

Waste Regulations Update

Proposed regulations intended to simplify requirements and promote recycling and material reuse

From the Editor:

We decided to devote this issue of *The First Stop* to information on newly proposed Pennsylvania Department of Environmental Protection (DEP) waste regulations because they contain so many changes which could affect small businesses. Over the past 10 years, we have received many requests for help navigating the voluminous and complex waste regulations, so we are pleased to see that efforts have been made to streamline and simplify them. The proposed regulations are intended to make it easier to reuse materials without first receiving approvals or permits, which should help many small businesses improve their bottom line. We hope these proposed regulations also stimulate the recycling marketplace and free up even more materials that can be listed on our on-line waste exchanges, PA Material Trader and PA Manure Trader and our new website devoted to biomass trading, PA Biomass Trader.

Although we have summarized many of the proposed changes in this newsletter, I urge you to review the proposed regulations, especially if you have specific questions relating to waste issues, and provide comments to DEP while the regulations are still in development.

- Christopher Lynch

The PA Department of Environmental Protection Bureau of Waste Management has taken the initiative to tackle the existing waste regulations in an effort to clarify the language, eliminate overlap, and start to accommodate the evolving technologies that are changing the way waste is defined and handled.

The Bureau's workgroup has been working with a team of experts for over two years on consolidating and revising the municipal and residual waste regulations. The revisions incorporate comments received from extensive outreach DEP conducted with many stakeholders, including the waste industry (Pennsylvania Waste Industry Association), Chamber of Business and Industry, medical waste industry representatives, local government representatives and citizen groups. The DEP Solid Waste Advisory Committee (SWAC) has been reviewing the draft chapters over the past 18 months and providing valuable input as well.

The draft regulations were submitted to SWAC for consideration and they were approved at their March 19, 2009 meeting. The package is expected to move forward to the Environmental Quality Board in September/October 2009 for their review.

A 90-day public comment period will follow, with opportunity for small businesses to voice any concerns or suggestions before final rulemaking would occur in September, 2010. A full set of the regulations can be found on DEP's Solid Waste Advisory Committee website, www.dep.state.pa.us/dep/subject/advcoun/solidwst/swac.htm.

What are the Proposed Changes?

The primary goals of driving this effort were to clarify and redefine what waste is, streamline the waste process across various governing entities, and ultimately provide opportunity to reduce landfill waste and increase recycling of certain materials.

Relevant highlights of the proposed changes and how they impact small businesses are listed below.

Consolidation and consistency of information. Current regulations are confusing because there are 10 chapters for municipal waste and 9 for residual waste. The consolidation results in a total of 12 chapters that cover both program areas, and it standardizes requirements for both waste streams.

Definition of waste (see box).

Currently, there are separate, conflicting definitions of waste in regulations. For instance, residual waste regulations provide options for reused waste materials to fall out of the waste definition, whereas municipal waste does not provide those same options. The new, combined definition of waste provides reuse and recycling opportunities, regardless whether it's a residual or municipal waste stream. Having more materials fall out of the waste definition will facilitate and stimulate increased recycling and beneficial use of waste materials for product development and use as fuel.

REDEFINING WASTE: in the proposed regulations, the following materials are NOT considered waste (provided they are handled and stored appropriately):

- Source separated recyclable materials
- Coproducts
- Clean fill
- Materials destined for reuse as fuel such as untreated wood & sawdust and waste tires
- Materials that can be reclaimed or used as an ingredient in an industrial process to make a product

This newsletter is a publication of the Pennsylvania Small Business Development Centers' Environmental Management Assistance Program (EMAP). EMAP is a free and confidential service for Pennsylvania small businesses.

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SPECIAL ISSUE:

Waste Regulations Update cont'd

Permit Hierarchy Introduced

① With the proposed new definition of waste, some materials will no longer be classified as waste and therefore will not be subject to any permitting requirements. In effect, they "fall out" of regulatory arena.

② Additional permits-by-rule have been developed to meet the need for reduced regulatory oversight of specific waste streams. There are 15 existing permits-by-rule that are retained and 13 proposed new permits-by-rule. Examples: ethanol fuel production, electronics recycling, tire-derived fuel, reclaimed asphalt pavement and foundry sand in concrete and asphalt.

