

Regulatory Analysis Form

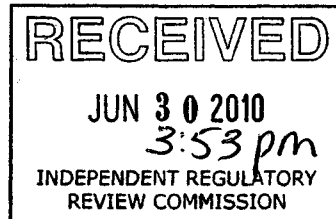
(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE



(1) Agency:

Department of Environmental Protection

(2) Agency Number:

Identification Number: # 7-445

IRRC Number: 2805

(3) Short Title:

Hazardous Waste Management System; Exclusion for Identification and Listing of Hazardous Waste

(4) PA Code Cite:

25 Pa. Code Chapter 261a

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, (717) 783-8727; Fax No.: (717) 783-8926
Rachel Carson State Office Building
400 Market Street
Harrisburg PA, 17105
mtate@state.pa.us

Secondary Contact: Duke Adams, (717) 783-8727
(same as above)
ranadams@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Environmental Quality Board (Board) is amending Chapter 261a (relating to identification and listing of hazardous waste). The amendments alter a delisting provision granted to the predecessor of Waste Management Disposal Services of Pennsylvania (WMDSPA) to increase the maximum annual volume of filter cake sludge generated from leachate treatment from 2,000 cubic yards to 4,000 cubic yards. Once delisted, the filter cake sludge would be disposed in WMDSPA's Subtitle D (non-hazardous) waste landfill in Falls Township, Bucks County, PA.

(9) Include a schedule for review of the regulation including:

- | | |
|---|---------------|
| A. The date by which the agency must receive public comments: | Nov. 30, 2009 |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Summer 2010 |
| D. The expected effective date of the final-form regulation: | Summer 2010 |
| E. The date by which compliance with the final-form regulation will be required: | Summer 2010 |
| F. The date by which required permits, licenses or other approvals must be obtained: | Summer 2010 |

(10) Provide the schedule for continual review of the regulation.

The final-form regulation addresses generator-specific waste. The Department will continually review the specific waste stream in comparison to the regulation as well as any future US Environmental Protection Agency (EPA) regulations.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

The final-form rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.105, 6018.402 and 6018.501) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20). Under sections 105, 402 and 501 of the

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SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are implemented by the Department.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, this final-form rulemaking is the result of a petition to amend the hazardous waste regulations to exclude a particular waste from the lists of hazardous wastes.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Federal regulations, incorporated by reference by Pennsylvania, allow for petitions to be submitted to delist certain wastes from particular facilities where the petitioner can demonstrate that the waste does not meet any of the criteria for which the waste was listed in 40 CFR 261.11. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for the agency to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste. If the petitioner can make that demonstration, then the waste is delisted and can be managed as a non-hazardous waste. This usually results in significant cost savings to the petitioner without detriment to the environment or public health and safety.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

The following are extensive reference documents, which the Department can furnish upon request:

- Calendar Years 2006, 2007, 2008, and 2009 Analytical Data from WMDSPA's Current Hazardous Waste Listing Exclusion Verification Sampling Program
- Delisting Risk Assessment Software (DRAS) Model Results
- March 31, 2009 Letter from WMDSPA Providing Additional Information Concerning:
 - 1) Factors Contributing to the Increased Volume of Sludge Filter Cake, and
 - 2) Underlying Assumptions Built into the Delisting Risk Assessment Software

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(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The final-form rulemaking is not expected to produce any adverse impacts.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Only the petitioner, WMDSPA, will be required to comply with the conditions included in the final-form rulemaking.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The primary beneficiary of this proposed rulemaking is the petitioner, who will save at least \$650,000 annually if the filter cake sludge generated at the WMDSPA treatment plant is considered non-hazardous and disposed accordingly.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amendments are not expected have any impact on local governments.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amendments are not expected have any impact on the state government.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	653,000	653,000	653,000	653,000	653,000	653,000
Local Government						
State Government						
Total Savings	653,000	653,000	653,000	653,000	653,000	653,000

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COSTS:					
Regulated Community					
Local Government					
State Government					
Total Costs					
REVENUE LOSSES:					
Regulated Community					
Local Government					
State Government					
Total Revenue Losses					

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
General Operations/HSCA (201-20069)	\$14,694,000	\$23,179,000	\$18,222,000	\$16,457,000
Solid Waste Abatement Fund (682-60074)	\$5,311,000	\$2,419,000	\$2,395,000	\$2,406,000

*Above figures represent the Commonwealth's 25% match to federal funds provided in "EPA Planning Grant - Administration"

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The petitioner will have a savings for any filter cake sludge disposed in the petitioner's Subtitle D landfill instead of being disposed as a Subtitle C hazardous waste. The petitioner provided the following savings breakdown:

1. Hazardous waste disposal costs

Wayne Disposal, Inc. in Belleville, Michigan is the facility WDMSPA is currently using for disposal of the hazardous F039 sludge. The charges for disposal at Wayne Disposal are as follows (as charged for a 10-ton load):

\$80/ton - tipping fees

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\$2550 - transportation cost

\$502 - ancillary fees and charges (taxes, Fuel surcharge, etc.)

Total costs per 10-ton load = \$385 per ton

2. Non-hazardous waste disposal costs

The treatment plant sludge material is disposed at the WDMSPA landfill up to the permitted annual volume under the delisting. The landfill does not have a standard fee for on-site generated waste; however, a fair comparison for the cost analysis of the delisting would be to apply the fee charged by GROWS Landfill for other similar non-hazardous sludges. This is because the capacity taken up in the landfill by the delisted sludge cannot be used for fee-generating disposal. The charge for a similar sludge is \$58.50 per ton.

