

APPENDIX I: DNREC AUTHORITIES - CONFIDENTIALITY PROVISIONS

§ 6304. Prohibitions; records.

(a) No person shall generate, store, transport, treat or dispose of hazardous wastes in this State without reporting such activity to the Department as required by this chapter and regulations promulgated hereunder.

(b) No person shall generate, store, treat, transport or dispose of hazardous wastes within this State except in compliance with this chapter and regulations hereunder.

(c) Information obtained by the Department under paragraph (10) of subsection (a) of § 6305 of this title or pursuant to any other provisions of this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Department certifies such information to be proprietary. The Department may make such certification where any person shows to the satisfaction of the Department that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this subsection shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter or the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended from time to time [42 U.S.C. § 6901 et seq.]. Prior to disclosure of proprietary information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter or Pub. L. 94-580, as amended.

(d) It shall be unlawful for any person to destroy, alter or conceal any records maintained and in existence as of July 11, 1980, with respect to any generation, treatment, disposal, storage or transportation of hazardous waste during or subsequent to any such operation. This requirement applies equally to facilities and sites closed prior to July 11, 1980. The Secretary shall prescribe by regulation terms and conditions upon which records shall be kept, including the period of retention.

(e) The Secretary shall issue such orders as may be necessary to carry out his duties under this chapter.

(f) Except with respect to its powers as set forth in the Hazardous Materials Transportation Act, §§ 8223-8230 of Title 29, the Commission shall serve in an advisory capacity to the Secretary and may consider all matters relating to the implementation of this chapter and regulations promulgated thereunder.

(g) No person shall transport or deliver hazardous waste to any facility operated by or on behalf of the Delaware Solid Waste Authority, except to the extent authorized by the Authority with respect to small quantity source separated designated materials which are delivered to recycling centers for disposal in an authorized manner. (62 Del. Laws, c. 412, § 3; 63 Del. Laws, c. 372, § 1; 67 Del. Laws, c. 432, § 6.)

§ 7107. Authority of Department of Natural Resources and Environmental Control.

The Department of Natural Resources and Environmental Control shall have the authority to:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of noise;
- (2) Conduct and supervise statewide programs of noise control education, including the preparation and distribution of information relating to noise control;
- (3) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of noise and ascertaining compliance or noncompliance of any statute, rule or regulation of the Department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination shall be kept confidential and shall not be admissible in evidence in any court or in any other proceedings except to the extent herein provided. If tests of any type are made for the purpose of determining whether or not a violation has occurred, or for any other purpose in connection with such entry and inspection, a duplicate of the results of the tests shall be furnished promptly to the person suspected of violating the statute, code or regulation;
- (4) With the approval of the Governor, cooperate with and receive money from the federal government, the state government or any county or municipal government or from private sources for the study and control of noise; and
- (5) Review and approve any plan to construct any highway corridor, the construction or operation of which may in the opinion of the Department cause or contribute to an amount of noise deemed excessive by the Department. (63 Del. Laws, c. 369, § 1.)

§ 7408. Inspection and monitoring.

(a) For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, any owner or operator of any underground storage tank used for storing regulated substances shall, upon the request of any duly designated officer or employee of the State, furnish information relating to such tanks or contents and permit such person at all reasonable times and in accordance with § 6024 of this title, to have access to, and to copy all records relating to such tanks and to conduct such monitoring as such officer deems necessary. For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, such officer, employee or representative is authorized:

- (1) To enter at reasonable times an establishment or other place where an underground storage tank is located;
 - (2) To inspect and obtain samples from any person of such regulated substances and to conduct monitoring of the tanks, contents or surrounding soils. Each such inspection shall be commenced and completed with reasonable promptness.
- (b) In submitting data under this chapter, a person required to provide such data may:
- (1) Designate the data which such owner or operator believes is entitled to protection under this section; and
 - (2) Submit such designated data separately from other data submitted under this chapter.
- (c) Any such records, reports or information obtained shall be entitled to protection under § 1905 of Title 18 of the United States Code. (65 Del. Laws, c. 161, § 1.)

