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"Working Face" means that portion of a landfill where waste is discharged, spread, and compacted prior to placement of cover.

8 DE Reg. 354 (08/01/04)

19 DE Reg. 418 (11/01/15)

19 DE Reg. 422 (11/01/15)

20 DE Reg. 296 (10/01/16)

21 DE Reg. 893 (05/01/18)

4.0 Permit Requirements And Administrative Procedures

4.1 General Provisions

4.1.1 Permit required

4.1.1.1 No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under subsection 2.3, without first having obtained a permit from the Department.

4.1.1.2 No person that is subject to the requirements of subsection 7.2 or 7.3 of these regulations shall transport solid waste in or through the State of Delaware without first having obtained an appropriate solid waste transporter's permit from the Department.

4.1.1.3 No person that is subject to the requirements of Section 12.0 of these regulations shall construct or operate a scrap tire facility without first having obtained a permit from the Department.

4.1.1.4 Permittees shall abide by the conditions of their permit issued by the Department.

4.1.2 Public notice; hearing

Within 60 days after receipt of a completed application and all other required information, the Department will give public notice and the opportunity for a public hearing as provided in 7 **Del.C.** Ch. 60. The cost of the advertisement shall be borne by the applicant. A 15 day comment period will follow the publication date of each public notice. If no meritorious adverse public comments are received during this period, and the Secretary does not deem a public hearing to be in the best interest of the State, the Department will enter into the permit approval/denial phase. If a meritorious request for a hearing is received during the comment period, or if the Secretary deems a hearing to be in the best interest of the State, a public hearing will be held as provided in 7 **Del.C.** §6004 and 6006.

4.1.3 Approval/denial

4.1.3.1 The Department shall act upon an application for a permit within 60 days after the close of the public notice comment period or upon receipt of the hearing officer's report if a hearing was required. When a final determination is made on an application, the Department shall issue a permit or send a letter of denial to the applicant explaining the reasons for the denial.

4.1.3.2 Permits may be modified, denied, terminated, or revoked by the Department for, including but not limited to, the following reasons:

4.1.3.2.1 Noncompliance by the permittee with any conditions of the permit, or requirements of these regulations, including failure to pay annual permit fees;

4.1.3.2.2 The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any facts at any time, or failure to comply with the requirements of the application;

4.1.3.2.3 A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation or termination; or

4.1.3.2.4 A permit may be terminated at the written request of the permittee for such reasons as, but not limited to: the company is no longer conducting the permitted activity in Delaware, or is no longer in business.

4.1.4 Suspension, revocation of permit

A permit may be revoked or suspended for violation of any condition of the permit or any requirement of this regulation, after notice and opportunity for hearing in accordance with 7 **Del.C.** Ch. 60.

4.1.5 Duration of permit

A permit will be issued for a specific duration which will be determined by the Department.

- 4.1.5.1 Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators, scrap tire facilities) shall not be issued for periods greater than 10 years.
- 4.1.5.2 Post-closure permits shall be valid and enforceable throughout the entire post-closure period.
- 4.1.6 Permit renewal
 - 4.1.6.1 Any person wishing to renew an existing permit that is to expire shall, not less than 180 days prior to the expiration date of the existing permit, submit to the Department, a permit renewal application form with all supporting documentation and appropriate fees as required by these regulations.
 - 4.1.6.2 In the event that the permittee submits a timely application, (not less than 180 days prior to the expiration date of the existing permit) and the Department, through no fault of the permittee, is unable to make a final determination on the application before the expiration date of the existing permit, the Department may, at its discretion, grant an extension of that permit. If the Department issues an extension, all conditions of the permit will remain in effect, for a period of time which will be determined by the Department.
- 4.1.7 Modification of permit
 - 4.1.7.1 A permittee may request modifications to a permit. All such requests must be submitted in writing to the Department.
 - 4.1.7.2 The Department may initiate modification of a permit if it finds that the existing permit conditions either are not adequate or are not necessary to protect human health and the environment.
 - 4.1.7.3 Public notice and opportunity for hearing in accordance with paragraph 4.1.2 of this Section shall be accomplished for all major modifications proposed for the permit. In the event a hearing is requested or deemed necessary by the Secretary, only the permit conditions subject to the modification shall be reopened for public comment.
 - 4.1.7.4 Public notice shall not be required for minor modifications to the permit. Minor modifications are those which if granted would not result in any increased impact or risk to the environment or to the public health. Minor modifications include:
 - 4.1.7.4.1 Changes in operation or design which do not involve pollution control devices or procedures.
 - 4.1.7.4.2 Improvements to approved pollution control devices or procedures.
 - 4.1.7.4.3 Administrative changes.
 - 4.1.7.4.4 A change in monitoring or reporting frequency.
 - 4.1.7.4.5 The correction of typographical errors.
 - 4.1.7.4.6 Other permit modifications deemed minor by the Department.
- 4.1.8 Transfer of a permit.

Until the permit has been transferred in accordance with this section of the regulations, the current permittee shall remain liable for compliance with all solid waste permit requirements, including liability for financial assurance, closure, and post-closure care. The following submittals are required in order to complete a permit transfer.

 - 4.1.8.1 At least 60 days prior to the proposed transfer, the current permittee shall submit their written request for transfer of the permit. The permittee shall submit the request to the Department and include the following:
 - 4.1.8.1.1 Written notification of the proposed transfer to include the scope and schedule of the transfer and the company name, address, phone number, and point of contact information for the prospective transferee.
 - 4.1.8.1.2 A written agreement between the current permittee and the prospective transferee, signed by both parties and containing a specific date upon which assets transfer will occur. The agreement must reference the specific solid waste permit for which transfer is sought and state both the current permittee's and the prospective transferee's desire for transfer of the permit. The agreement shall acknowledge that the current permittee is responsible for compliance with all permit requirements until the permit has been transferred to the transferee in accordance with the requirements of this section. The agreement shall acknowledge that the transferee will not interfere with the current permittee's ability to comply with the solid waste permit so long as the current permittee remains responsible for compliance with that permit.