3. Cost Comparison

WMDSPA is currently projecting that it will generate approximately 4000 cubic yards of sludge in 2010. Assuming a 1-to-1 (cubic yards-to-tons) conversion factor for simplicity, the petitioner will dispose of approximately 2000 tons of material at Wayne Disposal, Inc. this year, at a cost of approximately \$770,000 versus an estimated cost to manage an equal amount of material at GROWS Landfill at a cost of \$117,000. This is a \$653,000 difference for 2010.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

This proposal was developed in response to a petition to amend the regulation. The petitioner provided analytical data and other information that was used to draft the regulation. The EPA was involved in the review. Notice of the petition was provided to the municipalities in the vicinity of the WMDSPA Falls Township, Bucks County facility.

The proposed rulemaking was published in the Pennsylvania Bulletin on November 7, 2009, and the Board received no public comments in support or opposition to the proposed rulemaking. The Solid Waste Advisory Committee was briefed on the petition and proposed rulemaking on December 7, 2009, and reviewed and endorsed the final-form rulemaking on May 27, 2010. On January 6, 2010, the Independent Regulatory Review Commission notified the Board that the Commission had no comments on the proposed rulemaking. No public meetings or hearings were held.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory process was considered. The petition process as outlined in the Hazardous Waste Regulations is allowed by the EPA. See Response to Question (13).

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This proposal is not more stringent than federal standards. It is a provision that has been authorized by EPA for the Department to implement in Pennsylvania in lieu of the federal standards.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Not all states are authorized to process hazardous waste delisting petitions, in which case the EPA processes the petitions. This specific proposal will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The amended regulation already exists at 25 Pa.Code Chapter 261a through incorporation by reference of the federal hazardous waste regulations. Regulations of other state agencies will not be affected.

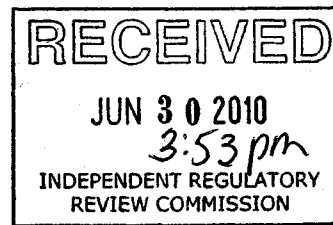
(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The final-form rulemaking includes a section on data submittal by the petitioner as a condition of the delisting. The company currently maintains similar but more extensive data and reports, including manifests, for the filter cake waste generated at the petitioner's facility that must be managed as hazardous wastes. There is no specific form for the submission of the data required as a condition of the delisting.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Due to the nature and purpose of the final-form rulemaking, no special provisions are needed.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU



(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-445

DATE OF ADOPTION JUNE 15, 2010

BY John Hanger

TITLE JOHN HANGER
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL JUN 17 2010

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable title~~)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Hazardous Waste Management System;
Proposed Exclusion for Identification and Listing of Hazardous Waste

25 Pa. Code, Chapter 261a

**Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapter 261a
Identification and Listing of Hazardous Waste**

**Hazardous Waste Management System;
Exclusion for Identification and Listing of Hazardous Waste**

Order

The Environmental Quality Board (Board) by this order amends Chapter 261a (relating to the identification and listing of hazardous waste). The final-form rulemaking modifies an existing hazardous waste delisting previously granted to Geological Reclamation Operations and Waste Systems, Inc. (GROWS), whose successor by merger, Waste Management Disposal Services of Pennsylvania, Inc. (WMDSPA), petitioned the Board to increase the maximum annual volume covered by the current delisting.

This order was adopted by the Board at its meeting of June 15, 2010.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. Contact Persons

For further information contact Dwayne Womer, Environmental Engineer Manager, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Curtis Sullivan, Assistant Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD Users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) Web site: www.depweb.state.pa.us.

C. Statutory Authority

The rulemaking is being made under the authority of sections 105, 402 and 501 of the Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.105, 6018.402 and 6018.501) and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20). Under sections 105, 402 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste that are necessary to protect the public's health, safety, welfare and property, and the air, water and other natural resources of this Commonwealth. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901—6986) and SWMA regulations. Under 40 CFR 260.20 and 260.22 (relating to general; and petitions to amend part 261 to exclude a waste produced at a particular facility), which are incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and modified by § 260a.20 (relating to rulemaking petitions), a person may petition the United States Environmental Protection Agency (EPA) or a state administering an EPA-approved hazardous waste management program to remove waste or the residuals resulting from effective treatment of a waste from a particular generating facility from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR 261.31 and 261.32 (relating to hazardous wastes from non-specific sources; and hazardous wastes from specific sources). Specifically, 40 CFR 260.20 allows a person to petition to modify or revoke any provision of 40 CFR Parts 260—266, 268 and 273. Section 260.22 of 40 CFR provides a person the opportunity to petition to exclude a waste on a “generator specific” basis from the hazardous waste lists.

Under the Commonwealth’s hazardous waste regulations in § 260a.20, these petitions are to be submitted to the Board in accordance with the procedures established in Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)—(e).

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed in 40 CFR 261.11 (relating to criteria for listing hazardous waste). In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity and toxicity) and must present sufficient information for the agency to decide whether factors other than those for which the waste was originally listed warrant retaining it as a hazardous waste.

