

## **In the Matter Of:**

Department of Natural Resources & Environmental Control

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Governing Hazardous Waste - Hearing

August 27, 2020

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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL  
OF THE STATE OF DELAWARE

RE: Proposed Regulatory Amendments to )  
7 DE Admin Code 1302 - Regulations )  
Governing Hazardous Waste )  
Docket #2020-R-WH-0020 )

.. . . .

Virtual Public Hearing  
Dial-In Number: 1-408-418-9388  
Access Code: 129 301 6372

Thursday, August 27, 2020  
6:00 p.m.

.. . . .

BEFORE: Theresa Newman, Hearing Officer  
FOR THE DIVISION: Melissa Ferree, Engineer  
Compliance and Permitting Section  
DNREC

-- Transcript of Proceedings --

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1 MS. NEWMAN: Good evening. I  
2 believe everyone is here and ready and  
3 connected, so we are going to begin the  
4 virtual public hearing.

5 First and foremost, I want to thank  
6 you all for taking the time out of your busy  
7 schedules to connect with us today.

8 The date is Thursday, August 27,  
9 2020. It is now 6:00 p.m. and we are here  
10 this evening to provide a virtual platform  
11 for the State of Delaware's Department of  
12 Natural Resources and Environmental Control  
13 on the proposed regulatory amendments to 7 DE  
14 Admin Code 1302, Regulations Governing  
15 Hazardous Waste.

16 My name is Theresa Newman, and  
17 Secretary Garvin has appointed me to serve as  
18 the hearing officer for tonight's formal  
19 proceeding.

20 There have been changes made to  
21 DNREC's standard hearing protocols,  
22 necessitated by the Delaware's ongoing State  
23 of Emergency due to COVID-19 pandemic. First  
24 and foremost, this hearing is conducted



1 virtually. Staff is not all together in the  
2 same room. Everyone is participating  
3 independently at their own respective  
4 locations.

5 While there is no sign-in sheet to  
6 document physical attendance tonight, WebEx  
7 does generate a list of those that are  
8 virtually present for this proceeding so that  
9 the Department can still have a record of  
10 those who have electronically joined this  
11 event.

12 At the conclusion of the  
13 introductory remarks, I will be turning the  
14 hearing over to the Department staff, who  
15 will be making a formal presentation  
16 regarding the regulatory matter before us  
17 tonight for the benefit of the formal hearing  
18 record being generated.

19 There is only one authentic record  
20 of this formal proceeding tonight, and it is  
21 the official court reporter's verbatim  
22 transcript. There is a court reporter  
23 virtually present, who will prepare a  
24 verbatim transcript of the hearing, pursuant



1 to the statutory requirement for DNREC to  
2 have the same prepared; and, as always, the  
3 that transcript will be posted on the hearing  
4 webpage dedicated to this matter as soon as  
5 it is received to ensure that everyone is  
6 able to offer their comments for inclusion in  
7 the record being generated in this matter.

8 The record will remain open for a  
9 minimum of 15 days following the hearing  
10 tonight. In complex cases, and in the event  
11 a request for a longer comment period is  
12 received, an extension of the time for public  
13 comment may be granted.

14 I would encourage those who have  
15 joined the hearing this evening to review the  
16 webpage dedicated to this public hearing  
17 matter, by going to DNREC's webpage, clicking  
18 on the tab for Administrative Law section,  
19 and viewing all related details to this  
20 hearing.

21 The following protocols remain in  
22 place for all DNREC public hearings: All  
23 comments received must be solely limited to  
24 the subject matter of tonight's hearing.



1 All comment pertinent to the  
2 subject matter of this virtual hearing will  
3 be incorporated into the record being  
4 generated in this matter.

5 In order to ensure that everyone  
6 who wishes to offer comment for the  
7 Secretary's consideration is accommodated,  
8 the record in this matter shall remain open  
9 for a full 15 days following tonight's  
10 proceeding, or through Friday, September 11,  
11 2020.

12 The statutory purpose of tonight's  
13 hearing is to build the record with regard to  
14 the proposed amendments to 7 DE Admin Code  
15 1302, a record consisting of the transcript  
16 for tonight's hearing, all comments, all  
17 exhibits, and my report will be reviewed by  
18 the Secretary.

19 The Secretary will ultimately issue  
20 an order following that review process,  
21 containing his decision on this matter and  
22 the reasons therefor.