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- 4.1.8.1.3 Demonstration that financial assurance requirements will continue to be met by the current permittee until the permit transfer has been completed, including provisions for providing financial assurance in the event that the solid waste permit cannot be transferred by the time company assets are transferred.
- 4.1.8.2 At least 60 days prior to the proposed transfer, the prospective transferee shall submit a letter of intent to the Department and include the following:
 - 4.1.8.2.1 A description of the transferee's training and experience with the permitted activity and a demonstration that the prospective transferee will be able to comply with applicable statutes, regulations, permit conditions and other requirements to which the current permittee is subject.
 - 4.1.8.2.2 A written agreement between the current permittee and the prospective transferee, signed by both parties and containing a specific date upon which assets transfer will occur. The agreement must reference the specific solid waste permit for which transfer is sought and state both the current permittee's and the prospective transferee's desire for transfer of the permit. The agreement shall acknowledge that the current permittee is responsible for compliance with all permit requirements until the permit has been transferred to the transferee in accordance with the requirements of this section. The agreement shall acknowledge that the transferee will not interfere with the current permittee's ability to comply with the solid waste permit so long as the current permittee remains responsible for compliance with that permit.
 - 4.1.8.2.3 The environmental permit application background statement required by 7 **Del.C.** Ch. 79.
 - 4.1.8.2.4 Demonstration that the prospective transferee has satisfied the financial assurance requirements imposed by these regulations. For additional information on financial assurance requirements see subsection 4.1.11 of these regulations.
- 4.1.8.3 In the event that the transfer of the permit can not be completed because of either the current permittee's or the prospective transferee's failure to provide the submittals required in subsections 4.1.8.1 and 4.1.8.2 above, the current permittee shall either:
 - 4.1.8.3.1 Close the facility in accordance with the closure requirements contained in the solid waste facility permit and these regulations, or
 - 4.1.8.3.2 Continue to maintain control of, and responsibility for the facility in compliance with the conditions of the permit and these regulations, including, but not limited to, the requirements for financial assurance, operations, recordkeeping, reporting, monitoring, closure, post-closure care, and corrective actions if needed.
- 4.1.9 Enforcement
 - 4.1.9.1 The Department reserves the right to inspect any site, or any vehicle intended for use in the transportation of solid waste, before issuing a solid waste permit for the site or the transporter.
 - 4.1.9.2 The Department may, at any reasonable time, enter any permitted solid waste facility or inspect any vehicle being used in the transportation of solid waste in order to verify compliance with the permit and these regulations.
 - 4.1.9.3 The Department may require such reports, interviews, tests or other information necessary for the evaluation of permit applications and the verification of compliance with the permit and these regulations.
 - 4.1.9.4 Any person using land, or allowing the use of land, for the storage, processing, or disposal of solid waste who violates a requirement of this regulation shall be subject to the provisions of Sections 6005, 6013, 6018, and 6025(c) of 7 **Del.C.** Ch. 60.
- 4.1.10 Replacement of Contaminated Water Supplies

If the Department determines, based on information obtained by or submitted to the Department or the Division of Public Health, that any drinking water supply well has become contaminated as a result of the construction or operation of a solid waste facility, the owner or operator of the facility will be required to construct and maintain, at his or her expense, a permanent alternative water supply of comparable quantity and quality to the source before it was contaminated. Such a determination will be subject to the review procedures contained in 7 **Del.C.** Ch. 60.
- 4.1.11 Financial Assurance Criteria
 - 4.1.11.1 Applicability.

The requirements of this section apply to owners and operators of all solid waste facilities, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

4.1.11.2 Financial Assurance for Closure, Post-Closure Care, and Corrective Action

4.1.11.2.1 The owner or operator of a solid waste facility must provide assurance that the financial costs associated with closure, post-closure care, and corrective action can be met throughout the life of the facility until released from these requirements by the Department after demonstrating successful completion of compliance with the requirements for each of these activities.

4.1.11.2.2 Records documenting compliance with the Financial Assurance Criteria of this Part shall be made available upon the request of the Department.

4.1.11.2.3 The language of the financial assurance mechanisms listed in this section must satisfy the following criteria:

4.1.11.2.3.1 They must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed.

4.1.11.2.3.2 They must ensure that funds will be available in a timely fashion when needed.

4.1.11.2.3.3 They must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

4.1.11.2.3.4 They must be legally valid, binding, and enforceable under State law.

4.1.11.2.3.5 Upon request by the Department, the applicant or permittee shall provide a third party review of the financial assurance documents submitted. The third party review must certify to the Department that the financial assurance documents as submitted by the applicant or permittee meet the requirements of subsection 4.1.11.2.2 of these regulations, and be sealed and signed by a Certified Public Accountant duly registered in Delaware, or other professional acceptable to the Department.

4.1.11.2.3.6 The application shall not be deemed complete until and unless the applicant has complied with subsection 4.1.11.2.4 of these regulations as specified above.

4.1.11.2.4 The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from the options specified in subsections 4.1.11.2.4.1 through 4.1.11.2.4.9 of this section, and comply with any conditions noted therein.

4.1.11.2.4.1 Trust Fund

Condition 1: The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal agency or an agency of the State in which the fund is established.

Condition 2: The wording of the trust agreement must be identical to the wording specified in Appendix A, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgment.