WMDSA operates a commercial landfill and associated wastewater treatment plant in Falls Township, Bucks County, PA. In 1991, WMDSA’s predecessor, GROWS, submitted a delisting petition under 40 CFR 260.20 and 260.22. In response to the petition, the EPA excluded the wastewater treatment sludge filter cake derived from the treatment of landfill leachate originating from the closed “Old GROWS” landfill, that contains a mixture of solid wastes and hazardous wastes, and other nonhazardous waste landfills. The EPA noted that the petitioner submitted sufficient information to allow the EPA to determine that the filter cake was not hazardous based upon the criteria for which it was listed and no other hazardous constituents were present in the waste at levels of regulatory concern. Accordingly, using risk assessment tools in use by the EPA at that time to evaluate the potential risk to human health and the environment associated with the disposal of the filter cake as a nonhazardous waste, the EPA excluded the filter cake generated from the treatment of EPA Hazardous Waste No. F039, multisource leachate, from the list of hazardous wastes found in 40 CFR 261.31 (relating to hazardous wastes from non-specific sources). This delisting was limited to a maximum annual volume of 1,000 cubic yards of filter cake and was conditioned upon the petitioner performing

certain verification testing of the filter cake to demonstrate compliance with maximum allowable concentration limits (MACLs). The MACLs were selected for organic and inorganic constituents of the filter cake and were established as delisting conditions by EPA to be met before the delisted waste could be disposed in a RCRA Subtitle D (nonhazardous waste) landfill. The original petition and subsequent amendments, including the one proposed by this petition, do not address the wastes disposed in any landfill for which its leachate is treated at the treatment plant, or the grit generated during the physical removal (for example, screening) of heavy solids from the landfill leachate.

In 2001, GROWS petitioned EPA to increase the volume of excluded wastewater treatment sludge filter cake to 2,000 cubic yards because of increased filter cake production attributable to improved efficiencies in its wastewater treatment operations. In support of the petition to amend its delisting, the petitioner submitted the verification testing results it had generated in the preceding 2 years and supplemented that data with the total constituents analyses of inorganic constituents for four samples at the request of the EPA. The EPA applied its Delisting Risk Assessment Software (DRAS) program to analyze the risk associated with the request to amend the delisting. The DRAS contains more advanced risk assessment models than those the EPA used in the 1991 delisting. The EPA ultimately concluded that the filter cake sample results and the results of the risk assessment modeling supported the delisting of the filter cake at the increased volume of 2,000 cubic yards annually. This conclusion was subject to the filter cake continuing to meet new MACLs set by the EPA based on the more conservative of: 1) the values generated by the DRAS program; or 2) the toxicity characteristic regulatory levels. The 2001 delisting amendment also required verification testing to show that the MACLs continued to be met.

Recently the volume of leachate treated by WMDSPA at the treatment plant has increased coincident with increased concentrations of certain leachate constituents. Accordingly, WMDSPA is generating substantially more filter cake and, to accommodate the disposal of this increased volume as a nonhazardous waste, it is requesting an increase in the volume limit established in its delisting from 2,000 to 4,000 cubic yards annually.

On December 18, 2008, WMDSPA submitted a petition to the Board requesting the increase in the volume limit to 4,000 cubic yards annually. The Board accepted the petition at its April 21, 2009, meeting and directed the Department to review the contents of the petition under § 23.6 (relating to notice of acceptance and Department report).

In support of its petition, WMDSPA submitted 3 years of verification testing—41 sets of sample results of leachate analyses for inorganic constituents and totals analyses for organic constituents collected over the period from December 2005 through December 2008 along with the total constituents analyses for inorganic constituents for four samples collected in 2008. The scope of data was comparable to, though more extensive than, the data submitted to the EPA in connection with the 2001 amendment. WMDSPA also submitted the results of the modeling of this data that it performed using the DRAS program to evaluate the potential risk associated with treating the filter cake as a nonhazardous waste and to generate MACLs for the filter cake at the proposed increased annual level of disposal. The MACLs were generated in a similar fashion to those generated by the EPA in connection with the 2001 delisting.

The petition demonstrates that the filter cake sample results and the results of the risk assessment modeling support the delisting of the filter cake at the increased volume of 4,000 cubic yards annually. Accordingly, the Board approved the amended delisting to increase the annual volume of filter cake that may be disposed as nonhazardous waste and also includes conditions in the amended delisting governing the testing and management of the filter cake similar to the conditions required by the EPA in the current delisting.

The Department carefully and independently reviewed the information contained in the petition submitted by WMDSPA. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA), as reflected in section 222 of the HSWA (42 U.S.C.A. § 6921(f) and 40 CFR 260.22(d)(2)—(4). In addition, the Department contacted the municipalities near the WMDSPA landfill and the Bucks County Health Department to gauge local concern over the petition. Based on the Department's review and report, on June 16, 2009, the Board directed the Department to develop this proposed rulemaking granting the changes requested by the WMDSPA petition.

The Board adopted the proposed rulemaking at its August 18, 2009 meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on November 7, 2009, with a 30-day public comment period (39 Pa.B. 6453). The Solid Waste Advisory Committee was briefed on the petition and proposed rulemaking on December 7, 2009, and reviewed and endorsed the final-form rulemaking on May 27, 2010. No public comments were submitted in response to the proposed rulemaking, either in support or opposition to the proposed amendments. On January 6, 2010, the Independent Regulatory Review Commission notified the Board that the Commission had no comments on the proposed rulemaking. No public meetings or hearings were held.

E. *Summary of Changes and Comments and Responses on the Proposed Rulemaking*

Chapter 261a contains provisions for the identification and listing of hazardous waste. Section 261a.32 was added in 2006 to refer to Appendix IXa (relating to wastes excluded under 25 Pa. Code § 260a.20 and 40 CFR 260.20 and 260.22). Appendix IXa contains Table 2a (relating to wastes excluded from specific sources), which lists wastes from specific sources that have been delisted through the petition process by the Department and the Board. This numbering scheme is being used to parallel the Federal regulations for clarity and consistency with the incorporation by reference of the Commonwealth's hazardous waste regulations.

