

Department - the Department of Health, or a successor agency.

Designated use - the use specified for the waterbody in these water quality standards whether or not they are being attained.

Director - the Director of the Department, or his or her designee.

Early warning value - a concentration that is a percentage of or practical quantitation limit, for a ground water quality criterion or enforcement standard.

EPA - United States Environmental Protection Agency.

Enforcement standard - the value assigned to a contaminant for the purpose of regulating an activity, which may be the same as the criterion for that contaminant.

Existing use - the use actually attained in the waterbody on or after November 28, 1975.

Federal Clean Water Act - the Federal Water Pollution Control Act, approved October 18, 1972 (86 Stat. 816; 33 U.S.C. § 1251 *et seq.*), as amended.

Ground water - underground water, excluding water in pipes, tanks, and other containers created or set up by people.

Harmonic mean flow - the number of daily flow measurements divided by the sum of the reciprocals of the flows. It is the reciprocal of the mean of the reciprocals.

High quality waters - waters of a quality that is better than needed to protect fishable and swimmable streams.

Landfill - a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading facility.

Landspreading disposal facility - a facility that applies sludge or other solid wastes onto the land or incorporates solid waste in the soil surface at greater than vegetative utilization and soil conditioners/immobilization rates.

LC₅₀ or lethal concentration - the numerical limit or concentration of a test material mixed in water that is lethal to fifty percent (50%) of the aquatic organisms exposed to the test material for a period of ninety-six (96) hours.

Load or Loading - the total quantity of a pollutant in a given period of time.

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Mixing zone - a limited area or a volume of water where initial dilution of a discharge takes place and where numerical water quality criteria may be exceeded but acute toxic conditions are prevented from occurring.

MPN - a statistically derived estimate of the "Most Probable Number" of bacteria colonies in a volume of one hundred milliliters (100 mL) water sample.

Narrative criteria - a condition that should not be attained in a specific medium to maintain a given designated use and that is generally expressed in a "free from" format.

Navigation - the designated use for certain District waters. This designation applies to waters that are subject to the ebb and flow of the tides, or waters that are presently used, may have been used, or may be used for shipping, travel, and transportation of interstate or foreign commerce by vessel.

Nonpoint source - any source from which pollutants are or may be discharged other than a point source.

Numerical criteria - the maximum level of a contaminant, or the minimum level of a constituent, or the acceptable range of a parameter in water to maintain a given designated use.

Permit or Permitted - a written authorization issued or certified by the Director under pertinent laws and regulations for an activity, facility, or entity to discharge, treat, store, or dispose of materials or wastes.

Point of compliance - the point or points where the water quality enforcement standard or criterion must not be exceeded.

Point source - any discrete source of quantifiable pollutants, including a municipal treatment facility discharge, residential, commercial or industrial waste discharge, a combined sewer overflow; or any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which contaminants are or may be discharged.

Pollution - the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

Pollutant - any substance that may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, or biological integrity of the waters of the District, including dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, hazardous wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment,

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rock, sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes.

Practical quantitation limit - the lowest concentration of a substance that generally can be determined by qualified laboratories within specified limits of precision and accuracy under routine laboratory operating conditions in the matrix of concern.

Primary contact recreation - those water contact sports or activities that result in frequent whole body immersion or involve significant risks of ingestion of the water. Such uses are not expected during times of high current velocity, floods, electrical storms, hurricanes, tornadoes, winter temperatures, heavy ice conditions and other adverse natural conditions.

Responsible party - any person who has caused or is causing pollution or has created or is creating a condition from which pollution is likely to occur.

Secondary contact recreation - those water contact sports or activities that seldom result in whole body immersion or do not involve significant risks of ingestion of the water.

Semi-anadromous fish - fish that spend most of their lives in tidally influenced low to medium salinity waters but migrate into freshwater tributaries to spawn.

Short term degradation - the period during which the waterbody may be degraded based on the nature of the pollutant and the degree of its environmental or human health impact, as determined by the Director on a case-by-case basis.

Solid waste - all putrescible and non-putrescible solid and semisolid wastes, including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This term also includes all liquid, solid, and semisolid materials that are not the primary products of public, private, industrial or commercial mining, and agricultural operations.

Standards - those regulations, in the form of numerical, narrative, or enforcement standards, that specify a level of quality of the waters of the District necessary to sustain the designated uses.

Surface impoundment - a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and that is designed to hold an accumulation of liquids or sludge.

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Surface waters - all rivers, lakes, ponds, wetlands, inland waters, streams, and all other water and water courses within the jurisdiction of the District of Columbia.

Tidally influenced waters - surface waters within the Potomac River, the Anacostia River and all embayments and tributaries to these rivers under the influence of tidal exchange.

Toxic substance - any substance or combination of substances that, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities, in the organism or its offspring.

Trend analysis - a statistical methodology used to detect net changes or trends in contaminant levels over time.

Water Effect Ratio or WER - the ratio of the site water LC₅₀ value to the laboratory water LC₅₀ value.

Waters of the District or District waters - flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems.

Wetland - a marsh, swamp, bog, or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation.

Wildlife - all animal life whether indigenous or migratory regardless of life stage including, but not limited to, birds, anadromous and semi-anadromous fish, shellfish, and mammals including sensitive species, that are found in or use the District waters.

1199.2 When used in this chapter, the following abbreviations shall have the meaning ascribed:

°C	-	degrees centigrade
CaCO ₃	-	Calcium Carbonate
CF	-	Conversion Factor
m	-	meter
mg/L	-	milligrams per liter
mg N/L	-	milligrams of Nitrogen per liter
mL	-	milliliter

MPN	-	Most Probable Number
NPDES	-	National Pollutant Discharge Elimination System
NTU	-	nephelometric turbidity units
$\mu\text{g/L}$	-	microgram per liter
WQS	-	water quality standards

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

HAZARDOUS WASTE MANAGEMENT REGULATIONS

The Director of the Department of Health hereby gives notice of final action to repeal the Hazardous Waste Regulations in chapters 40 through 54 of Title 20 of the District of Columbia Municipal Regulations (DCMR), and to replace them with the following Hazardous Waste Management Regulations, to be codified in chapters 42 and 43 of Title 20 DCMR.

The Director is adopting these rules pursuant to the following authorities:

- Section 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1305 (2001)), and Mayor's Order 2005-70, 52 DCR 5495 (2005);
- Sections 3 and 7 of the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-902(c) (2004 Supp.) and 41 DCR 3190 (1994)), and Mayor's Order 2000-54, 47 DCR 4734 (2000);
- Section 9 of the Solid Waste Facility Permit Act of 1995, effective February 27, 1996, as amended (D.C. Law 11-94; D.C. Official Code § 8-1058 (2001)), and paragraph (2) of Mayor's Order 98-53, 45 DCR 2700 (1998);
- Section 105 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.05 (2001)), and paragraph (2)(c) of Mayor's Order 2004-46, 51 DCR 4128 (2004); and
- Section 4908 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-737 (2004 Supp.)).

The Department published a Notice of Proposed Rulemaking on October 29, 2004, at 51 DCR 10,034. In addition, the proposed rules were submitted to the Council of the District of Columbia on October 22, 2004, *see* 51 DCR 10,162 (2004) (PR15-1121); however, the Council adjourned before the Council review period ended, necessitating a second Council review period. The Department received several minor comments in response to its first Notice, and made several changes in the rules. The Department published a second Notice of Proposed Rulemaking on March 4, 2005, at 52 DCR 2070. These rules were submitted to the Council on May 5, 2005, *see* 52 DCR 4735 (2005) (PR16-209), and deemed approved on September 23, 2005.

The Chief Financial Officer concluded in a memorandum to the Chairman of the Council on November 1, 2004, that funds are sufficient in the FY 2005 through FY 2008 budget and financial plan to implement the rules. As the changes to the first Notice of Proposed Rulemaking

were minor in nature, the Chief Financial Officer indicated that the second Notice of Proposed Rulemaking did not require a new fiscal impact statement and that the November 1, 2004, fiscal impact statement would suffice for the rulemaking.

These rules repeal the Hazardous Waste Regulations in 20 DCMR chapters 40 through 54, and replace them with the Hazardous Waste Management Regulations, to be codified in 20 DCMR chapters 41 and 42, bringing the District's regulations in line with the federal hazardous waste regulations. The rules establish criteria for determining what constitutes a hazardous waste; standards for generators, transporters, and owners and operators of treatment, storage, and disposal facilities; standards for used oil management; permitting procedures; inspection and enforcement procedures; and fees for hazardous waste management activities. They also retain the District's prohibitions against the burning, land disposal, and underground injection of hazardous waste. A detailed description of the changes in the rules can be found in the preamble to the notice of proposed rulemaking published at 52 DCR 2070 (2005).

The final rules do not differ in substance from the proposed rules. The Department has corrected several typographical errors in the proposed rules. In addition, the following corrections, indicated by using strike-through lettering for deletions, and bolded and underlined lettering for additions, have been made:

- Section 4263.5(a): The phrase "or its contractors" was inserted after the phrase "in a vehicle owned or operated by the utility" to reflect the fact that a public utility may employ contractors to transport the utility's own waste.
- Section 4263.5(c): The cross-reference to § 4270.2(a)(4) is corrected to § 4264.2(a)(4).
- Section 4264.6: The numbering of subsection, which was erroneously numbered § 4265.6, was corrected to § 4264.6.
- Section 4271.3(b) and (c): The terminology relating to the suspension and revocation of permits was changed to mirror the language used in the federal regulation, consistent with § 4201.8(f).
- Section 4312.2: The numbering of this subsection, which was erroneously numbered § 4312.3, was corrected to § 4312.2.
- Section 4314.1 This provision was clarified to distinguish cost recovery actions brought under the Hazardous Waste Management Act from cost recovery actions brought under the Illegal Dumping Act.
- Section 4315.3: The numbering of this subsection, which was erroneously numbered § 4315.4, was corrected to § 4315.3.

Section 4390.14: This subsection, pertaining to the fees for dishonored checks, was corrected to reference 1 DCMR § 108.1, which establishes the fee to be charged by all District Government agencies for dishonored checks as sixty-five dollars per check (\$65.00).

The final rules will become effective upon publication in the *D.C. Register*. Upon becoming effective, the Department will submit the rules to the United States Environmental Protection Agency as part of its application for approval of this revision to the District's federal authorized hazardous waste program.

Title 20 (Environment) (February 1997) of the District of Columbia Municipal Regulations is amended by repealing chapters 40 through 54, the Hazardous Waste Regulations, and replacing them with new chapters 42 and 43, the Hazardous Waste Management Regulations, to read as follows:

**CHAPTER 42 – STANDARDS FOR THE MANAGEMENT OF
HAZARDOUS WASTE AND USED OIL**

- 4200 Purpose and Applicability
- 4201 Rules of Interpretation for Federal Regulations Incorporated by Reference
- 4202 Prohibitions Specific to the District of Columbia
- 4203 District-Only Hazardous Wastes
- 4204 Procedures for Providing Notification of Regulated Waste Activity and
Obtaining an EPA Identification Number
- 4205 Emergency and Release Notification
- 4206 Record-Retention and Reporting Requirements
- 4207-
- 4259 Reserved
- 4260 Hazardous Waste Management System: General Provisions
- 4261 Identification and Listing of Hazardous Waste
- 4262 Standards Applicable to Generators of Hazardous Waste
- 4263 Standards Applicable to Transporters of Hazardous Waste
- 4264 Standards for Owners and Operators of Hazardous Waste
Treatment, Storage, and Disposal Facilities
- 4265 Interim Status Standards for Owners and Operators of Hazardous Waste
Treatment, Storage, and Disposal Facilities
- 4266 Standards for the Management of Specific Hazardous Wastes and
Specific Types of Hazardous Waste Management Facilities
- 4267 Reserved
- 4268 Land Disposal Restrictions
- 4269 Reserved
- 4270 Department-Administered Hazardous Waste Permit Program
- 4271 Decision-Making Procedures for the Department-Administered Hazardous Waste Permit Program
- 4272 Reserved
- 4273 Standards for Universal Waste Management
- 4274-
- 4278 Reserved
- 4279 Standards for the Management of Used Oil
- 4280-
- 4299 Reserved
- Appendix Corrections to the RCRA Regulations

4200 PURPOSE AND APPLICABILITY

- 4200.1 The Department of Health (Department) adopts the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, to carry out:
- (a) The District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1301 to 8-1314 (2001 & 2004 Supp.));
 - (b) Sections 2 and 3 of the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code §§ 8-901 and 8-902 (2004 Supp.)), as they pertain to hazardous waste; and
 - (c) Sections 6 and 7 of the District of Columbia Solid Waste Facility Permit Act of 1995, effective February 27, 1996, as amended (D.C. Law 11-94; D.C. Official §§ 8-1055 and 8-1056 (2001)), as they pertain to hazardous waste.
- 4200.2 Each person subject to regulation under this chapter shall also comply with all applicable provisions of chapter 43 of this title, pertaining to inspections, enforcement, and fees.

4201 RULES OF INTERPRETATION FOR FEDERAL REGULATIONS INCORPORATED BY REFERENCE

- 4201.1 The Hazardous Waste Management Regulations in 20 DCMR §§ 4260 through 4279 incorporate by reference the federal Resource Conservation and Recovery Act regulations in 40 CFR Parts 260 through 266, 268, 270, 273, and 279, as well as the provisions of 40 CFR Part 124 pertaining to RCRA permits (hereafter collectively referred to as the "RCRA regulations"), promulgated by the United States Environmental Protection Agency (EPA).
- 4201.2 The incorporation by reference of the RCRA regulations in 20 DCMR §§ 4260 through 4279 is subject to the general modifications in §§ 4200 through 4206, as well as the corrections in Appendix A to this chapter.
- 4201.3 Unless specified otherwise, whenever a provision in the Hazardous Waste Management Regulations refers to Volume 40 of the *Code of Federal Regulations* (40 CFR), the provision shall refer to Volume 40 revised as of July 1, 2004.
- 4201.4 Unless specified otherwise, whenever a provision in the Hazardous Waste Management Regulations refers to a volume of the *Code of Federal Regulations* other than Volume 40, the citation shall refer to the volume published as of July 1, 2004,

and any amendments to the volume since its last revision date that were published in the *Federal Register* on or before June 30, 2004.