Condition 3: The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

Condition 4: The owner or operator shall submit the receipt from the trustee for the initial payment into the trust fund as well as the originally signed duplicate of the trust agreement for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: Pay-in periods and amounts for all solid waste facilities shall be in accordance with those specified in 40 CFR Part 258.74, subsections (a)(2),(a)(3), (a)(4) and (a)(6) or otherwise acceptable to the Department. Amounts for scrap tire facilities shall be in accordance with those specified in Section 12.0 of these regulations.

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Condition 6: Schedule A, attached to the trust agreement, shall list the facility name and address and the current cost estimate. Schedule A must relate the trust agreement to the specific facility and obligation(s) being assured and shall be updated at least annually to account for inflation or other increases to the cost estimate. Costs reflected in Schedule A shall not be reduced without the written consent of the Department.

Condition 7: Schedule B, attached to the trust agreement, shall list the property or money that the fund consists of initially. Property must consist of cash or securities acceptable to the trustee. Other property (e.g., real estate) is not an acceptable payment into the trust fund.

Condition 8: Exhibit A, attached to the trust agreement, shall list the persons designated by the Grantor to sign orders, requests, and instructions to the trustee.

Condition 9: Annually, the trustee shall furnish to the Department and to the owner or operator, a statement confirming the value of the trust fund. Any securities in the trust fund shall be valued at market value as of no more than 60 days prior to the date the statement is submitted to the Department. If possible, the statement should be submitted during the month that Schedule A is adjusted annually.

Condition 10: The trustee shall make payments from the fund only as the Department directs to provide for the payment for the costs of corrective action, closure, and/or post-closure care.

Condition 11: After beginning closure, post-closure care, or corrective action, an owner or operator or other person authorized in accordance with Condition 7 may request reimbursements for partial expenditures by submitting itemized bills to the Secretary. The owner or operator may request reimbursements for partial closure, post-closure care, or corrective action only if sufficient funds are remaining in the trust fund to cover the maximum costs of completing the activities for which the trust agreement was established. Within 60 days after receiving bills for reimbursable closure, post-closure care, or corrective action activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing. Reimbursements will be allowed only if the Secretary determines that the partial or final expenditures are in accordance with the approved closure, post-closure care, or corrective action plan or are otherwise justified. If the Secretary has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he/she may withhold reimbursements of such amounts as he/she deems prudent. If the Secretary does not instruct the trustee to make such reimbursements, he/she will provide the owner or operator with a detailed written statement of reasons.

Condition 12: The trust agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

Condition 13: Subject to Condition 11, the trust agreement shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

4.1.11.2.4.2 Surety Bond

Condition 1: At a minimum, the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of Treasury as qualified in the state where the bond was executed.

Condition 2: The surety's underwriting limit must be at least as great as the amount of the surety bond.

Condition 3: The wording of the surety bond must be identical to the wording specified in Appendix B, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

Condition 4: The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of

the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 5: The wording of the standby trust fund must be identical to the wording specified in Appendix G, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

Condition 6: The owner or operator shall submit the bond and standby trust fund for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 7: Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation to the Secretary of the Department, to the Solid and Hazardous Waste Management Section, and to the owner and operator at least 120 days in advance of cancellation. If the Surety cancels the bond, the owner or operator must obtain alternate financial assurance. The Department may draw on the surety bond if the owner or operator has not provided alternative financial assurance within 90 days after receipt by the Solid Waste Management Section of a notice of cancellation from the surety.

Condition 8: The owner or operator may cancel the surety bond if the Department provides its written consent to do so. The Department will provide such written consent when the owner substitutes alternate financial assurance as specified in these regulations or the bonded activity has been completed in accordance with these regulations.

Condition 9: The surety shall become liable on the bond when the owner or operator has failed to fulfill the closure, post-closure care or corrective action activities as required. Upon notification by the Department that the owner or operator has failed to perform closure or post-closure care guaranteed by a payment bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust fund. Upon notification that the owner or operator has failed to perform closure, post-closure care, or corrective action as guaranteed by a performance bond, the surety shall either perform the activities guaranteed by the bond or place funds in the amount guaranteed for the facility into the standby trust fund.

4.1.11.2.4.3 Letter of Credit

Condition 1: The issuing financial institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

Condition 2: The wording of the letter of credit must be identical to the wording specified in Appendix C, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

Condition 3: The owner or operator shall also submit an accompanying letter referring to the letter of credit by number and listing the following information: complete name and address of facility, issuing institution and date, and amount and purpose of funds assured.

Condition 4: The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 5: The wording of the standby trust fund must be identical to the wording specified in Appendix G, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

Condition 6: The owner or operator shall submit the letter of credit, standby trust and accompanying letter for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 7: The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies the Secretary of the Department, the Solid

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and Hazardous Waste Management Section, and the owner or operator of a decision not to extend the expiration date.

Condition 8: Once the issuing financial institution notifies the Solid and Hazardous Waste Management Section of its intent not to extend the Letter of Credit, the owner or operator must, within 90 days, provide alternate financial assurance. The Department may draw on the letter of credit if the owner or operator has not provided alternative financial assurance within 90 days.

Condition 9: Following a determination by the Secretary of the Department that the owner or operator has failed to perform closure, post-closure care, or corrective action when required to do so, the Department may draw on the letter of credit.

4.1.11.2.4.4 Insurance

Condition 1: The insurer must be licensed to transact the business of insurance in one or more states or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Condition 2: Captive insurance companies and risk retention groups can not be used to satisfy the requirements of this section.

Condition 3: Insurance is not an allowable mechanism for demonstrating financial responsibility for corrective action.

Condition 4: The owner or operator shall submit a certificate of insurance utilizing a form provided by the Department, as found in Appendix D of these Regulations, worded exactly as shown, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

Condition 5: Prior to requesting reimbursement from the insurer, owners or operators shall submit justification and documentation of the reimbursable expenses to the Department for its consent.