The proposal amended Appendix IXa Table 2a to provide a specific conditional delisting of wastewater treatment sludge filter cake at the WMDSPA facility (as opposed to incorporating the existing EPA delisting). The delisting levels in Appendix IXa were established by using the more conservative of health-based values calculated by DRAS or toxicity characteristic regulatory levels. WMDSPA will perform verification testing on the filter cake as set forth in the proposed delisting.

In preparing the final-form rulemaking, the Department recognized that there was an error in the placement of the WMDSPA delisting amendments. The Federal Appendix IX in Part 261

contains two tables, one for wastes excluded from non-specific sources (Table 1) and one for wastes excluded from specific sources (Table 2). EPA placed the original GROWS delisting that is amended by this final-form rulemaking in Table 1, not Table 2. Therefore, in order to be consistent with the Federal hazardous waste regulations, the final rulemaking creates a new "Table 1a, Wastes Excluded from Non-Specific Sources" in Chapter 261a. Although two additional minor editorial corrections were made to the final-form rulemaking, it does not make any substantive changes to the proposed rulemaking published on November 7, 2009.

F. Benefits, Costs and

Compliance Benefits

The final-form rulemaking will provide additional delisted volume of filter cake commensurate with WMDSPA's increased production of wastewater treatment sludge filter cake resulting from its operations. Allowing WMDSPA to dispose of the filter cake in a permitted Subtitle D landfill after performing certain verification testing provides a cost-effective and environmentally responsible method of disposal for this non-hazardous waste. Based on the current costs incurred by WMDSPA to properly dispose of the hazardous filter cake sludge at Model City Landfill in New York, the company will save over \$400,000 annually in avoided disposal costs as a result of this delisting amendment.

Compliance Cost

WMDSPA will be required to continue to comply with the conditions set forth in the delisting regulation, including testing and recordkeeping requirements. However, the delisting of the filter cake should result in an overall reduced waste management cost for the WMDSPA facility, which would otherwise send the filter cake it generates beyond 2,000 cubic yards to a Subtitle C landfill.

Compliance Assistance Plan

The final-form rulemaking should not require any educational, technical or compliance assistance efforts. The Department has and will continue to provide manuals, instructions, forms and Web site information consistent with the final-form rulemaking. In the event that assistance is required, the Department's central office staff will provide it.

Paperwork Requirements

The final-form rulemaking creates no new paperwork requirements to be satisfied by WMDSPA beyond those it already implements under the existing delisting to demonstrate ongoing compliance with the conditions of the current delisting regulation.

G. Pollution Prevention

For this final-form rulemaking, the Department would require no additional pollution prevention efforts. The Department already provides pollution prevention educational material

as part of its hazardous waste program.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6453 (November 7, 2009), and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on _____, 2010, this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2010, and approved the final-form rulemaking.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968, P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 39 Pa.B. 6453.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing SWMA identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 261a, are amended by amending § 261a.32, Appendix IXa as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order, 39 Pa.B. 6453 and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 39 Pa.B. 6453 and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 39 Pa.B. 6453 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

John Hanger
Chairperson
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBCHAPTER D. LISTS OF HAZARDOUS WASTES

**APPENDIX IXa. WASTES EXCLUDED UNDER 25 PA CODE §260a.20
AND 40 CFR §§260.20 AND 260.22.**

[Table 2a. — Wastes Excluded from Specific Sources]

TABLE 1A. — WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

(Editor's Note: The following addition to the appendix is new. It has been printed in regular type to enhance readability.)

<u>Facility</u>	<u>Address</u>	<u>Waste description</u>
Waste Management Disposal Systems of Pennsylvania, Inc.	100 New Ford Mill Road, Morrisville, PA 19067	Wastewater treatment sludge filter cake from the treatment of EPA Hazardous Waste No. F039, generated at a maximum annual rate of 4,000 cubic yards, after _____ (<i>Editors Note: The blank refers to the effective date of adoption of this proposed rulemaking.</i>) and disposed off in a RCRA Subtitle D landfill. The exclusion covers the filter cake resulting from the treatment of hazardous waste leachate derived from only the "old" Geological Reclamation Operations and Waste Systems, Inc. (GROWS) landfill and non-hazardous leachate derived from only non-hazardous waste sources. The exclusion does not address the waste disposed in the "old" GROWS landfill or the grit generated during the removal of heavy solids from the landfill leachate. To ensure that hazardous constituents are not present in the filter cake at levels of regulatory concern, WMDSPA must implement a testing program for the petitioned waste. This testing program must meet the conditions listed below in order for the exclusion to be valid:
		(1) Testing: Sample collection and analyses, including quality control (QC) procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.
		(i) Sample Collection: Each batch of waste generated over a 4-week period must be collected in containers with a maximum capacity of 20