- 4201.5 Federal regulations that are incorporated by reference in the Hazardous Waste Management Regulations, or that are cross-referenced in the federal regulations that are incorporated by reference, include any District modifications to the federal regulations, such that whenever a District analog to a federal regulation is more stringent, broader, or different than the federal regulation, the District analog shall be substituted for the federal regulation.
- 4201.6 The following table shows the correspondence between the RCRA regulations and the Hazardous Waste Management Regulations:

Federal Regulation	Subject Matter	District Regulation
40 CFR Part 260	Hazardous Waste Management System: General Provisions	20 DCMR § 4260
40 CFR Part 261	Identification and Listing of Hazardous Waste	20 DCMR § 4261
40 CFR Part 262	Standards Applicable to Generators of Hazardous Waste	20 DCMR § 4262
40 CFR Part 263	Standards Applicable to Transporters of Hazardous Waste	20 DCMR § 4263
40 CFR Part 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	20 DCMR § 4264
40 CFR Part 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	20 DCMR § 4265
40 CFR Part 266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	20 DCMR § 4266
40 CFR Part 268	Land Disposal Restrictions	20 DCMR § 4268
40 CFR Part 270	Hazardous Waste Permit Program	20 DCMR § 4270
40 CFR Part 124	Decision-Making Procedures for Hazardous Waste Permit Program	20 DCMR § 4271
40 CFR Part 273	Standards for Universal Waste Management	20 DCMR § 4273
40 CFR Part 279	Standards for the Management of Used Oil	20 DCMR § 4279
N/A	Inspections, Enforcement, and Fee Schedule	20 DCMR chapter 43

- 4201.7 In the incorporation by reference of the RCRA regulations, for all instances in which the RCRA regulations contain a cross-reference to 40 CFR Parts 124, 260 through 266, 268, 270, 273, or 279, the federal cross-reference shall be replaced with the corresponding section in the District regulations shown in the table in 20 DCMR § 4201.6.
- 4201.8 For purposes of interfacing with the RCRA regulations, the following terms apply, unless specified otherwise or unless the context requires otherwise:
- (a) Except in those federal provisions that are not delegable by law, or that have not been delegated by EPA, to the District of Columbia, the term "Director" shall supplant the terms "Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response," "EPA Administrator," "Regional Administrator," "Regional Administrator for the Region in which the generator is located," and "State Director";
 - (b) The terms "District of Columbia Department of Health" or "Department" shall supplant the terms "United States Environmental Protection Agency," "U.S. Environmental Protection Agency," "EPA," "Agency," "EPA Headquarters," "EPA Regions," "Regional Office," "EPA Regional Office," and "appropriate Regional EPA Office," except as follows:
 - (1) In those federal provisions that are not delegable by law, or that have not been delegated by EPA, to the District, the terms "District of Columbia Department of Health" and "Department" shall not be substituted for the federal terms;
 - (2) The abbreviation "EPA," when used as an adjective in the terms "EPA Acknowledgement of Consent," "EPA form," "EPA guidance," "EPA hazardous waste number," "EPA identification number," "EPA publication," "EPA Region," "EPA test methods," or similar phrases, shall not be supplanted and shall remain as in the *Code of Federal Regulations*; and
 - (3) The terms "U.S. Environmental Protection Agency" or "Environmental Protection Agency" shall not be supplanted when it appears in a mailing or physical address;
 - (c) The terms "Department of Transportation" and "DOT" shall mean the United States Department of Transportation;
 - (d) The term "notification requirements of § 3010 of RCRA" shall mean the requirements, under § 3010 of RCRA, 42 USC § 6930, to notify the Administrator or states having an EPA-authorized RCRA Subtitle C program, including the District of Columbia, of the person's regulated waste activities (hazardous waste activities, universal waste activities, and used oil

management activities). The EPA-authorized state where the activity takes place is the primary point of contact for submission of notifications;

- (e) The term "RCRA permit," "permit issued under subtitle C of RCRA," or "permit issued under RCRA § 3005" shall mean a permit, as defined in 40 CFR § 270.2, issued by the Department or EPA to implement the provisions of 40 CFR Parts 270, 271, and 124, including a hazardous waste permit issued by the Department pursuant to 20 DCMR § 4270;
- (f) The term "revocation and reissuance" in the federal regulation is equivalent to the "suspension" and granting of a new permit under §§ 4 and 10 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 28, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303 and 8-1309 (2001 & 2004 Supp.)), and the Hazardous Waste Management Regulations; and
- (g) The term "termination" in the RCRA regulations is equivalent to the term "revocation" in §§ 4 and 10 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303 and 8-1309, and the Hazardous Waste Management Regulations.

4201.9 The incorporation by reference of the RCRA regulations excludes all site-specific provisions pertaining to Project XL (eXcellence in Leadership) facilities located in other states.

Note: The *Code of Federal Regulations* may be viewed online at <http://www.gpoaccess.gov> or at certain public libraries; or purchased by calling (202) 512-1800 or toll-free (866) 512-1800; by writing to the Superintendent of Documents, U.S. Government Printing Office, attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954; or online, at <http://bookstore.gpo.gov>.

4202 PROHIBITIONS SPECIFIC TO THE DISTRICT OF COLUMBIA

- 4202.1 Except as provided in 20 DCMR § 4202.4, the prohibitions in this section supersede any provision to the contrary in the RCRA regulations, 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279, incorporated by reference in 20 DCMR §§ 4260 through 4279.
- 4202.2 No person may dispose of, or permit or cause the disposal of, any hazardous waste, mixture of hazardous waste and any other constituent, used oil, or mixture of used oil and any other constituent into or upon any land or water, including groundwater, in the District of Columbia, nor into the District's wastewater system or storm water system, except in accordance with the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, and the terms and conditions of any permit or approval issued by the District for the activity, facility, or site.

- 4202.3 The following activities are prohibited in the District of Columbia:
- (a) Use of a surface impoundment to treat, store, or dispose of a hazardous waste or used oil;
 - (b) Use of waste piles to treat, store, or dispose of hazardous waste or used oil;
 - (c) Use of land treatment to manage or dispose of hazardous waste;
 - (d) Disposal of hazardous waste in landfills;
 - (e) Land disposal of hazardous waste or any mixture of hazardous waste and any other constituent, whether hazardous or not;
 - (f) Use of used oil for dust suppression;
 - (g) Use of waste or other material, contaminated or mixed with dioxin or any other hazardous waste, for dust suppression or road treatment;
 - (h) Burning, processing, or incineration of hazardous waste, hazardous waste fuels, or mixtures of hazardous wastes and other materials in any type of incinerator, boiler, or industrial furnace;
 - (i) Burning of used oil, whether on-specification or off-specification, including burning in space heaters and burning incidental to processing;
 - (j) Burning of wastes that meet the comparable fuel or synthesis gas (syngas) fuel specifications in 40 CFR § 261.38;
 - (k) Underground injection of hazardous waste; and
 - (l) Acceptance of hazardous waste at a solid waste facility, as defined in § 2 of the Solid Waste Facility Permit Act of 1995, effective February 27, 1996, as amended (D.C. Law 11-94; D.C. Official Code § 8-1051(12) (2001)).
- 4202.4 Notwithstanding the prohibition in 20 DCMR § 4202.3(d) on the disposal of hazardous waste in landfills, hazardous waste management units that are unable to achieve clean closure shall be considered to be landfills and subject to the closure, post-closure, and financial assurance requirements for landfills, as specified in the RCRA regulations applicable to the unit in question.
- 4203 DISTRICT-ONLY HAZARDOUS WASTES**
- 4203.1 The Director may, in accordance with the criteria in 40 CFR § 261.11, through rulemaking, list a solid waste as a District-only hazardous waste upon determining

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that the solid waste is a hazardous waste as defined in § 3 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1302(2) (2001)).

4203.2 The Director may, through rulemaking, list classes or types of solid waste as District-only hazardous waste if he or she has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of the term "hazardous waste" in § 3 of the Hazardous Waste Management Act, D.C. Official Code § 8-1302(2).

4203.3 Wastes listed as District-only hazardous wastes shall be subject to regulation under the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43; except that the RCRA regulations applicable to the export and import of hazardous waste and transfrontier shipments of hazardous wastes for recovery within the member countries of the Organization for Economic Cooperation and Development, incorporated by reference in this chapter (20 DCMR chapter 42), shall not apply to District-only hazardous wastes.

4204 PROCEDURES FOR PROVIDING NOTIFICATION OF REGULATED WASTE ACTIVITY AND OBTAINING AN EPA IDENTIFICATION NUMBER

4204.1 Except as provided in § 4204.2, each person required by the Standards for the Management of Hazardous Waste and Used Oil (20 DCMR chapter 42) to comply with the notification requirements of § 3010 of RCRA, 42 USC § 6930 (notification of regulated waste activity), and to obtain an EPA identification number shall do so by submitting to the Director a completed EPA Form 8700-12 (RCRA Subtitle C Identification Form).

4204.2 A transporter transporting hazardous waste in or through the District, and having its headquarters or principal place of business located outside of the District, shall provide notification of its regulated waste activity to, and obtain an EPA identification number from, the state in which its headquarters or principal place of business is located, if the state has an EPA-authorized RCRA Subtitle C program, or from the Administrator, as appropriate.

4204.3 The Director may grant a provisional EPA identification number to any generator who treats, stores, disposes of, transports, or offers for transportation hazardous waste no more than one (1) time in a calendar year.

4204.4 A provisional EPA identification number shall be valid for no more than thirty (30) days.

4204.5 The EPA identification number issued to a generator or transporter shall be deemed a permit, as required by § 4(a) of the District of Columbia Hazardous Waste

Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1303(a) (2004 Supp.)), to generate or transport hazardous waste in the District.

4205 EMERGENCY AND RELEASE NOTIFICATION

4205.1 Notwithstanding any provision in the RCRA regulations, 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279, to the contrary, whenever the RCRA regulations require that telephonic emergency or release notification be given to EPA, DOT, the National Response Center, or another federal agency, the person required to provide the notice shall, at the same time, provide telephonic notice to the District of Columbia Emergency Management Agency at (202) 727-6161 and the Department of Health, Hazardous Waste Division at (202) 535-2270.

4206 RECORD-RETENTION AND REPORTING REQUIREMENTS

4206.1 Each generator of hazardous waste or used oil handler shall keep on-site all records required to be kept under the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43.

4206.2 Whenever the RCRA regulations in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279 require that a document be sent to EPA, DOT, or another federal agency, the person required to send the document to EPA, DOT, or other federal agency shall, at the same time, send a copy to the Department's Hazardous Waste Division at the following address:

DOH/EHA/BHMTS
Hazardous Waste Division
51 N Street, N.E., Third Floor
Washington, D.C. 20002.

4207 – 4259 RESERVED

**4260 HAZARDOUS WASTE MANAGEMENT SYSTEM:
GENERAL PROVISIONS**

4260.1 The provisions of 40 CFR Part 260 (Hazardous Waste Management System: General) and Appendix I to Part 260 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

- 4260.2 In 40 CFR § 260.1, pertaining to the purpose, scope, and applicability of Part 260, the term “EPA” shall mean the United States Environmental Protection Agency.
- 4260.3 In 40 CFR § 260.2, pertaining to the availability and confidentiality of information submitted to EPA, the term “EPA” shall mean the United States Environmental Protection Agency. In addition to the requirements of 40 CFR § 260.2:
- (a) Any information provided to the Department under the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1301 through 8-1314 (2001)), and the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, shall be made available to the public to the extent and in the manner authorized by the District of Columbia Freedom of Information Act, effective March 29, 1977, as amended (D.C. Law 1-96; D.C. Official Code §§ 2-531 to 2-540 (2004 Supp.)) (FOIA), and the rules implementing FOIA, chapter 4 in Title 1 DCMR; and
 - (b) Any person submitting information to the Department pursuant to the Hazardous Waste Management Act or the Hazardous Waste Management Regulations may assert a claim of confidentiality covering part or all of the information by demonstrating to the Director that the information claimed to be confidential is exempt from public disclosure under FOIA, D.C. Official Code § 2-534(a). The Director will determine, in accordance with the criteria in § 2-534(a), whether and to what extent the information claimed to be confidential will be withheld from disclosure.
- 4260.4 Except as provided in this subsection, the substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to the definitions in 40 CFR § 260.10. The following definitions either clarify or modify the corresponding federal definitions, or provide the meaning for terms not defined in the RCRA regulations:
- (a) **Active life** - in the federal definition of the term “active life,” the term “Director” shall supplant the term “Regional Administrator”;
 - (b) **Boiler** - in the federal definition of the term “boiler,” the term “Director” shall supplant the term “Regional Administrator”;
 - (c) **Department** means the District of Columbia Department of Health or a successor agency;
 - (d) **Director** means the Director of the Department or his or her designee;
 - (e) **District-only wastes** means wastes that are regulated as hazardous waste under the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, but that are not considered hazardous wastes under 40 CFR Part 261, Subparts C or D;

- (f) **Existing tank system or existing component** means for HSWA tanks, the terms “existing tank system” or “existing component” have the meaning given those terms in 40 CFR § 260.10. For non-HSWA tanks, an “existing tank system” or “existing component” is one that is in operation, or for which installation has commenced, on or before March 1, 1996;
- (g) **HSWA** means the Hazardous and Solid Waste Amendments of 1984, approved November 8, 1984 (98 Stat. 3321; 42 USC §§ 6901 – 6991i). RCRA regulations promulgated by EPA under HSWA authorities take effect in all states at the same time, regardless of a state’s authorization status. RCRA regulations promulgated by EPA under non-HSWA authorities do not take effect in EPA-authorized states until the state adopts the non-HSWA regulation;
- (h) **HSWA tank** means a hazardous waste storage or treatment tank that meets any one of the following criteria:
- (1) a tank that is owned or operated by a small quantity generator;
 - (2) a new underground tank; or
 - (3) an existing underground tank that cannot be entered for inspection;
- (i) **New tank system or new tank component** means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced (1) after July 14, 1986, for HSWA tanks, and (2) after March 1, 1996, for non-HSWA tanks; except, however, for purposes of applying the variance provisions of 40 CFR §§ 264.193(g)(2) and 265.193(g)(2), a new tank system is one for which construction commences (1) after July 14, 1986, for HSWA tanks, and (2) after March 1, 1996, for non-HSWA tanks (See “existing tank system”);
- (j) **Non-HSWA tank** means any hazardous waste storage or treatment tank that is not a HSWA tank;
- (k) **Resource Conservation and Recovery Act (RCRA) regulations** means the regulations contained in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279; and
- (l) **Wastewater treatment unit** means a device that:
- (1) Is part of a wastewater treatment facility that is subject to regulation under either §§ 307(b) or 402 of the Clean Water Act, 33 U.S.C. §§ 1317(b) or 1342; § 7 of the District of Columbia Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.06 (2001)); or the District of Columbia Wastewater

System Regulation Act, effective March 12, 1986, as amended (D.C. Law 6-95; D.C. Official Code §§ 8-105.01 to 8-105.15 (2001));

- (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR § 261.3; and
- (3) Meets the definition of tank or tank system in 40 CFR § 260.10.

4260.5 In 40 CFR §§ 260.20 through 260.22 (general requirements for rulemaking petitions, petitions for equivalent testing or analytic methods, and petitions to amend 40 CFR Part 261 to exclude a waste produced at a particular facility), the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency. Within sixty (60) days after a decision by the Administrator to grant a petition under 40 CFR §§ 260.21 or 260.22, the Director shall take rulemaking action to propose the adoption of the federal regulatory amendment by reference in the District of Columbia Hazardous Waste Management Regulations.

4260.6 Except as provided in 20 DCMR § 4260.5 for petitions for equivalent testing or analytic methods and petitions to amend 40 CFR Part 261 to exclude a waste produced at a particular facility, any person may petition the Director to amend or repeal any provision in the District of Columbia Hazardous Waste Management Regulations. The following procedures shall apply to rulemaking petitions submitted to the Director:

- (a) The petitioner shall include in the petition the information listed in 40 CFR § 260.20(b); and
- (b) In deciding whether to grant or deny the petition, the Director shall follow the procedures in 40 CFR § 260.20(c) through (e), except that the Director shall publish tentative and final decisions as notices of proposed and final rulemaking in the *D.C. Register*.