§ 7710. Inspection.

(a) Inspection program components. Essential components of a facility inspection shall include at a minimum:

- (1) A sampling of all required risk management program documentation;
- (2) A physical inspection of equipment associated with the process containing the EHS to verify implementation of the risk management program;
- (3) Evidence of the application of engineering and maintenance standards associated with EHS substances; and
- (4) Sampling interviews of personnel associated with EHS to verify that the provisions of the risk management program have been implemented.

(b) Confidential information. All documents (such as, but not limited to: inspection reports, responses to inspection reports, notices of violation, Administrative Orders and penalties, correspondences and facility RMPs) submitted to the Department or developed by the Department pursuant to this chapter shall be handled consistent with the Freedom of Information Act (Chapter 100 of Title 29) with the exception of the following which shall be maintained as confidential by the Department:

- (1) Sections of inspection notes containing or relating to trade secrets, and/or commercial or financial information observed, viewed or obtained orally during an inspection that may result in substantial harm to a business' competitive edge.
- (2) Sections of inspection notes containing the identity of persons interviewed during the inspection.

(c) Inspection program schedule. The Department shall develop and issue a phased initial inspecting program on the basis of degree of risk. Facilities with extremely hazardous substances having the highest substance hazard indexes shall be inspected before facilities with lower indexed extremely hazardous substances. Facility inspections shall continue during the regulation revision process and be an integral part of the revised regulation.

The Secretary may determine the frequency of inspection of a specific facility, based on:

- (1) Compliance history;
- (2) The recent occurrence of an incident involving an extremely hazardous substance; or
- (3) Recent compliance with this chapter.

Each facility shall be inspected at least once every 3 years.

(d) Inspection Protocol. All inspections shall be conducted by trained and tested state personnel or Program Inspection Protocol issued by the Department and adopted after public hearing. The Protocol consists of specific questions, facility characteristics, required risk management program components, physical observations and interviews.

(e) Inspection training program. The Department shall have a training program to periodically educate and test state employees or representatives responsible for inspecting regulated facilities. The program shall also be available to personnel responsible for operation of facility risk management programs in accordance with the purpose of this chapter. Preparation of such a training program shall make full use of appropriate available resources. Successful completion of such a training program is a requirement for all state employees or representatives responsible for inspecting regulated facilities or dealing with implementation of this chapter.

(f) Access to facilities and records. The Department has the right to enter any facility at any time to verify compliance with this chapter. Inspections for the purpose of document review shall be scheduled with the facility with reasonable advance notice and, when possible, mutual agreement. Inspectors shall comply with all safety regulations of the facility.

(g) A report of compliance or noncompliance. The Department shall issue an inspection report detailing the findings of compliance or noncompliance with the risk management program requirements for each inspection. This report shall contain the Department's recommendations based on inspection for potential improvements to a facility's risk management program. In the event that the Department has a finding of substantial noncompliance, the Department may issue a written Notice of Violation and may proceed as detailed in § 7715 of this title.

(h) Resolution of unfavorable inspection findings. Responsible person(s) of the facility shall respond to the Department's recommendations from the written inspection report within 60 days and notify the Department of any changes and additions to improve their risk management program or respond with a remediation plan and schedule for the Department's approval. Upon a finding of substantial noncompliance with the risk management program, with the risk management plan or upon a finding of failure to implement the approved remediation plan or schedule, the Department may proceed as detailed in § 7715 of this title.

(i) Written agreement. If the responsible person(s) and the Department agree on measures to correct risk management program deficiencies or omissions, the parties may enter into a written agreement.

