CHAPTER 40 GENERAL STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE

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4000 GENERAL PROVISIONS

4000.1 This chapter shall provide overview information, general standards and regulations for the management of hazardous waste in the District of Columbia.

4000.2 Any information provided to the Department under this chapter shall be made available to the public to the extent and in the manner authorized by the D.C. Freedom of Information Act (FOIA), D.C. Law 1-96, D.C. Code §§1-1521 through 1-1529 (1992 Repl. Vol.), and regulations implementing FOIA (1 DCMR, Chapter 4) as applicable.

4000.3 Any person who submits information to the Department under this chapter may assert a claim of business confidentiality covering all or part of that information by following the procedures set forth by the Mayor. Information covered by the claim shall be disclosed by the Department in accordance with §4000.2.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §6 of the District of Columbia Hazardous Waste Management Act of 1977, as amended, D.C. Law 2-64, D.C. Code §6-701 *et seq.* (1995 Repl. Vol.), Mayor's Order 78-185 dated September 19, 1978.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4001 RULEMAKING PETITIONS

4001.1 Any person may petition the Director of the Department to modify or revoke any provision of this chapter except those regulations that specify testing or analytical methods.

4001.2 Each petition shall be submitted to the Director by certified mail and shall include the following:

(a) The petitioner's name and address;

(b) A statement of the petitioner's interest in the proposed action;

(c) A description of the proposed action, including (where appropriate) suggested regulatory language; and

(d) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

4001.3 The Director shall make a tentative decision to grant or deny a petition and shall publish notice of the tentative decision, either in the form of a proposed rule or a tentative determination to deny the petition in the *District of Columbia Register* for written public comment.

4001.4 Upon the written request of any interested person, the Director may, at his or her discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Director may in any case decide on his or her own motion to hold an informal public hearing.

4001.5 After evaluating all public comments, the Director shall make a final decision by publishing in the *District of Columbia Register* a regulatory amendment or a denial of the petition.

4001.6 Any person seeking to add a testing or analytical method to Chapter 41 or 44 shall petition EPA for a regulatory amendment. The petitioner shall demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method prescribed in Chapter 41 or 44 in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

4001.7 Each petition shall include, in addition to the information required by §4001.2, the following:

(a) A full description of the proposed method, including all procedural steps and equipment used in the method;

(b) A description of the types of wastes or waste matrices for which the proposed method may be used;

(c) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Chapter 41 or 44;

(d) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(e) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

4001.8 After receiving a petition for an equivalent method, the Administrator may request any additional information on the proposed method which he or she may reasonably require to evaluate the method.

4001.9 If the Administrator amends the Federal regulations to permit use of a new testing method, the method shall be incorporated in *Test Methods for the Evaluation of Solid Waste: Physical/Chemical Methods* (incorporated by reference, see Chapter 53).

4001.10 Any person seeking to exclude a waste at a particular generating facility from the lists in §4103 may file a petition with the Administrator of EPA pursuant to 40 CFR Part 260.22.

4001.11 The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §4100.30(d) should be regulated under §§4100.32 and 4100.33. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Regional Administrator will consider the following factors:

(a) The types of materials accumulated or stored and the amounts accumulated or stored;

(b) The method of accumulation or storage;

(c) The length of time the materials have been accumulated or stored before being reclaimed;

(d) Whether any contaminants are being released into the environment, or are likely to be so released; and

(e) Other relevant factors.

4001.12 The procedures for the decision under §4001.11 are set forth in §4100.12.

4001.13 The Regional Administrator shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in §4100.30(d) under the provisions of §§4100.32 and 4100.33, rather than under the provisions of §4505 of this subtitle:

(a) If a generator is accumulating the waste, the Regional Administrator will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of §§4200, 4202, 4203 and 4204 of this subtitle. The notice shall become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving the request, the Regional Administrator will hold a public hearing. The Regional Administrator will provide notice of the hearing to the public and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with Chapter 42 is required. The order becomes effective thirty (30) days after service of the decision unless the Regional Administrator specifies a later date or unless review by the Administrator is requested. The order may be appealed to the

Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted; or

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state the person shall obtain a permit in accordance with all applicable provisions of Chapters 46 and 47 of this subtitle. The owner or operator of the facility shall apply for a permit within no less than sixty (60) days and no more than six (6) months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, the owner or operator may do so in the permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Agency's determination. The question of whether the Regional Administrator's decision was proper will remain open for consideration during the public comment period discussed under §4700.21 of this subtitle and in any subsequent hearing.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4002 RIGHT OF ENTRY

4002.1 The Director, or his or her designee, shall have the right, upon presentation of appropriate credentials to the owner, operator or agent in charge, to enter without delay any place where hazardous wastes are or have been generated, stored, treated, transported or disposed, for the purpose of enforcing the Act or this subtitle, as set forth in this section.

4002.2 Appropriate credentials for making an inspection shall include, but are not limited to, the following:

(a) A duly issued photo identification card or badge showing the name of the inspector and proof of employment with the Department; or

(b) A notice of inspection issued by the Environmental Regulation Administration, Pesticides, Hazardous Waste and Underground Storage Tank Division, containing at least the following information:

(1) The name of the owner, operator, or agent in charge;

(2) The address to be inspected;

(3) The date of the inspection; and

(4) The signature of the inspector.

4002.3 Entry may be at any reasonable time with or without prior notice, as follows:

(a) In emergency situations, or where there is a potential immediate threat to public health or the environment, the Director shall have the right to enter at any hour; or

(b) In non-emergency situations, entry between the hours of 7:30 a.m. and 6 p.m. on weekdays, and entry during any hours in which the owner or operator is open for business shall be deemed "reasonable."

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4003 ENTRIES FOR INSPECTIONS AND MONITORING

4003.1 Upon entry, the Director or designated inspector may do the following:

(a) Inspect the premises where the waste is or was located and surrounding areas which may be impacted;

(b) Inspect and obtain samples of any waste or substance used in the treatment of waste; and

(c) Inspect and copy any records, reports, information or test results relating to the purposes of the Act.

4003.2 If the Director obtains any samples prior to leaving the premises, he or she shall give the owner, operator, or agent in charge, a receipt that describes the samples obtained, and if requested, a portion of each sample equal in volume or weight to the portion obtained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

4003.3 In addition to information required to be produced during an inspection as provided by §4003.1, the Director may require in writing that a generator, transporter, or owner or operator of a treatment, storage or disposal (TSD) facility, or other person handling hazardous wastes, provide any information or record with respect to any such wastes or the handling of such wastes, as may be necessary to determine compliance with the Act or this subtitle.

4003.4 Where the Director makes a written request pursuant to §4003.3 for the submission of records, documents, responses to specific questions or for other related information, the records, documents or responses shall be submitted to the Director within fourteen (14) days of receipt of a request therefore, unless a different time period is specified by the Director.

4003.5 The Director may require a generator, transporter, owner or operator of a TSD facility or other responsible party to conduct monitoring or testing, or take any necessary corrective action in accordance with the requirements of the Act and this subtitle.

4003.6 When requiring a responsible party to take action pursuant to the Act or this subtitle, the Director may issue a field notice or directive letter which shall advise the responsible party of the action he or she is required to take and shall state the time period within which the action must be performed, or may take other enforcement actions authorized by this chapter or other provisions of this subtitle.

4003.7 The provisions of §4003.5 shall not preclude the Director or a designated inspector from giving an oral directive to a responsible party to cease and desist from an activity, or to take immediate action to mitigate dangers from a spill or release, in a situation where there is potential serious danger to health or the environment; Provided, that the inspector shall, as soon as practicable thereafter, issue a written directive incorporating the contents of the oral directive.