4260.7 In 40 CFR § 260.41(a) (procedures for case-by-case regulation of hazardous waste recycling activities), the term "District of Columbia Office of Administrative Hearings" shall supplant the term "Administrator."

4261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4261.1 The provisions of 40 CFR Part 261 (Identification and Listing of Hazardous Waste) and Appendices I through III and VII through IX to Part 261 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

- 4261.2 In 40 CFR § 261.1 (purpose and scope of Part 261), the term “EPA” shall mean the United States Environmental Protection Agency.
- 4261.3 In addition to the scope of the regulations as described in 40 CFR § 261.1, this section (20 DCMR § 4261) identifies materials that are hazardous wastes under:
- (a) Section 3 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1302(2) (2001));
 - (b) Section 2(a) of the Illegal Dumping Enforcement Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-90; D.C. Official Code § 8-901(2A) (2004 Supp.)); and
 - (c) Section 2(a) of the Solid Waste Facility Permit Amendment Act of 1998, effective June 11, 1999 (D.C. Law 12-286; D.C. Official Code § 8-1051(20) (2001)).
- 4261.4 A material that is not identified as a hazardous waste in this section shall be regulated as a hazardous waste under any of the following circumstances:
- (a) Where the Director, in carrying out his or her responsibilities under § 8 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code § 8-1307, or § 2(b)(12) through (18) of the Solid Waste Facility Permit Amendment Act of 1998, D.C. Official Code § 8-1055(c)(12) through (18), has reason to believe that the material may be a hazardous waste within the meaning of § 3 of the Hazardous Waste Management Act, D.C. Official Code § 8-1302(2);
 - (b) Where the Director, in taking enforcement action under §§ 11 and 12(a) of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1310 and 8-1311(a), determines that the material presents a danger or threat to the public health, safety, or welfare or the environment; or
 - (c) Where the Director, in taking enforcement action under § 2(b) of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-902(a) and (h), has reason to believe that the material may be a hazardous waste within the meaning of § 2(a) of the Act, D.C. Official Code § 8-901(2A).
- 4261.5 In 40 CFR § 261.2(d)(3) (criteria used by the Administrator to add wastes to the list referenced in § 261.2(d)(3)), the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency.
- 4261.6 In 40 CFR § 261.4(b)(10) (exclusions), the cross-reference to “part 280 of this chapter” shall refer instead to the District of Columbia Underground Storage Tank Regulations, 20 DCMR chapters 55 through 70.

- 4261.7 The provisions of 40 CFR § 261.5 (special requirements for hazardous waste generated by conditionally exempt small quantity generators), are adopted with the following modifications:
- (a) With respect to 40 CFR § 261.5(b), each conditionally exempt small quantity generator's hazardous wastes shall be subject to the notification requirements of § 3010 of RCRA;
 - (b) The provisions of 40 CFR § 261.5(j), which regulate mixtures of conditionally exempt small quantity generator waste and used oil that are to be recycled as used oil under 40 CFR Part 279, are excluded from the incorporation by reference. Instead, all mixtures of conditionally exempt small quantity generator waste and used oil shall be regulated as hazardous waste under this subsection (20 DCMR § 4261.7); and
 - (c) In addition to the requirements of 40 CFR § 261.5, beginning on March 1, 2006, and on or before March 1 of each year thereafter, each conditionally exempt small quantity generator shall complete and submit to the Director, on forms provided by the Department, an annual self-certification of compliance that addresses compliance with the requirements of 40 CFR § 261.5, as modified by this subsection (20 DCMR § 4261.7), during the preceding twelve (12) months, and, where necessary, a return-to-compliance plan. The generator shall also address:
 - (1) Any measures taken during the previous year to reduce the volume and toxicity of hazardous waste generated; and,
 - (2) To the extent such information is available, any changes in the volume and toxicity actually achieved during the year in comparison to previous years.
- 4261.8 Except for 40 CFR § 261.20(c), in which the term "Director" shall supplant the term "Administrator," the substitution of terms specified in 20 DCMR § 4201.8(a) and (b), shall not apply to Subparts B, C, and D in 40 CFR Part 261 (criteria for identifying characteristics of hazardous waste and for listing hazardous waste, the characteristics of hazardous waste, and lists of hazardous waste).
- 4261.9 With respect to 40 CFR § 261.38 (comparable/syngas fuel exclusion), the provisions of 40 CFR § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4.
- 4261.10 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to Appendix IX to 40 CFR Part 261 (wastes excluded from non-specific sources).

4262 STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

- 4262.1 The provisions of 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) and the Appendix to Part 262 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4262.2 With respect to the federal compliance requirements and penalties referenced in 40 CFR § 262.10(g), the following District of Columbia enforcement authorities are also applicable: sections 10, 11, and 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1309 to 8-1311 (2001)).
- 4262.3 In 40 CFR § 262.11 (hazardous waste determination), the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.
- 4262.4 The provisions of 40 CFR § 262.34 (accumulation time) are adopted with the following modifications:
- (a) With respect to the satellite accumulation provisions in 40 CFR § 262.34(c):
 - (1) A generator shall mark each container with the date on which the accumulation began and the words "Hazardous Waste"; and
 - (2) Notwithstanding 40 CFR § 262.34(c)(2), a generator shall not accumulate the hazardous waste for more than ninety (90) days total or, in the case of a generator accumulating hazardous waste under § 262.34(d) through (I), one hundred eighty (180) or two hundred seventy (270) days total, as applicable; and
 - (b) Cross-references throughout the federal regulation to Subpart I of 40 CFR Part 265 shall refer instead to 20 DCMR § 4265.7.
- 4262.5 In 40 CFR § 262.43 (additional reporting), the cross-references to §§ 2002(a) and 3002(6) of RCRA shall refer instead to § 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1305(a) (2001)).
- 4262.6 In addition to the requirements in 40 CFR § 262.44, beginning on March 1, 2006, and on or before March 1 of each year thereafter, each generator of greater than one hundred kilograms (100 kg) but less than one thousand kilograms (1000 kg) of hazardous waste in a calendar month shall complete and submit to the Director, on forms provided by the Department, an annual self-certification of compliance with the requirements of 40 CFR Part 262, as modified by this section (20 DCMR § 4262)

during the preceding twelve (12) months, and, where necessary, a return-to-compliance plan. The generator shall also address:

- (a) Any measures taken during the previous year to reduce the volume and toxicity of hazardous waste generated; and,
- (b) To the extent such information is available, any changes in the volume and toxicity actually achieved during the year in comparison to previous years.

4262.7 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR Part 262, Subparts E and H (exports of hazardous waste and transfrontier shipments of hazardous waste for recovery within the member countries of the Organization for Economic Cooperation and Development).

4263 STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

4263.1 The provisions of 40 CFR Part 263 (Standards Applicable to Transporters of Hazardous Waste) are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4263.2 Except as provided in 20 DCMR § 4263.5, the provisions of 40 CFR § 263.12 (reduced requirements for transfer facilities) are excluded from the incorporation by reference. Instead, transfer facilities shall be considered storage facilities and subject to full regulation under 20 DCMR chapters 42 and 43.

4263.3 Except as provided in 20 DCMR § 4263.5, a transporter shall not park a vacuum truck, pump truck, or tanker containing hazardous waste at a transfer facility or at any other location in the District of Columbia for more than twenty-four (24) hours.

4263.4 Except as provided in 20 DCMR § 4263.5, a vacuum truck, pump truck, or tanker containing hazardous waste is to remain in the District for more than twenty-four (24) hours, the transporter shall transfer the contents to containers meeting the requirements of 40 CFR Part 264, Subpart I.

4263.5 A public utility, as defined in D.C. Official Code § 34-214 (2001) and regulated by the Public Service Commission of the District of Columbia, shall comply with the provisions of 40 CFR Part 263, including the provisions of 40 CFR § 263.12, which are incorporated by reference with respect to the public utility, subject to the following:

- (a) The provisions of 20 DCMR § 4263.5 shall apply only to hazardous waste generated by a public utility at remote locations and transported by the utility, in a vehicle owned or operated by the utility **or its contractors**, to a central

collection facility owned and operated by the utility pursuant to an approval issued by the Department before October 29, 2004;

- (b) The general modifications in 20 DCMR §§ 4200 through 4206 shall apply to the incorporation by reference of 40 CFR Part 263;
- (c) The exclusions in 20 DCMR §§ 4270.2(a)(4) **4264.2(a)(4)**, 4265.2(a)(4), and 4270.3(b) from the reduced requirements for transfer facilities provided in 40 CFR §§ 264.1(g)(9), 265.1(c)(12), and 270.1(c)(2)(vi), shall not apply to a central collection facility operated under 20 DCMR § 4263.5;
- (d) The public utility shall comply with all applicable requirements for generators under these rules for hazardous waste generated at its remote locations and at the central collection facility;
- (e) The public utility shall not park a vacuum truck, pump truck, or tanker containing hazardous waste at the central collection facility or any other location in the District for more than seven (7) days; and
- (f) If a vacuum truck, pump truck, or tanker truck containing hazardous waste is to remain in the District for more than seven (7) days, the public utility shall transfer the contents to containers meeting the requirements of 40 CFR Part 264, Subpart I.

Note: Transporters of hazardous waste are also subject to regulation under the District of Columbia Hazardous Materials Transportation and Motor Carrier Safety Act of 1988, effective March 16, 1989, as amended (D.C. Law 7-190; D.C. Official Code §§ 8-1401 to 8-1405 (2001)), and the implementing rules in 18 DCMR chapter 14.

4264 STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

- 4264.1 The provisions of 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I, IV, V, and IX to Part 264, are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4264.2 The provisions of 40 CFR Part 264, Subpart A (general provisions), are adopted with the following modifications:
 - (a) In 40 CFR § 264.1, pertaining to the purpose, scope, and applicability of Part 264:

- (1) The provisions of 40 CFR § 264.1(f), which clarify that the requirements of Part 264 do not apply to an owner or operator in an EPA-authorized state, are excluded from the incorporation by reference;
 - (2) With respect to 40 CFR § 264.1(g)(1), the provisions of 40 CFR § 261.5 (special requirements for hazardous waste generated by conditionally exempt small quantity generators), incorporated by reference, are subject to modification in 20 DCMR § 4261.7;
 - (3) With respect to 40 CFR § 264.1(g)(3), the provisions of 40 CFR § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4; and
 - (4) The provisions of 40 CFR § 264.1(g)(9), pertaining to transfer facilities, are excluded from the incorporation by reference.
- (b) With respect to 40 CFR § 264.4 (imminent hazard action) the Department may bring enforcement actions pursuant to §§ 4, 8, 10, 11, and 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303(b), 8-1307(c) and (d), 8-1309, 8-1310, and 8-1311 (2001)).
- 4264.3 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR § 264.12 (required notices).
- 4264.4 With respect to the lead-in paragraph to 40 CFR § 264.76 (unmanifested waste report), the provisions of 40 CFR § 261.5, incorporated by reference, are modified in 20 DCMR § 4261.7.
- 4264.5 The substitution of terms specified in 20 DCMR § 4208.1(a) and (b) shall not apply to the provisions in 40 CFR Part 264, Subpart F (releases from solid waste management units) relating to corrective action.
- 4265.6
- 4264.6** The provisions of 40 CFR § 264.112(d)(3) (closure deadlines) are also applicable following issuance of a court order or final administrative order under §§ 10, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1309 to 8-1311.
- 4264.7 The provisions of 40 CFR Part 264, Subpart H (Financial Requirements), are adopted with the following modifications:
- (a) The provisions of 40 CFR §§ 264.143(c)(5) and (d)(8) and 264.145(c)(5) and (d)(9) are also applicable following a final administrative decision pursuant to §§ 4, 10, or 12 of the District of Columbia Hazardous Waste Management Act

of 1977, D.C. Official Code §§ 8-1303(b), 8-1309, or 8-1311(a), that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements;

- (b) With respect to 40 CFR §§ 264.143(h), 264.145(h), 264.147(a)(1)(i) and (b)(1)(i), and 264.151, whenever the federal regulations require that owners and operators notify several Regional Administrators of their financial responsibilities or liability coverage, the owners and operators shall notify the Director and:
 - (1) Other state agencies regulating hazardous waste, if the facilities are located in EPA-authorized states; or
 - (2) The appropriate EPA Regional Administrators, if the facilities are located in unauthorized states;
- (c) In 40 CFR § 264.147(c) and (d), the cross-reference to § 124.5 shall refer instead to 20 DCMR § 4271.3; and
- (d) The provisions of 40 CFR §§ 264.149 and 264.150, pertaining to the use of state-required mechanisms and state assumption of responsibility, are excluded from the incorporation by reference.

4264.8 The provisions of 40 CFR Part 264, Subpart J (Tank Systems), are adopted with the following modifications:

- (a) In 40 CFR § 264.191(a), the compliance date for HSWA tanks is the date stated in the federal regulation. The compliance date for non-HSWA tanks is March 1, 1997;
- (b) In 40 CFR § 264.191(c), the effective date for HSWA tanks is the date stated in the federal regulation. The effective date for non-HSWA tanks is March 1, 1996; and
- (c) In 40 CFR § 264.193(a)(2) through (5), the compliance dates for HSWA tanks are counted from the dates stated in the federal regulation. For non-HSWA tanks, the compliance dates are counted from March 1, 1996.

4264.9 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR Part 264, Subpart S (Special Provisions for Cleanup).

4264.10 The provisions of 40 CFR Part 264, Subpart W (Drip Pads), are adopted with the following modifications:

- (a) With respect to 40 CFR § 264.570(a), the compliance date for HSWA drip pads (drip pads that convey F032 waste) is the date stated in the federal regulation.

