

DEPARTMENT OF HEALTH
ENVIRONMENTAL HEALTH ADMINISTRATIONNOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in sections 5 and 6 of The District of Columbia Air Pollution Control Act of 1984 ("the Act"), as amended (effective March 15, 1985, D.C. Law 5-165; D.C. Official Code §8-101.06), and Mayor's Order 98-44 (dated April 10, 1998) hereby gives notice of his intent to adopt the following amendments to Chapter 7, of Subtitle A: Air Quality, of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register* pursuant to D.C. Official Code §2-505(a).

The proposed rules contain minor amendments to a recently published final rulemaking, effective April 16, 2004, 51 DCR 3879, which addressed steps to further reduce volatile organic compound (VOC) emissions in the District. Since VOCs are precursors to ozone, the final rules incorporated model rules to help reduce ozone in the eastern United States promulgated by the Ozone Transport Commission (OTC), an entity created by the federal Clean Air Act (42 U.S.C. 7506a). All members of the OTC: Virginia, The District of Columbia, Maryland, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, and Maine, enacted similar rules as part of a regional strategy to reduce ozone.

There is good cause for a shortened notice of publication in the *D.C. Register* because the proposed rules are only minor changes to a previously published rulemaking wherein the public had an opportunity to submit written comments and testify at a public hearing.

TITLE 20 DCMR (ENVIRONMENT) (FEBRUARY 1997), SUBTITLE A: AIR QUALITY, CHAPTER 7, VOLATILE ORGANIC COMPOUNDS is amended by deleting the words stricken with a line and adding the words underlined:

718 MOBILE EQUIPMENT REPAIR AND REFINISHING

718.1 This section applies to any person who sells, supplies, offers for sale, ~~manufacturers~~ manufactures or applies repair and refinishing or color-matched coatings for or to mobile equipment or mobile equipment components on or after January 1, 2005 in the District of Columbia, except as provided in §718.2.

718.4 A person who sells, supplies, offers for sale or ~~manufacturers~~ manufactures mobile equipment repair and refinishing coatings subject to this section shall provide documentation with the product concerning the

VOC content of the coatings, in pounds per gallon, calculated in accordance with the equations provided in this section:

- 718.6 The following are exempt from the application ~~techniques~~ equipment requirements listed in §718.5(g) & ~~(h)~~ §§718.7 and 718.8:

719 CONSUMER PRODUCTS – GENERAL REQUIREMENTS

- 719.2 For purposes of §§719 through 734 and of any definitions in §799 applicable to §§719 through 734 the District incorporates by reference rules and test methods from the California Air Resource Board (CARB), the South Coast Air Quality Management District (SCAQMD), and the American Society for Testing and Materials (ASTM), where specifically cited, ~~including subsequent amendments~~. These materials are incorporated in their versions current as of January 1, 2004 unless otherwise indicated in §§719 through 734 and 799.

721 CONSUMER PRODUCTS – EXEMPTIONS FROM VOC STANDARDS

- 721.1 The following are exempt from the Table of Standards in §720:

- (d) Fragrances up to a combined level of two percent (2%) by weight contained in any consumer product and colorants up to a combined level of two percent (2%) by weight contained in any antiperspirant or deodorant;

723 CONSUMER PRODUCTS – PRODUCTS REQUIRING DILUTION

- 723.2 Consumer products wherein the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, shall comply with the limits specified in the Table of

Standards in §720, ~~shall apply to the product~~ only after the maximum recommended dilution has taken place.

727 CONSUMER PRODUCTS – CHARCOAL LIGHTER MATERIALS

727.3 For certification of a charcoal lighter material formulation, the application shall be in writing and shall include, at a minimum, the following:

- (d) Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified in an Alternative Control Plan (ACP) Agreement issued pursuant to §727.4(b) 732.

730 CONSUMER PRODUCTS – REPORTING REQUIREMENTS

730.1 Any person who sells, supplies, offers for sale, or manufactures consumer products for use in the District of Columbia shall comply with the following reporting requirements:

- (a) Upon ninety (90) days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify including but not limited to all or part of the following information:

- (9) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstracts Services (CAVES CAS) number, of the following:

- (d) Consumer products that contain perchloroethylene or methylene chloride shall comply with the following special reporting requirements:

- (4) The information specified in subparagraph (d)(3) of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.

731**CONSUMER PRODUCTS – TEST METHODS****731.1**

Testing to determine compliance with the requirements of §§720 through 734 shall be performed using CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, and as last amended on September 3, 1999, incorporated herein by reference. The requirements of Sections 3.5, 3.6, and 3.7 of CARB Method 310 define a process for the initial determination of VOC content, the determination of ~~LVP-VOL~~ VOC status of compounds and mixtures, and the final determination of VOC content, and are incorporated in paragraphs (a) through (c) of this subsection as follows:

- (b) Pursuant to Section 3.6 of CARB Method 310, Determination of the LVP-VOC Status of Compounds and Mixtures, Section 3.6 of CARB Method 310 does not apply to antiperspirants and deodorants or aerosol coating products because there is no LVP-VOC exemption for these products;

- (1) Pursuant to Section 3.6.1 of CARB Method 310, Formulation Data, if the vapor pressure is unknown, the following ASTM methods may be used to determine the LVP-VOC status of compounds and mixtures: ASTM D 86-96 (April 10, 1996), ASTM D 850-93 (April 15, 1993), ASTM D 1078-97 (July 10, 1997), ASTM D 2879-97 (April 10, 1997), as modified in Appendix B to Method 310, ASTM D 2887-97 (April 10, 1997) and ASTM E 1719-97 (March 10, 1997);

- (c) Pursuant to Section 3.7 of CARB Method 310, Final Determination of VOC Content, if a product's compliance status is

not satisfactorily resolved under Sections 3.5 and 3.6, the manufacturer or responsible party must conduct further analyses and testing as necessary to verify the formulation data;

- (3) Pursuant to Section 3.7.3 of CARB Method 310, If there exists a discrepancy that cannot be resolved between the results of CARB Method 310 and the supplied formulation data, then the results of CARB Method 310 shall take precedence over the supplied formulation data. The results of CARB Method 310 shall then determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of District of Columbia regulations.