Condition 6: A copy of the policy shall be submitted to the Department for its approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

4.1.11.2.4.5 Local Government Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective action.

Condition 2: The Owner or Operator shall submit a guarantee agreement, utilizing a form provided by the Department, as found in Appendix E of these Regulations, except that instruction in brackets are to be replaced with relevant information and the brackets deleted.

Condition 3: A local government is not eligible to assure its obligations by this mechanism if it:

- a) is currently in default of any outstanding general obligation bonds; or
- b) has any general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or
- c) operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or
- d) received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement, and the Department deems the reason for the qualification as significant.

Condition 4: The local government must meet one of the following two financial tests: a) If the local government has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or b) Based upon the most recently audited annual financial statement, a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

Condition 5: The total costs being assured through a financial test must not exceed 43 percent of the local government's total annual revenue. If the local government assures other environmental obligations through financial tests; including those associated with UIC facilities under 40 CFR 144.62, underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; it must add those costs to the closure costs it seeks to assure under this mechanism.

Condition 6: The local government shall place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR).

Condition 7: A Certified Public Accountant's opinion of the local government's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year. The opinion must be unqualified and demonstrate that the local government has prepared its financial statements in accordance with the requirements of the General Accounting Standards Board Statement 18.

Condition 8: The Chief Financial Officer must include a letter demonstrating that the local government has complied with Conditions 3, 4, 5, and 6. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year.

Condition 9: If, at the end of any fiscal year, the local government fails to meet the financial test criteria required by conditions 3, 4, or 5, then the local government shall send, within 90 days, by certified mail, notice to the Secretary of the Department and to the Solid and Hazardous Waste Management Section, that they intend to provide alternate financial assurance as required by these regulations. The local government shall, within 210 days following the close of the fiscal year, obtain alternative financial assurance that meets the requirements of these regulations.

Condition 10: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 11: The guarantee shall remain in force unless the local government sends notice of cancellation by certified mail to the Secretary of the Department and to the Solid and Hazardous Waste Management Section. Such notice shall be given at least 120 days in advance of the cancellation. Within 90 days of receipt of this notice of cancellation by the Solid and Hazardous Waste Management Section, the local government shall provide alternative financial assurance acceptable to the Department.

4.1.11.2.4.6 Corporate Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: The owner or operator shall submit a guarantee agreement, utilizing a form provided by the Department, as found in Appendix F of these Regulations, except that instruction in brackets are to be replaced with relevant information and the brackets deleted.

Condition 3: A resolution agreeing to the terms and conditions of the guarantee and signed by the guarantor's board of directors shall be attached to the guarantee.

Condition 4: The guarantor must be the direct or higher tier parent company of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator.

Condition 5: The guarantor must have a tangible net worth equal to the sum of the costs they seek to assure through a financial test, plus \$10 million. The costs that the guarantor seeks to assure are equal to the current cost estimates for closure, post-closure care, corrective action, and any other environmental obligation assured by a financial test and/or corporate guarantee by the guarantor (including other landfills or solid waste facilities; PCB storage facilities; underground storage tanks; hazardous waste treatment, storage, disposal facilities; or underground injection control program facilities).

Condition 6: Guarantors must meet one of the following three financial tests:

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a) A most recent bond rating no lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

b) A leverage ratio of less than 1.5 based on the ratio of total liabilities to tangible net worth.

c) A profitability ratio of greater than 0.10 based on the sum of the net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

Condition 7: Guarantors must have assets in the United States at least equal to the costs they seek to assure through a financial test (costs include those reported for Condition 5).

Condition 8: The Chief Financial Officer must include a letter demonstrating that the guarantor has complied with Conditions 4, 5, 6, and 7. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year.

Condition 9: A Certified Public Accountant's opinion of the guarantor's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year. The opinion must be unqualified (not modified by conditions or reservations) and demonstrate that the firm has prepared its financial statements in accordance with generally accepted accounting principles for corporations.

Condition 10: In the event that the CFO does not use financial test figures directly from the annual statements provided to the Securities and Exchange Commission, then a special report from an independent accountant shall be required. In the report, the Certified Public Accountant must confirm that the data used in the CFO letter was appropriately derived from the audited, year-end financial statements.

Condition 11: The guarantor shall notify the Secretary of the Department and the Solid and Hazardous Waste Management Section by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 Bankruptcy, USC, naming the guarantor, owner or operator of the facility as debtor, within 10 days after commencement of the proceeding.

Condition 12: If, at the end of any fiscal year, the guarantor fails to meet the financial test criteria required by conditions 5, 6, or 7, then the guarantor shall send, within 90 days, by certified mail, notice to the Secretary of the Department, to the Solid and Hazardous Waste Management Section, and to the owner or operator, that guarantor intends to provide alternate financial assurance as required by these regulations. Within 120 days of such fiscal year, the guarantor shall establish such financial assurance unless the owner or operator has done so.

Condition 13: Within 30 days of being notified by the Department that a determination has been made that the guarantor no longer meets the requirements stated in Conditions 5, 6, or 7, the guarantor shall establish alternate financial assurance in accordance with these regulations.

Condition 14: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

4.1.11.2.4.7 Department-Approved Mechanism.

4.1.11.2.4.8 State Assumption of Responsibility.

4.1.11.2.4.9 Use of Multiple Financial Mechanisms (any combination of the options listed above).

4.1.11.3 Cost Estimate for Closure

4.1.11.3.1 The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility that is consistent with the closure plan developed in accordance with the closure requirements for that type of facility. The estimate must equal the maximum cost of closure at any time during the active life of the facility. The owner or operator shall also notify the Secretary in writing that the estimate has been placed in the records to be maintained at the facility.