The compliance date for non-HSWA drip pads (drip pads that convey F034 and F035 wastes) is September 29, 2000; and

- (b) In 40 CFR § 264.570(c)(1)(iv), the cross-reference to “Federal regulations” shall refer instead to “District regulations.”
- 4264.11 In 40 CFR §§ 264.1031, 264.1051, and 264.1081 (definitions for the air emission standards in Part 264, Subparts AA, BB, and CC), the cross-references to the “Act” shall refer instead to § 3 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code § 8-1302.
- 4264.12 In 40 CFR § 264.1033(a)(2)(iii) (standards for closed-vent systems and control devices), the phrase “EPA regulatory amendment” shall refer instead to the phrase “EPA or Department regulatory amendment.”
- 4265 INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**
- 4265.1 The provisions of 40 CFR Part 265 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I and III through VI to Part 265 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4265.2 The provisions of 40 CFR Part 265, Subpart A (general provisions), are adopted with the following modifications:
- (a) In 40 CFR § 265.1, pertaining to the purpose, scope, and applicability of Part 265:
- (1) The provisions of 40 CFR § 265.1(c)(4), which clarify that the requirements of Part 265 do not apply to an owner or operator in an EPA-authorized state, are excluded from the incorporation by reference;
 - (2) With respect to 40 CFR § 265.1(c)(5), the provisions of § 261.5 (special requirements for hazardous waste generated by conditionally exempt small quantity generators), incorporated by reference, are subject to modification in 20 DCMR § 4261.7;
 - (3) With respect to 40 CFR § 265.1(c)(7), the provisions of § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4; and

- (4) The provisions of 40 CFR § 265.1(c)(12) (reduced requirements for transfer facilities), are excluded from the incorporation by reference.
- (b) With respect to 40 CFR § 265.4 (imminent hazard action), the Director may bring enforcement actions pursuant to §§ 4, 8, 10, 11, and 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303(b), 8-1307(c) and (d), 8-1309, 8-1310, and 8-1311 (2001)).
- 4265.3 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR § 265.12 (required notices).
- 4265.4 With respect to 40 CFR § 265.76 (unmanifested waste report), the provisions of § 261.5, incorporated by reference, are modified in 20 DCMR § 4261.7.
- 4265.5 The provisions of 40 CFR §§ 265.112(d)(3)(ii) and 265.118(e)(2) (submission of closure plan and post-closure plan) are also applicable following the issuance of a court order or final administrative order under §§ 4, 10, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b), 8-1309 to 8-1311, to cease receiving hazardous wastes or close.
- 4265.6 The provisions of 40 CFR Part 265, Subpart H (Financial Requirements) are adopted with the following modifications:
- (a) The provisions of 40 CFR §§ 265.143(c)(8) and 265.145(c)(9) are also applicable following a final administrative determination pursuant to §§ 4, 10, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b), 8-1309, or 8-1311(a), that the owner or operator has failed to perform final closure in accordance with the approved closure plan, or post-closure care in accordance with the approved post-closure plan and other permit requirements, as applicable;
- (b) With respect to 40 CFR §§ 265.143(g), 265.145(g), and 265.147(a)(1)(i), whenever the federal regulation requires that owners and operators notify several Regional Administrators of their financial responsibilities or liability coverage, the owners and operators shall notify the Director and:
- (1) Other state agencies regulating hazardous waste, if the facilities are located in EPA-authorized states; or
- (2) The appropriate EPA Regional Administrators, if the facilities are located in unauthorized states;
- (c) With respect to 40 CFR §§ 265.143, 265.145, 265.147, and 265.148, the provisions of 40 CFR § 264.151, incorporated by reference, are subject to modification in 20 DCMR § 4264.7(b).

- (d) With respect to 40 CFR § 265.147(d), the provisions of 40 CFR § 124.5, incorporated by reference, are subject to modification in 20 DCMR § 4271.3; and
 - (e) The provisions of 40 CFR §§ 265.149 and 265.150, pertaining to use of state-required mechanisms and state assumption of responsibility, are excluded from the incorporation by reference.
- 4265.7 In addition to the requirements of 40 CFR Part 265, Subpart I (Use and Management of Containers), the owner or operator shall comply with the containment system requirements in 40 CFR § 264.175 and the closure requirements in § 264.178.
- 4265.8 The provisions of 40 CFR Part 265, Subpart J (Tank Systems) are adopted with the following modifications:
- (a) In 40 CFR § 265.191(a), the compliance date for HSWA tanks is the date stated in the federal regulation. The compliance date for non-HSWA tanks is March 1, 1997;
 - (b) In 40 CFR § 265.191(c), the effective date for HSWA tanks is the date stated in the federal regulation. The effective date for non-HSWA tanks is March 1, 1996; and
 - (c) In 40 CFR § 265.193(a)(2) through (5), the compliance dates for HSWA tanks are counted from the dates stated in the federal regulation. For non-HSWA tanks, the compliance dates are counted from March 1, 1996.
- 4265.9 The provisions of 40 CFR Part 265, Subpart W (Drip Pads) are adopted with the following modifications:
- (a) In 40 CFR § 265.440(a), the compliance date for HSWA drip pads (drip pads that convey F032 waste) is the date stated in the federal regulation. The compliance date for non-HSWA drip pads (drip pads with F034 and F035 wastes) is September 29, 2000; and
 - (b) In 40 CFR § 265.440(c)(1)(iv), the cross-reference to "Federal regulations" shall refer instead to "District regulations."
- 4265.10 In 40 CFR §§ 265.1031, 265.1051, and 265.1081 (definitions for air emission standards in Part 265, Subparts AA, BB, and CC), the cross-references to the "Act" shall refer instead to § 3 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code § 8-1302 (2001)).

4265.11 In 40 CFR § 265.1033(a)(2)(iii) (standards for closed-vent systems and control devices), the phrase "EPA regulatory amendment" shall refer instead to the phrase "EPA or Department regulatory amendment."

4266 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

4266.1 The provisions of 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities) and Appendices I through IX and XI through XIII to Part 266, are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4266.2 The provisions of 40 CFR Part 266, Subpart M (military munitions) are adopted with the following modifications:

- (a) With respect to 40 CFR § 266.201 (definitions), the provisions of 40 CFR § 260.10, incorporated by reference, are subject to modification in 20 DCMR § 4260.4; and
- (b) With respect to 40 CFR § 266.202(d), the Director may require corrective action or seek injunctive or other appropriate remedies under §§ 4, 8, 10, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303(b), 8-1307(c) and (d), 8-1309, 8-1310, or 8-1311(a) (2001)), if a used or fired military munition lands off-range and is not promptly rendered safe and/or retrieved.

4266.3 With respect to 40 CFR § 266.255(a), pertaining to low-level mixed waste, the provisions of 40 CFR § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4.

4267 RESERVED

4268 LAND DISPOSAL RESTRICTIONS

4268.1 The provisions of 40 CFR Part 268 (Land Disposal Restrictions) and Appendices III, IV, VI through IX, and XI to Part 268 are incorporated by reference subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section. Except as provided in 20 DCMR § 4268.2, the substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR Part 268 and Appendices III, IV, VI through IX, and XI to Part 268.

- 4268.2 In 40 CFR § 268.7 (testing, tracking, and record-keeping requirements for generators, treaters, and disposal facilities) and § 268.9 (special rules regarding wastes that exhibit a characteristic), the federal terms shall be replaced, pursuant to 20 DCMR § 4201.8(a) and (b), with the corresponding District terms.
- 4268.3 With respect to 40 CFR § 268.50(a)(1) (prohibitions on the storage of restricted wastes), the provisions of 40 CFR § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4.
- 4269 RESERVED**
- 4270 DEPARTMENT-ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM**
- 4270.1 The provisions of 40 CFR Part 270 (EPA-administered hazardous waste permit program) are incorporated by reference as the regulations applicable to the Department-administered hazardous waste (RCRA) permit program, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4270.2 The cross-references throughout 40 CFR Part 270 to § 264.1 shall refer instead to 20 DCMR § 4264.2(a).
- 4270.3 The provisions of 40 CFR § 270.1 (purpose and scope of Part 270) are adopted with the following modifications:
- (a) With respect to 40 CFR § 270.1(c)(2)(i), pertaining to generators who accumulate hazardous waste on-site, the provisions of 40 CFR § 262.34 (accumulation time), incorporated by reference, are subject to modification in 20 DCMR § 4262.4; and
 - (b) The provisions of 40 CFR § 270.1(c)(2)(vi) (reduced requirements for transfer facilities) are excluded from the incorporation by reference.
- 4270.4 The substitution of terms specified in 20 DCMR 4201.8(a) and (b) shall not apply to the provisions of 40 CFR § 270.2 (definitions applicable to Parts 124 and 270), which are adopted as the definitions applicable to 20 DCMR §§ 4270 and 4271, with the following modifications:
- (a) Terms not defined in 40 CFR § 270.2 or 20 DCMR § 4270.4 shall have the meanings given in § 3 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-

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64; D.C. Official Code § 8-1302 (2001)), and the Hazardous Waste Management Regulations, 20 DCMR § 4260.4;

- (b) With respect to the definition of the term “draft permit,” provisions of 40 CFR § 124.5, incorporated by reference, are subject to modification in 20 DCMR § 4271.3; and
- (c) The term “wastewater treatment unit” means a device which:
 - (1) Is part of a wastewater treatment facility that is subject to regulation under either §§ 307(b) or 402 of the Clean Water Act, 33 U.S.C. §§ 1317(b) or 1342; § 7 of the District of Columbia Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.06 (2001)); or the District of Columbia Wastewater System Regulation Act, effective March 12, 1986, as amended (D.C. Law 6-95; D.C. Official Code §§ 8-105.01 to 8-105.15 (2001)); and
 - (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3; and
 - (3) Meets the definition of tank or tank system in 40 CFR § 260.10.

4270.5 In addition to the requirements of 40 CFR §§ 270.3, 270.14(b)(20), and 270.32(a), pertaining to considerations under other federal laws that may apply to the issuance of RCRA permits, whenever another District of Columbia law that applies to a facility or activity regulated by this section (20 DCMR § 4270) requires the consideration or adoption of a particular permit condition, those District requirements shall also be followed, provided they are no less stringent than these regulations (Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43).

4270.6 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR § 270.5 (noncompliance and program reporting by the Director).

4270.7 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR § 270.10 (general permit application requirements), the provisions of which are adopted with the following modifications:

- (a) With respect to 40 CFR § 270.10(e)(2), the Director shall publish notices in the *D.C. Register* of any extension of the date by which owners and operators of specified classes of existing hazardous waste management facilities must file Part A of the permit application; and
- (b) With respect to 40 CFR § 270.10(e)(3), the Director may, by compliance order issued under § 12 of the District of Columbia Hazardous Waste Management

Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(2001)), extend the date by which the owner or operator of an existing hazardous waste management facility must submit Part A of the permit application.

- 4270.8 With respect to 40 CFR § 270.12 (confidentiality of information), the following provisions shall govern the confidentiality of any information submitted to the Department pursuant to these regulations:
- (a) Any information provided to the Department under the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1301 through 8-1314, and the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, shall be made available to the public to the extent and in the manner authorized by the District of Columbia Freedom of Information Act, effective March 29, 1977, as amended (D.C. Law 1-96; D.C. Official Code §§ 2-531 to 2-540 (Supp. 2004) (FOIA), and the rules implementing FOIA, chapter 4 in Title 1 DCMR;
 - (b) Any person submitting information to the Department pursuant to the Hazardous Waste Management Act or the Hazardous Waste Management Regulations may assert a claim of confidentiality covering part or all of the information by demonstrating to the Director that the information claimed to be confidential is exempt from public disclosure under FOIA, D.C. Official Code § 2-534(a);
 - (c) Any claim of confidentiality shall be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice;
 - (d) The Director will determine, in accordance with the FOIA criteria in D.C. Official Code § 2-534(a), whether and to what extent the information claimed to be confidential will be withheld from disclosure; and
 - (e) Claims of confidentiality shall not apply to the names and addresses of any permit applicants or permittees.
- 4270.9 With respect to the introductory text in 40 CFR § 270.41 (modification or revocation and reissuance of permit), the provisions of 40 CFR § 124.5, incorporated by reference, are subject to modification in 20 DCMR § 4271.3.
- 4270.10 In 40 CFR § 270.42(f), pertaining to public notice and appeals of permit modification decisions, the cross-references to § 124.19 shall refer instead to 20 DCMR § 4271.7.

- 4270.11 In addition to the causes identified in 40 CFR § 270.43 for the termination of a permit, the Director may suspend, refuse to reissue, or revoke a permit as provided in §§ 4 and 10 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b) and 8-1309 (2001 & 2004 Supp.).
- 4270.12 The provisions of 40 CFR § 270.51(a) through (c) (continuation of expiring EPA-issued RCRA permits) are adopted as the procedures the Department will follow with respect to the continuation of expiring Department-issued permits.
- 4270.13 With respect to 40 CFR § 270.72(a)(4), pertaining to changes in ownership or operational control during interim status, the provisions of Part 265, Subpart H, incorporated by reference, are subject to modification in 20 DCMR § 4265.6.
- 4270.14 The provisions of 40 CFR Part 270, Subpart H (Remedial Action Plans (RAPs)) are adopted with the following modifications:
- (a) With respect to 40 CFR § 270.115, the confidentiality of information submitted to the Department shall be governed by 20 DCMR § 4270.8;
 - (b) In addition to the public notice procedures in 40 CFR § 270.145, the Director shall provide notice by publication in the *D.C. Register*, and in accordance with § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10 (2004 Supp.));
 - (c) The provisions of 40 CFR § 270.155, pertaining to administrative appeals, are adopted with the following modifications:
 - (1) An appeal under this paragraph shall be made to the District of Columbia Office of Administrative Hearings pursuant to 1 DCMR chapter 29; and
 - (2) In 40 CFR § 270.155(a), the cross-references to 40 CFR § 124.19 shall refer instead to 20 DCMR § 4271.7;
 - (d) In 40 CFR §§ 270.190 and 270.215, all references to the "Environmental Appeals Board" shall refer instead to the "District of Columbia Office of Administrative Hearings";
 - (e) With respect to 40 CFR § 270.220(b) (transfer of a RAP), the provisions of Part 264, Subpart H (Financial Requirements), incorporated by reference, are subject to modification in 20 DCMR § 4264.7; and
 - (f) With respect to 40 CFR § 270.230(d)(2), pertaining to remediation waste management activities at locations removed from where the remediation wastes

originated, the provisions of 40 CFR §§ 124.31, 124.32, and 124.33, incorporated by reference, are subject to modification in 20 DCMR § 4271.9.