732 CONSUMER PRODUCTS – ALTERNATIVE CONTROL PLANS

732.5 In accordance with the time periods specified in §732.7, the Department shall issue an ACP Agreement approving an ACP application that meets the requirements of §§719 through 734. The Department shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in the Table of Standards in §720. The ACP Agreement shall also include:

- (a) Only those ACP products for which the enforceable sales are at least seventy five percent (75%) of the gross District of Columbia sales, as determined in §732.4(d);
- (b) A reconciliation of shortfalls plan meeting the requirements of ~~§733~~ §732.4(g)(10); and

732.9 Failure to meet any condition of an applicable ACP Agreement shall constitute a single, separate violation for each day until such requirement or condition is satisfied, unless otherwise provided in paragraphs (a) through ~~(i)~~ (h) of this subsection:

- (d) False reporting or failure to report any of the information specified in §732.10(a)(9) §732.10(j), or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation for each day during the time period for which the surplus reductions are claimed to be valid;

- (f) If a violation specified in paragraph (e) of this subsection occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

- (g) In assessing the amount of penalties for any violation occurring pursuant to paragraphs (a) through (f) of this subsection, the circumstances identified in applicable District of Columbia health and safety laws and regulations shall be taken into consideration; and

732.10 The Department shall issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, any surplus reductions achieved by a responsible ACP party operating under an ACP. All surplus reductions shall be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, according to the following provisions:

- (g) Only small or one-product businesses selling products under an approved ACP may purchase surplus reductions, except as provided in ~~subparagraph (8)(B) of this subsection~~ §732.10(h)(2). An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase;
- (h) While valid, surplus reductions can be used only for the following purposes:

- (1) To adjust ~~either~~ the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

732.11 The use of limited-use surplus reduction credits for early reformulations of ACP products shall comply with the following provisions:

- (b) If requested in the application for an ACP, the Department shall, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that all of the following documentation has been submitted to the satisfaction of the Department:

- (2) Accurate documentation demonstrating that the early reformulated ACP product was sold in District of Columbia retail outlets within the time period specified in paragraph (a) of this subsection;

- (c) Surplus reduction credits issued pursuant to this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((VOC \text{ Content})_{initial} - (VOC \text{ Content})_{final})}{100}$$

where,

SR = Surplus Reductions for the ACP product, expressed to the nearest pound;

Enforceable Sales = the Enforceable Sales for the early reformulated ACP product, expressed to the nearest pound of ACP product;

VOC

Content_{initial} = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in ~~§719.2~~ §720, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product;

- (d) The use of surplus reduction credits issued pursuant to this section shall be subject to all of the following provisions:

- (3) Except as provided in this subsection, surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in §732.10.

732.22 The information required by §732.4 (a), §732.4(b), and ~~§732.10(a)(9)~~ §732.10(j) is public information that may not be claimed as confidential. All other information submitted to the Department to meet the requirements of this regulation shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106.

733 CONSUMER PRODUCTS – INNOVATIVE PRODUCTS EXEMPTION

733.2 Manufacturers of consumer products that have been granted an Innovative Products exemption based on California specific data, or that have not been granted an exemption by CARB may apply for an Innovative Products exemption from the District of Columbia if the product meets the following criteria:

- (a) The manufacturer demonstrates by clear and convincing evidence that due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

- (3) VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} / \text{VOC}_{NC}$$

where,

- E_R = The VOC emissions from the noncomplying representative product, had it been reformulated;
- E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation;
- VOC_{STD} = The VOC limit specified in the ~~table of standards~~ Table of Standards in §720;
- VOC_{NC} = The VOC content of the noncomplying product in its current formulation;

- (b) If a manufacturer demonstrates that the equation in paragraph (a) of this subsection yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the Department;
- (c) For the purposes of this subsection, representative consumer product means a consumer product that meets all of the following criteria:

734

CONSUMER PRODUCTS – VARIANCE REQUESTS

734.1

Any person who cannot comply with the requirements set forth in §720, and §§722 through 728 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Department for a variance according to the following requirements:

- (c) Information submitted to the Department by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106. The Department may consider such confidential information in reaching a decision on a variance application;

735 PORTABLE FUEL CONTAINERS AND SPOUTS – GENERAL REQUIREMENTS

735.1 The requirements of §§735 through 741 apply to any person who sells, supplies, offers for sale, or manufactures, or uses a portable fuel container or spout on or after January 1, 2005 in the District of Columbia, except as provided in §737.

735.2 For purposes of §§736 through 741 and of any definitions in §799 applicable to §§736 through 741 the District incorporates by reference rules and test methods from the Code of Federal Regulations (CFR), and the California Air Resources Board (CARB), and Title 13, California Code of Regulations, sections 2250-2298, where specifically cited, including subsequent amendments. These materials are incorporated in their versions current as of January 1, 2004, unless otherwise indicated in §§736 through 741 and 799.

736 PORTABLE FUEL CONTAINERS AND SPOUTS – PERFORMANCE STANDARDS

736.3 The manufacturer of portable fuel containers or spouts shall perform compliance tests in accordance with ~~§741~~ §739 to show that their product meets the performance standards of §§736 through 741 prior to allowing the product to be offered for sale in the District of Columbia. The manufacturer must maintain records of these compliance tests for as long as the product is available for sale in the District of Columbia and make those test results available to the Department within sixty (60) days of request.

738 PORTABLE FUEL CONTAINERS AND SPOUTS – LABELING REQUIREMENTS

738.3 Each manufacturer subject to ~~this section~~ §738.1 or §738.2 shall file an explanation of both the date code and representative code with the Department no later than three (3) months after the effective date of this

regulation or within three (3) months of production, and within three (3) months after any change in coding.