23 Lastly, it is important to note  
24 that no decision has already been made by the



1 Department, nor will any decision be made  
2 tonight with regard to this proposed  
3 regulatory promulgation.

4 Again, the record being generated  
5 in this matter shall remain open for an  
6 additional 15 days from today's date so that  
7 members of the public have ample opportunity  
8 to offer written comment for Secretary's  
9 consideration, should they feel to do so,  
10 should they wish to do so.

11 Written comment may be received by  
12 the Department through Friday, September 11,  
13 2020.

14 All mechanisms previously available  
15 by which to offer comment remain. Comments  
16 may be submitted through a comment form link  
17 on the hearing webpage, or via e-mail to  
18 DNRECHearingComments@delaware.gov, or the  
19 U.S. Postal Service at the physical address  
20 for DNREC dedicated to the hearing page  
21 and/or the public notices previously issued  
22 in this matter.

23 Written comments to DNREC may not  
24 be submitted using social media platforms





1 such as Twitter, Facebook, YouTube or text  
2 messaging.

3 It is important to note all comment  
4 received either through USPS or via the  
5 electronic mechanisms noted just now, as long  
6 as received by the Department on or before  
7 September 11, 2020, will bear the exact same  
8 weight and will be considered equally by the  
9 Secretary prior to making a final decision in  
10 this matter.

11 The ultimate decision regarding  
12 this matter is made by DNREC Secretary  
13 Garvin. This formal hearing tonight acts as  
14 a mechanism to enable the Department to  
15 thoroughly vet this proposed action to the  
16 public and to let the public know the various  
17 ways which comment may be submitted for  
18 Secretary Garvin's consideration if so  
19 desired.

20 With that being said, I will now  
21 hand it over to Ms. Ferree with the Division  
22 of Waste and Hazardous Substances.

23 MS. FERREE: Hi. My name is  
24 Melissa Ferree, and I'm an engineer with the



1 Compliance and Permitting Section in the  
2 Department of Natural Resources and  
3 Environmental Control.

4 And, as Theresa said, tonight we  
5 will be discussing proposed amendments to 7  
6 DE Administrative Code, Section 1302,  
7 Delaware's Regulations Governing Hazardous  
8 Waste.

9 Prior to beginning, I would like to  
10 enter the following exhibits into the record.  
11 These exhibits are all available on DNREC's  
12 Public Hearing webpage that's at the bottom  
13 of this slide.

14 Exhibit 1: The Delaware Register  
15 of Regulations, Volume 24, Issue 2, published  
16 on August 1, 2020, that identifies the  
17 proposed regulations and provides notice of  
18 this public hearing.

19 Exhibit 2: The August 2, 2020  
20 public notice and affidavit from the News  
21 Journal providing public notice of this  
22 public hearing.

23 Exhibit 3: The August 2, 2020  
24 public notice and affidavit from the Delaware



1 State News providing notice of this public  
2 hearing.

3 Exhibit 4: The August 3, 2020  
4 e-mail sent to the Hazardous Waste Regulatory  
5 Update listserv providing notice of this  
6 public hearing.

7 Exhibit 5: The State of Delaware  
8 Public Meeting Calendar providing notice of  
9 this public hearing.

10 Exhibit 6: The DNREC Public  
11 Notices webpage providing notice of this  
12 public hearing.

13 Exhibit 7: Identified corrections  
14 that will be made to the proposed regulations  
15 published in the Delaware Register of  
16 Regulations, Volume 24, Issue 2.

17 And Exhibit 8: A copy of the Power  
18 Point presentation that will be used in  
19 tonight's public hearing.

20 Okay. So there is my contact info  
21 if anyone needs it. Again, we will be  
22 discussing proposed amendments to Delaware's  
23 Regulations Governing Hazardous Waste.

24 First I want to start and talk a



1 little bit about Delaware's authorization.  
2 Delaware's Hazardous Waste Program is  
3 required to maintain regulations that are no  
4 less stringent than the Federal regulations  
5 promulgated by the United States  
6 Environmental Protection Agency.

7 And Delaware has evaluated the  
8 regulatory language and the preamble language  
9 associated with each rule's Federal Register  
10 notice and has determined that the rules are  
11 appropriate and necessary to be adopted in  
12 Delaware to continue protection of human  
13 health and the environment.