4271 DECISION-MAKING PROCEDURES FOR THE DEPARTMENT-ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM

- 4271.1 This section incorporates by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section, the provisions of 40 CFR Part 124 applicable to RCRA permits as the decision-making procedures the Department will follow when issuing, modifying, suspending and reissuing, and revoking hazardous waste permits issued pursuant to this chapter (20 DCMR chapter 42).
- 4271.2 The provisions of 40 CFR § 124.3 (application for a permit) are adopted with the following modifications:
- (a) With respect to 40 CFR § 124.3(a)(1), the provisions of 40 CFR § 270.1, incorporated by reference, are subject to modification in 20 DCMR § 4270.3; and
 - (b) With respect to 40 CFR § 124.3(d), if an applicant fails or refuses to correct deficiencies in an application, the Director may deny the permit and take enforcement action under §§ 4, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b), 8-1310, or 8-1311, and 20 DCMR chapter 43.
- 4271.3 The provisions of 40 CFR § 124.5 (modification, revocation and reissuance, or termination of permits) are adopted with the following modifications:
- (a) Only paragraphs (a), (c), and (d)(1) in 40 CFR § 124.5 are incorporated by reference. The cross-references in the federal regulation to 40 CFR §§ 270.41 and 270.43 shall refer instead to 20 DCMR §§ 4270.9 and 4270.11 respectively;
 - (b) If the Director determines that a request for the modification, ~~suspension~~ **revocation** and reissuance, or ~~revocation~~ **termination** of a permit is not justified, he or she shall send the requestor a brief written response giving the reasons for the decision. Denials of requests for modification, ~~suspension~~ **revocation** and reissuance, or ~~revocation~~ **termination** are not subject to public notice, comment, or hearing. Denials may be appealed administratively to the District of Columbia Office of Administrative Hearings (OAH), pursuant to procedures established in 20 DCMR § 4271.7. This appeal is a prerequisite to seeking judicial review of the Director's determination to deny a request for modification, ~~suspension~~ **revocation** and reissuance, or ~~revocation~~ **termination**; and

- (c) Where there has been a history of repeated violations or a permit has been previously ~~suspended~~ **revoked and reissued**, or where there is an initial violation and the violation presents an imminent and substantial endangerment to the public health, public welfare, or the environment, the Director may proceed under § 10 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1309(c) and (d), and 20 DCMR chapter 43 to ~~revoke~~ **terminate** the permit in lieu of proceeding under this subsection.
- 4271.4 The provisions of 40 CFR § 124.10 (public notice of permit actions and public comment period) are adopted with the following modifications:
- (a) With respect to 40 CFR § 124.10(a)(1)(iv), the Director shall give public notice whenever a request for a hearing under 20 DCMR § 4271.7 to review a permit decision is received; and
- (b) In addition to the methods specified in 40 CFR § 124.10(e), the Director shall give notice by publication in the *D.C. Register*, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10 (2004 Supp.)).
- 4271.5 In addition to the notice required under 40 CFR § 124.15(a) for a final permit decision or a decision to deny a permit for the active life of a hazardous waste management facility or unit, the Director shall provide notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, D.C. Official Code § 1-309.10.
- 4271.6 In 40 CFR § 124.16(a)(2)(ii), pertaining to requests for reviews of permit conditions, the term "District of Columbia Office of Administrative Hearings" shall supplant the term "EAB."
- 4271.7 The provisions of 40 CFR § 124.19, pertaining to appeals of permits, are excluded from the incorporation by reference. Instead, the following procedures shall govern appeals:
- (a) Within fifteen (15) days of the date of a hazardous waste permit decision or a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR § 124.15, any person adversely affected by the decision may appeal the decision pursuant to § 9 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1308 (2001)), by requesting the District of Columbia Office of Administrative Hearings (OAH) pursuant to 1 DCMR § 2805 to conduct a hearing to review the decision;

- (b) The fifteen-day (15-day) period within which a person may request a hearing under this section begins on the date of the service of the notice of the Director's action, unless a later date is specified in the notice. The rules governing the computation of time are found in 1 DCMR § 2811;
- (c) A request for a hearing under this section shall include a statement of the reasons supporting the request, including a demonstration that the person requesting the hearing is adversely affected by the Director's decision; that any issues being raised were raised during the public comment period (including any public hearings) to the extent required by these regulations; and, when appropriate, a showing that the condition in question is based upon a finding of fact or conclusion of law that is clearly erroneous;
- (d) Pursuant to § 9 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1308, a hearing on an appeal under this subsection, 20 DCMR § 4271.7, shall be held in accordance with the contested case procedures of § 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1204; D.C. Official Code § 2-509 (2001));
- (e) The Director shall give public notice of an appeal under this subsection as provided in 20 DCMR § 4271.4. The public notice shall set forth the briefing schedule for the appeal as set by OAH, and shall provide instructions so as to afford any interested person the opportunity to seek intervention in the proceeding pursuant to 1 DCMR § 2816.2;
- (f) At any time prior to the rendering of a decision by OAH on the merits of the appeal, the Director may, upon notification to OAH and any parties to the proceeding, withdraw the permit and prepare a new draft permit under 40 CFR § 124.6, addressing the portions withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this section. Any portions of the permit that are not withdrawn and that are not stayed under 40 CFR § 124.16 continue to apply;
- (g) An appeal to OAH pursuant to this section shall be a prerequisite to the seeking of judicial review of the final administrative decision;
- (h) For purposes of judicial review, final administrative action occurs when a hazardous waste permit is issued, or when a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit has been issued, and the administrative review procedures under this section are exhausted. The Director shall issue a final permit decision, and administrative review procedures shall be exhausted:

- (1) When OAH issues a final decision on the merits of the appeal and the decision does not include a remand of the proceedings; or
 - (2) If the proceedings are remanded, upon the completion of remand proceedings, unless OAH's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies;
 - (i) The Director shall give public notice of the final decision in accordance with the procedures in § 4271.5; and
 - (j) A motion for reconsideration shall not stay the effective date of a final permit decision issued by the Director pursuant to paragraph (h) of this subsection, unless so ordered by OAH.
- 4271.8 The provisions of 40 CFR § 124.20 (computation of time) are excluded from the incorporation by reference. Instead, the provisions of 20 DCMR § 4316 shall govern time computation.
- 4271.9 With respect to 40 CFR Part 124, Subpart B (Specific Procedures Applicable to RCRA Permits):
- (a) The provisions of 40 CFR §§ 124.31, 124.32, and 124.33 shall also apply to applications submitted to the Department; and
 - (b) In addition to the requirements of 40 CFR § 124.32 (b) for public notice at the application stage, the Director shall give notice by publication in the *D.C. Register*, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10 (2004 Supp.)).
- 4272 RESERVED**
- 4273 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**
- 4273.1 The provisions of 40 CFR Part 273 (Standards for Universal Waste Management) are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4273.2 With respect to 40 CFR §§ 273.12 and 273.32(a)(1), each small quantity handler and each large quantity handler of universal waste shall notify the Director of the handler's universal waste management activities by submitting a completed EPA Form 8700-12 to the Director, and shall have received an EPA identification number,

before generating universal waste or receiving universal waste from other universal waste handlers.

- 4273.3 With respect to 40 CFR §§ 273.13(c)(2)(iii) and (iv) and 273.33(c)(2)(iii) and (iv), pertaining to universal waste thermostats, the provisions of § 262.34, incorporated by reference, are subject to modification in 20 DCMR § 4262.4.
- 4273.4 Notwithstanding the time periods specified in 40 CFR § 273.53, a transporter storing universal waste for any length of time at a universal waste transfer facility shall become a universal waste handler and shall comply with the applicable requirements of Subparts B or C of Part 273 while storing the universal waste.
- 4273.5 In 40 CFR § 273.80, the cross-reference to § 260.20 shall refer instead to 20 DCMR §§ 4260.5 and 4260.6.

4274 – 4278 RESERVED

4279 STANDARDS FOR THE MANAGEMENT OF USED OIL

- 4279.1 The provisions of 40 CFR Part 279 (Standards for the Management of Used Oil) are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4279.2 The cross-references throughout 40 CFR Part 279 to “Part 280” shall refer instead to the District of Columbia Underground Storage Tank Regulations, 20 DCMR chapters 55 through 70; and the cross-references to “Subpart F of this chapter [40 CFR Part 280]” shall refer instead to 20 DCMR chapter 62 (Reporting of Releases, Investigations, Confirmation, Assessments, and Corrective Action).
- 4279.3 Notwithstanding any provision to the contrary in 40 CFR Part 279 that would allow a person required to obtain an EPA identification number by letter request, each person required to notify the Director of the person’s used oil activity shall obtain an EPA identification number by submitting to the Director a completed EPA Form 8700-12.
- 4279.4 The provisions of 40 CFR § 279.1 (definitions) are adopted with the following modifications:
- (a) The cross-references to 40 CFR §§ 260.10 and 280.12 shall refer instead to 20 DCMR §§ 4260.4 and 7099.1; and
 - (b) With respect to the definitions of the terms “existing tank” and “new tank,” the effective date of the EPA-authorized used oil program for the District of Columbia is November 9, 2001.

- 4279.5 The provisions of 40 CFR § 279.10 (applicability of Part 279) are adopted with the following modifications:
- (a) The provisions of 40 CFR § 279.10(b)(3), pertaining to mixtures of used oil and conditionally exempt small quantity generator waste, are excluded from the incorporation by reference. Instead, all mixtures of used oil and conditionally exempt small quantity generator hazardous waste shall be regulated as hazardous waste under 40 CFR § 261.5, as incorporated by reference, subject to modification in 20 DCMR § 4261.7; and
 - (b) The provisions of 40 CFR § 279.10(d), pertaining to mixtures of used oil with products, are excluded from the incorporation by reference. Instead, all mixtures of used oil and fuels or other fuel products, including all mixtures of used oil and diesel fuel, are subject to regulation under this section (20 DCMR § 4279).
- 4279.6 In addition to the prohibitions in 40 CFR § 279.12, the provisions of 20 DCMR § 4202.3 prohibit the following activities in the District of Columbia:
- (a) Management of used oil in surface impoundments or waste piles;
 - (b) Use of used oil as a dust suppressant; and
 - (c) Burning of used oil, whether on-specification or off-specification, including burning in space heaters and burning incidental to processing.
- 4279.7 The provisions of 40 CFR Part 279, Subpart C, Standards for Used Oil Generators, are adopted with the following modifications:
- (a) The exception in 40 CFR § 279.20(a)(3) for mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles is excluded from the incorporation by reference. Instead, all mixtures of used oil and diesel fuel are subject to regulation under this section (20 DCMR § 4279);
 - (b) In addition to the requirements of 40 CFR § 279.22(b), containers and aboveground tanks shall:
 - (1) Have secondary containment, as approved by the Director;
 - (2) Always be closed during storage, except when it is necessary to add or remove waste; and
 - (3) Not be opened, handled, or stored in a manner that may rupture the container or tank or cause them to leak; and

- (c) With respect to 40 CFR § 279.22(d), the effective date of the recycled used oil management program in the District of Columbia is September 29, 2000.
- 4279.8 The provisions of 40 CFR § 279.45 (used oil storage at transfer facilities) are adopted with the following modifications:
- (a) Each owner or operator of a used oil transfer facility shall comply with the standards for used oil processors and re-refiners in Subpart F of Part 279; and
 - (b) With respect to 40 CFR § 279.45(h), the effective date of the recycled used oil management program in the District of Columbia is September 29, 2000.
- 4279.9 With respect to 40 CFR § 279.54(g) (used oil management by used oil processors/re-refiners), the effective date of the recycled used oil management program in the District of Columbia is September 29, 2000.
- 4279.10 With respect to 40 CFR § 279.75(a)(1), the notice obtained by the used oil generator, transporter, or processor/re-refiner shall contain the certification from the burner that the burner has notified either EPA or, if the burner is located in a state with an EPA-authorized used oil program, the state agency with regulatory authority over recycled used oil management activities, as applicable.

4280 – 4299 RESERVED

APPENDIX A TO 20 DCMR CHAPTER 42
Corrections to the RCRA Regulations

Federal Regulation	Correction
40 CFR § 260.10 ("active portion")	The effective date of 40 CFR Part 261 is November 19, 1980.
40 CFR § 260.10 ("designated facility")	The cross-reference to § 260.20 shall refer instead to § 262.20.
40 CFR § 260.10 ("inactive portion")	The effective date of 40 CFR Part 261 is November 19, 1980.
40 CFR § 260.40(a)	The cross-reference to § 261.6(a)(2)(iv) shall refer instead to § 261.6(a)(2)(iii) (recyclable materials from which precious metals are reclaimed).
40 CFR § 260.41	In the lead-in sentence, the cross-reference to § 261.6(a)(2)(iv) shall refer instead to § 261.6(a)(2)(iii) (recyclable materials from which precious metals are reclaimed).
40 CFR § 261.1(c)(10)	The cross-reference to § 261.4(a)(13) shall refer instead to § 261.4(a)(14) (shredded circuit boards being recycled).
40 CFR § 261.2(c)(3) – Table 1	In column 3, labeled "Reclamation," the term "secondary materials" shall refer instead to "spent materials."
40 CFR § 261.4(a)(17)(iii)	In the parenthetical phrase in the first sentence, the term "secondary materials" shall refer instead to "spent materials."
40 CFR § 261.4(a)(17)(iv)	In the third sentence, the term "secondary materials" shall refer instead to "spent materials."
40 CFR § 261.4(a)(17)(iv)(A)	The term "secondary material" shall refer instead to "spent material."
40 CFR § 261.4(a)(17)(vi)	The cross-reference to paragraph (a)(7) shall refer instead to paragraph (b)(7).
40 CFR § 261.4(e)(2)(vi)	The cross-reference to paragraph (e)(v)(C) shall refer instead to paragraph (e)(2)(v)(C).
40 CFR § 261.11(c)	The cross-reference to § 261.5(c) shall refer instead to § 261.5(e).
40 CFR § 261.21(a)(3)	The phrase "an ignitable compressed gas as defined in 49 CFR § 173.300" shall refer instead to "a flammable gas as defined in 49 CFR § 173.115(a)."
40 CFR § 261.21(a)(4)	The phrase "an oxidizer as defined in 49 CFR § 173.151" shall refer instead to "an oxidizer as defined in 49 CFR § 173.127(a)."
40 CFR § 261.23(a)(8)	Replace § 261.23(a)(8) with the following: "It is a forbidden explosive as defined in 49 CFR § 173.54, or would have been a Class A or Class B explosive as defined in 49 CFR §§ 173.52 and 173.53."
40 CFR § 261.38(c)(1)(i)(C)(4)	In the statement to be signed and submitted by the person claiming the comparable/syngas fuel exclusion, the cross-reference to § 261.28(c)(10) shall refer instead to § 261.38(c)(10).
40 CFR Part 261, App. VII	Remove the listings for K064, K065, K066, K090, and K091.
40 CFR § 264.1(g)(2)	The cross-reference to Subparts C, D, F, or G of Part 266 shall refer instead to Subparts C, F, G, or H of Part 266.
40 CFR § 264.70	The cross-reference to § 264.73(b) shall refer instead to § 264.73(b)(9).