738.4 Each manufacturer subject to ~~§739.1 and §739.2~~ §738.1 or §738.2 shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

738.5 Each manufacturer of a spout subject to ~~§739.2~~ §738.2 shall clearly display the make, model number, and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with §736.1 on the accompanying package, or for spouts sold without packaging, on either the spout, or a label affixed to the spout.

744 SOLVENT CLEANING – BATCH VAPOR CLEANING

744.1 This subsection applies to batch vapor cleaning machines that process metal parts.

746 SOLVENT CLEANING – AIRLESS AND AIR-TIGHT CLEANING

746.1 This subsection applies to airless cleaning machines and air-tight cleaning machines that process metal parts.

748 SOLVENT CLEANING – RECORDKEEPING AND MONITORING

748.1 The operator of a solvent cleaning machine subject to §§743 through 746 shall conduct monitoring and record keeping as follows:

(h) If a carbon adsorber is used to comply with these standards, the owner or operator shall measure and record the concentration of halogenated HAP solvent in the exhaust of the carbon adsorber weekly with a colorimetric detector tube;

(A) (1) This test shall be conducted while the solvent cleaning machine is in the working mode and is venting to the carbon adsorber;

(B) (2) The exhaust concentration shall be determined using a colorimetric detector tube designed to measure a concentration of one hundred (100) parts per million by volume of solvent in air to an accuracy of plus or minus twenty-five (25) parts per million (ppm) by volume; and

(C) (3) The concentration shall be determined through a sampling port for monitoring within the exhaust outlet that is easily accessible and located at least eight (8) stack or duct diameters downstream and two (2) stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet.

**749 ARCHITECTURAL AND INDUSTRIAL MAINTENANCE
COATING – GENERAL REQUIREMENTS**

749.1 Sections 749 through 754 apply to any person who supplies, sells, offers for sale, ~~manufacturers~~ manufactures, applies or solicits the application of any architectural coating on or after January 1, 2005 within the District of Columbia, except as provided in §751.

749.2 For purposes of §§749 through 754 and of any definitions in §799 applicable to §§749 through 754 the District incorporates by reference rules and test methods from the United States Environmental Protection Agency (U.S. EPA), the Code of Federal Regulations (CFR), the California Air Resource Board (CARB), the South Coast Air Quality Management District (SCAQMD), the Bay Area Air Quality Management District (BAAQMD), and the American Society for Testing and Materials (ASTM), where specifically cited, ~~including subsequent amendments~~. These materials are incorporated in their versions current as of January 1, 2004, unless otherwise indicated in §§749 through 754 and 799.

**750 ARCHITECTURAL AND INDUSTRIAL MAINTENANCE
COATING – STANDARDS**

750.3 A coating manufactured prior to the effective date specified for that coating in Table I of this section, may be sold, supplied, or offered for sale after the specified effective date. In addition, a coating manufactured before the effective date specified for that coating in Table I of this section may be applied at any time, both before and after the specified effective date, so long as the coating complied with the standards in effect at the

time the coating was manufactured. ~~Subsection 750.2~~ This subsection does not apply to any coating that does not display the date or date code required by §752.1(a).

750.8 A manufacturer, seller, or user may petition the Department to apply an industrial maintenance coating with a VOC content ~~up to~~ greater than 340 g/l if all of the following conditions are met:

**752 ARCHITECTURAL AND INDUSTRIAL MAINTENANCE
COATING – LABELING REQUIREMENT**

752.1 A manufacturer of any architectural coating shall list the following information on the coating container (or label) in which the coating is sold or distributed:

- (c) Either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer;
 - (1) VOC content shall be displayed in grams of VOC per liter of coating; and
 - (2) VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods and equations in §754.1(a) ~~and (b)~~, §754.1(b) and §754.2;

**753 ARCHITECTURAL AND INDUSTRIAL MAINTENANCE
COATING – REPORTING REQUIREMENTS**

753.1 Any manufacturer of clear brushing lacquers shall, on or before April 1 of each calendar year beginning in the year 2005, submit an annual report to the Department. The report shall specify the number of gallons of clear brushing lacquers sold in the District ~~if of~~ of Columbia during the preceding calendar year, and shall describe the method used by the manufacturer to calculate District of Columbia sales.

- 753.6 Any manufacturer of bituminous roof coatings or bituminous roof primers shall, on or before April 1 of each calendar year beginning with the year 2005, submit an annual report to the Department. The report shall specify the number of gallons of bituminous roof coatings or bituminous roof primers sold in the District of Columbia during the preceding calendar year, and shall describe the method used by the manufacturer to calculate District of Columbia sales.

**754 ARCHITECTURAL AND INDUSTRIAL MAINTENANCE
COATING – TESTING REQUIREMENTS**

- 754.1 ~~The compliance provisions and test methods for architectural and industrial maintenance coatings f~~ For the purpose of determining compliance with the VOC content limits in Table I in §750, the VOC content of a coating shall be determined by using the procedures described below in paragraphs (a) or (b), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured as follows:

- 754.2 To determine the physical properties of a coating in order to perform the calculations in §754.1(a)(1), the reference method for VOC content is U.S. EPA Method 24, except as provided in §§754.3 and 754.4. An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91 (Revised February 1996). The exempt compounds content shall be determined by SCAQMD Method 303-91 (Revised August 1996). To determine the VOC content of a coating, the manufacturer may use U.S. EPA Method 24, or an alternative method, as provided in §754.3, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended, including but not limited to, quality assurance checks and record keeping. However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 results will govern, except when an alternative method is approved as specified in §754.3. The Department may require the manufacturer to conduct a Method 24 analysis.