- 4.1.11.3.2 Until final closure of the facility, the owner or operator must annually adjust the closure cost estimate for inflation, facility expansions, and any other applicable requirements which impact the cost of closure.
- 4.1.11.3.3 The owner or operator must increase the cost estimate and the amount of financial assurance provided for closure if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.
- 4.1.11.3.4 The Department may approve reduction in the amount of financial assurance provided for closure if the latest cost estimate is significantly less than the maximum cost of the current closure plan. The owner or operator must submit to the Secretary in writing the justification for the reduction of the closure cost estimate and the amount of financial assurance. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

4.1.11.4 Cost Estimate for Post-Closure Care

- 4.1.11.4.1 The owner or operator of a solid waste facility for which post-closure care is required must demonstrate financial assurance for the cost of thirty (30) years of post-closure care. The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste facility in compliance with the post-closure plan. This estimate must be based on the most expensive costs of post-closure care during the post-closure care period. The owner or operator must also notify the Department in writing that the estimate has been placed in the records to be maintained at the facility.
- 4.1.11.4.2 During the active life of the solid waste facility and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation and other applicable factors.
- 4.1.11.4.3 The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or solid waste facility conditions increase the maximum costs of post-closure care.
- 4.1.11.4.4 The Secretary may approve the reduction of the post-closure cost estimate and the amount of financial assurance provided if the latest cost estimate is significantly less than the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit to the Secretary in writing the justification for the reduction of the post-closure cost estimate. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

4.1.11.5 Cost Estimate for Corrective Action

- 4.1.11.5.1 An owner or operator of a solid waste facility required to undertake a corrective action program must submit to the Secretary in writing a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must also notify the Secretary that the cost estimate has been placed in the records to be maintained at the facility.
- 4.1.11.5.2 The owner or operator must annually adjust the estimate for inflation and any other applicable factors until the corrective action program is completed.
- 4.1.11.5.3 The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.
- 4.1.11.5.4 The Secretary may approve reduction of the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must submit to the Secretary in writing the justification for the reduction of the corrective action cost estimate. The owner or operator must also notify the Secretary in writing that the amended amount of financial assurance has been placed in the records to be maintained at the facility.

4.2 Application Procedures For Sanitary And Industrial Landfills

Unless otherwise specified within these regulations, the following application procedures apply to all submissions received after May 22, 2018.

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4.2.1 Application

Any person desiring to construct or operate a sanitary or industrial landfill or cell must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

- 4.2.1.1 A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.
- 4.2.1.2 Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.
- 4.2.1.3 A plan of operation. This report shall be prepared under the direction of and signed by a Professional Engineer or Professional Geologist registered in Delaware or other Department-approved person and shall include the following:
 - 4.2.1.3.1 A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used;
 - 4.2.1.3.2 A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;
 - 4.2.1.3.3 A description of the proposed monitoring methods;
 - 4.2.1.3.4 A description of the proposed methods for controlling noise, litter, odors, dust, insects, and rodents; and
 - 4.2.1.3.5 A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment).
- 4.2.1.4 An engineering report. This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:
 - 4.2.1.4.1 Descriptions and specifications of all proposed design features;
 - 4.2.1.4.2 A description of the proposed installation methods and procedures;
 - 4.2.1.4.3 A schedule of events for construction of the facility;
 - 4.2.1.4.4 Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility; and
 - 4.2.1.4.5 A construction quality assurance plan.
- 4.2.1.5 A hydrogeological assessment. A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation and report shall be prepared and signed by a Professional Geologist registered in Delaware. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:
 - 4.2.1.5.1 The occurrence and characteristics of the unconfined and first confined aquifers;
 - 4.2.1.5.2 Groundwater flow directions;
 - 4.2.1.5.3 Background groundwater quality, using a minimum of eight (8) independent samples for each background and downgradient well;
 - 4.2.1.5.4 Potential pathways of contaminants to points of groundwater discharge;
 - 4.2.1.5.5 Approximate groundwater flow rates and travel times from the facility to points of discharge (including wells and/or surface water); and
 - 4.2.1.5.6 A delineation of the anticipated maximum elevation of the seasonal high water table.
- 4.2.1.6 An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. This assessment shall be prepared under the direction of and signed by a Professional Engineer registered in Delaware. Factors to be considered include:
 - Air quality.
 - Water quality.
 - Stream flow.
 - Fish and wildlife.
 - Plants.

- Threatened or endangered species.
- Water uses.
- Land use.
- Aesthetics.
- Traffic.
- Public health and safety.
- Cultural, recreational, and natural areas.
- Historic sites.
- Social and economic factors.
- Soil Quality.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

- 4.2.1.7 Topographical and site location maps. This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:
- 4.2.1.7.1 The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.
 - 4.2.1.7.2 The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.
 - 4.2.1.7.3 The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.
 - 4.2.1.7.4 The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.
- 4.2.1.8 Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.
- 4.2.1.9 Closure plan as described in subsection 5.10.3 or 6.10.3, as appropriate.
- 4.2.1.10 Proof of financial responsibility for closure and post-closure care, as described in subsection 4.1.11.
- 4.2.1.11 Proof that the facility meets the siting criteria required by subsection 5.1 or 6.1.
- 4.2.1.12 A Stormwater Plan (SWP) (aka Stormwater Pollution and Prevention Plan (SWPPP)). The SWP/SWPPP shall describe stormwater management controls and practices in place or planned for the facility and shall identify potential sources of pollutants which may reasonably be expected to affect the quality of stormwater discharges from landfill operations and site maintenance. The SWP/SWPPP need not address construction activities regulated by a Sediment and Stormwater Plan Approval issued by the Department. SWP/SWPPP plans created under regulations other than DRGSW can be substituted for this requirement provided the plan meets the minimum requirements specified in subsection 5.6 or 6.6.
- 4.2.1.13 Any other related reports, data, maps, or information that the Department requires.
- 4.2.2 Construction and Operation
- 4.2.2.1 The applicant shall not commence construction of the landfill or cell until the Department has issued the solid waste permit required by these regulations.
 - 4.2.2.2 After construction has been completed and prior to the placement of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the landfill or cell was completed in accordance with the engineering report to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not place solid waste into the newly constructed landfill or cell until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.
- 4.2.3 Closure