4003.8 When dangerous chemicals or hazardous waste on property pose an imminent threat to human health or the environment, the Director may post the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists and shall prohibit the owner from removing or handling the waste without prior approval by the Director or his or her designee.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4004 REFERRAL TO OFFICE OF COMPLIANCE

4004.1 The Administrator of the Environmental Regulation Administration, or his or her designee, may refer an enforcement case to the Department's Office of Compliance for any of the following purposes:

(a) Further investigation;

(b) Compliance meeting with responsible parties;

(c) Informal resolution of differences; or

(d) Entry of consent agreement.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4005 JURISDICTION AND DELEGATION OF AUTHORITY FOR ADMINISTRATIVE HEARINGS

4005.1 In every case in which a formal administrative hearing is requested or otherwise required pursuant to the Act or pursuant to this chapter, the hearing authority of the Director is delegated to the Department's Office of Adjudication (OAD), which shall have jurisdiction to hear and render a final decision in the case.

4005.2 Office of Adjudication (OAD) procedures shall govern all cases in which a hearing is requested or otherwise required, unless inconsistent with this chapter, in which case this chapter shall supersede the OAD procedures.

4005.3 Cases in which a hearing is requested or required pursuant to the Act shall be "Class A" cases under OAD procedures.

4005.4 The Administrator of the Environmental Regulation Administration, or his or her designee, shall be authorized to pursue enforcement actions through:

(a) The issuance of notices of violation pursuant to §4006;

(b) Proposed compliance orders pursuant to §4007;

(c) Notices of violation combined with immediate compliance orders pursuant to §4008;

(d) Notices of intention to suspend or revoke a permit pursuant to §4009;

(e) The development and presentation of cases before the Office of Adjudication; and

(f) Pursuit of civil infractions fines in accordance with §4013, or other enforcement actions authorized by this chapter.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4006 NOTICE OF VIOLATION, THREAT, OR RELEASE

4006.1 Any enforcement action under the Act or pursuant to this chapter shall be commenced with a written notice of violation, threat or release issued to the generator, transporter, owner or operator of a TSD facility, or any other responsible party deemed appropriate by the Director, except as provided in §§4008 and 4009.

4006.2 The notice of violation, threat or release shall identify the alleged violation(s), threat or release and may require the generator, transporter, owner or operator of a TSD facility or other person responsible (hereinafter respondent) to conduct monitoring, testing or take the corrective measures the Director considers reasonable and necessary.

4006.3 The notice need not be denominated "Notice of Violation," "Notice of Threat," or "Notice of Release"; Provided, that the body of the notice makes clear the basis for the notice and that failure to take the measures directed, will constitute a violation of the Act or regulations. A field notice and directive letter issued pursuant to §4003.6 may serve as a notice of violation provided it meets the requirements of this section.

4006.4 A notice of violation, threat, or release shall be served on the respondent or his or her authorized agent in person or by certified mail return receipt requested. If the responsible party fails or refuses to accept certified mail, the notice of violation, threat or release may be served by regular first class mail; Provided, that the following requirements are met:

(a) The notice is sent to the last known address listed on the EPA ID Number application, Annual Report or other official correspondence submitted to the Department; or

(b) The accuracy of the address is verified.

4006.5 Where there is a threat to human health or the environment, or a release of hazardous waste into the environment, and the responsible party or address of the responsible party is unknown, or cannot be located, written notice shall be served by conspicuously posting the notice on the property where the threat exists or the release occurred and sending a copy to the last known address via certified mail.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4007 PROPOSED COMPLIANCE ORDER

4007.1 If the respondent upon whom a notice of violation, threat or release has been served, fails to comply with the testing, monitoring or corrective measures required in the notice, the Administrator of the Environmental Regulation Administration, or his or her designee, may issue a proposed compliance order.

4007.2 A proposed compliance order shall:

(a) Include a statement of the facts and nature of alleged violations, and the legal grounds for relief;

(b) Allow a reasonable time for compliance with the order consistent with the likelihood for harm and the need to protect health, safety, life, property, and the environment;

(c) Advise the respondent that he or she has a right to a hearing and to legal representation;

(d) Inform the respondent of any scheduled hearing date or the actions which the respondent must take to obtain a hearing and the consequences of failure to comply with the proposed order or failure to request a hearing;

(e) Set forth the action or actions which the respondent must take or the activity or activities which the respondent must cease in order to comply with the order; and

(f) State the amount of any penalties to be assessed for failure to comply with the order.