- 754.4 Analysis of methacrylate ~~multi~~ multi-component coatings used as traffic marking coatings shall be conducted according to a modification of U.S. EPA Method 24 in 40 CFR 59, Subpart D, Appendix A. This method has not been approved for methacrylate multi-component coatings used for

purposes other than traffic marking coatings or other classes of multi-component coatings;

799 DEFINITIONS

Fuel – all fuels subject to any provision of 20 DCMT DCMR Chapter 9, and Title 13, California Code of Regulations, Chapter 5, Standards for Motor Vehicle Fuels, Sections 2250 - 2298, except for Sections 2292.5, 2292.6, and 2292.7.

Non-flat - high gloss coating – a non-flat coating that registers a gloss of seventy (70) or above on a sixty (60) degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference into §741.1(e)(3) §754.

Pre-Treatment Wash Primer – a primer that contains a minimum of 0.5 acid, by weight, when tested in accordance with ASTM Designation D 1613-96, incorporated by reference into §754.1(e)(5) §754.5(e), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

Specialty primer, sealer, and undercoater – a coating labeled as specified in §752.1(g) and that is formulated for application to a substrate to seal fire, smoke or water damage, to condition excessively chalky surfaces, or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four (4) or less as determined by ASTM Designation D 4214-98, incorporated by reference in §754.1(e)(7) §754.5(g).

Varnish – a clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the ~~final~~ final sheen or gloss of the finish.

VOC content – consist of the following:

- (a) For the purpose of §§719 through 734, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight, exclusive of the container or packaging, as determined pursuant to §728.1(a) and ~~(b)~~ §731.1 through 731.3;

Comments on these proposed rules should be submitted, in writing, to Mr. Stanley Tracey, Department of Health, Air Quality Division, Chief of the Engineering and Planning Branch, 51 N Street, NE, 5th Floor, Washington, D.C. 20002. Copies of the

proposed rules and the materials incorporated by reference are available for public review during normal business hours at the offices of the Department of Health, Environmental Health Administration, 51 N Street, NE, Room 6051, Washington, D.C. 20002.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

HAZARDOUS WASTE MANAGEMENT REGULATIONS

The Director of the Department of Health hereby gives notice of intent to take proposed rulemaking 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 proposed Hazardous Waste Management Regulations, to be codified in chapters 42 and 43 of Title 20 DCMR, in not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*. Further, these rules shall not become effective until approved by the Council of the District of Columbia, or forty-five (45) days after submission to the Council, not including Saturdays, Sundays, legal holidays, and days of Council recess, if the Council has not disapproved these rules.

The Director is proposing this rulemaking 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 98-55, 45 DCR 2704 (1998);
- 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 existing District rules are patterned after the federal Resource Conservation and Recovery Act regulations in 40 CFR Parts 260 through 266, 268, 270, 273, 279, and the procedural regulations in 40 CFR Part 124 (hereafter collectively referred to as the "RCRA regulations"), but contain a number of provisions that are more stringent, broader in scope, or otherwise different than the RCRA regulations. Given the complexity of hazardous waste law, these differences have led to confusion and frustrated efforts to achieve compliance. The format and length of the existing District rules have likewise proven unwieldy for both the Department and

the regulated community. The format also makes it difficult to update the rules to keep them current with changes in the RCRA regulations.

To address these problems, the proposed rules would incorporate by reference, with certain exceptions, the text of the RCRA regulations published in the *Federal Register* through June 30, 2004, as published in the July 1, 2004 edition of the *Code of Federal Regulations*. The proposed rules would allow the Department to more effectively regulate hazardous waste, in a manner consistent with federal law and to focus its efforts on pollution prevention.

As with the existing rules, the proposed rules would establish criteria to be used in determining the materials that constitute hazardous waste; standards for generators, transporters, and owners and operators of hazardous waste facilities; standards for universal waste management; standards for used oil management; inspection and enforcement procedures; and fees for hazardous waste activities. The proposed rules would continue the prohibitions in the District of Columbia on the burning, land treatment and disposal, and underground injection of hazardous waste, and the burning of used oil. The proposed rules would also continue the requirement that owners and operators of hazardous waste transfer facilities obtain permits for their facilities. A description of the regulated community that would be affected by the proposed rules follows, along with a summary of the principal changes in the rules. The principal differences between the proposed rules and the RCRA regulations are also highlighted.

Hazardous Waste, Universal Waste, and Used Oil Activities in the District of Columbia

The proposed rules would primarily affect generators and transporters of hazardous waste and used oil handlers.

Generators. There are approximately 600 generators in the District of Columbia. Of these, fewer than 20 would be classified under the proposed rules as large quantity generators. The majority of the large quantity generators would consist of federal agencies and public utilities. The remaining generators would fall into two categories, the "100 to 1000 kilogram per month" small quantity generators, which typically include printers, hospitals, museums, universities, and educational facilities; and conditionally exempt small quantity generators, which typically include dry-cleaners and auto repair shops.

As indicated by the most recent biennial hazardous waste reports, remediation waste derived from lead-based paint activities accounts for the largest quantity of hazardous waste generated in the District. The remaining hazardous wastes are primarily generated through laboratory operations; painting and coating processes, including building and maintenance; cleaning out processes, including periodic sludge or residue removal; and equipment change-out or discontinuing the use of equipment.

Transporters. Nearly all of the generators in the District use commercial transporters headquartered outside of the District to transport their hazardous waste to designated treatment, storage, and disposal facilities, all of which are located outside of the District. There are no commercial transporters of hazardous waste headquartered or having their principal place of

business in the District, nor are there any hazardous waste transfer facilities located in the District.

Treatment, Storage, and Disposal Facilities. There are no hazardous waste treatment or disposal facilities located in the District, nor any commercial storage facilities. There is one permitted storage facility, the United States Naval Research Laboratory, which stores only its own waste.

Universal Waste Handlers, Transporters, and Destination Facilities. Certain types of waste - batteries, pesticides, thermostats, and lamps that are generated by a large number of businesses in relatively small quantities - are classified as "universal wastes." Universal wastes are managed under special rules designed to reduce the amount of hazardous waste disposed of together with municipal solid waste, to encourage recycling and proper disposal, and to reduce the regulatory burden on the businesses that generate these wastes. There are no facilities in the District that have notified the Department of Health that they are engaged solely in universal waste activities. Several generators of hazardous waste, however, have given notification of their universal waste management activities as universal waste handlers.