		cubic yards. At the end of the 4-week period, each container must be divided into four quadrants and a single, full-depth core sample shall be collected from each quadrant. All of the full-depth core samples then must be composited under laboratory conditions to produce one representative composite sample for the 4-week period.
		(ii) Sample Analysis: Each 4-week composite sample must be analyzed for all of the constituents listed in Condition (3). The analytical data, including quality control information, must be submitted to the Pennsylvania Department of Environmental Protection, Bureau of Waste Management, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17105. Data from the annual verification testing must be compiled and submitted to the Department within 60 days from the end of the calendar year. All data must be accompanied by a signed copy of the statement set forth in 40 CFR 260.22(i)(12) to certify to the truth and accuracy of the data submitted. Records of operating conditions and analytical data must be compiled, summarized, and maintained on-site for a minimum of 3 years and must be furnished upon request by any employee or representative of the Department, and made available for inspection.
		(2) Waste Holding: The dewatered filter cake must be stored as hazardous until the verification analyses are completed. If the 4-week composite sample does not exceed any of the delisting levels set forth in Condition (3), the filter cake waste corresponding to this sample may be managed and disposed in accordance with all applicable solid waste regulations. If the 4-week composite sample exceeds any of the delisting levels set forth in Condition (3), the filter cake waste generated during the time period corresponding to the 4-week composite sample must be retreated until it meets these levels (analyses must be repeated) or managed and disposed in accordance with Subtitle C of RCRA. Filter cake which is generated but for which analyses are not complete or valid must be managed and disposed in accordance with Subtitle C of RCRA, until valid analyses demonstrate that the waste meets the delisting levels.
		(3) Delisting Levels: If the concentrations in the 4-week composite sample of the filter cake waste for any of the hazardous constituents listed below exceed their respective maximum allowable concentrations (mg/l or mg/kg) also listed below, the 4-week batch of failing filter cake waste must either be retreated until it meets these levels or managed and disposed in accordance with Subtitle C of RCRA. WMDSPA has the option of determining whether the filter cake waste exceeds the maximum allowable concentrations for the organic constituents by either performing the analysis on a TCLP leachate of the waste or performing total constituent analysis on the waste, and then comparing the results to the corresponding maximum allowable concentration level.
		(i) Inorganics Maximum Allowable Leachate Conc. (mg/l)
		Constituent: Arsenic.....1.83e-01 Barium.....1.43e+01 Cadmium.....1.10e-01 Chromium.....5.00e+00

	Lead.....5.00e+00 Mercury.....1.59e-02 Nickel.....5.52e+00 Selenium.....4.25e-01 Silver.....7.50e-01 Cyanide.....2.64e+00 Cyanide extractions must be conducted using distilled water in place of the leaching media specified in the TCLP procedure.		
	(ii) Organics	Maximum allowable leachate conc. (mg/l)	Maximum allowable total conc. (mg/kg)
	Constituent: Acetone..... Acetonitrile..... Acetophenone..... Acrolein..... Acrylonitrile..... Aldrin..... Aniline..... Anthracene..... Benz(a)anthracene..... Benzene..... Benzo(a)pyrene..... Benzo(b)fluoranthene..... Benzo(k)fluoranthene..... Bis(2-chloroethyl)ether.... Bis(2-ethylhex yl)phthalate Bromodichloromethane..... Bromoform (Tribromomethane) Butyl-4,6-dinitrophenol, 2-sec-(Dinoseb) Butylbenzylphthalate..... Carbon disulfide..... Carbon tetrachloride..... Chlordane..... Chloro-3-methylphenol 4- Chloroaniline, p-..... Chlorobenzene..... Chlorobenzilate..... Chlorodibromomethane..... Chloroform..... Chlorophenol, 2-..... Chrysene..... Cresol..... DDD..... DDE..... DDT..... Dibenz(a,h)anthracene..... Dibromo-3-chloropropane, 1,2- Dichlorobenzene 1,3-..... Dichlorobenzene, 1,2-.....	1.39e+01 3.25e+01 1.39e+01 2.60e+02 4.76e-03 7.72e-06 9.24e-01 4.88e+00 2.56e-04 8.86e-02 1.57e-05 1.42e-04 1.98e-03 1.95e-02 1.19e-01 4.14e-02 3.25e-01 1.39e-01 5.67e+00 1.39e+01 2.75e-02 6.79e-04 1.81e+02 5.57e-01 2.79e+00 5.02e-02 3.06e-02 4.75e-02 6.97e-01 2.71e-02 6.97e-01 7.74e-04 1.82e-04 3.42e-04 7.43e-06 2.14e-03 1.36e-02 7.60e+00	2.78e+02 6.50e+02 2.78e+02 5.20e+03 9.52e-02 1.54e-04 1.85e+01 9.76e+01 5.12e-03 1.77e+00 3.14e-04 2.84e-03 3.96e-02 3.90e-01 2.38e+00 8.28e-01 6.50e+00 2.78e+00 1.13e+02 2.78e+02 5.50e-01 1.36e-02 3.62e+03 1.11e+01 5.58e+01 1.00e+00 6.12e-01 9.50e-01 1.39e+01 5.42e-01 1.39e+01 1.55e-02 3.64e-03 6.84e-03 1.49e-04 4.28e-02 2.72e-01 1.52e+02