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Federal Regulation	Correction
40 CFR § 264.99(h)(2)	The cross-reference to § 264.98(h)(5) shall refer instead to § 264.98(g)(5).
40 CFR § 264.101(d)	After the word "This", add the word "section."
40 CFR § 264.112(b)(8)	The cross-reference to § 264.110(d) shall refer instead § 264.110(c).
40 CFR § 264.114	At the end of the first sentence, add the phrase "or in §§ 264.601 or 264.603."
40 CFR § 264.118(c)	The cross-reference to § 264.188(b)(3) shall refer instead to § 264.118(b)(3).
40 CFR § 264.119(b)(1)(ii)	The cross-reference to 40 CFR Subpart G shall refer instead to 40 CFR Part 264, Subpart G.
40 CFR § 264.140(d)(1)	The cross-reference to § 264.110(d) shall refer instead to § 264.110(c).
40 CFR § 264.144(b)	The cross-reference to § 264.145(b)(1) and (2) shall refer instead to "subparagraphs (1) and (2) of this paragraph."
40 CFR § 264.147(c) and (d)	The cross-references to § 270.41(a)(5) shall refer instead to § 270.42.
40 CFR § 264.151(h)(2)	In the Guarantee for Liability Coverage, the phrase "as defined in 40 CFR [either 264.141(h)]" shall mean "as defined in 40 CFR [either 264.141(h) or 265.141(h)]."
40 CFR § 264.151(f)	In the first sentence, the cross-reference to "§ 264.147(h) or § 265.147(h)" shall refer instead to "§ 264.147(i) or § 265.147(i)."
40 CFR § 264.193(e)(2)(v)(A)	The cross-reference to § 262.21 shall refer instead to § 261.21.
40 CFR § 264.193(e)(2)(v)(B)	The cross-reference to § 262.21 shall refer instead to § 261.23.
40 CFR § 264.573(a)(4)(i)	In the last sentence, the phrase "§ 264.572(a) instead of 264.572(b)" shall refer instead to "§ 264.572(b) instead of 264.572(a)."
40 CFR § 264.573(b)	In the lead-in line, the phrase "§ 264.572(b) instead of § 264.572(a)" shall refer instead to "§ 264.572(a) instead of § 264.572(b)."
40 CFR § 264.1101(b)(3)(iii)	The cross-reference to § 264.193(d)(1) shall refer instead to § 264.193(e)(1).
40 CFR § 264.1101(b)(4)(i)	The November 16, 1992, notification deadline shall refer instead to February 18, 1993.
40 CFR § 265.1(c)(6)	The cross-reference to Subparts C, D, F, or G of Part 266 shall refer instead to Subparts C, F, G, or H of Part 266.
40 CFR § 265.111(c)	The cross-reference to § 264.1102 shall refer instead to § 265.1102.
40 CFR § 265.112(d)(4)	The cross-reference to § 264.1102 shall refer instead to § 265.1102.
40 CFR § 265.119(b)(1)(ii)	The cross-reference to 40 CFR Subpart G shall refer instead to 40 CFR Part 265, Subpart G.
40 CFR § 265.140(b)	In the lead-in line, the cross-reference to § 265.146 shall refer instead to § 265.145.
40 CFR § 265.140(b)(2)	The cross-reference to § 264.197 shall refer instead to § 265.197.
40 CFR § 265.145(e)(11)	The cross-reference to "paragraphs (f)(1) through (9) of this section" shall refer instead to "paragraphs (e)(1) through (9) of this section", and the cross-reference to "paragraph (f)(3) of this section" shall refer instead to "paragraph (e)(3) of this section."

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Federal Regulation	Correction
40 CFR § 265.147(b)(1)	<p>Add the following sub-subparagraphs from 47 <i>Fed. Reg.</i> 16544 (1982):</p> <p>(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrators if the facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.</p> <p>(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.</p>
40 CFR § 265.147(c) and (d)	The cross-references to § 270.41(a)(5) shall refer instead to § 270.42.
40 CFR § 265.193(e)(2)(v)(A)	The cross-reference to § 262.21 shall refer instead to § 261.21.
40 CFR § 265.193(e)(2)(v)(B)	The cross-reference to § 262.21 shall refer instead to § 261.23.
40 CFR § 265.228(b)(2)	The cross-reference to § 265.221(c)(2)(iv) and (3) shall refer instead to § 264.221(c)(2)(iv) and (3).
40 CFR § 265.255(b)	The term "surface impoundment units" shall refer instead to "waste pile units."
40 CFR § 265.301(d)(1)	The cross-reference to § 261.4 shall refer instead to § 261.24.
40 CFR § 265.302(b)	The term "surface impoundment units" shall refer instead to "landfill units."
40 CFR § 265.443(a)(4)(i)	The phrase "§ 265.442(a) instead of § 265.442(b)" shall refer instead to "§ 265.442(b) instead of § 265.442(a)."
40 CFR § 265.443(b)	The phrase "§ 265.442(b) instead of § 265.442(a)" shall refer instead to "§ 265.442(a) instead of § 265.442(b)."
40 CFR § 265.1090(f)(1)	The cross-reference to § 265.1084(c)(2)(i) through (c)(2)(vi) shall refer instead to § 265.1083(c)(2)(i) through (c)(2)(vi).
40 CFR § 265.1100(d)	The phrase "as needed to permit fugitive dust emissions" shall mean "as needed to prevent fugitive dust emissions."
40 CFR § 265.1101(b)(3)(iii)	The cross-reference to § 265.193(d)(1) shall refer instead to § 265.193(e)(1).
40 CFR § 268.7(b)(4)(ii)	The cross-reference to § 261.3(e) shall refer instead to § 261.3(f).
40 CFR § 268.7(b)(6)	The cross-reference to § 268.20(b) shall refer instead to § 266.20(b).
40 CFR § 268.7(d)	In the lead-in line, the cross-reference to § 261.3(e) shall refer instead to § 261.3(f).

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Federal Regulation	Correction
40 CFR § 268.7(d)(1)	<p>Add the following sub-subparagraphs (i) through (iii) to § 268.7(d)(1), from 57 Fed. Reg. 37194 (1992):</p> <ul style="list-style-type: none"> (i) The name and address of the Subtitle D facility receiving the treated waste; (ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and (iii) For debris excluded under § 261.3(f)(1) of this chapter, the technology from Table 1, § 268.45, used to treat the debris.
40 CFR § 268.50(g)	Add the word "section" after the phrase "The prohibition and requirements in this"
40 CFR § 270.1(a)(3)	The cross-reference to Part 267 shall refer instead to Part 266.
40 CFR § 270.11(d)(1)	After the phrase, "paragraph (a) or (b) of this", add the word "section."
40 CFR § 270.14(c)(7)	The cross-reference to § 264.98(h)(5) shall refer instead to § 264.98(g)(5).
40 CFR § 270.18(b)	The cross-reference to § 264.90(2) shall refer instead to § 264.90(b)(2).
40 CFR § 270.42	The cross-references throughout the regulation to § 124.10(c)(viii) and (ix) shall refer instead to § 124.10(c)(1)(ix) and (x).
40 CFR § 270.42(a)(1)(i)	The cross-reference to §§ 270.13 through 270.21 shall refer instead to §§ 270.13 through 270.28.
40 CFR § 270.42(c)(1)(iv)	The cross-reference to §§ 270.13 through 270.22 shall refer instead to §§ 270.13 through 270.28.

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**CHAPTER 43 – HAZARDOUS WASTE MANAGEMENT REGULATIONS
ADMINISTRATION AND ENFORCEMENT**

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4300 APPLICABILITY AND SCOPE

- 4300.1 This chapter applies to inspections and enforcement proceedings by the District of Columbia Department of Health (Department) pursuant to:
- (a) The District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1301 to 8-1314 (2001)), and the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43;
 - (b) Section 3 of the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994, as amended (D.C. Law 10-62; D.C. Official Code § 8-902 (2004 Supp.)), as it pertains to hazardous waste and regulated medical waste; and
 - (c) Section 7 of the District of Columbia Solid Waste Facility Permit Act of 1995, effective February 27, 1996 (D.C. Law 11-94; D.C. Official **Code** § 8-1056 (2001)), as it pertains to hazardous waste and regulated medical waste.

DISTRICT OF COLUMBIA REGISTER**4301 RIGHT OF ENTRY**

4301.1 For the purpose of enforcing the laws and rules listed in § 4300, the Director shall have the right, upon presentation of appropriate credentials to the owner, operator, or agent in charge, to enter without delay, subject to § 4301.3, any place or vehicle where hazardous waste, used oil, or regulated medical waste are, or have been generated, handled, transported, treated, stored, or disposed.

4301.2 Appropriate credentials for making an inspection shall include:

- (a) A duly issued photo identification card or badge showing the name of the inspector and proof of employment with the Department; or
- (b) A notice of inspection issued by the Director, containing the following information:
 - (1) Name of the owner, operator, or agent in charge;
 - (2) Address of the place or identification of the vehicle to be inspected;
 - (3) Date of the inspection; and
 - (4) Signature of the inspector.

4301.3 Entry by the Director may be made, with or without prior notice, as follows:

- (a) At any time, in emergency situations, or where there is a potential immediate threat to human health and safety or the environment; and
- (b) At any reasonable time in non-emergency situations. The following times shall be deemed reasonable for purposes of entry:
 - (1) Between the hours of 7:30 a.m. and 6:00 p.m. on weekdays; and
 - (2) Any hours during which the facility is open for business or operation.

4302 ENTRIES FOR INSPECTIONS AND MONITORING

4302.1 Upon entry, the Director may do any of the following:

- (a) Inspect the place or vehicle where the hazardous waste, used oil, or regulated medical waste is or was located, or will be located, and any surrounding areas that may be impacted;

- (b) Inspect and obtain samples of any hazardous waste, used oil, or regulated medical waste, or of any substance or thing used in handling, transporting, treating, storing, or disposing of the waste or used oil; and
 - (c) Inspect and copy any records, reports, information, test results, or other documents relating to the purpose of the laws and rules listed in § 4300.
- 4302.2 If the Director obtains any samples from the premises or the vehicle, the Director shall give the owner, operator, or agent in charge a receipt that describes the samples obtained, and, if requested, a portion of each sample equal in volume or weight to the portion obtained. If any analysis is made of the samples, the Director shall promptly furnish the owner, operator, or agent in charge a copy of the results of the analysis made of the samples.
- 4302.3 In addition to the information required to be produced during an inspection pursuant to § 4302.1(c) the Director may require in writing that a generator, transporter, owner or operator of a regulated facility, or other person handling hazardous waste, used oil, or regulated medical waste provide any document, respond to specific questions, or provide other information with respect to any of the wastes or used oil, or the handling of the wastes or used oil, as may be necessary to determine compliance with the laws and rules listed in § 4300.
- 4302.4 When the Director makes a written request for any document, response to specific questions, or other information pursuant to § 4302.3, the documents, responses, or other information shall be submitted to the Director within fourteen (14) days of receipt of the request, unless the Director specifies a different time period.
- 4302.5 The Director may require a generator, transporter, owner or operator of a regulated facility, or any other responsible person to take any necessary response or corrective action, including monitoring or testing, in accordance with the requirements of the laws and rules listed in § 4300.
- 4302.6 When requiring a responsible person to take action pursuant to this chapter, the Director may, in addition to any other enforcement action authorized by law, issue a field notice or directive letter, that shall advise the responsible person of the action the person is required to take and state the time period within which the action must be performed.
- 4302.7 Notwithstanding § 4302.6, the Director may give an oral directive to a responsible person to cease and desist from an activity in a situation where there is potential serious danger to human health or the environment, or to take immediate action to mitigate any hazard from a spill or release; provided, that the Director shall, as soon thereafter as practicable, issue a written directive incorporating the contents of the oral directive.

4302.8 When dangerous chemicals, hazardous wastes, used oil, or regulated medical waste on a property pose an imminent threat to human health or the environment, the Director may post notice of the threat on the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists, and shall prohibit the owner, operator, and agent in charge from removing or handling the chemicals or the waste without prior approval from the Director.

4303 ENTRIES FOR RESPONSE OR CORRECTIVE ACTION

4303.1 In the event of a spill or release of hazardous waste, used oil, or regulated medical waste, or an alleged violation of the laws and rules listed in § 4300, the Director may, under the following circumstances, enter upon any place or vehicle to perform, or cause to be performed, any response or corrective action necessary to protect human health or the environment:

- (a) In a situation that requires immediate action by the Director to protect human health or the environment;
- (b) Where the person responsible for the spill, release, or alleged violation has failed or refused to comply with an administrative or court order requiring response or corrective action; or
- (c) As authorized under § 3 of the Illegal Dumping Enforcement Act, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-902(f) and (h) (2004 Supp.)), where a person has failed to abate a nuisance resulting from violation of the Illegal Dumping Enforcement Act.

4303.2 Except as provided in § 4303.4, the Director shall provide written notice of the Director's intent to enter the premises or vehicle to take response or corrective action to the owner or operator at least seven (7) days before commencing work, and shall serve the notice personally or by certified mail, or where personal service cannot be accomplished, by publication or posting.

4303.3 Except as provided in § 4303.4, when the owner or operator is a domestic corporation, any notice to be served pursuant to this section, if served upon the president, treasurer, any other principal officer, general manager, or registered agent of the corporation in the manner specified in § 4303.2, shall be deemed to have been served upon the corporation. If the owner or operator is a foreign corporation, service upon the registered agent of the corporation shall be deemed service upon the corporation.

4303.4 When a spill or release of hazardous waste, used oil, or regulated medical waste, or an alleged violation of the laws and rules listed in § 4300, creates an imminent threat to human health or the environment necessitating response or corrective action, and the emergency nature of the situation makes it impractical to give prior notice as

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specified in §§ 4303.2 and 4303.3, the Director may provide notice by conspicuously posting the notice on the property at the earliest time feasible, before commencing work.

4303.5 Except as provided in § 4303.4, the written notice of intent to begin response or corrective action shall contain the following information:

- (a) The name and address of the owner or operator of the premises or vehicle;
- (b) The name and address of the person to whom the notice is directed;
- (c) A statement of the authority under which the Director is taking response or corrective action;
- (d) A description of the location where the work will take place;
- (e) A brief summary of the response or corrective actions to be taken, and the conditions that require response or corrective action;
- (f) Notice of any applicable hearing rights, if such notice has not already been served;
- (g) A statement that the Director will pursue cost recovery against the responsible person pursuant to § 4314 for:
 - (1) All response and corrective action costs, related expenses, and interest; or,
 - (2) In the case of violations of the Illegal Dumping Enforcement Act, pursuant to D.C. Official Code § 8-902(f), three (3) times the cost and expense of abating the nuisance, preventing recurrence of the violation, cleaning and clearing the site where the unlawful disposal occurred, and properly disposing of the waste;
- (h) The name, position, office address, telephone and fax numbers, and e-mail address of the Department employee issuing the notice, and the name and telephone number of the appropriate contact individual within the Department; and
- (i) The signature of the Director or his or her designee.

4304 JURISDICTION AND DELEGATION OF AUTHORITY FOR ADMINISTRATIVE HEARINGS

4304.1 In every case brought pursuant to this chapter in which an administrative hearing is requested or otherwise required, the Director hereby delegates his or her hearing

authority to the District of Columbia Office of Administrative Hearings (OAH), which shall have jurisdiction to adjudicate and render a final administrative decision in a contested case.

4304.2 The Director shall pursue administrative enforcement actions through:

- (a) Notices of violation, threat, or release pursuant to § 4305;
- (b) Proposed compliance orders pursuant to § 4306;
- (c) Notices of violation, threat, or release, combined with an immediate compliance order or cease and desist order pursuant to § 4307;
- (d) Proposed modification, suspension, proposed revocation, or revocation of a permit or approval pursuant to § 4308;
- (e) Notices of infraction pursuant to § 4311;
- (f) Notices of violation and administrative sanctions under the Illegal Dumping Enforcement Act pursuant to § 4312;
- (g) Cost recovery under the Illegal Dumping Enforcement Act pursuant to § 4314.6; and
- (h) Any other enforcement action authorized by law.

4305 NOTICE OF VIOLATION, THREAT, OR RELEASE

- 4305.1 Except as provided in §§ 4308, 4311, 4313, and 4314, the Director shall commence an enforcement action pursuant to this chapter with a written notice of violation, threat, or release issued to the generator, transporter, owner or operator of a regulated facility, or any other responsible person (the “respondent”) deemed appropriate by the Director.
- 4305.2 The notice of violation, threat, or release shall identify the alleged violation, threat, or release, and may require the respondent to conduct monitoring or testing, or to take any response or corrective measures the Director determines reasonable and necessary.
- 4305.3 A “Notice of Violation,” “Notice of Threat,” or “Notice of Release” shall make clear the basis for the notice, and that the respondent’s failure to take the measures directed will constitute an additional violation of the pertinent statute or regulation.
- 4305.4 A field notice or directive letter issued pursuant to § 4302.6 may serve as a notice of violation, threat, or release, provided it meets the requirements of this section.