Used Oil Handlers. The Hazardous Waste Regulations require used oil transporters, processors/re-refiners, and fuel marketers to notify the Department of their activities. Fifteen (15) businesses have identified themselves as belonging to one of these categories, most of which are auto repair shops that market their used oil. A power utility and its subcontractors fall within the transporter and fuel marketer categories. There are no other used oil transporters headquartered or having their principal place of business in the District, nor are there any used oil transfer facilities. Further, there are no used oil collection centers or used oil aggregation points in the District.

Summary of Proposed Changes in the District of Columbia Hazardous Waste Management Regulations

The proposed rules would incorporate the RCRA regulations by reference, with certain modifications and exceptions. The existing District rules differ from the RCRA regulations, and thus the proposed District rules, in many respects, as highlighted below.

A. Prohibitions Specific to the District of Columbia

The broad prohibitions in proposed 20 DCMR § 4202 constitute the principal difference between the RCRA regulations and the proposed District rules. The federal regulations allow, subject to strict controls, various methods for the treatment, storage, and disposal of hazardous waste and used oil. The proposed District rules would prohibit the following:

- o The disposal (dumping) of any hazardous waste or used oil into or upon any land or water in the District, including the District's wastewater system and storm water system (new prohibition);

- o Use of a surface impoundment for the treatment, storage, or disposal of hazardous waste or used oil;
- o Use of waste piles to treat or store hazardous waste or used oil (new prohibition);
- o Use of land treatment to manage or dispose of hazardous waste;
- o Disposal of hazardous waste in landfills;
- o Land disposal of hazardous waste or any mixture of hazardous waste and any other constituent, whether hazardous or not;
- o Use of used oil for dust suppression;
- o Use of waste or other material, contaminated or mixed with dioxin or any other hazardous waste, for dust suppression or road treatment;
- o 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;
- o Burning of used oil, whether on-specification or off-specification, including burning in space heaters and burning incidental to processing;
- o Burning of wastes that meet the comparable fuel or synthesis gas (syngas) fuel specifications in 40 CFR § 261.38, including burning in space heaters and burning incidental to processing;
- o Underground injection of hazardous waste; and
- o 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)).

B. Emergency and Spill Notification

Another major difference between the RCRA regulations and the proposed District rules relates to telephonic emergency or release notification. Under proposed 20 DCMR § 4205, whenever the federal regulations require that telephonic emergency, spill, or release notification be given to a federal agency, the person required to give the notice would, at the same time, be required to give telephonic notice to the District of Columbia Emergency Management Agency and the Department of Health, Hazardous Waste Division.

C. Reporting Requirements

Under proposed 20 DCMR § 4206.2, whenever the RCRA regulations require that a document be submitted to EPA or another federal agency, the person required to submit the document to EPA or other federal agency would be required to submit, at the same time, a copy to the Department of Health, Hazardous Waste Division.

D. Conditionally Exempt Small Quantity Generators

- The proposed District rules would recognize the distinction in the RCRA regulations between conditionally exempt small quantity generators (less than 100 kilograms per calendar month of hazardous waste, one kilogram of acute hazardous waste, or 100 kilograms of material from the cleanup of a spill of acute hazardous waste per calendar month); 100 to 1000 kilograms per calendar month small quantity generators; and large quantity generators (more than 1000 kilograms per calendar month).
 - The existing rules in 20 DCMR § 4102 classify generators of less than 100 kilograms of hazardous waste, up to one kilogram of acute hazardous waste, or 50 kilograms of acute hazardous waste spill residues per calendar month, as “small quantity generators,” subject to more extensive regulation than conditionally exempt small quantity generators under the RCRA regulations. All other generators are classified as large quantity generators and subject to more extensive regulation, comparable to or more stringent than the RCRA regulations applicable to large quantity generators.
- The proposed District rules would differ from the RCRA regulations in the following material respects:
 - Proposed 20 DCMR §§ 4204.1 and 4261.7(a) would require each conditionally exempt small quantity generator to notify the Department of its hazardous waste activities and to obtain an EPA identification number from the Department before generating hazardous waste;
 - Under proposed 20 DCMR § 4261.7(c), beginning March 1, 2006, each conditionally exempt small quantity generator would be required to submit to the Director, on or before March 1 of each year, on forms provided by the Department, an annual self-certification of compliance with the requirements of 40 CFR § 261.5 and, where necessary, a compliance plan, as well as a summary of the generator’s efforts to reduce the volume and toxicity of hazardous waste generated; and
 - Unlike 40 CFR §§ 261.5(j) and 279.10(b)(3), proposed 20 DCMR §§ 4261.7(b) and 4279.5(a) would regulate all mixtures of conditionally exempt small quantity generator waste and used oil as hazardous waste and not as used oil.

E. Standards Applicable to Generators of Hazardous WasteThe Manifest

- Generators would remain subject to all federal requirements in Subpart B of 40 CFR Part 262 relating to the manifests. The proposed rules would repeal the additional existing District requirements in 20 DCMR §§ 4201.10(d) and 4201.12 that generators send a copy of the manifest to the Department after a shipment of hazardous waste is accepted by the initial transporter and after a shipment is received by the designated facility.