4007.3 A proposed compliance order shall serve as a petition issued pursuant to OAD procedures.

4007.4 A proposed compliance order shall be served by one of the following methods:

(a) Personal service on the respondent or the respondent's agent;

(b) Delivering to the last known home or business address of the respondent and leaving it with a person over the age of eighteen (18) years residing or employed therein;

(c) Sending U.S. mail, first class certified, postage prepaid to the last known home or business address of the respondent or the respondent's agent; or

(d) Any other means set forth in D.C. Law 2-64 or any amendment thereto.

4007.5 A proposed compliance order may state in the order or accompanying summons or instructions, that the respondent is required to file an answer thereto, the time within which to respond, and the form of response required.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4008 NOTICE OF VIOLATION, THREAT OR RELEASE COMBINED WITH IMMEDIATE COMPLIANCE ORDER/CEASE AND DESIST ORDER

4008.1 The Administrator of the Environmental Regulation Administration, or his or her designee, may issue, or may file a motion before an Administrative Law Judge (ALJ) in OAD to issue a notice of violation together with an immediate compliance order, in order to require a person to correct a situation which immediately threatens the public health, welfare or the environment or to prohibit any person from engaging in any unauthorized activity that immediately endangers or causes damage to the public health, welfare or the environment.

4008.2 When a notice of violation and immediate compliance order is authorized under this section, reasonable notice shall be a notice appropriate to the emergency

nature of the situation, and it shall not be necessary to first issue a proposed compliance order or to provide an opportunity for a prior hearing pursuant to §4007.

4008.3 An immediate compliance order issued pursuant to this section shall be served in the same manner as a proposed compliance order is served pursuant to §4007.4, except as provided in §4008.4.

4008.4 Where there is a threat to human health or the environment, or a release of a hazardous waste into the environment, and the responsible party or address is unknown, or cannot be located, notice can be given as set forth in §4006.5.

4008.5 An immediate compliance order shall:

(a) Include a statement of the nature of the violation, threat or release;

(b) Take effect at the time and on the date signed;

(c) Identify the action or actions to be taken or ceased; and

(d) Include a statement advising the respondent that he or she has a right to request a hearing before an ALJ within the OAD within fifteen (15) days of service of the order upon him or her, and that if a hearing is not requested within that time period, the order will become final.

4008.6 A hearing request shall not stay the effective date of the order.

4008.7 If a person fails to comply with the notice within the time period stated in the notice, the Director shall take corrective action necessary to alleviate or terminate the violation, threat, or release to protect human health or the environment.

4008.8 If a hearing is requested, the hearing shall be held within fifteen (15) days from the date that the hearing request is received by OAD and the ALJ shall issue a decision, including findings of fact and conclusions of law, no later than fifteen (15) days after the hearing.

4008.9 Immediate compliance orders issued pursuant to this section are distinguishable from "provisional emergency orders" issued by OAD and shall not be subject to the requirements for and limitations of the orders.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4009 NOTICE OF SUSPENSION OR REVOCATION OF PERMIT

4009.1 An action to suspend or revoke a permit provided for in the Act and this chapter shall be initiated by a notice of suspension, proposed revocation or revocation in accordance with this section in lieu of a notice of violation pursuant to §4006 or §4008.

4009.2 The notice of suspension, proposed revocation or revocation shall be in writing and shall include the following:

(a) The name and address of the holder of the permit;

(b) A statement of the action or proposed action;

(c) A statement of the reasons for the action or proposed action; and

(d) Notice that the respondent has a right to request a hearing, or to have a hearing at the time and place stated.

4009.4 A notice of suspension may take effect immediately, however, respondent shall have a right to request a hearing within fifteen (15) days or may reapply for a permit.

4009.5 A notice of proposed revocation may be issued where there is a history of repeated violations or where a permit has been previously suspended. Except as provided in §4009.6, the revocation shall take effect fifteen (15) days after the notice has been given, unless a written request for a hearing is received prior to that time.

4009.6 The Director may immediately revoke a permit upon an initial violation of the Act or this subtitle where the violation presents an imminent and substantial endangerment to the public health, the public welfare, or the environment.