- 4305.5 The Director shall serve a notice of violation, threat, or release on the respondent or the respondent's authorized representative in person or by certified mail, return receipt requested. If the responsible person fails or refuses to accept certified mail, the Director may serve the notice of violation, threat, or release by regular first class mail; provided the following requirements are met:
- (a) The Director shall send the notice to the last known address listed on the person's application for an EPA identification number, biennial report, or other official correspondence submitted to the Department; or
 - (b) The Director shall verify the accuracy of the address.
- 4305.6 Where dangerous chemicals, hazardous waste, used oil, or regulated medical waste on property pose a threat to human health or the environment, or where there is a release of hazardous waste, used oil, or regulated medical waste into the environment, and the responsible person, or the address of the responsible person, is unknown or cannot be located, the Director may serve written notice by conspicuously posting the notice on the property where the threat exists or the release occurred and sending a copy to the owner of the property at the owner's last known address via certified mail.

4306 PROPOSED COMPLIANCE ORDER

- 4306.1 If the respondent upon whom a notice of violation, threat, or release has been served fails to comply with the monitoring, testing, response, or corrective measures required in the notice, the Director may issue a proposed compliance order.
- 4306.2 A proposed compliance order shall:
- (a) Include a statement of the facts and nature of the alleged violation, threat, or release, and the legal grounds for the enforcement action;
 - (b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect human health, and safety, property, and the environment;
 - (c) Advise the respondent that the respondent has the right to request an administrative hearing and, at the respondent's expense, the right to legal representation at the hearing;
 - (d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the proposed compliance order or failure to request a hearing;
 - (e) State the action that the respondent is required to take, or the activity or activities that the respondent is required to cease, to comply with the order, including those measures listed in § 4309.3;

- (f) State the amount of any civil infraction fines, penalties, or costs to be assessed for failure to comply with the order; and
- (g) State that if the respondent fails to comply with the proposed compliance order within the time period stated in the order, the respondent shall be liable, pursuant to § 12(a) of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(a)(2)(B) (2001)), for the cost of any response or corrective action incurred by the District of Columbia to protect human health or the environment by alleviating or terminating the violation, threat, or release.

4306.3 The Director shall serve a proposed compliance order by one (1) of the following methods:

- (a) Personal service on the respondent or the respondent's authorized representative;
- (b) Mailing the proposed compliance order to the respondent or the respondent's authorized representative by certified mail, return receipt requested. Service by mail is complete upon deposit in the United States mail, properly stamped and addressed;
- (c) Delivering the proposed compliance order to the last known home or business address of the respondent or respondent's agent, and leaving it with an individual of suitable age and discretion then residing or employed therein; or
- (d) Any other method set forth in the District of Columbia Hazardous Waste Management Act of 1977 or any amendment thereto.

4306.4 A proposed compliance order shall state that the respondent is required to file a written answer to the compliance order, the time within which to respond, and the form of response required.

4307 NOTICE OF VIOLATION, THREAT, OR RELEASE, COMBINED WITH IMMEDIATE COMPLIANCE ORDER OR CEASE AND DESIST ORDER

4307.1 The Director may issue a notice of violation, threat, or release together with an immediate compliance order or cease and desist order; or issue a notice of violation, threat, or release and file a motion before OAH to issue an immediate compliance order or cease and desist order; to require a respondent to respond to or correct a situation that immediately threatens human health or the environment, or to prohibit the respondent from engaging in any unauthorized activity that immediately endangers or causes damage to the public health, safety, or welfare or the environment.

- 4307.2 When a notice of violation, threat, or release and an immediate compliance order or cease and desist order is authorized under this section, reasonable notice shall be notice appropriate to the emergency nature of the situation. It shall not be necessary to first issue a proposed compliance order or to first provide an opportunity for an administrative hearing.
- 4307.3 Except as provided in § 4307.4, the Director shall serve a notice of violation, threat, or release combined with an immediate compliance order or a cease and desist order in the same manner as a proposed compliance order pursuant to § 4306.3.
- 4307.4 When dangerous chemicals, hazardous waste, used oil, or regulated medical waste on property pose a threat to human health or the environment, or where there is a release of hazardous waste, used oil, or regulated medical waste into the environment, and the responsible person is unknown or cannot be located, the Director may serve a notice of violation, threat, or release combined with an immediate compliance order or a cease and desist order in the manner specified in § 4305.6.
- 4307.5 An immediate compliance order or a cease and desist order shall:
- (a) Include a statement of the nature of the violation, threat, or release;
 - (b) Take effect immediately, at the time and on the date signed;
 - (c) Identify the action to be taken or the activity to be stopped, including those measures listed in § 4309.3;
 - (d) Include a statement, pursuant to § 9 of the District of Columbia Hazardous Waste Management Act, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1308 (2001)), advising the respondent that the respondent has the right to request a hearing before OAH in accordance with the requirements of 1 DCMR § 2805.2 within fifteen (15) days of service of the order and that, if a hearing is not requested within that time period, the order will become final;
 - (e) Include a statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and
 - (f) Where applicable, state that if the respondent fails to comply with the notice within the time period stated in the **immediate** compliance order or cease and desist order, the respondent shall be liable, pursuant to § 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(a)(2)(B) (2001)), for the cost of any response or corrective action incurred by the District of Columbia to protect human health or the environment by alleviating or terminating the violation, threat, or release.

4307.6 A request for a hearing shall not stay the effective date of an immediate compliance order or cease and desist order.

4307.7 If a person fails to comply with the notice within the time period stated in the notice, the Director shall, to protect human health and the environment, take response or corrective action necessary to alleviate or terminate the violation, threat, or release.

4308 NOTICE OF MODIFICATION, SUSPENSION, OR REVOCATION OF PERMIT

4308.1 An action for modification, suspension, proposed revocation, or revocation of a Department-issued RCRA permit shall be conducted pursuant to the procedures in 40 CFR Part 270, Subpart D, incorporated by reference, subject to modification in 20 DCMR § 4270.

4308.2 Except as provided in § 4308.1, an action pursuant to §§ 4 or 10 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Official Code §§ 8-1303 or 8-1309 (2001 & 2004 Supp.)), to modify, suspend, or revoke a permit or approval issued pursuant to the Act or the regulations adopted pursuant to the Act, shall be initiated by a notice of proposed modification, suspension, proposed revocation, or revocation in accordance with this section.

4308.3 The notice of proposed modification, suspension, proposed revocation, or revocation shall be in writing, and shall include the following:

- (a) The name and address of the holder of the permit or approval;
- (b) A statement of the action or proposed action;
- (c) A statement of the alleged violation of the pertinent statute, regulation, or term or condition of the permit or approval;
- (d) Notice that the respondent has the right to request an administrative hearing in accordance with the requirements of 1 DCMR § 2805.2, or to have a hearing at the time and place stated;
- (e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and
- (f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

- 4308.4 The Director may issue a notice of proposed modification of a permit or approval issued pursuant to the District of Columbia Hazardous Waste Management Act of 1978 when necessary to achieve the purposes of the Act, as stated in § 2 of the Act, D.C. Official Code § 8-1301; to protect the public health, safety, or welfare or the environment; or to correct an error in the terms and conditions of the permit.
- 4308.5 The Director may issue a notice of suspension of a permit or approval if the holder is in violation of the District of Columbia Hazardous Waste Management Act of 1977 or the regulations adopted pursuant to the Act.
- 4308.6 A notice of suspension may take effect when served; however, the holder of the permit or approval shall have the right to:
- (a) Request a hearing within fifteen (15) days of service of the notice; and
 - (b) Reapply for the permit or approval. If the applicant is able to demonstrate an ability and willingness to comply with the terms and conditions of a new permit or approval and the provisions of the pertinent statutes and regulations, the Director may grant a new permit or approval.
- 4308.7 The Director may issue a notice of proposed revocation of a permit or approval issued pursuant to the District of Columbia Hazardous Waste Management Act of 1977 or the regulations adopted pursuant to the Act when the holder of the permit or approval has a history of repeated violations of the Act or the regulations. Except as provided in § 4308.8, the revocation shall take effect fifteen (15) days after service of the notice, unless the holder of the permit or approval requests a hearing within fifteen (15) days of service of the notice.
- 4308.8 The Director may immediately revoke a permit or approval issued pursuant to the District of Columbia Hazardous Waste Management Act of 1977 or the regulations adopted pursuant to the Act upon an initial violation of the Act or the regulations, where the violation presents an imminent and substantial endangerment to the public health, safety, or welfare or the environment.
- 4308.9 In the case of an immediate revocation, the respondent may request a hearing within fifteen (15) days of service of the notice of revocation; however, the revocation shall take effect when served.
- 4308.10 The Director shall serve a notice of proposed modification, suspension, proposed revocation, or revocation in the same manner as a proposed compliance order pursuant to § 4306.3.
- 4308.11 The Director may serve a notice of proposed modification, suspension, proposed revocation, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

4309 ADMINISTRATIVE HEARINGS

- 4309.1 Once an administrative hearing is requested or scheduled, the proceeding shall be governed by the District of Columbia Administrative Procedure Act, approved October 4, 1968, as amended (82 Stat. 1203; D.C. Official Code §§ 2-501 to 2-510 (2001)); the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 to 2-1831.19 (2004 Supp.)); and the rules of practice and procedure established by the District of Columbia Office of Administrative Hearings (OAH) in chapters 28 and 29 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR).
- 4309.2 Pursuant to § 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(a) (2001)), a compliance order or cease and desist order shall order the respondent to monitor, test, or take such corrective actions as are reasonable and necessary to respond to or correct a violation, threat, or release.
- 4309.3 A compliance order or cease and desist order, **including an immediate compliance order or cease and desist order issued pursuant to 20 DCMR § 4307**, may include the following:
- (a) Measures to respond to or correct a violation, threat, or release, including:
 - (1) Performance of any spill or release response or cleanup measures necessary to alleviate or terminate the violation, threat, or release to protect human health and the environment;
 - (2) Performance of monitoring, testing, investigations, or studies;
 - (3) Preparation of a comprehensive site assessment;
 - (4) Preparation of corrective action plans, including measures to be taken to prevent future violations;
 - (5) Implementation of a corrective action plan;
 - (6) Training requirements;
 - (7) Performance bond and financial assurance requirements; and
 - (8) Reporting, record-keeping, and record retention requirements;
 - (b) The amount of any civil infraction fines, penalties, and fees to be imposed;

- (c) Where applicable, authorization for the Director to enter the premises or vehicle for purposes undertaking any monitoring, testing, assessment, response, or corrective action if the respondent fails or refuses to comply with an order requiring the respondent to take these actions within the time periods set forth in the order;
- (d) A statement that the Director may recover, pursuant to § 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(2)(B) (2001)), any costs, expenses, and interest incurred by the District of Columbia for any response or corrective action undertaken by the Department; and
- (e) A statement regarding appeal rights.

4310 PENALTIES AND INJUNCTIVE RELIEF FOR FAILURE TO COMPLY WITH FINAL ADMINISTRATIVE ORDER

- 4310.1 Pursuant to § 11 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1310 (2001)), the Director may seek a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief in court, or any administrative, civil, or criminal penalty, or other remedy authorized by § 12 of the Act, D.C. Official Code § 8-1311, including cost recovery, for failure to comply with a final compliance order, final cease and desist order, or final modification, suspension, or revocation order.

4311 CIVIL INFRACTION FINES, PENALTIES, AND FEES PURSUANT TO THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS CIVIL INFRACTIONS ACT

- 4311.1 In any instance where a civil fine, penalty, or fee has been established pursuant to § 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code § 2-1801.4 (2001)), and the Civil Infractions Schedule of Fines, 16 DCMR chapter 32, the civil fine, penalty, or fee may be imposed as an alternative sanction to the penalties set forth in § 12(b) and (c) of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1311(b) and (c) (2001)).
- 4311.2 Where civil infraction fines are the only penalties pursued in a particular case, the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 and the regulations adopted thereunder, govern the proceedings in lieu of this chapter, and where there is a violation, a notice of infraction may be issued without first issuing a notice of violation, threat, or release.

4311.3 A civil infraction case may be consolidated for hearing together with another case in which a proposed compliance order, proposed cease and desist order, or proposed modification, suspension, or revocation order has been issued against the same respondent.

4312 CIVIL FINES AND ADMINISTRATIVE SANCTIONS PURSUANT TO THE ILLEGAL DUMPING ENFORCEMENT ACT

4312.1 In any instance where a civil fine, penalty, or fee has been established pursuant to § 3 of the Illegal Dumping Enforcement Act, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-902(c) (2004 Supp.)), and the Schedule of Fines for Violation of the Litter Control Administrative Act in 24 DCMR § 1380 for the illegal disposal of hazardous waste or regulated medical waste, the civil fine, penalty, or fee may be imposed as an alternative sanction to the criminal and civil penalties set forth in § 3 of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-902(b)(3), (b)(4), and (c).

~~4312.3~~

4312.2 When the Director pursues administrative remedies under § 3 of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-902, including civil infraction fines, penalties, and costs and cost recovery, the Director shall adhere to the procedures in the Litter Control Administrative Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-100; D.C. Official Code §§ 8-801 to 8-810 (2001)), and the implementing rules in 24 DCMR chapter 13.

4313 JUDICIAL ACTION IN LIEU OF ADMINISTRATIVE ENFORCEMENT

4313.1 Pursuant to § 11 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1310 (2001)), if the Director finds that any person is operating a treatment, storage, or disposal facility, or is generating or transporting hazardous waste, used oil, or regulated medical waste in an illegal, unsafe, or otherwise improper manner that endangers the public health, safety, or welfare or the environment, the Director may seek a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief in court in lieu of proceeding with an administrative enforcement action under this chapter.

4313.2 After a notice of violation, threat, or release has been issued and the time for compliance has expired, the Director may institute judicial action pursuant to §§ 11 and 12 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1310 and 8-1311, for injunctive relief, civil or criminal penalties,

or cost recovery in lieu of proceeding through the administrative enforcement process.

- 4313.3 Pursuant to § 3 of the Illegal Dumping Enforcement Act, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-902(b)(3), (b)(4), and (c) (2004 Supp.)), the Director may, in addition to any administrative penalty or sanction authorized by the Illegal Dumping Enforcement Act:
- (a) In cases involving the knowing disposal of hazardous waste in violation of D.C. Official Code § 8-902(a), seek criminal penalties and/or civil penalties in court in lieu of civil infraction fines, penalties, and fees; and
 - (b) In cases involving the knowing disposal of regulated medical waste in violation of D.C. Official Code § 8-902(a), seek criminal penalties in court in lieu of civil infraction fines, penalties, and fees.