Accumulation Time

- The proposed rules would largely conform the District's accumulation rule to the RCRA regulations, except as follows:
 - The RCRA regulations in 40 CFR § 262.34(c) permit the satellite accumulation of as much as 55 gallons of hazardous waste or one quart of acute hazardous waste at or near any point of generation where wastes initially accumulate. Under proposed 20 DCMR § 4262.4(a), the District rules would:
 - Require a generator accumulating hazardous waste to mark each container with the date on which the accumulation began and the words "Hazardous Waste"; and
 - Prohibit the generator from accumulating hazardous waste for more than 90 days (total) or, in the case of a generator accumulating hazardous waste under 40 CFR § 262.34(d) through (f), 180 days (total); or 270 days (total); as applicable.
 - The RCRA regulations in 40 CFR § 262.34 require generators accumulating hazardous waste in containers to comply with the applicable requirements of Subpart I in 40 CFR Part 265. Proposed 20 DCMR § 4262.4(b) would require generators to comply, in addition, with secondary containment and closure requirements.
- The existing District rules relating to accumulation time differ significantly from the RCRA regulations, and thus the proposed District rules, in the following respects:
 - The existing rules in 20 DCMR §§ 4202.6 and 4202.7 require generators accumulating hazardous waste to comply with standards for containers, tanks, drip pads, and containment buildings equivalent to the standards in 40 CFR Part 264 instead of the interim status standards in Part 265, as modified in the existing District rules;
 - The existing rules do not contain a satellite accumulation provision;
 - The existing rules do not contain provisions comparable to 40 CFR § 262.34(d) through (f), which allow extended accumulation time under certain circumstances for 100 to 1000 kilogram generators and for large quantity generators generating wastewater treatment

sludges from electroplating operations (F006 waste) and for members of EPA's National Performance Track Program; and

- o The existing rules do not contain provisions comparable to 40 CFR § 261.5(g)(2) that would allow a generator of less than 100 kilograms of hazardous waste per month, or less than the exclusion limits for acute hazardous waste, to accumulate up to 1000 kilograms of hazardous waste. Instead, under existing 20 DCMR §§ 4102.6 and 4202.6(b), a generator who generates less than 100 kilograms of hazardous waste per month may accumulate hazardous waste on-site for 180 days from the date the accumulation began, provided the quantity accumulated never exceeds 600 kilograms or the exclusion limits for acute hazardous waste.

100 to 1000 Kilogram per Month Generators

- The RCRA regulations in 40 CFR § 264.44 exempt generators of between 100 and 1000 kilograms of hazardous waste in a calendar month from biennial reporting requirements.
 - o The existing District rules require these generators to comply with the biennial reporting requirement.
 - o Under proposed 20 DCMR § 4262.6, these generators would be exempt from the biennial reporting requirement, but would, however, be required, beginning March 1, 2006, to submit to the Director, on or before March 1 of each year, on forms provided by the Department, an annual self-certification of compliance with the applicable regulatory requirements and, where necessary, a compliance plan, as well as a summary of the generator's efforts to reduce the volume and toxicity of hazardous waste generated.

Treatability Studies

- The proposed District rules would adopt without modification the provisions of 40 CFR § 261.4(e) and (f), which exempt from certain regulatory requirements treatability study samples, samples undergoing treatability studies at laboratories and testing facilities, and laboratory and testing facilities conducting treatability studies. A treatability study is a study to determine, among other things, whether a hazardous waste is amendable to a treatment process. It may not be used as a means to commercially treat or dispose of hazardous waste.
 - o The existing District rules:
 - Require generators, sample collectors, and laboratories to notify the Director of their activities and to obtain an EPA identification number, whereas the federal regulations generally do not require notification;
 - Require generators, sample collectors, and laboratories to obtain prior approval by the Director before any of the applicable regulatory requirements are waived or reduced; whereas the federal regulations do not require prior approval from the Regional

Administrator or the director of an authorized state program before the analogous federal requirements are waived; and

- Contain more stringent limits than the RCRA regulations on the quantities of hazardous waste that are subject to the exemption. For example, the existing District rules limit the use in the treatability study to no more than 1000 kilograms of media contaminated with non-acute hazardous waste (versus 10,000 kilograms allowed under the federal regulation); 100 kilograms of non-acute hazardous waste other than contaminated media (versus 1000 kilograms allowed under the federal regulation); 1 kilogram of acute hazardous waste (1 kilogram allowed under the federal regulation); or 250 kilograms of media contaminated with acute hazardous waste (versus 2500 kilograms allowed under the federal regulation), for each process being evaluated for each generated waste stream.

F. Standards Applicable to Transporters and Owners and Operators of Hazardous Waste, Universal Waste, and Used Oil Transfer Facilities

Both the existing and proposed District rules specify more stringent requirements for transfer facilities than the RCRA regulations. Under the proposed District rules, the terms "transfer facility," "universal waste transfer facility," and "used oil transfer facility" would be defined as in 40 CFR § 260.10. Unlike the federal regulations, however, the proposed District rules would not relax any of the requirements for these facilities. Thus, transporters and owners and operators of transfer facilities storing manifested shipments of hazardous waste would be subject to the same requirements as owners and operators of storage facilities, and would be required to obtain a hazardous waste (storage facility) permit. Transporters and owners and operators of universal waste transfer facilities storing universal waste would be subject to the same requirements as universal waste handlers; while transporters and owners and operators of used oil transfer facilities storing used oil for more than 24 hours would be subject to the same requirements as processors and re-refiners of used oil.

G. Post-Closure Requirements

The proposed District rules would adopt the closure and post-closure requirements in the RCRA regulations, including the requirements for 30-year post-closure care, post-closure plans, financial assurance, and post-closure permits or enforceable documents in lieu of permits. The RCRA regulations require owners and operators of all types of hazardous waste facilities to comply with the closure standards; however, only owners and operators of hazardous waste disposal facilities, certain waste piles and surface impoundments; and tank systems, containment buildings, and other facilities that are unable to achieve clean closure are required to comply with the post-closure standards. Since the proposed District rules would prohibit disposal facilities, waste piles, and surface impoundments, only owners and operators of tank systems, containment buildings, and other facilities that are unable to achieve clean closure would be required to comply with post-closure standards.

- o In contrast, the existing District rules require owners and operators of all types of hazardous waste facilities to comply with 30-year post-closure requirements, even where the owner or operator is able to achieve clean closure.