Dichlorobenzene, 1,4-.....	1.07e-01	2.14e+00
Dichlorobenzidine, 3,3'-...	5.71e-03	1.14e-01
Dichlorodifluoromethane....	1.28e+01	2.56e+02
Dichloroethane, 1,1-.....	7.33e-01	1.47e+01
Dichloroethane, 1,2-.....	1.57e-03	3.14e-02
Dichloroethylene, 1,1-.....	4.28e-03	8.56e-02
Dichloroethylene, trans-1,2-	2.79e+00	5.58e+01
Dichlorophenol, 2,4-.....	4.18e-01	8.36e+00
Dichlorophenoxyacetic acid, 2,4-(2,4-D)	1.39e+00	2.78e+01
Dichloropropane, 1,2-.....	6.93e-02	1.39e+00
Dichloropropene, 1,3-.....	2.57e-02	5.14e-01
Dieldrin.....	8.28e+01	1.66e+03
Diethyl phthalate.....	1.35e+02	2.70e+03
Dimethoate.....	3.67e+01	7.34e+02
Dimethyl phthalate.....	7.33e+01	1.47e+03
Dimethylbenz(a)anthracene, 7,12-	2.05e-06	4.10e-05
Dimethylphenol, 2,4-.....	2.79e+00	5.58e+01
Di-n-butyl phthalate.....	3.23e+00	6.46e+01
Dinitrobenzene, 1,3-.....	1.39e-02	2.78e-01
Dinitromethylphenol, 4,6-,2-	1.32e-02	2.64e-01
Dinitrophenol, 2,4-.....	2.79e-01	5.58e+00
Dinitrotoluene, 2,6-.....	3.99e-03	7.98e-02
Di-n-octyl phthalate.....	6.83e-03	1.37e-01
Dioxane, 1,4-.....	2.34e-01	4.68e+00
Diphenylamine.....	2.29e+00	4.58e+01
Disulfoton.....	2.32e+02	4.64e+03
Endosulfan.....	8.36e-01	1.67e+01
Endrin.....	2.00e-02	4.00e-01
Ethylbenzene.....	1.02e+01	2.04e+02
Ethylene Dibromide.....	2.52e-03	5.04e-02
Fluoranthene.....	3.15e-01	6.30e+00
Fluorene.....	1.08e+00	2.16e+01
Heptachlor.....	8.00e-03	1.60e-01
Heptachlor epoxide.....	8.00e-03	1.60e-01
Hexachloro-1,3-butadiene	1.28e-02	2.56e-01
Hexachlorobenzene.....	1.29e-04	2.58e-03
Hexachlorocyclohexane, gamma-(Lindane)	4.00e-01	8.00e+00
Hexachlorocyclopentadiene	8.61e+02	1.72e+04
Hexachloroethane.....	1.84e-01	3.68e+00
Hexachlorophene.....	1.91e-04	3.82e-03
Indeno(1,2,3-cd) pyrene....	8.02e-05	1.60e-03
Isobutyl alcohol.....	4.18e+01	8.36e+02
Isophorone.....	2.70e+00	5.40e+01
Methacrylonitrile.....	1.39e-02	2.78e-01
Methoxychlor.....	1.00e+01	2.00e+02
Methyl bromide (Bromomethane)	7.80e+01	1.56e+03
Methyl chloride (Chloro-methane)	1.21e-02	2.42e-01
Methyl ethyl ketone.....	8.36e+01	1.67e+03
Methyl isobutyl ketone.....	1.11e+01	2.22e+02
Methyl methacrylate.....	2.11e+02	4.22e+03
Methyl parathion.....	7.74e+01	1.55e+03

		Methylene chloride.....	1.76e-01	3.52e+00
		Naphthalene.....	2.53e-01	5.06e+00
		Nitrobenzene.....	6.97e-02	1.39e+00
		Nitrosodiethylamine.....	1.71e-05	3.42e-04
		Nitrosodimethylamine.....	5.04e-05	1.01e-03
		Nitrosodi-n-butylamine.....	4.76e-04	9.52e-03
		N-Nitrosodi-n-propylamine	3.67e-04	7.34e-03
		N-Nitrosodiphenylamine.....	5.24e-01	1.05e+01
		N-Nitrosopyrrolidine.....	1.22e-03	2.44e-02
		Pentachlorobenzene.....	7.01e-03	1.40e-01
		Pentachloronitrobenzene (PCNB)	6.64e-03	1.33e-01
		Pentachlorophenol.....	5.44e-03	1.09e-01
		Phenanthrene.....	1.27e-01	2.54e+00
		Phenol.....	8.36e+01	1.67e+03
		Polychlorinated biphenyls	3.99e-05	7.98e-04
		Pronamide.....	1.04e+01	2.08e+02
		Pyrene.....	2.41e-01	4.82e+00
		Pyridine.....	1.39e-01	2.78e+00
		Styrene.....	3.71e+00	7.42e+01
		Tetrachlorobenzene, 1,2,4,5-	5.75e-03	1.15e-01
		Tetrachloroethane, 1,1,2,2-	1.48e-01	2.96e+00
		Tetrachloroethylene.....	5.22e-02	1.04e+00
		Tetrachlorophenol, 2,3,4,6-	1.10e+00	2.20e+01
		Tetraethyl dithiopyrophosphate (Sulfotep)	1.83e+05	3.66e+06
		Toluene.....	2.79e+01	5.58e+02
		Toxaphene.....	5.00e-01	1.00e+01
		Trichlorobenzene, 1,2,4-...	4.41e-01	8.82e+00
		Trichloroethane, 1,1,1-....	4.63e+00	9.26e+01
		Trichloroethane, 1,1,2-....	4.76e-02	9.52e-01
		Trichloroethylene.....	1.86e-01	3.72e+00
		Trichlorofluoromethane.....	1.24e+01	2.48e+02
		Trichlorophenol, 2,4,5-....	5.59e+00	1.12e+02
		Trichlorophenol, 2,4,6-....	2.34e-01	4.68e+00
		Trichlorophenoxyacetic acid, 2,4,5-(245-T)	1.39e+00	2.78e+01
		Trichlorophenoxypropionic acid, 2,4,5-(Silvex)	1.00e+00	2.00e+01
		Trichloropropane, 1,2,3-...	4.69e-04	9.38e-03
		Trinitrobenzene, sym-.....	3.96e+00	7.92e+01
		Vinyl chloride.....	1.81e-03	3.62e-02
		Xylenes (total).....	1.95e+02	3.90e+03
		(4) Changes in Operating Conditions: If WMDSPA significantly changes the treatment process or the chemicals used in the treatment process, WMDSPA may not manage the treatment sludge filter cake generated from the new process under this exclusion until it has met the following conditions: (a) WMDSPA must demonstrate that the waste meets the delisting levels set forth in Condition 3 (3); (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of 40 CFR Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from the Department to manage the waste under this exclusion.		
		(5) Reopener:		