14 The statutory authority that these  
15 regulations are being promulgated under are 7  
16 Delaware Code Section 6010(a) and 7 Delaware  
17 Code Section 6305(a).

18 The proposed amendments that we are  
19 discussing tonight discuss a variety of rules  
20 implemented by the Environmental Protection  
21 Agency. Those rules are Imports and Exports  
22 of Hazardous Waste, the Hazardous Waste  
23 Generator Improvement Rule, Confidentiality  
24 Determinations on Hazardous Waste



1 Import/Export documents, the Hazardous Waste  
2 Electronic Manifest Fee Rule, the Safe  
3 Management of Recalled Airbags, the  
4 Management Standards for Hazardous Waste  
5 Pharmaceuticals, and Amendment to the P075  
6 Listing for Nicotine, and, finally,  
7 Increasing Recycling: Adding Aerosol Cans to  
8 Universal Waste Rule.

9 And we are just going to briefly  
10 talk about each of these rules, who they  
11 impact, and what the rule is designed to do.

12 So the first rule we are going to  
13 talk about is Imports and Exports of  
14 Hazardous Waste. This rule impacts the  
15 importing and exporting of hazardous waste,  
16 and that would be importing and exporting  
17 into or out of the country, not necessarily  
18 the state.

19 The rule establishes standards for  
20 using EPA's electronic notification system  
21 for imports and exports. That system is the  
22 Waste Import/Export Tracking System, also  
23 known as WIETS.

24 And the rule establishes standards



1 for the trans-boundary movement of hazardous  
2 waste.

3 The next rule that is encompassed  
4 in these provisions is the Hazardous Waste  
5 Generator Improvements Rule. This rule  
6 impacts all entities generating hazardous  
7 waste.

8 It establishes streamlined  
9 regulations for hazardous waste generators  
10 that are more easily understood. And then  
11 it's really the first major regulatory update  
12 for requirements that haven't been updated  
13 significantly for decades.

14 And because it's a relatively large  
15 rule, we are going to talk about some of the  
16 key provisions that are associated with the  
17 rule.

18 The rule defines generator  
19 categories, very small-quantity generators,  
20 small-quantity generators, and large-quantity  
21 generators. It places requirements for each  
22 of those generator categories into one  
23 location, as opposed to the requirements  
24 being in several different locations, which

1 is designed to make it easier for hazardous  
2 waste generators to locate the requirements  
3 with which they are required to comply.

4 The rule provides more clarity on  
5 how to make a hazardous waste determination  
6 and implements requirements on documenting  
7 that determination. One of the major changes  
8 is that it requires the hazardous waste  
9 determination to be accurate.

10 There are also some additional  
11 container labeling requirements in the  
12 Hazardous Waste Generator Improvements Rule.  
13 Containers have to be labeled hazardous  
14 waste, which has always been a requirement,  
15 but containers will also need to be labeled  
16 now with the hazards of the contents of the  
17 container, such as ignitable or corrosive,  
18 and hazardous waste codes must be placed on  
19 the labels prior to off-site shipment.

20 The rule also establishes standards  
21 for episodic generation. It allows for one  
22 episodic generation event per year; plus, it  
23 gives a generator the opportunity to petition  
24 for a second event if necessary.



1                   And the last key provision of this  
2 rule is that it allows very small-quantity  
3 generators to transfer hazardous waste to  
4 large-quantity generators that are under  
5 control of the same person.

6                   The next rule is the  
7 Confidentiality Determinations for Hazardous  
8 Waste Import/Export Documents. This impacts,  
9 again, all entities importing or exporting  
10 hazardous waste. And, again, that would be  
11 into or out of the United States. And it  
12 establishes standards for submitting  
13 confidentiality requests to EPA related to  
14 import/export documents.

15                   The Hazardous Waste Electronic  
16 Manifest User Fee Rule: This impacts  
17 designated facilities that treat, store, or  
18 dispose of hazardous waste. And we do not  
19 have any of those facilities in Delaware  
20 currently.

21                   The rule establishes criteria for  
22 how EPA will develop fees for the submission  
23 of manifests to EPA's electronic manifest  
24 system and how a designated facility can





1 submit manifests to the system.