H. The Department-Administered RCRA Permit Program

The RCRA regulations in 40 CFR Parts 124 and 270 contain the decision-making procedures that EPA follows in issuing, modifying, revoking and re-issuing, or terminating RCRA permits.

- o Proposed 20 DCMR §§ 4270 and 4271 would contain provisions comparable to the RCRA regulations, but would be consistent with applicable District laws, including the enforcement and appeal provisions in the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1304 and 8-1308 to 8-1311; the contested case procedures in the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-509 (2001); and the notice and comment provisions, including the "great weight" requirement, in § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1978, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10 (2004 Supp.)). All public notices required to be published by the Department would be published in the *D.C. Register*;
- o The proposed rules would add standards for the administrative record for draft and final permits, as well as for public hearings, including the requirement to raise all reasonably ascertainable issues and arguments during the public comment period; and
- o The proposed rules would also update the existing rules to provide that the newly established District of Columbia Office of Administrative Hearings (OAH) will adjudicate all cases under the Department's jurisdiction pursuant to § 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03 (2004 Supp.)), with appeals of final administrative decisions taken directly to the District of Columbia Court of Appeals. The existing rules provide for adjudication by the Department of Health, Office of Adjudications and Hearings (previously, the Department of Consumer and Regulatory Affairs, Office of Adjudication), with appeals taken to the Board of Appeals and Review, and then to the Court of Appeals.

I. Standards for Universal Waste Management

- The proposed rules would incorporate the standards in 40 CFR Part 273 for universal waste management, with the following exceptions:
 - o The District rules would require both small and large quantity handlers of universal waste to notify the Director of their universal waste management activities and to have received an EPA identification number before generating universal waste or receiving universal waste from other universal waste handlers, unless the handler has previously notified the

Director of its hazardous waste management activities. In contrast, under the federal regulations, small quantity handlers are exempt from the notification requirement, and large quantity handlers must notify EPA before accumulating 5000 kilograms or more of universal waste; and

- o Under the proposed District rules, universal waste handlers would not have the option of using a letter to request an EPA identification number, but would instead be required to use the standard EPA notification form (EPA Form 8700-12).
- The proposed rules differ from the existing District rules in the following significant respects:
 - o The existing rules specify that, except for universal waste pesticides, universal waste that is not destined for recycling is subject to full regulation as hazardous waste, whereas the proposed rules would allow a universal waste handler to send universal waste to a destination facility for recycling or disposal;
 - o Under the existing rules, all universal waste handlers are required to meet the standards for large quantity handlers, whereas the proposed rules would provide reduced requirements for small quantity handlers;
 - o The existing rules prohibit universal waste handlers from accumulating more than 1000 kilograms of universal waste at any time, while the proposed rules would not limit the amount accumulated. Universal waste handlers would, however, be subject to accumulation time periods, as specified in the RCRA regulations; and
 - o The existing rules apply to mercury-containing lamps; whereas the proposed rules would apply to all universal waste lamps, including fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

J. Standards for the Management of Used Oil

- Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with listed halogenated hazardous waste. *See, e.g.,* 40 CFR § 279.10(b)(1)(ii). Under the existing rules, all used metalworking oils/fluids containing more than 1000 ppm total halogens are presumed hazardous. The proposed rules would adopt the exception in § 279.10(b)(1)(ii)(A) to the presumption for metalworking oils/fluids containing chlorinated paraffins that are processed through a tolling arrangement to reclaim metalworking oils/fluids.
- The proposed rules would adopt the used oil fuel specifications in 40 CFR § 279.11. These specifications set maximum allowable limits for arsenic, cadmium, chromium, lead, and total halogens, as well as a minimum flash point. The existing rules establish lower maximum allowable limits for cadmium, chromium, lead, and total halogens, and a higher minimum flash point. The specifications are used to determine which used oil fuels may be burned for

energy recovery without regulation under RCRA. While the proposed rules would continue the prohibition on the burning of all used oil in the District, the proposed adoption of the federal used oil fuel specifications would clarify the requirements for those used oil handlers in the District who first claim that used oil to be burned for energy recovery outside of the District meets the federal specifications.

- The federal regulations in 40 CFR Part 279 provide used oil handlers the option of obtaining an EPA identification number by submitting a completed EPA Form 8700-12 or a letter request.
 - Under proposed 20 DCMR § 4279.3, used oil handlers would not have the option of submitting a letter request. Instead, each used oil handler would be required to use EPA Form 8700-12.
- Under 40 CFR §§ 261.5(j) and 279.10(b)(3), mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under § 261.5 are subject to regulation as used oil.
 - In proposed 20 DCMR §§ 4261.7(b) and 4279.5(a), the District rules would subject all mixtures of used oil and conditionally exempt small quantity generator hazardous waste to regulation as hazardous waste.
- Under 40 CFR §§ 279.10(d)(2) and 279.20(a)(3), mixtures of used oil and diesel fuel mixed on-site by a generator of used oil for use in the generator's own vehicles are not subject to regulation under Part 279 once the used oil and diesel fuel have been mixed.
 - In proposed 20 DCMR §§ 4279.5(b) and 4279.7(a), the District rules would subject all mixtures of used oil and fuels or other fuel products, including all mixtures of used oil and diesel fuel, to regulation under the proposed § 4279 used oil management standards.
- The federal regulations in 40 CFR § 279.22(b) require used oil generators to maintain containers and aboveground tanks used to store used oil in good condition and not leaking.
 - In proposed 20 DCMR § 4279.7(b), the District rules would require, in addition, secondary containment for containers and aboveground tanks.