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- 4.2.3.1 Any person wishing to modify their current permit to allow closure of a facility or part thereof must submit the following to the Department at least 180 days prior to the projected date when wastes will no longer be accepted:
 - 4.2.3.1.1 Notification of intent to close;
 - 4.2.3.1.2 Closure plan as described in subsection 5.10.3 or 6.10.3, as appropriate; and
 - 4.2.3.1.3 Post-closure care plan describing how the requirements of subsection 5.11 or 6.12 (as appropriate) will be met.
- 4.2.3.2 If the Department determines that the closure plan and supporting documents are sufficient to ensure closure, it will modify the permit to allow closure to be performed. The owner or operator of the landfill shall not commence closure of the landfill or cell without first obtaining the necessary permit modifications.
- 4.2.3.3 After closure has been completed, the permittee shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell shall not be considered closed until the Department has provided its written notification that the closure has been accomplished in accordance with the solid waste permit and these regulations.
- 4.2.3.4 Facilities entering the Post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

4.3 This Paragraph Reserved

4.4 Application Procedures For Resource Recovery Facilities

4.4.1 Application

Any person desiring to construct or operate a resource recovery facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

- 4.4.1.1 A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.
- 4.4.1.2 Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.
- 4.4.1.3 A plan of operation. This shall include the following:
 - 4.4.1.3.1 A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used.
 - 4.4.1.3.2 A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility. This shall include a description of the procedures for facility start up and for scheduled and unscheduled shut down operations.
 - 4.4.1.3.3 A description of the solid wastes that will be accepted at the facility, the manner in which recyclable components will be removed from the solid waste stream, the markets for these recyclable materials, and the proposed disposition of the nonrecyclable components and residuals.
 - 4.4.1.3.4 A description of the proposed monitoring methods.
 - 4.4.1.3.5 A description of the measures that will be used to ensure that unauthorized and unwanted solid wastes are prevented from entering the facility.
 - 4.4.1.3.6 A description of the personnel training program, including training that will be provided to ensure compliance with subsections 9.4.2.5 and 9.4.2.7 of these regulations.
 - 4.4.1.3.7 A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, fires, and explosions.
 - 4.4.1.3.8 A detailed contingency plan to be implemented in case of an emergency such as a spill, accident, or explosion.

- 4.4.1.4 An engineering report. This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:
- 4.4.1.4.1 A drawing or drawings showing the complete layout of the proposed facility.
 - 4.4.1.4.2 Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.
 - 4.4.1.4.3 Descriptions and specifications of all proposed design features that the engineer has provided to the owner of the facility.
 - 4.4.1.4.4 A description of the proposed installation methods and procedures.
 - 4.4.1.4.5 A plan for third party quality assurance for the construction and installation of components of the facility that will be used in the processing, handling, and/or monitoring of solid waste.
 - 4.4.1.4.6 A schedule of events for construction of the facility.
 - 4.4.1.4.7 Proposed design capacity per day, and life expectancy of the facility.
 - 4.4.1.4.8 A description of potential safety hazards and methods of control.
 - 4.4.1.4.9 An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.
 - 4.4.1.4.10 An identification of possible groundwater and surface water discharges.
- 4.4.1.5 A recycling analysis. This analysis shall consist of the following:
- 4.4.1.5.1 Identification of available and potential markets for recovered recyclable.
 - 4.4.1.5.2 An evaluation of the impact that alternative source separation/recyclables recovery programs could have on the facility. If a thermal recovery facility is the subject of the application, this shall include an engineering analysis of the BTU value of the solid waste before and after recyclables recovery for the proposed life of the project to determine if increases in recycling activities will necessitate changes in facility size and capacity.
- 4.4.1.6 A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or other testing protocol acceptable to the Department. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.
- 4.4.1.7 A hydrogeological assessment, if deemed necessary by the Department. A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.
- 4.4.1.8 The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include, but are not necessarily limited to:
- Aesthetics.
 - Air quality.
 - Cultural, recreational, and natural areas.
 - Fish and wildlife.
 - Historic Sites.
 - Land use.
 - Plants.
 - Public health and safety.
 - Social and economic factors.
 - Soil Quality.
 - Stream flow.
 - Threatened or endangered species.
 - Traffic.
 - Water quality.
 - Water uses.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

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- 4.4.1.9 Topographical and site location maps. This shall include a topographical map or series of maps on a scale satisfactory to the Department, but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:
- 4.4.1.9.1 The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.
 - 4.4.1.9.2 The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.
 - 4.4.1.9.3 The locations and names of all water supply wells or surface water intakes within 1/4 mile of the site boundaries.
- 4.4.1.10 Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.
- 4.4.1.11 A conceptual closure plan. This shall address the items listed in subsection 9.5.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.
- 4.4.1.12 Proof of financial responsibility for closure, as described in subsection 4.1.11.2.
- 4.4.1.13 Proof that the facility meets the siting criteria required by subsection 9.2.
- 4.4.1.14 Any other related reports, data, maps, or information that the Department requires.

4.4.2 Construction and operation

- 4.4.2.1 The applicant shall not commence construction of a new resource recovery facility or operate an existing resource recovery facility until the applicant has received a permit from the Department in accordance with these regulations.
- 4.4.2.2 After the construction of a new resource recovery facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the resource recovery facility was completed in accordance with the engineering report to include the quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the third-party quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not commence operations, store, or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and Delaware's Regulations Governing Solid Waste.