2 So right now there's three options.  
3 You can submit manifests via paper, you can  
4 submit them fully electronically, or there is  
5 a data plus image option. But the rule does  
6 not set specific fees for each of those  
7 options, only the formula that EPA will use  
8 to calculate those fees.

9 The next rule is the Safe  
10 Management of Recalled Airbags. This impacts  
11 entities removing recalled airbags from  
12 vehicles and entities transporting or  
13 collecting those recalled airbags.

14 And this comes out of the Takata  
15 Airbag Recall. But it establishes more  
16 flexible standards for the management of  
17 recalled airbags, to encourage replacement of  
18 recalled airbags while still protecting human  
19 health and the environment.

20 The rule identifies that recalled  
21 airbags are not a solid waste until they are  
22 received at a collection facility, which this  
23 allows automobile repair facilities to  
24 replace the recalled airbags without becoming

1 fully subject to hazardous waste regulations,  
2 while also ensuring that recalled airbags are  
3 ultimately managed properly.

4 The next rule is the Management  
5 Standards for Hazardous Waste Pharmaceuticals  
6 and Amendment to the P075 Listing. This rule  
7 impacts entities generating hazardous waste  
8 pharmaceuticals or over-the-counter nicotine  
9 replacement therapies.

10 It establishes a separate set of  
11 standards for the management of hazardous  
12 waste pharmaceuticals with the intent to make  
13 compliance more straightforward.

14 And, specifically, the rule removes  
15 over-the-counter nicotine replacement  
16 therapies, for example gums, patches,  
17 lozenges, from the P075 Hazardous Waste  
18 Listing. Those materials are currently acute  
19 hazardous waste, falling under that category,  
20 and this rule will remove them from that  
21 hazardous waste listing.

22 Again, because that's a relatively  
23 big rule, we are going to go through some of  
24 the key provisions.



1           The rule creates a separate  
2           subpart, so it's Part 262, Subpart P, to  
3           address hazardous waste pharmaceuticals. And  
4           hazardous waste pharmaceuticals includes  
5           electronic cigarettes, vaping pens, and  
6           pre-filled cartridges or vials for electronic  
7           nicotine delivery systems.

8           The major provision is that  
9           hazardous waste pharmaceuticals do not count  
10          toward the site's generator status.

11          And hazardous waste pharmaceuticals  
12          that can potentially receive credit from the  
13          manufacturer upon return can be sent to a  
14          reverse distributor for evaluation, rather  
15          than being sent to a hazardous waste  
16          permitted treatment disposal facility.

17          The rule establishes standards for  
18          reverse distribution and reverse logistics.  
19          It creates three different categories of  
20          hazardous waste pharmaceuticals.

21          So the first one would be  
22          non-creditable hazardous waste  
23          pharmaceuticals. For example, those would be  
24          broken containers, dispensed pharmaceuticals,

1 expired pharmaceuticals, floor sweepings,  
2 contaminated PPE. Those materials, those  
3 wastes, must be sent to a hazardous waste  
4 treatment storage disposal facility.

5 The second category is the  
6 potentially creditable hazardous waste  
7 pharmaceuticals. Those are the ones that  
8 have the potential to have credit from the  
9 manufacturer, and those can be sent to a  
10 reverse distributor to be evaluated for  
11 potential manufacturer's credit.

12 And then the last category is  
13 evaluated hazardous waste pharmaceuticals.  
14 And once the pharmaceuticals are evaluated at  
15 a reverse distributor, they must be sent to a  
16 hazardous waste treatment, storage, or  
17 disposal facility for proper management.

18 The rule also establishes a  
19 prohibition on sewerage hazardous waste  
20 pharmaceuticals. That would mean, you know,  
21 flushing them down the drain, putting them in  
22 a sink. And it's important to note that that  
23 prohibition does not apply to households.  
24 The prohibition is only for businesses in the



1 state.

2 And, as I said earlier, that  
3 over-the-counter nicotine replacement  
4 therapy, the patches, gums, lozenges no  
5 longer meet that acute P075 hazardous waste  
6 listing.

7 And the last rule we are going to  
8 talk about as part of this package is  
9 increasing recycling, adding aerosol cans to  
10 the Universal Waste Rule. And this rule  
11 would impact entities generating spent  
12 hazardous waste aerosol cans and allow for  
13 the management of spent aerosol cans under  
14 reduced universal waste requirement rather  
15 than the full hazardous waste regulation.