4009.7 In the case of an immediate revocation, the respondent may request a hearing within fifteen (15) days, however, the revocation shall still take effect when served.

4009.8 The notice of proposed suspension, proposed revocation or revocation shall serve as a petition pursuant to OAD procedures and shall be served in the same manner as a proposed compliance order pursuant to §4007.4.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4010 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

4010.1 At any time during the course of the proceedings, the parties to the proceeding may enter into a settlement agreement signed by the parties. A settlement agreement or consent decree shall set forth each of the agreements made, actions to be taken by either party and any agreed upon fines or penalties.

4010.2 A settlement agreement shall be effective when signed by the parties thereto and shall not require the signature of an ALJ in order to be filed in the case.

4010.3 A settlement agreement may be submitted to the ALJ for approval.

4010.4 The parties may enter into a consent compliance order with the approval of the ALJ.

4010.5 A consent compliance order shall be signed by the parties to the case and by an ALJ, and shall have the force and effect of any final order. Unless otherwise stated therein, there shall be no right of appeal from a consent compliance order.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4011 HEARINGS AND ISSUANCE OF FINAL ORDER

4011.1 Once a hearing is requested, motions practice, pre-hearing discovery, and the conduct of the hearing shall be in accordance with the D.C. Administrative Procedures Act and OAD procedures.

4011.2 The petitioner shall have the burden of going forward with and of proving that the violation occurred as set forth in the proposed compliance order or notice, and that the proposed civil penalty, corrective action order, revocation or suspension, as the case may be, is appropriate.

4011.3 Following the establishment of a *prima facie* case, the respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the petition. Each matter of controversy shall be determined by the ALJ upon a preponderance of the evidence.

4011.4 If a respondent scheduled for a hearing does not appear for the hearing, and no continuance has been granted, the ALJ may receive evidence and hear testimony and may render a decision on the basis of evidence before it.

4011.5 The ALJ shall inform the parties of an action taken under this section.

4011.6 A decision of the ALJ shall be supported by substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509(c) (1992 Repl. Vol.).

4011.7 The ALJ's decision and order shall include findings of fact and conclusions of law.

4011.8 A final compliance order shall also set forth the following:

(a) The action or actions which must be taken by the respondent to correct a violation of the Act or regulations issued under the Act, and may include the following:

(1) Performance of testing, studies, investigations, monitoring;

(2) Performance of comprehensive site assessment;

(3) Preparation of corrective action plans;

(4) Implementation of corrective action plan; and

(5) Maintenance and submission of records;

(b) The amount of any civil penalties to be imposed, as authorized by §12 of the Act (D.C. Code §6-711);

(c) Where applicable, authorization for the Director to enter on property to undertake testing, monitoring, assessment and corrective action, if the respondent fails or refuses to comply with an order requiring the respondent to take these actions within the time period set forth in the order; and

(d) A statement that the Director may recover the costs incurred if any corrective action is undertaken by the District Government.

4011.9 A final order suspending or revoking a permit shall state clearly the action taken, the reasons for the action, and any applicable appeal rights.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4012 PENALTIES

4012.1 Penalties for failure to comply with a final compliance order, or a final suspension or revocation order shall be in accordance with §12 of the Act (D.C. Code §6-711).

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4013 CIVIL INFRACTIONS

4013.1 In any instance where a civil fine, penalty or fee has been established pursuant to the "Civil Infractions Act" (D.C. Law 6-42, D.C. Code §6-2701 *et seq.)* and the "Civil Infractions Regulations" (Title 1 DCMR, Chapter 11) promulgated pursuant thereto, the civil fine, penalty or fee may be imposed as an alternative sanction to the penalties set forth in §§12 (b) and 12(c) of the Act.

4013.2 Where civil infractions fines are the only penalties pursued in a particular case, the Civil Infractions Regulations shall govern the proceedings in lieu of this Chapter.