K. Proposed Amendments to Update the District Rules

- The proposed rules also include changes to bring the existing rules up-to-date:
 - The Department is proposing to adopt the RCRA regulations published in the *Federal Register* between July 1, 1998, and June 30, 2004, including regulations related to remediation waste, cleanup provisions for corrective action management units, organic emission standards for tanks and containers, and low-level mixed radioactive waste;

- o The proposed rules would update the Department's enforcement procedures, to establish standards for parties proposing supplemental environmental projects as part of a settlement agreement or consent compliance order, and to implement amendments to the Illegal Dumping Enforcement Act of 1994, D.C. Official Code § 8-902, and the Solid Waste Facility Permit Act of 1995, D.C. Official Code §§ 8-1055(c)(12) through (18) and 8-1056, which expanded the Department's enforcement authorities relating to hazardous waste and regulated medical waste.
- The proposed rules would eliminate the biennial permit requirement in 20 DCMR § 4208. Instead, under proposed § 4204.5, the EPA identification number issued to a generator would be deemed a permit to generate hazardous waste.
- Proposed 20 DCMR § 4390 contains an updated fee schedule that would establish fees for generators; owners and operators of hazardous waste facilities; owners and operators of used oil transfer facilities; and used oil processors and re-refiners.

Conclusion

Copies of the proposed rules and a complete list of the proposed changes in the rules may be obtained from 8:15 a.m. to 4:45 p.m., Monday through Friday, excluding holidays, from the Department of Health, Environmental Health Administration, Bureau of Hazardous Material and Toxic Substances, Hazardous Waste Division, 51 N Street, N.E., 3rd Floor, Washington, D.C. 20002, for a small fee to cover the cost of copying.

The RCRA regulations that would be incorporated by reference 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.

Persons wishing to comment on the proposed rules may submit written comments no later than forty-five (45) days after the date of publication of this notice in the *D.C. Register*, to Marie Sansone, Attorney-Advisor to the Bureau of Hazardous Material and Toxic Substances, Department of Health, Environmental Health Administration, Office of Enforcement, Compliance & Environmental Justice, 51 N Street, N.E., Room 6045, Washington, D.C. 20002.

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 supercede 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 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** means the term “Director” shall supplant the term “Regional Administrator”;
- (b) **Boiler** means 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 § 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 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 §§ 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 § 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 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 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 If 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.

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 14 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 § 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 § 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 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 § 261.5, incorporated by reference, are modified in 20 DCMR § 4261.7.

4264.5 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.

4264.6 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.
- 4264.7 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.
- 4264.8 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).
- 4264.9 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."
- 4264.10 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.

- 4264.11 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 § 264.151, incorporated by reference, are subject to modification in 20 DCMR § 4264.6(b);
 - (d) With respect to 40 CFR § 265.147(d), the provisions of § 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 § 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 § 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 § 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 § 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 § 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 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 2-64; 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 § 4264.6; 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 and reissuance, or revocation 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 and reissuance, or revocation 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 and reissuance, or revocation; and
 - (c) Where there has been a history of repeated violations or a permit has been previously suspended, 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 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)(iii) and (iv) and 273.33(c)(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)." |

| Federal Regulation | Correction |
|--------------------------------|--|
| 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). |
| 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(i) | 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. |

| Federal Regulation | Correction |
|------------------------------|--|
| 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." |
| 40 CFR § 265.147(b)(1) | <p>Add the following sub-subparagraphs from 47 <i>Fed. Reg.</i> 16544 (1982):</p> <ul style="list-style-type: none"> (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. (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. |
| 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) | 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)." |

| Federal Regulation | Correction |
|------------------------------|---|
| 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). |
| 40 CFR § 268.7(d)(1) | <p>Add the following sub-subparagraphs (i) through (iii) to § 268.7(d)(1), from 57 <i>Fed. Reg.</i> 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 270.21 shall refer instead to §§ 270.13 through 270.28. |

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 § 8-1056 (2001)), as it pertains to hazardous waste and regulated medical waste.

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

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 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 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 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, 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, plus 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:
 - (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 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 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 March 1, 2005, 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 unpaid 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 fee for a returned check shall be twenty-five dollars (\$25).

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) (2004 Supp.)), 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.

Persons wishing to comment on the proposed rules may submit written comments no later than forty-five (45) days after the date of publication of this notice in the *D.C. Register*, to Marie Sansone, Attorney-Advisor to the Bureau of Hazardous Material and Toxic Substances, Department of Health Environmental Health Administration, Office of Enforcement, Compliance & Environmental Justice, 51 N Street, N.E., Room 6045, Washington, D.C. 20002.

Copies of the proposed rules and a complete list of the proposed changes in the rules may be obtained from 8:15 a.m. to 4:45 p.m., Monday through Friday, excluding holidays, from the Department of Health, Environmental Health Administration, Bureau of Hazardous Material and Toxic Substances, Hazardous Waste Division, 51 N Street, N.E., 3rd Floor, Washington, D.C. 20002. Copies are available for a small fee to cover the cost of copying.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director, Department of Human Services, pursuant to the authority set forth in Section 2(f) of the Self-Sufficiency Promotion Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-241; D.C. Official Code § 4-202.05(b)), and Mayor's Order 99-65, dated April 26, 1999, hereby gives notice of intent to adopt the following amendment to Chapter 58 of Title 29 of the District of Columbia Municipal Regulations (DCMR).

The Public Defender Service and the District of Columbia Superior Court are concerned that defendants are not being tried by a jury of their peers. A recipient of public assistance may be discouraged from serving on a jury because he or she believes that their welfare check might be cut off because of the compensation they will receive. The proposed rule amendment is intended to ensure that jury duty compensation is excluded as countable income for recipients of public assistance in determining eligibility under the Temporary Assistance for Needy Families program.

The Director also gives notice of intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, or upon their approval by the Council of the District of Columbia, pursuant to Section 2(f) of the Self-Sufficiency Promotion Act of 1998, whichever occurs first.

CHAPTER 58 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Amend Subsection 5814.2 by adding a new paragraph (e) to read as follows:

- (e) Compensation received from jury or grand jury duty.

Comments on this proposed rulemaking may be made by filing written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Kate Jesberg, Administrator, Income Maintenance Administration, 645 H Street, N.E., Washington, D.C. 20002. Copies of these rules may be obtained by writing to the above address.