		(i) If WMDSPA discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then WMDSPA must report any information relevant to that condition, in writing, to the Department within 10 days of discovering that condition.
		(ii) Upon receiving information described in subparagraph (i) of this Condition, regardless of its source, the Department will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY OFFICE

June 30, 2010

Mr. Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Administration of the Water and Wastewater Systems Operators' Certification Program (#7-433)
Final-Form Rulemaking – Proposed Exclusion for the Identification and Listing of Hazardous Waste (#7-445)
Final-Form Rulemaking – Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Operations (#7-449)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of three final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) approved these final-form rulemakings at its June 15, 2010, meeting.

The final-form rulemaking pertaining to the **Administration of the Water and Wastewater Systems Operators' Certification Program** deletes and reserves 25 *Pa Code*, Chapters 301, 303 and 305 and establishes a new Chapter 302 to implement provisions of the Water and Wastewater Systems Operators' Certification Act (Act 11), which was passed by the state legislature on February 21, 2002. The Act restructured Pennsylvania's Operator Certification Program to meet federal requirements and gave the Department the authority to implement provisions of the Operator Certification Program through the development of technical guidance, which was initially finalized in July 2002, and subsequently revised in June 2005. The final-form regulations comply with federal and state requirements and will, once promulgated, replace the technical guidance that was previously developed to operate the program.

The rulemaking establishes provisions to ensure that certified water and wastewater systems operators have the appropriate knowledge and skills to make process control decisions. The rulemaking establishes the minimum education, experience and examination requirements that must be met by all operators in the Commonwealth, as well as the requirements and conditions that must be met by operators to maintain certification. The rulemaking also establishes administrative requirements for operator certification examinations and for the processing of operator certification, renewal and recertification applications. The rulemaking includes a fee structure that equitably divides program costs by certified operators, water and wastewater systems and training and examination providers.

The Board approved the proposed rulemaking on April 21, 2009, and the proposal was published in the *Pennsylvania Bulletin* on July 11, 2009 (39 *Pa.B.* 3591). The Board received comments from 77 commentators during the public comment period, which closed on September 9, 2009. To solicit additional comment on the rulemaking, the Department published an Advanced Notice of Final Rulemaking (ANFR), which was published in the *Pennsylvania Bulletin* on January 23, 2010, at 40 *Pa.B.* 560. The Department received comments on the ANFR from 13 commentators. The public comment period for the ANFR concluded on February 26, 2010.

Based on comments received during the official comment period, the Department made several amendments to the final rulemaking, including revisions to definitions, changes to the scope to more accurately capture the standards that must be met to ensure compliance, clarification of the fee structure, revisions to the definitions for single entity and satellite collection systems to parallel statutory language, clarification of the requirements for the laboratory supervisor subclassification, resolution of an issue regarding the assessment of fines and penalties caused by a statutory compilation error, revisions to the list of the duties of operators, elimination of language pertaining to Department staff making process control decisions, clarification of when process control plans would be required and the addition of further criteria to identify when and how the Department could require additional security training beyond the initial training. Additional changes were also made to the rulemaking, based upon comments the Department received in response to the ANFR. These amendments included revisions to the scope to more accurately capture who is impacted by the regulations and revisions to the sections regarding the use of PLC or SCADA systems and circuit riders.

Throughout the development of this regulatory package, the Department undertook an extensive outreach effort to build consensus on the rulemaking. The Department worked closely with the State Board for Certification of Water and Wastewater Systems Operators, the Certification Program Advisory Committee, and the Small Systems Technical Assistance Center Advisory Board. Their comments are included with the final-form rulemaking package. As required by Section 4 of Act 11, the Water and Wastewater Systems Operator's Certification Act, the rulemaking package specifically includes comments and recommendations by the State Board for Certification of Water and Wastewater Systems Operators.

The second final-form rulemaking enclosed concerns the **Proposed Exclusion for the Identification and Listing of Hazardous Waste**, which was initiated in response to a rulemaking petition submitted to the EQB on December 18, 2008, by Waste Management Disposal Services of Pennsylvania (WMDSPA). The petition requests the EQB amend Chapter 261a of Pennsylvania's Hazardous Waste Regulations in order to increase the annual volume of filter cake that the petitioner may dispose of in a Subtitle D landfill. Currently, the petitioner's existing exclusion, contained in Appendix IX of 40 C.F.R. Part 261, allows up to an annual volume of 2000 cubic yards of filter cake to be disposed of in a Subtitle D landfill. The wastewater treatment sludge filter cake in question results from the treatment of landfill leachate from old landfill cells – including both non-hazardous and hazardous waste landfills – and currently operating non-hazardous waste landfills. The petitioner requests that an amendment to increase the annual volume limit in its existing exclusion be amended from 2000 cubic yards to 4000 cubic yards.