4013.3 A civil infractions case may be consolidated for hearing together with another case against the same respondent in which a proposed compliance order or proposed suspension or revocation order has been issued.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4014 COURT ACTION IN LIEU OF COMPLIANCE ORDER

4014.1 After a notice of violation, threat or release, has been issued and the time for compliance has expired, or after a notice of suspension or revocation has been issued, the Director may, in his or her discretion, institute a court action for injunctive relief, damages, civil or criminal penalties, or recovery of any corrective action costs incurred by the District Government pursuant to §§11 and 12 of the Act, in lieu of proceeding through the administrative process to seek a compliance order or proposed suspension or revocation order.

4014.2 Pursuant to §11 of the Act, the Director may, in his or her discretion, seek a temporary restraining order, preliminary injunction or permanent injunction in Court in lieu of issuing a notice of violation and seeking a compliance order.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4015 COST RECOVERY PROCEDURES

4015.1 If the District Government has incurred costs for taking corrective action, the Director shall issue a "demand letter" requesting payment in the amount of all costs incurred by the Director plus any applicable interest. The demand letter shall be issued after completion of corrective action and prior to bringing a judicial action for recovery of costs. At his or her discretion, the Director may also issue interim demand letters prior to completion of corrective action.

4015.2 The demand letter shall include the following information:

(a) The total amount due;

(b) An itemization of costs included in the total amount claimed;

(c) A statement of the time within which payment must be made;

(d) The interest rate; and

(e) Notice that if the responsible party fails to pay within the prescribed time period, court action will be instituted, a tax lien may be issued and that the responsible party will be liable for costs of the legal action.

4015.3 The demand letter shall be mailed to the responsible party postage prepaid at his or her last known address.

4015.4 Thirty (30) days after the demand letter has been postmarked, the Director may do the following:

(a) Institute court action; or

(b) Take any other collection measures deemed appropriate.

4015.5 The Director can settle claims for cost recovery and in doing so, may compromise a claim, if appropriate, based upon consideration of such factors as the solvency of the responsible party, the cost of the cleanup, the likelihood of recovery, the costs of judicial collection, pollution prevention measures undertaken by the responsible party.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.

4016 ENTRY FOR CORRECTIVE ACTION

4016.1 The Director may enter upon property to perform, or cause to be performed, release response and corrective action which are necessary to protect human health or the environment in the following circumstances:

(a) Where a situation exists which requires immediate action by the Director to protect human health and the environment; or

(b) Where the responsible party for the release has failed or refused to comply with an order issued pursuant to §4008 or 4011 requiring corrective action.

4016.2 Except as provided in §4016.4, the Director shall provide written notice of his or her intention to enter the property to take corrective action, at least seven (7) days prior to commencing work, and shall serve the notice personally or by certified mail, or where personal service cannot be accomplished by publication or posting.

4016.3 When the owner or operator is a corporation, any notice to be served, if served on the president, treasurer, general manager, or any principal officer of the corporation in the manner provided in §4016.2, shall be deemed to have been served on the corporation. If the owner or operator is a foreign corporation, service on the registered agent of the corporation shall also be deemed service on the corporation.

4016.4 Where a spill or release of a hazardous waste creates an imminent threat to human health or the environment necessitating summary corrective action, and the emergency nature of the situation makes it impractical to give prior notice as provided in §4016.2, the Director may provide notice by conspicuous posting on the property at the earliest time feasible, prior to commencing work.

4016.5 Except as provided in §4016.4, the written notice of intention to begin corrective action shall contain the following information:

(a) The name and address of the owner of the property;

(b) The name and address of the party to whom the notice is directed;

(c) A statement of the authority pursuant to which the Director is taking the corrective action;

(d) A brief summary of the corrective actions to be taken and the conditions in need of correction;

(e) A description of the location where work will take place;

(f) Notice of any applicable hearing rights, if the notice has not already been served;

(g) A statement that the Director will pursue cost recovery against the responsible party for all corrective action costs and related expenses;

(h) The name, position, office address, and phone number of the employee issuing the notice and the name and phone number of the appropriate contact person within the Department; and

(i) The signature of the Program Manager of the Pesticides, Hazardous Waste and Underground Storage Tank Division, Environmental Regulation Administration, or other designated representative of the Director.

SOURCE: Final Rulemaking published at 43 DCR 1077 (March 1, 1996), incorporating by reference the text of Chapters 40 through 54.