16 So right now we already have in our  
17 regulations, you know, universal waste lamps  
18 and batteries. This would add aerosol cans  
19 to those universal wastes where a hazardous  
20 waste manifest is not required and the  
21 accumulation time increases to one year.

22 In preparing for this hearing, we  
23 did identify that there were a couple of  
24 corrections that we are going to need to



1 make. Specifically, we have identified three  
2 corrections to the draft regulations as  
3 proposed in the Delaware Register of  
4 Regulations, Volume 24, Issue 2.

5 Those are identified in Exhibit 7,  
6 which are available on our website, and we  
7 are going to go through them here.

8 The first correction is to Table 1,  
9 Section -- Table 1 of Section 262.13, which  
10 is the Hazardous Waste Generator Category  
11 Determination.

12 And you can see what I have in red  
13 is what we proposed, and what we have in blue  
14 underlined is the correction.

15 So we originally proposed for acute  
16 hazardous waste for large-quantity generator  
17 is greater than or equal to 1 kilogram, but  
18 in looking at the actual written definition  
19 of large-quantity generator, that should be  
20 greater than 1 kilogram as opposed to greater  
21 than or equal to.

22 And then you will note the same  
23 thing for a small-quantity generator and very  
24 small-quantity generator. It's less than or

1 equal to versus less than 1 kilogram.

2 The second correction is to 262.41,  
3 Annual Reporting for Large-Quantity  
4 Generators. Paragraph B was actually added  
5 by DNREC to provide some clarification to  
6 generators that a very small-quantity  
7 generator who accumulated hazardous waste,  
8 accumulated greater than 1 kilogram of  
9 hazardous waste in any, you know, at anytime  
10 while a large-quantity generator and,  
11 therefore, was required to submit an annual  
12 report.

13 And this was a historical  
14 interpretation that we have confirmed that  
15 EPA is not intending to collect that annual  
16 report. They are only basing the  
17 large-quantity generator determination on the  
18 amount of acute hazardous waste generated at  
19 anytime or generated in a month, but not  
20 accumulated.

21 So we are removing that extra  
22 paragraph that we have added.

23 And the last correction is to  
24 264.71(a)(1). You will see in that top



1 section the language. It includes language,  
2 "if a facility receives hazardous waste  
3 accompanied by a manifest, the owner or  
4 operator," the Federal regs say "his or her  
5 agent."

6 The Delaware Register of  
7 Regulations did not allow us to use the words  
8 "his or her" and suggested "the owner or  
9 operator's agent."

10 But, as you can see there in that  
11 top paragraph, the word "operator's" did not  
12 get underlined as new text; so in our final  
13 draft we will have to underline the word  
14 "operator's" to get that reflected as new  
15 text.

16 So those are the three corrections  
17 that we have identified. As I said, they are  
18 all available in Exhibit 7 for your review,  
19 and they will be published as part of the  
20 final rule as corrections.

21 And I'm going to turn it back over  
22 to Theresa to talk about how to submit public  
23 comments.

24 Theresa, you are still muted.





1 MS. NEWMAN: Thank you so much.

2 Let the record reflect that I have  
3 electronically received Department's proposed  
4 exhibits, which are the same as those posted  
5 on the hearing webpage dedicated to this  
6 matter.

7 The exhibits include the  
8 Department's revised proposed amendments,  
9 which is Exhibit Number 7, which reflect  
10 changes made to the initial proposed  
11 amendments subsequent to the August 1st  
12 publication of the same, as mentioned just  
13 now in the Department's presentation. The  
14 documents received are hereby marked as  
15 Department Exhibits 1 through 8.

16 Is there anything further you would  
17 like to add, Ms. Ferree, before we conclude  
18 the hearing tonight?

19 MS. FERREE: I don't have anything  
20 more to add.

21 MS. NEWMAN: Okay. Great. This  
22 will now conclude the hearing, and thank you  
23 all for attending.

24 Again, the record will remain open



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through September 11, 2020 for comments to be received pertaining to tonight's hearing.

The hearing is now adjourned at 6:21 p.m.

Thank you.

(Concluded at 6:21 p.m.)



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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 31st day of August 2020.



---

Lorena J. Hartnett  
Registered Professional Reporter

Governing Hazardous Waste - Hearing - August 27, 2020

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