③ General permit reviews have changed to registrations which will be handled by the regional offices. "Determination of Applicability" has been eliminated to reduce the number of different general permits requested and standardize the types of permits available. DEP will have a transition scheme to cover existing permittees under GPs for uses that will no longer be eligible for GPs.

④ Beneficial Use Individual Permits will be required for specific activities at a specific location, not covered by an existing general permit, that involve the beneficial use of waste materials. Before going through the costly and time-consuming individual permit process, the proposed regulations allow an individual to submit a formal request to DEP to develop a general permit for the activity. The request must include an explanation and detailed physical and chemical description of the beneficial use.

Disposal bans. The Disposal Ban Subcommittee recommended, and the full SWAC adopted, a protocol for assessing the feasibility of commodities considered for ban. The proposed banned materials listed below have undergone the protocol review, which included environmental, health and safety factors; management factors; economic factors; and implementation factors.

Items Currently Banned

- Explosive waste
- Radioactive materials, including tritium exit signs
- Lead acid batteries
- Loads primarily composed of leaf waste
- Whole waste tires

Proposed Bans

- Used oil filters
- White goods
- Aluminum cans
- Steel and bimetallic cans
- PETE #1 plastic
- HDPE #2 plastic
- Corrugated cardboard

Potential Future Bans (DEP will evaluate in 3 years)

- Office paper
- Mixed paper
- Yard waste
- Source-separated food waste
- Glass bottles and jars
- Electronic waste, including CRTs
- Mercury-containing devices

Simplified and clarified reporting requirements. This applies to residual (industrial) waste generators only. For example, the source reduction strategy report will be eliminated because documentation is no longer needed for waste reduction efforts. The regulations also clarify that only waste streams generated in quantities greater than 2200 pounds per month must be reported to DEP.

Program efficiencies. The inspection frequencies have been reduced for routine monitoring of compliant facilities to allow flexibility for regional staff. Facilities that have historically had problems or have been non-compliant require more frequent inspections and enforcement actions. This approach is more efficient for the regional staff to handle their workloads with less staffing anticipated in the future.

Fee increases. Permit application and annual report fees were increased to reflect program costs. For example, the general permit registration fee is proposed to be increased from \$250 to \$1000 and the application fee for a beneficial use individual permit is \$2000.

Storage Requirement Variance

Many businesses are currently limited in their recycling and material reuse efforts because DEP's storage requirements require that materials cannot be accumulated speculatively for more than one year. The proposed regulations provide a much-needed variance opportunity – an operator can make a written request to DEP requesting a variance from recycling at least 75% of the stored materials. If the variance is granted, it will be good for one year and the operator can reapply on an annual basis. The proposed fee for each variance request is \$500.

EMAP would like to thank Kim Hoover from PA DEP Bureau of Waste Management who provided summary information on the DEP's proposed changes to the waste regulations.

Other Waste News

Mercury Thermostats

The Mercury-Free Thermostat Act (Act No. 97 and House Bill 44) was signed into law on October 9, 2008. A few highlights of the legislation include:

- By June 6, 2009, manufacturers must develop and implement a plan for collection and recycling of mercury thermostats, and must provide annual reports
- Effective December 8, 2009:
 - The sale, installation and disposal of mercury thermostats is prohibited
 - Wholesalers must participate as collection points for mercury containing thermostats – if they do not participate, they cannot sell any non-mercury containing devices
 - Retailers and contractors must participate as collection points of mercury containing thermostats, or provide notice to customers that recycling mercury thermostats is required under Pennsylvania law and identify nearby collection points

More information can be found on DEP's website at: www.depweb.state.pa.us, keyword "mercury"



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SPECIAL ISSUE: Waste Update

SUMMER 2009

EMAP Launching Pennsylvania Biomass Trader, to Support the Expanding Green Energy Marketplace (www.biomasstrader.org/pa)

Responding to interest from the alternative energy business community, EMAP is currently developing a new free on-line waste exchange, the Pennsylvania Biomass Trader. Biomass fuel or energy is derived from the use of plant material, vegetation, or agricultural waste, and while these items were previously incorporated onto our Material or Manure Trader exchanges, this will allow buyers and sellers of this specific organic material to more easily find each other. This new site will stimulate and promote the green energy marketplace, providing an opportunity for businesses to look for sources of biomass materials to produce fuel, and for generators of biomass materials to find markets for their reuse rather than disposal.

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