In response to EQB approval of the petition on April 21, 2009, the Department initiated a technical review of the petition, as well as additional information submitted by WMDSPA. The information demonstrates that the disposal of increased volumes of filter cake sludge wastes at the WMDSPA facility is acceptable under the substantive delisting criteria set forth in 40 CFR 260.22. The Department presented its report to the EQB at its June 16, 2009, meeting where the Board directed the Department to develop a proposed rulemaking amending Chapter 261a. The proposed rulemaking was adopted by the EQB on August 18, 2009, and published in the *Pennsylvania Bulletin* on November 7, 2009 (39 *Pa.B.* 6453), where a 30-day public comment period was advertised. The EQB did not receive any public comments on the rulemaking, nor did the Independent Regulatory Review Commission (IRRC) submit comments to the Board on the rulemaking.

No substantive changes are included in the final-form rulemaking. In order to retain consistency with the federal hazardous waste regulations, the final-form rulemaking makes one minor technical correction. At proposed rulemaking, the Department placed the proposed WMDSPA delisting in Table 2a of Appendix IXa of Chapter 261a; however, the federal Appendix IX in Part 261 contains two tables, one for wastes excluded from non-specific sources (Table 1) and one for wastes excluded from specific sources (Table 2). EPA placed the original GROWS delisting that is amended by this final-form rulemaking in Table 1, not Table 2. In order to be consistent with the federal hazardous waste regulations, the final rulemaking creates a new "Table 1a, Wastes Excluded from Non-Specific Sources" in Chapter 261a and places the WMDSPA delisting in Table 1a. The Department presented the final-form rulemaking to the Solid Waste Advisory Committee on May 27, 2010, where the committee reviewed and endorsed the final regulations.

The third final-form rulemaking enclosed pertains to the **Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Operations**, which amends 25 *Pa Code*, Chapter 129 to limit emissions of volatile organic compounds (VOCs) from the use and application of coatings and cleaning materials in large appliance and metal furniture surface coating processes. Adoption of the VOC emission requirements in the rulemaking is part of the Commonwealth's strategy, in concert with other Ozone Transport Region (OTR) jurisdictions, to further reduce the transport of VOC ozone precursors and ground-level ozone throughout the Ozone Transport Region and to attain and maintain the 8-hour ozone national ambient air quality standard.

Federal statutory or regulatory limits do not exist for VOC emissions from large appliance and metal furniture coating processes; however the Clean Air Act and its implementing regulations require that State Implementation Plans (SIPs) for nonattainment areas must include "reasonably available control measures", including "reasonable available control technology" (RACT) for sources of emissions. The Clean Air Act further requires that for moderate ozone nonattainment areas, states must revise their SIP to include RACT for sources of VOC emissions covered by a Control Techniques Guideline (CTG) document issued by the EPA prior to the area's date of attainment. The Department has reviewed the recommendations included in the EPA's 2007 Control Techniques Guidelines for large appliance and metal furniture coatings and has determined that the measures are appropriate to be implemented in the Commonwealth as RACT in this final-form rulemaking in order to reduce VOC emissions from the use and application of

coatings and cleaning materials in large appliance and metal furniture surface coating processes. The regulation, when adopted by the Board as final, will be submitted to the EPA as a revision to the SIP.

There are four large appliance surface coating facilities and 16 metal furniture surface coating facilities in the Commonwealth that collectively emitted 68.5 tons of VOC in 2008 and may be subject to the limitations included in the rulemaking. It is estimated that implementation of the recommended control options in this rulemaking will reduce VOC emissions in Pennsylvania by 23 tons per year.

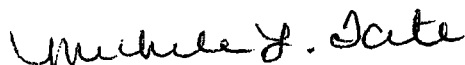
The EQB approved the proposed rulemaking on November 17, 2009. The proposal was published in the *Pennsylvania Bulletin* on January 16, 2010, where a 66-day public comment period and three public hearings in Pittsburgh, Harrisburg, and Norristown were advertised. The Board did not receive any public comments on the proposal during the public comment period; however, IRRC submitted comments regarding proposed subsections 129.52a(d) and 129.52a(e). With regard to subsection 129.52a(d), IRRC felt the provision, which requires the owners and operators of the regulated surface coating processes to maintain certain records, is unclear and requested that Board clarify the format in which these records must be maintained. Concerning 129.52a(e), which requires that records required under subsection 129.52a(d) be submitted to the Department "upon request", IRRC also felt the provision was unclear and questioned whether such records had to be submitted orally or in writing to the Department. The Department has addressed IRRC's comments in a Comment and Response document, which accompanies the final-form rulemaking.

The final-form rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC, Committee) on April 29, 2010. The Committee voted 13-0-1 to concur with the Department's recommendation to move the final-form rulemaking forward to the Board. On April 28, 2010, the Department consulted with the Small Business Compliance Advisory Committee, which did not express any concerns and the Citizens Advisory Council on May 6, 2010.

The Department will provide assistance as necessary to facilitate the Commission's review of these final-form rulemakings under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Please contact me at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT**

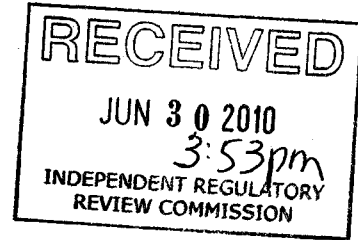
I.D. NUMBER: 7- 445

SUBJECT: *hazardous waste management system; Proposed Exclusion for Identification and Listing of Hazardous Waste*

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions



FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/30	<i>D Neuf</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6/30	<i>Jenica Parsy</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6/30	<i>Gen Parsy</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6-30-10	<i>A. Rybarczyk</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6/30/10	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)