4314 COST RECOVERY PROCEDURES

- 4314.1 Except as provided in § 4314.6 for cost recovery pursuant to ~~§ 3 of the Illegal Dumping Enforcement Act, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-902(f) (2004 Supp.))~~, if the District of Columbia has incurred costs for taking response or corrective action under § 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1311(a)(2)(B) (2001)), the Director shall issue a demand letter to the responsible person, requesting payment in the amount of all costs and related expenses incurred by the Director District of Columbia Government, plus including any applicable interest. The demand letter shall be issued after completion of the response or corrective action and before bringing a civil action in the Superior Court for the District of Columbia for the recovery of costs. The Director may also issue interim demand letters before completion of the response or corrective action.
- 4314.2 The demand letter shall include the following information:
- (a) The total amount due;
 - (b) An itemization of costs and related expenses included in the total amount due;
 - (c) The interest rate and any accrued interest;
 - (d) A statement of the date by which payment must be received; and
 - (e) Notice that if the responsible person fails to pay within the prescribed time period:

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- (1) Judicial action may be instituted;
- (2) A tax lien on all property belonging to the responsible person, whether real or personal, may be issued; and
- (3) The responsible person shall be liable for the attorney's fees and costs of the legal action, and interest on the amount due.

4314.3 The Director shall mail the demand letter to the responsible person, postage prepaid, at the responsible person's last known address.

4314.4 Thirty (30) days after the demand letter has been postmarked, the Director may take the following actions:

- (a) Institute judicial action; or
- (b) Take any other appropriate collection measures.

4314.5 The Director may settle claims for cost recovery and, in doing so, may settle a claim, if appropriate, based upon consideration of such factors as the cost of the response or corrective action, the likelihood of recovery, the solvency of the responsible person, the costs of judicial action, and pollution prevention measures undertaken by the responsible person.

4314.6 When the Director pursues cost recovery pursuant to § 3 of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-902(f), the Director shall adhere to the procedures of ~~that section~~ § 8-902 and §§ 7 and 8 of the Litter Control Administrative Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-100; D.C. Official Code §§ 8-806 and 8-807 (2001 & 2004 Supp.)), and the applicable provisions of 24 DCMR chapter 13, to the extent they are not inconsistent with the Illegal Dumping Enforcement Act, as follows:

- (a) The Director shall require the responsible person to pay three (3) times the cost and expense incurred by the District of Columbia for abating the nuisance, preventing recurrence of the violation, cleaning and clearing the site where the unlawful disposal occurred, and for properly disposing of the waste;
- (b) The Director shall also require the payment of interest on any outstanding sums due under paragraph (a) of this subsection, as well as reimbursement for private collection services, when used; and
- (c) When the Director is seeking criminal or civil penalties in court pursuant to § 3 of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-902(b)(3), (b)(4), and (c), the Director may also request the court to order the payment of the costs and expenses identified in paragraphs (a) and (b) of this subsection, in

lieu of proceeding administratively under the Litter Control Administrative Act to recover those costs and expenses.

4315 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

4315.1 At any time during the course of administrative or judicial enforcement proceedings, the parties to the proceeding may enter into a settlement agreement and/or consent compliance order.

4315.2 A settlement agreement or consent compliance order, including a consent compliance decree, shall set forth each of the agreements made, actions to be taken by the parties to the agreement, the dates by which any required actions must be undertaken or completed; and any agreed-upon fines, penalties, cost recovery, damages, attorney's fees, costs and expenses, interest, supplemental environmental project, or any other sanction or remedy authorized by law.

4315.4

4315.3 Where a party proposes a supplemental environmental project, the project shall meet the following criteria:

- (a) The project shall be directly related to preventing or correcting the problems that led to the violation;
- (b) The project shall incorporate pollution prevention practices, including source reduction and waste minimization;
- (c) The project, when it involves capital improvements, new pollution control equipment, or employee training for the facility in question, shall exceed minimum legal requirements;
- (d) The party shall demonstrate the financial and technical ability to successfully complete the project;
- (e) The party shall demonstrate good faith in correcting the violation and a willingness to change the party's course of conduct;
- (f) The project shall not delay or frustrate compliance with regulatory or permit requirements;
- (g) The total settlement value, including the value of the supplemental environmental project, shall reflect the full value of the penalties, damages, and cost recovery that would be otherwise imposed;

- (h) The monetary component of the settlement shall fully compensate the District of Columbia for any damages, costs, and expenses incurred in connection with the violation; and
- (i) To avoid rewarding noncompliance, the proposed supplemental environmental project shall create greater benefits for the public than economic benefits for the settling party.

- 4315.4 A settlement agreement shall be effective when signed by the parties thereto, and shall not require the signature of an OAH administrative law judge or a judge to become effective or to be filed in the case.
- 4315.5 A settlement agreement may be submitted to OAH or the court for approval.
- 4315.6 The parties may enter into a consent compliance order with the approval of the OAH or the court.
- 4315.7 A consent compliance order shall be signed by the parties to the case and by the administrative law judge or the judge, and shall have the force and effect of any final administrative or judicial order.
- 4315.8 Unless the consent compliance order states otherwise, there shall be no right of appeal from a consent compliance order.

4316 COMPUTATION OF TIME

- 4316.1 This section applies to all periods of time prescribed or allowed by the Hazardous Waste Management Regulations, 20 DCMR chs. 42 and 43.
- 4316.2 In computing any period of time measured in days or calendar days, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 4316.3 For any period of time that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation, unless the period of time is measured in calendar days.
- 4316.4 Whenever a person has the right or the obligation to do some act within a prescribed period after the service of an order or other paper upon the person, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statute provides otherwise.

4317 - 4389 RESERVED

4390 FEE SCHEDULE

- 4390.1 Except as provided in § 4390.5, each conditionally exempt small quantity generator shall pay an annual permit fee of two hundred dollars (\$200) for each generating site on or before March 1 of each year, for the following calendar year or any portion thereof.
- 4390.2 Except as provided in § 4390.5, each small quantity generator of one hundred (100) to one thousand (1000) kilograms of hazardous waste per calendar month shall pay an annual permit fee of five hundred dollars (\$500) for each generating site on or before March 1 of each year, for the following calendar year or any portion thereof.
- 4390.3 Except as provided in § 4390.5, each large quantity generator shall pay an annual permit fee of one thousand dollars (\$1000) for each generating site on or before March 1 of each year, for the following calendar year or any portion thereof.
- 4390.4 Except as provided in § 4390.5, each owner or operator of a universal waste transfer facility, used oil transfer facility, or used oil processor or re-refiner shall pay an annual permit fee of five hundred dollars (\$500) on or before March 1 of each year, for the following calendar year or any portion thereof.
- 4390.5 A person who first applies to the Director for an EPA identification number after the effective date of these rules, shall pay the annual permit fee according to that person's generator category upon submitting a notification form to the Director.
- 4390.6 A person who applies for a provisional EPA identification number pursuant to § 4204.3 for the one-time generation of hazardous waste shall pay a permit fee of one hundred dollars (\$100).
- 4390.7 The applicant for a hazardous waste (RCRA) permit under § 4270 shall pay a permit application fee of ten thousand dollars (\$10,000), which shall accompany each initial permit application and renewal permit application.
- 4390.8 The owner or operator of a facility or unit permitted under § 4270 shall pay an annual facility permit fee of two thousand, five hundred dollars (\$2500) on or before March 1 of each year for the following calendar year or any portion thereof.
- 4390.9 An owner or operator of a facility or unit permitted under § 4270 that pays an annual facility permit fee shall not be required to pay an annual generator permit fee.
- 4390.10 The Director shall assess a late charge equal to ten percent (10%) of the fee due if the fee is not received by the Department by the date due. The Director shall assess an additional late charge of ten percent (10%) of the unpaidd amount each thirty (30) days

that the fee remains unpaid. After ninety (90) days, the Director shall not assess any further late charges; however, the Director may refer the account to the appropriate authorities for collection.

- 4390.11 The following miscellaneous fees shall be paid at the time the service is requested:
- (a) Photocopies: after twenty (20) copies, thirty-five cents (\$0.35) per page;
 - (b) Copies of tape recordings of public hearings and meetings: five dollars (\$5.00) per cassette tape; and
 - (c) Searching and copying records in response to requests under § 204 of the District of Columbia Freedom of Information Act, approved March 25, 1977, as amended (D.C. Law 1-96; D.C. Official Code § 2-534 (2004 Supp.)): fees shall be determined in accordance with 1 DCMR § 408.
- 4390.12 A department, office, or agency of the District of Columbia Government shall not be required to pay a fee pursuant to this section, if the activities for which a ~~permit~~ fee is required are performed directly by the department, office, or agency for a government purpose, or if the miscellaneous services are required for a government purpose.
- 4390.13 All fees shall be paid by check or money order, made payable to the District of Columbia Treasurer.
- 4390.14 ~~The Pursuant to 1 DCMR § 108.1, fee for a returned check shall be twenty-five dollars (\$25)~~ sixty-five dollars (\$65.00).
- 4390.15 The initial payment of all fees due pursuant to this section shall be due on ~~March 1, 2005, or~~ the effective date of these rules, ~~whichever is later~~.

4391 – 4398 RESERVED

4399 DEFINITIONS

4399.1 When used in this chapter, the following terms have the meanings ascribed:

Department – the District of Columbia Department of Health or a successor agency.

Director – the Director of the Department of Health or his or her designee.

Regulated medical waste has the meaning given the term “medical waste” in § 2 of the Illegal Dumping Enforcement Act, effective May 20, 1994, as amended (D.C. Law 10-117; D.C. Official Code § 8-901(3A)) and the term “infectious waste” in § 2 of the District

of Columbia Solid Waste Facility Permit Act of 1995, effective February 27, 1996, as amended (D.C. Law 11-94; D.C. Official Code § 8-1051(21) (2001)).

Responsible person means a person who is or has been the generator of hazardous waste, used oil, or regulated medical waste; the owner or operator of a site that contains, or a vehicle that transports, hazardous waste, used oil, or regulated medical waste; or a person who by contract, agreement, or otherwise arranges for the storage, treatment, or disposal of hazardous waste, used oil, or regulated medical waste.

4399.2 Terms not defined in this chapter shall have the meanings ascribed in § 3 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1302; § 2 of the Illegal Dumping Enforcement Act, D.C. Official Code § 8-901; § 2 of the District of Columbia Solid Waste Facility Permit Act, D.C. Official Code § 8-1051; and chapter 42 of the Hazardous Waste Management Regulations, Title 20 DCMR.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(J) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(J), and 50-308(b)), hereby gives notice of its final rulemaking action taken October 12, 2005, to amend § 102.1 of Chapter 1 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on August 5, 2005, at 52 DCR 7263. The final rulemaking will amend the date and time of the Commission's regular meetings from the first Tuesday at 9:00 am, to the second Wednesday at 10:00 am. A public hearing was held on September 14, 2005, and comments were received by the Commission and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 102, MEETINGS, is amended to read as follows:

102 MEETINGS

102.1 The Commission shall hold regular meetings on the second Wednesday of January, March, May, July, September and November at 10:00 a.m., at the official offices of the Commission, or at any other place as the Chairperson may designate.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(D) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1)(D), and 50-308(b)), hereby gives notice of its final rulemaking action taken October 12, 2005, to amend § 507.2 of Chapter 5 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on July 15, 2005, at 52 DCR 6683. The final rulemaking will amend the time requirement to provide a notice of transfer to the Office of Taxicabs from ten (10) days to five (5) working days. A public hearing was held on September 14, 2005, and comments were received by the Commission and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 507, TRANSFER OF OWNER OR OPERATOR, is amended to read as follows:

507 TRANSFER OF OWNER OR OPERATOR

507.2 The notice shall be filed on a form provided by the Office within five (5) working days of the owner or operator either leaving or entering the company, association or fleet.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

and

Z.C. ORDER NO. 04-31

Z.C. Case No. 04-31

(Text Amendments to Definitions Section, 11 DCMR § 199)

July 11, 2005

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of amendments to § 199 (Definitions) of the Zoning Regulations (Title 11 DCMR). The amendments will define the terms "clear height" and "clear or low-emissivity glass." The Commission took final action to adopt the amendments at a public meeting held on July 11, 2005.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The existing regulations do not provide definitions of either term. However "clear height" is a term that has been included in the text of pending map amendments that would establish the Takoma Neighborhood Commercial Overlay District (Z.C. Case No. 04-16) and the Mount Vernon Triangle sub-area of the Downtown Development District (Z.C. Case No. 04-08). In addition to these proposed amendments, "Clear or low-emissivity glass" has also been used in the following overlays: Capital Gateway (§ 1604.6) Downtown Development District (§ 1701.5(a)), Southeast Federal Center (§§ 1803.3(e) & 1804.3(e)), and Uptown Arts-Mixed Use (§ 1903.4(a)). Without these amendments, "clear height" or "clear or low-emissivity glass" would need to be defined in each section in which the term was used. This would be an unnecessary encumbrance to the Zoning Regulations.

Description of Text Amendment

Given the multiple instances in which these terms now appear or are proposed to appear in the Zoning Regulations, the Office of Planning initiated this rulemaking to define these terms once, rather than defining them repeatedly within individual overlay or sub-district regulations. These specifications reflect new industry standards for quality retail space and other space not intended

for living-units. The clear height requirement, as defined, is intended to be flexible enough to change with interior and market needs over time, and to stimulate pedestrian activity.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the goals of the Comprehensive Plan and are consistent with the following sections of the Comprehensive Plan: § 708.2, which advocates designing buildings to complement or enhance the physical character of the District; §709.2(i) which encourages design features such as storefront windows to promote pedestrian activity along streets; and §713.2, which emphasizes the design of functionally active commercial areas throughout the District, and the orientation of major new development toward the street in order to emphasize the public space as a setting for active use.

Public Hearing and Proposed Action

The Commission held a public hearing on March 31, 2005 and took proposed action immediately thereafter to approve the advertised text. There was only one comment at the hearing, a strongly supportive statement from the Retail Committee of the District of Columbia Building Industry Association. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 27, 2005 at 52 DCR 5092, for a 30-day notice and comment period. No comments were received.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated April 28, 2005, found that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 11, 2005. No substantive changes were made to the advertised prepared text.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the amendment of 11 DCMR § 199.1, to insert the following new definitions, in proper alphabetical order.

OCT 28 2005

1. **Clear Height, Floor to Ceiling** – floor to ceiling height is a vertical distance measured from the finished floor to the finished ceiling that is unobstructed by any of the following:
 - (a) Elements of the building structure, other than columns and walls;
 - (b) Components of mechanical, plumbing, or fire suppression systems;
or
 - (c) Components of electrical systems, except lighting fixtures.

If the ceiling is not finished, the distance shall be measured to the lowest point of any of the structural elements of systems referenced in (a), (b) or (c) above.

2. **Glass, Clear and/or Low-Emissivity** – glass with a visible light transmission rating of at least seventy percent (70%) and an outdoor visible light reflectance rating of no greater than seventeen percent (17%).

Vote of the Zoning Commission taken at its public meeting on March 31, 2005, to **APPROVE** the proposed rulemaking:5-0-0 (Carol J. Mitten, Kevin L. Hildebrand, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons).

This order was **ADOPTED** by the Zoning Commission at its public meeting on July 11, 2005, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on ~~OCT 28 2005~~.