4.4.3 Closure. Any person desiring to close a resource recovery facility shall, at least 180 days before the date on which the facility will stop accepting solid waste, submit the following to the Department:

- 4.4.3.1 Written notification of intent to close.
- 4.4.3.2 Updated closure plan.
- 4.4.3.3 Closure schedule.
- 4.4.3.4 An evaluation of the impact that closing the facility will have on the flow of solid waste in the region serviced by the facility, and a plan for minimizing any disruption in the flow. If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

4.5 Application Procedures For Transfer Stations

4.5.1 Application

Any person desiring to construct or operate a transfer station must submit a letter of intent to the Department. For proposed facilities, the letter shall narrate the projected design and usage of the facility; provide a tentative schedule for construction and startup, and summarize the applicant's experience and training with transfer station operations. For existing facilities, the letter shall state the reason for the application submittal and include a narration about design, usage, and schedule only if new construction is proposed. After submitting the Letter of Intent, the applicant shall submit the following:

- 4.5.1.1 A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.
- 4.5.1.2 Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must be submitted.
- 4.5.1.3 A plan of operation. The applicant shall submit a plan of operation in a format that includes a dated title page (title, name/location of facility, author, permittee name), a table of contents, numbered pages, labeled chapters and subsections, and numbered paragraphs. Content of the plan shall include the following:
- 4.5.1.3.1 A narrative description of the type of facility and of the solid waste handling procedures to be used.
- 4.5.1.3.2 A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility.
- 4.5.1.3.3 A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, leachate, and facility washdown water.
- 4.5.1.3.4 A description of the methods that will be used to prevent unauthorized wastes from being accepted at the facility.
- 4.5.1.3.5 A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment.)
- 4.5.1.4 An engineering report. This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:
- 4.5.1.4.1 Descriptions, plans, and specifications of all proposed design features.
- 4.5.1.4.2 A description of the proposed installation methods and procedures.
- 4.5.1.4.3 A schedule of events for construction of the facility.
- 4.5.1.4.4 Proposed design capacity in both tons and cubic yards per day.
- 4.5.1.5 A hydrogeological assessment, if deemed necessary by the Department. A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. This investigation and report shall be signed by a Professional Geologist registered in Delaware. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:
- 4.5.1.5.1 The occurrence and characteristics of the water table aquifer.
- 4.5.1.5.2 Groundwater flow directions.
- 4.5.1.5.3 Background groundwater quality.
- 4.5.1.5.4 Potential pathways of contaminants to points of groundwater discharge.
- 4.5.1.6 The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:
- Aesthetics.
 - Air quality
 - Cultural, recreational, and natural areas.
 - Fish and wildlife.
 - Historic sites.
 - Land use.
 - Plants.
 - Public health and safety.
 - Social and economic factors.
 - Soil Quality.
 - Stream flow.
 - Threatened or endangered species.
 - Traffic.
 - Water quality.
 - Water uses.

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If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

4.5.1.7 Topographical and site maps. This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

4.5.1.7.1 The legal boundaries of the property as determined by a survey performed by a surveyor registered in Delaware; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

4.5.1.7.2 The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

4.5.1.7.3 The locations and names of all water supply wells or surface water intakes within 1/4 mile of the handling site boundaries.

4.5.1.7.4 Proximity to airport runways.

4.5.1.8 Proof that all applicable zoning approvals have been obtained and that application has been made for all other appropriate federal, state, and local environmental permits.

4.5.1.9 A conceptual closure plan. This shall address the items listed in subsection 10.6.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

4.5.1.10 Proof of financial responsibility for closure, as described in subsection 4.1.11.2.

4.5.1.11 Proof that the facility meets the siting criteria required by subsection 10.2.

4.5.1.12 Any other related reports, data, maps, or information that the Department reasonably requires.

4.5.2 Construction and operation

4.5.2.1 The applicant shall not commence construction of a new transfer station or operate an existing transfer station until the applicant has received a permit from the Department in accordance with these regulations.

4.5.2.2 After the construction of a new transfer station has been completed, and prior to the receipt of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the transfer station was completed in accordance with the permit requirements. The final report shall be certified correct by a Professional Engineer registered in Delaware. The permittee shall not commence operations, store, or receive solid waste until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

4.6 Application Procedures For Infectious Waste Management Facility

4.6.1 Application

Any person desiring to construct or operate an infectious waste management facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility.

The letter of intent shall be followed by submission, by the applicant, of the following additional information:

4.6.1.1 A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.

4.6.1.2 Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.

4.6.1.3 A plan of operation. This plan shall include the following:

4.6.1.3.1 The source(s) of the infectious waste (generator names and locations);

4.6.1.3.2 A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;

4.6.1.3.3 A description of the facility where the waste will be rendered non-infectious, including the name and the exact location of the facility;