(j) Issuance of Administrative Order. If, after notice to the responsible person(s) of the facility and an administrative hearing with written findings, the parties are unable to reach an agreement on improvements to the facility risk management program to bring it into compliance, the Department shall issue an Administrative Order requiring correction of deficiencies of the risk management program including a schedule for the corrections as detailed in § 7715 of this title.

(k) Injunctive relief. If, upon Department inspection and notice to the responsible person(s) of the facility, a functioning risk management program is lacking and a situation exists which demonstrates the purpose of this chapter is in real and imminent jeopardy, the Department may promptly seek injunctive relief in Chancery Court. (66 Del. Laws, c. 417, § 1; 71 Del. Laws, c. 308, § 1.)

§ 7805. Trade secret protection.

All trade secret information, written, verbal or observed, obtained pursuant to this chapter by the Department or any other state agency will be held as confidential unless such information is already a matter of public record or disclosure is required by law. Nothing in this section shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter. Prior to disclosure of trade secret information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the trade secret information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter. Any person who, by virtue of obtaining access to confidential trade secret information and knowing that disclosure is prohibited, knowingly and willfully discloses the information to any person not entitled to receive it shall be in violation of this chapter and subject to disciplinary actions provided by the Merit Rules, including dismissal. (67 Del. Laws, c. 361, § 1.)

§ 7902. Statement required.

Applicants for National Pollution Discharge Elimination System (NPDES), air, hazardous waste, solid waste, commercial subaqueous and coastal zone permits issued under the authority of Chapters 60, 63, 70 and 72 of Title 7, except those facilities which have been permitted by the Department for a period of at least 5 years shall have on file at the Department, a statement containing the following information:

- (1) A complete list of all current members of the board of directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, parent companies and companies with which the applicant's company shares 2 or more directors;
- (2) A description of all notices of violation, criminal citations, arrests, convictions, or civil or administrative penalties assessed against the applicant or any other person identified under paragraph (1) of this section for the violation of any environmental statute, regulation, permit, license, approval or order, regardless of the state in which it occurred, for the 5 years prior to the date of the application;
- (3) A description of the disposition of any of the items identified pursuant to paragraph (2) of this section and any actions that have been taken to correct the violations that led to such enforcement actions;
- (4) A description of any felony or other criminal conviction of any person identified in paragraph (1) of this section that resulted in a fine greater than \$1,000 or a sentence longer than 7 days, regardless of whether such fine or sentence was suspended; and
- (5) Copies of any and all settlements of environmental claims, whether or not such settlements were based on agreements where the applicant did not admit liability. (68 Del. Laws, c. 419, § 1.)

§ 7903. Confidential information.

(a) All information provided pursuant to § 7902(2) of this title shall be considered public information and shall be considered part of the public record pertaining to the permit application.

(b) If the applicant can demonstrate that information provided pursuant to paragraphs (1), (3), (4) and (5) of § 7902 of this title is not a matter of public record at the time of the application, and that the release of such information to the public would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation, the applicant may claim that such information is confidential information.

(c) Confidential information shall not be released to the public or made part of the public record and shall only be released to law enforcement personnel performing the background investigation, authorized representatives of the office of the Attorney General, or sworn law enforcement personnel of other jurisdictions performing similar investigations on the applicant. (68 Del. Laws, c. 419, § 1.)

§ 9116. Confidentiality of proprietary information.

Information obtained by the Secretary under this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Secretary certifies such information to be proprietary. The Secretary may make such certification where any person shows to the satisfaction of the Secretary that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets or as confidential financial or commercial information. Nothing in this section shall be construed as limiting the disclosure of information by the Secretary to any officer, employee or authorized representative of the state or federal government to effectuate the purposes of this chapter. Furthermore, nothing in this section shall prevent the Secretary from including in the remedial decision record information concerning the cost of the remedy or the manner in which it is performed. Prior to disclosure of information certified by the Secretary to be proprietary to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter. (67 Del. Laws, c. 326, § 1; 70 Del. Laws, c. 218, § 32.)