- 4.6.1.3.4 A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;
- 4.6.1.3.5 A description of the processing methods to be used for each type of waste, including schematic drawings (e.g., blueprints, etc.);
- 4.6.1.3.6 A description showing that the facility has developed a validation program which demonstrates the effectiveness of the treatment method by performing an Initial Efficacy Test and Periodic Verification Tests(s);
- 4.6.1.3.7 A description of the measures that will be used to ensure that unauthorized and unwanted wastes are prevented from entering the facility;
- 4.6.1.3.8 A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of time of storage;
- 4.6.1.3.9 A description of the alternatives to be used if the processing equipment is inoperable, and the procedures to be used for the management of the waste if it cannot be promptly processed;
- 4.6.1.3.10 A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required;
- 4.6.1.3.11 A description of the proposed methods for controlling noise, litter, odors, vectors, dust, fires, and explosions; and
- 4.6.1.3.12 A contingency plan to be implemented in case of emergency. In addition, if the proposed facility is an incinerator, the Plan of Operation shall include a plan for sampling, analysis, and disposition of the ash generated in the incinerator. The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste. The plan also shall include a strategy for treating and/or disposing of the ash if it is found to exhibit hazardous waste characteristics. A sanitary landfill in Delaware will not be considered an acceptable disposal facility for ash that exhibits hazardous waste characteristics.
- 4.6.1.4 An engineering report. This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:
 - 4.6.1.4.1 Descriptions and specifications of all proposed design features.
 - 4.6.1.4.2 A description of the proposed installation methods and construction procedures.
 - 4.6.1.4.3 A schedule of events for construction of the facility, if deemed necessary by the Department.
 - 4.6.1.4.4 Proposed design capacity in both tons and cubic yards per day, and life expectancy of the facility.
 - 4.6.1.4.5 Materials and energy balance of the facility.
- 4.6.1.5 A hydrogeological assessment, if deemed necessary by the Department. A hydrogeological investigation may be required at the proposed site and approved by the Department before a construction permit will be issued. This investigation and report shall be signed by a Professional Geologist registered in Delaware. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:
 - 4.6.1.5.1 The occurrence and characteristics of the unconfined and first confined aquifers;
 - 4.6.1.5.2 Groundwater flow directions;
 - 4.6.1.5.3 Background groundwater quality;
 - 4.6.1.5.4 Potential pathways of contaminants to points of groundwater discharge; and
 - 4.6.1.5.5 A delineation of the anticipated maximum elevation of the seasonal high water table.
- 4.6.1.6 An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:
 - Aesthetics.
 - Air quality.
 - Cultural, recreational, and natural areas.
 - Fish and wildlife.
 - Historic sites.
 - Land use.
 - Plants.

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- Public health and safety.
- Social and economic factors.
- Soil Quality.
- Stream flow.
- Threatened or endangered species.
- Traffic.
- Water quality.
- Water uses.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

4.6.1.7 Topographical and site location maps, if deemed necessary by the Department. This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including, but not limited to, the following:

4.6.1.7.1 The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

4.6.1.7.2 The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

4.6.1.7.3 The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

4.6.1.7.4 The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

4.6.1.8 Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

4.6.1.9 Closure plan that conforms with Section 11.0 - Special Wastes Management, Part 1 - Infectious Waste, subsection 11.8, as appropriate.

4.6.1.10 Proof of financial responsibility for closure as described in subsections 4.1.11.2 and 4.1.11.4.

4.6.1.11 Proof that the facility meets the siting criteria required by Section 11.0 - Special Wastes Management, Part 1 - Infectious Waste, subsection 11.1.2.

4.6.1.12 Any other related reports, data, maps, or information that the Department requires.

4.6.2 Construction and operation

4.6.2.1 The applicant shall not commence construction of a new infectious waste facility or operate an existing infectious waste facility until the applicant has received a permit from the Department in accordance with these regulations.

4.6.2.2 After the construction of a new infectious waste facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the facility was completed in accordance with the engineering report. The permittee shall not commence operations or store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

4.6.3 Closure. Any person wishing to close an infectious waste facility must submit the following to the Department:

4.6.3.1 Notification of intent to close.

4.6.3.2 A detailed plan for closing the facility so as to achieve the objectives described in Section 11.0 - Special Wastes Management, Part 1 - Infectious Waste, subsection 11.10.

4.6.3.3 If the Department approves the closure plan, it will modify the facility's permit to allow closure to take place.

4.7 Application Procedures For Solid Waste Transporters

Any person required to obtain a permit to transport solid waste must submit a completed application to the Department. The application shall be accompanied by all applicable supporting documentation and appropriate application fees as required by these regulations. All information provided by the applicant shall be certified to be true, accurate, and complete by the applicant's signature on the provided application.

4.8 Application Procedures For Scrap Tire Facilities

The application procedures shall be in accordance with those specified in Section 12.0.

8 DE Reg. 354 (08/01/04)

11 DE Reg. 807 (12/01/07)

13 DE Reg. 1093 (02/01/10)

19 DE Reg. 418 (11/01/15)

19 DE Reg. 422 (11/01/15)

21 DE Reg. 893 (05/01/18)

5.0 Sanitary Landfills

(NOTE: This section applies only to landfills that accept household waste.)

5.1 SITING

5.1.1 Sanitary landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

5.1.2 All sanitary landfill facilities shall be constructed to at least minimum design requirements as contained in subsection 5.2. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

5.1.3 The owner or operator of any proposed sanitary landfill within a 5 mile radius of any airport runway must notify the airport and the Federal Aviation Administration (and provide proof of notification to the Department).

5.1.4 No new cell of a sanitary landfill shall be located:

5.1.4.1 Within the 100-year flood plain as delineated by the Federal Emergency Management Agency.

5.1.4.2 In an area that may cause or contribute to the degradation of any state or federally regulated wetlands unless the owner or operator can demonstrate to the satisfaction of the appropriate wetlands regulatory agency that:

5.1.4.2.1 there is no impact to any regulated wetlands on the site, or

5.1.4.2.2 any impact will be mitigated as required.

5.1.4.3 Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

5.1.4.4 Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

5.1.4.5 So as to be in conflict with any locally adopted land use plan or zoning requirement.

5.1.4.6 Within the wellhead protection area of a public water supply well or well field or a formally designated aquifer resource protection area.

5.1.4.7 Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)

5.1.4.8 Within a seismic impact zone unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

For the purposes of this section:

5.1.4.8.1 Seismic impact zone means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

5.1.4.8.2 Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater