



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

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SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

RONALD R. POTESA  
Director

MICHAEL A. FOTOS  
Deputy Director

APPENDIX A

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: Department of Natural Resources  
RULE TYPE: Legislative  
RULE TITLE: Hazardous Waste Management - Chapter 20, Article 5E, Series  
XV


A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 7:00 p.m.  
ON September 19, 1985 AT Room 674, 1800 Washington Street, East  
Charleston, West Virginia 25305

COMMENTS ARE LIMITED TO: ORAL            WRITTEN            BOTH XX

COMMENTS MAY ALSO BE MAILED TO: Ron Shipley, Special Assistant to the  
Director, 1800 Washington Street, East, Building 3, Room 669, Charleston,  
West Virginia 25305

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE  
HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE  
A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
\_\_\_\_\_  
Ronald R. Potesa  
Director



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

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SECRETARY OF STATE

ARCH A. MOORE, JR.  
Governor

APPENDIX B

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON PROPOSED RULE  
COMMENT PERIOD

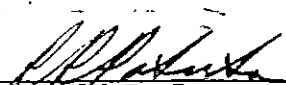
AGENCY: Department of Natural Resources

RULE TYPE: Legislative

RULE TITLE: Hazardous Waste Management - Chapter 20, Article 5E,  
Series XV

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED AND WILL  
END ON Sept. 19, 1985 AT 5:00 p.m. . WRITTEN COMMENTS ARE TO BE  
MAILED TO THE FOLLOWING ADDRESS: Ron Shipley, State Hazardous Waste  
Coordinator, WV Department of Natural Resources, 1800 Washington Street,  
East, Building 3, Room 669, Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
\_\_\_\_\_  
Ronald R. Potesta  
Director

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1986 JAN 24 PM 4:12

NOTICE OF PUBLIC HEARING

ON A PROPOSED RULE

AGENCY: West Virginia Department of Natural Resources

RULE TYPE: Legislative

RULE TITLE: Hazardous Waste Management Regulations,  
Chapter 20, Article 5E, Series 15

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT  
10:00 a.m. ON Monday, February 24, 1986 at 1800

Washington Street, East, Room 674, Charleston, WV 25305

COMMENTS ARE LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

COMMENTS MAY ALSO BE MAILED TO: Mr. Ron Shipley, Special

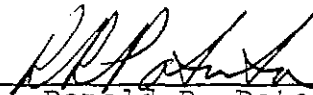
Assistant to the Director, Director's Office of Regulatory

Affairs, 1800 Washington Street, East, Building 3, Room 842,

Charleston, West Virginia 25305

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT  
THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER  
TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta  
Director

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NOTICE OF COMMENT PERIOD  
ON PROPOSED RULE


AGENCY: West Virginia Department of Natural Resources

RULE TYPE: Legislative

RULE TITLE: Hazardous Waste Management Regulations,  
Chapter 20, Article 5E, Series 15

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED  
AND WILL END ON Monday, Feb 24, 1986 AT 5:00 p.m. WRITTEN  
COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Ron  
Shipley, Special Assistant to the Director, Director's Office  
of Regulatory Affairs, 1800 Washington Street, East, Charleston,  
West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
\_\_\_\_\_  
Ronald R. Potesta  
Director



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1986 JAN 24 PM 4:12

STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306

ARCH A. MOORE, JR.  
Governor

January 24, 1986

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

The Honorable Ken Hechler  
Secretary of State  
State Capitol, Suite 157-K  
Charleston, West Virginia 25305

Re: Filing of Proposed Rules  
(Hazardous Waste Management,  
Series 15) and Notice of Comment  
and Public Hearing by the Depart-  
ment of Natural Resources.

Dear Mr. Hechler:

Enclosed please find for your filing a copy of proposed amendments to the legislative rules (Hazardous Waste Management, Series 15) of the Department of Natural Resources and a Notice of Public Hearing on Comment Period on a Proposed Rule. We are initiating the public comment period and Notice of Public Hearing for the proposed rule immediately.

If you have any questions, please contact Mr. Ron Shipley, Director's Office of Regulatory Affairs, State Hazardous Waste Coordinator at 304-348-2761.

Sincerely,

Ronald R. Potesta  
Director

RRP/rsb

Enclosures

cc: David W. Robinson  
Timothy T. Laraway  
All State Hazardous Waste  
Management Agencies

# 3rd Amend (Proposed)

## PREAMBLE TO HAZARDOUS REGULATIONS

PROGRAM: Hazardous Waste Management

REGULATIONS: Hazardous Waste Management Regulations, West Virginia Department of Natural Resources, Chapter 20, Article 5E, Series 15.

AUTHORITY: West Virginia Code Section 20-5E-6.

ACTION: Proposed rule and request for comments.

TOPIC: Proposed amendments in the Hazardous Waste regulations based on EPA amendments between October 29, 1984 and May 8, 1985 and rulemaking petitions from the West Virginia Manufacturers' Association.

SUMMARY: This proposed rulemaking reflects changes to the State's hazardous waste management program prompted by EPA regulatory changes primarily made between October 29, 1984 and May 8, 1985 as well as rulemaking petitions of the West Virginia Manufacturers' Association (WVMA). Some of these proposed changes are necessary for the State to retain primacy of the federal program and for the State to receive final authorization of the RCRA program in effect prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA). In addition, the West Virginia Manufacturers' Association has petitioned the Department four times for rulemaking to amend the State's regulations based on EPA regulatory amendments. This proposed rulemaking completes the Department's response to most of the requested changes in the four petitions.

DATES: Comments will be received until the close of business on Monday, February 24, 1986 or until the end of the public hearing scheduled for 10:00 a.m. on that date, whichever is later.

CONTACT: For further information, contact Mr. Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, 1800 Washington Street, East, Building 3, Room 842, Charleston, West Virginia 25305, phone (304) 348-2761.

PUBLIC HEARING: A public hearing will be held on Monday, February 24, 1986 at 10:00 a.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia 25305.

SUPPLEMENTARY INFORMATION: Pursuant to the terms of EPA's authorization implementing the federal hazardous waste management program and the State's Hazardous Waste Management Act, the Department is required to examine federal regulatory amendments

under the Resource Conservation and Recovery Act (RCRA) and to amend our hazardous waste program in such a way as to ensure that our program is "consistent and equivalent" to the federal program.

Under 40 CFR Section 271.21, a state with an authorized program must change its regulations within one year after the federal amendments in order to maintain a consistent and equivalent program. A six month extension of this requirement is allowable.

Section 22 of the State's Hazardous Waste Management Act (Chapter 20, Article 5E) requires the State to maintain a hazardous waste management program which is consistent and equivalent to the federal program. The Department is required to amend its regulations within six (6) months of federal regulatory changes it deems necessary for the State program. W. Va. Code Section 20-5E-6(b). Section 18 of the State's Hazardous Waste Management Act allows an interested person to petition the Director for regulatory amendments.

West Virginia is currently authorized to implement Phase I and Phase II (Components A&B) Interim Authorization of the federal RCRA program. In addition, West Virginia has applied to EPA for authority to implement the entire RCRA program except for program components arising from the passage of the Hazardous and Solid Waste Amendments of 1984 (enacted November 8, 1984). The expected authorization from EPA is commonly referred to as "final authorization."

West Virginia applied for final authorization based on the State program in effect on October 29, 1985. (The federal EPA has published a Notice of Tentative Determination on January 13, 1986. 40 F.R. 1394. A public hearing, will be held on February 13, 1986, if enough interest is shown.) According to EPA regulations the State's application must demonstrate that the State's program is consistent and equivalent to the federal program which was in effect one year prior to the State's application. EPA, therefore, is judging West Virginia's application based on compliance with EPA's program in effect on October 29, 1984.

Pursuant to EPA's regulations, however, the State must continue to amend its program so that it remains consistent and equivalent to the federal program in effect one year prior to final authorization. The State, therefore, must review changes made in the federal program between October 29, 1984 and April 30, 1985 (the expected date of final authorization approval). The deadline for making these amendments has been extended to May 8, 1986.

This proposed rulemaking therefore covers amendments to the

Department's hazardous waste program corresponding to changes made in the federal RCRA program between October 29, 1984 and April 30, 1985.

In addition to these changes, the Department is proposing several minor relaxations in its program. The West Virginia Manufacturers' Association has filed four (4) petitions with the Department requesting regulatory amendments conforming to EPA program amendments. Many of the amendments have already been made by the Department as part of our responsibility to maintain a consistent and equivalent hazardous waste program. Several changes that are not EPA mandated were not made, however. We are proposing several today.

Finally, the Department is proposing several minor amendments resulting from typographical or clerical errors which have substantive effect.

#### I. PROPOSED AMENDMENTS NECESSARY TO MAINTAIN DELEGATION

Table 1 lists those proposed amendments necessary for the State to maintain the federal program. All of these proposed amendments arise from EPA's January 4, 1985 rulemaking in which they revised the definitions of solid and hazardous wastes. Generally, these proposed amendments provide more specificity to the concept of what materials are a waste and, therefore, may be a hazardous waste. Hazardous wastes are defined in RCRA as a subset of "solid wastes". Thus a material must first be a "solid waste" before it can be declared a hazardous waste subject to the provisions of the RCRA program. In the State's Hazardous Waste Management Act hazardous wastes are defined as a subset of "waste". It is thus necessary to define what is a waste before determining what is a hazardous waste.

The State's proposed rulemaking arises from EPA's culmination of a lengthy rulemaking originally proposed on April 4, 1983. Most of the EPA proposal dealt with the issue of which materials are solid wastes when recycled. This question is not explicitly answered in RCRA. EPA also proposed regulatory standards for various types of hazardous waste recycling activities. Most of the commenters on EPA's rule agreed that EPA's proposal was a substantial improvement over the current regulations because it replaced the "sometimes discarded" criteria of the current rule (See analogous DNR Reg. Section 3.1.1.b.2.). Some generators, however, challenged EPA's classification of certain recycling activities as waste management.

After examination of over 100 comments EPA adopted the rule with many modifications and clarifications. (For EPA's discussion of its action, see 50 FR 613, January 4, 1985.) In defining a solid waste, they depend both on what the material is and in the case



CHANGES IN HAZARDOUS WASTE REGULATIONS  
TABLE 1

40 CFR	Description	Date	Fed Reg Cite	State Counterpart
260.10	New definitions for "boiler" and "industrial furnace". Revised definitions for "designated facility" and "incinerator"	1/4/85	50 FR 661	2.00 (18) (others would be new)
261.1(b) & (c)	Identification and listing; purpose and scope	1/4/85	50 FR 663-64	3.1b&c
261.2	Revises definition of solid waste to deal with energy recovery and recycling	1/4/85	50 FR 664	3.1.1
261.5(c)	Consideration of use of recycled waste in small quantity determinations	1/4/85 & (4/11/85)	50 FR 665 (50 FR 14219)	3.1.4(c)
261.6(a), (a) (3), (b)	Requirements for recyclable materials and reclaimed items	1/4/85	50 FR 665	3.1.5
261.31	Revises listings for F007, F008, F009, F010, F011 and F012	1/4/85	50 FR 665	3.4.2
261.33	Introduction text revised for discarded commercial chemicals, spill residues, etc.	1/4/85	50 FR 665	3.4.4
264.1(g) (2)	Revises purpose, scope and applicability subsection	1/4/85	50 FR 665	8.1.5

CHANGES IN HAZARDOUS WASTE REGULATIONS  
TABLE 1

40 CFR	Description	Date	Fed Reg Cite	State Counterpart
264.340(a)	Revises applicability designations for incinerators of hazardous waste	1/4/85	50 FR 665	8.1.2
Part 266	New standards for the management of specific hazardous waste and specific types of facilities - recyclable materials used in a manner constituting disposal; used for precious metal recovery; spent lead-acid batteries	1/4/85 (corrections on 4/11/85)	50 FR 666-668 (50 FR 14219-14220)	9.00

XVTABLE1

of recycling how it is being recycled before declaring it a solid waste. In addition, EPA clarified how the regulations apply to the recycling of hazardous scrap metal.

Section 3.1.1 of the Department's proposed regulations will specify that a waste is any material that is discarded by being abandoned, recycled, or considered inherently "waste-like". Abandonment of a material can occur when it is either disposed, burned, or incinerated (or stored, treated, or accumulated before or in lieu of these activities). The remainder of the definition states which materials are wastes when recycled.

There are four types of recycling activities which constitute abandonment of "secondary materials" (spent materials, sludges, by-products, scrap metal, certain commercial chemical products) and are, therefore, classified as a waste:

Use constituting disposal. This activity involves directly placing wastes or waste-derived products (a product that contains a hazardous waste as an ingredient) onto the land;

Burning waste or waste fuels for energy recovery, or using wastes to produce a fuel;

Reclamation. This activity involves the regeneration of wastes or the recovery of materials from wastes;

Speculative accumulation. This activity involves either accumulating wastes that are potentially recyclable but for which no recycling market (or feasible recycling market) exists, or accumulating wastes before recycling unless 75% of the accumulated material is recycled during a one-year period. (This provision now includes the activity referred to in the proposal as overaccumulation.)

Materials that are recycled can be shown not to be wastes if they are: used or reused as ingredients in an industrial process to make a product (with one exception); used or reused as effective substitutes for commercial products; or if they are returned to the original process from which they were generated provided that they were not "reclaimed".

In addition, the Department is further refining the several classifications of combustion units (incinerators, boilers, and industrial furnace) consistent with EPA's rule.

## II. PROPOSED AMENDMENTS WHICH ARE NOT NECESSARY TO MAINTAIN DELEGATION

This category of proposed amendments contains two groups. The first is those proposed amendments which relate to EPA's January 4, 1985 rules (discussed above) that represent exceptions or variances to that regulation. EPA does not require the State to adopt these provisions since they represent less stringent than required provisions. The State, however, is opting to adopt them because the variances should not have deleterious impacts on the environment and are granted with sufficient safeguards in the form of documentation.

It should be noted that one portion of EPA's January 4, 1985 regulations have not yet been proposed. This section deals with variances from being classified as a boiler. This provision more appropriately falls under the jurisdiction of the West Virginia Air Pollution Control Commission.

The second group includes amendments requested by the West Virginia Manufacturers' Association based on earlier EPA regulatory amendments. With the proposal of this rulemaking the Department will substantially complete its review of the four petitions filed by the West Virginia Manufacturers' Association. Both categories of the proposed rulemaking are shown in Table 2. The proposed rules arising from the petitions of the WVMA are identified in Table 2 by an asterisk (\*).

## III. MISCELLANEOUS CHANGES TO THE REGULATIONS

Along with the previously discussed proposed amendments, the Department is proposing some clean-up amendments. They are listed in Table 3:

TABLE 3

Section	Explanation
2.00-Definitions	deleted all numbers so that regulations may be more easily amended in future; "cell", inserted word "a" before word "hazardous". "flashpoint", inserted "," after word "ignited"; "interim status", inserted the word "a" before word "health"; "triple revised", corrected misspelling of "diluent"; "wastewater treatment unit" corrected

misspelling of words "treats".

3.3.2-Characteristic of Ignitability	3.3.2.a.1 added word "Section" before "2.00"; deleted reference to "(32)" 3.3.2.a.2 deleted reference to "(3.1.1)" 3.3.3.a.4 corrected section citation
5.00-Standards Applicable to Transporters of Hazardous Waste by Air and/or Water	Updated incorporation by reference to incorporate EPA regulations in effect on the effective date of the regulations provided they are not promulgated pursuant to HSWA.
6.3.5-Accumulation time Generators of Hazardous Waste	6.3.5.a reorganized section by placing it in 6.3.5.b.
8.00-Standards Applicable to Treatment, Storage and Disposal Facilities	8.2.6.b.4 corrected typographical error by changing word "or" to "of" (see 40 CFR Section 264.15(b)(4))
11.00-Hazardous Waste Permitting Program	11.1.2 corrected citations
13.00-Financial Assurance Requirements	Updated incorporation by reference to incorporate EPA regulations in effect on the effective date of the regulations provided they are not promulgated pursuant to HSWA.

CHANGES IN HAZARDOUS WASTE REGULATIONS  
TABLE 2

40 CFR	Description	Date	Fed Reg Cite	State Counterpart
122.7*	Duty to Provide Information - not limited by relevancy	4/8/82	47 FR 15304	11.10.8
122.7(c)*	Duty to Halt or Reduce Activity	4/8/82	47 FR 153073	1 1.10.3
264.1*	Broaden exemptions to cover "discharges" not just "spills" and to cover imminent and sub- stantial threats of discharge	1/19/83	48 FR 2511	8.1.5(g)
122.21(d)*	Broaden exclusion from permit requirements to cover discharges	1/19/83	48 FR 2511	11.1.2(g)
260.10*	Delete definition of word "spill"	1/19/83	48 FR 2511	2.00(95)
260.30	Variances from classification as a solid waste for recycled materials	1/4/85 (correction 4/11/85)	50 FR 661 (50 FR 14219)	None-added 3.1.5.d
260.31	Standards and criteria for variances from classifica- tion as a solid waste for recyclable material	1/4/85	50 FR 662	None-added 16.3.2
260.33	Procedures for variances from classification as a solid waste	1/4/85	50 FR 662	16.3.3
260.40	Regulation of recycling activities on a case-by-case basis	1/4/85	50 FR 662-663	None-added 3.1.5d

CHANGES IN HAZARDOUS WASTE REGULATIONS  
TABLE 2

40 CFR	Description	Date	Fed Reg Cite	State Counterpart
260.41	Procedures for case-by-case regulation of recycling activities	1/4/85	50 FR 663	None-added 3.1.5d
261.3(c) (2)	Revises definition of hazardous waste with regard to reclaimed materials and energy recovery	1/4/85 and (4/11/85)	50 FR 665 (50 FR 14219)	3.1.2(c) (2)
261.3(c) (2) *	Exempts lime stabilized waste pickle liquor sludge generated by the iron and steel industry	6/5/84	49 FR 23284	3.1.2(c)
261.4(a) (6) and (7)	Excludes from regulation as a waste for reused black liquor and spent sulfuric acid	1/4/85 & (4/11/85)	50 FR 665 (50 FR 14219)	3.1.3
260.31	Standards and criteria for variances from classification as a solid waste for recyclable material	1/4/85	50 FR 662	None-added 16.3.2
261.4(b) (1) *	Adds bunkhouses, ranger stations, crew quarters, campgrounds, etc. as examples of household wastes which are excluded from being hazardous wastes	11/13/84	49 FR 44977	3.1.3.b.2
261.33(e) *	Changes hazard class for low concentrations of warfarin and zinc phosphide	5/10/84	49 FR 19923	3.1.2(c)

CHANGES IN HAZARDOUS WASTE REGULATIONS  
TABLE 2

40 CFR	Description	Date	Fed Reg Cite	State Counterpart
261.33(f)*	Changes in hazard class for low concentrations of warfarin and zinc phosphide	5/10/84	49 FR 19923	3.4.4(f)
262.34	Extends accumulation time in certain circumstances, etc.	1/11/82 & (4/1/83) & (12/20/84)	47 FR 1251 (48 FR 14293) (49 FR 49571)	6.3.5
270.2*	Delete definition of "spill" (covered by word "discharge")	6/30/83	48 FR 301133	2.00
270.11(a)*	Signatory requirements for applications	9/1/83	48 FR 39622	11.7.1
270.11(d)*	Certification provisions	9/1/83	48 FR 39622	11.7.4
270.30(d)*	"Duty to mitigate" revision	9/1/83	48 FR 39622	11.10.4
270.70(b)*	Qualifying for interim status - time to cure deficiencies	4/14/84	49 FR 17718	11.3.1

XVTABLE2



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## Section 2. Definitions

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For the purposes of these regulations, the following words and phrases shall have the meanings ascribed to them in this section unless the context of the regulations indicate otherwise.

(1) "Active portion" means that portion of a facility where treatment, storage or disposal operations are being conducted. It includes the treated area of a landfarm and the active face of a landfill, but does not include those portions of a facility which have been closed in accordance with all applicable closure requirements;

(2) "Administrator" means the administrator of the United States Environmental Protection Agency or his designee;

(3) "Approved form" means any environmental Protection Agency standard national form for administering the hazardous waste provisions of RCRA, or a form approved by the Chief of the Division of Water Resources or the Director of the Department of Natural Resources;

(4) "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of groundwater to wells or springs;

(5) "Application, part A" means that part of the application which a permit applicant must complete to qualify for interim status under Section 3005(e) of RCRA or these regulations and for consideration for a permit;

(6) "Application, Part B" means that part of the application which a permit applicant must complete to be considered for a permit;

(120) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e. - part of a facility), e.g. - the plant manager, superintendent or person of equivalent responsibility

(8) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(a) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the

combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and primary energy recovery section(s). The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(c) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent (60%), calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The unit must export and utilize at least seventy-five percent (75%) of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.);

{7} "Calendar Year" means January 1 through December 31;

{8} "Cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes;

{9} "Certification" means a statement of professional opinion based upon knowledge and belief;

{10} "Chief" means the chief of the division of water resources of the Department of Natural Resources;

{11} "Closed facility" means a facility which has been properly closed in accordance with the facility closure plan and all applicable regulations and requirements;

{12} "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the facility closure plan and all applicable closure requirements;

{13} "Closure" means the act of securing a hazardous waste management facility pursuant to the requirements of these regulations;

{14} "Confined aquifer" means an aquifer, overlain by a confining layer of significantly lower hydraulic conductivity, containing ground water that is under sufficient pressure to rise above the level at which it is encountered by a well;

(14) "Container" means any portable device in which a material is stored, transported, treated, disposed of or otherwise handled;

(15) "Contingency plan" means a document setting out an organized, planned and coordinated course of actions to be followed in the event of a fire, explosion or release of hazardous waste or hazardous constituents which could threaten human health or environment;

(16) "Common code" means the unique code assigned by the Chemical Abstract Services (also known as the CAS Registry Number) to each EPA hazardous waste and to each Department of Transportation hazardous waste material;

(17) "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. 1251 et seq.;

(18) "Designated facility (designated hazardous waste management facility)" means a hazardous waste treatment, storage or disposal facility which has received a permit from the Environmental Protection Agency in accordance with 40 CFR Parts 271 and 124, a permit from this State, or another authorized state hazardous waste program or which has been granted interim status or that is regulated under Section 3.1.5 or Section 9.6 of these regulations, and that has been designated on the manifest to receive a specific hazardous waste shipment;

(19) "Dike" means an embankment or ridge of either natural or man-made materials used to contain liquids, sludges, solids, or other materials;

(20) "Director" means the director of the department of Natural Resources;

(21) "Discharge or hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous waste into or on any land or State waters;

(22) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any State waters;

(23) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which the waste will remain after closure;

~~(24)~~ "Division" means the Division of Water Resources of the Department of Natural Resources;

~~(25)~~ "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

~~(26)~~ "DOT" means the United States Department of Transportation;

~~(27)~~ "Draft permit" means a document prepared under Section 11.21 indicating the Chief's tentative decision to issue, deny, modify, revoke and reissue, revoke, or reissue a permit;

~~(28)~~ "Elementary neutralization unit" means a device which (i) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in Section 3.3.3 of these regulations, or are listed in Section 3.4 only for this reason; and, (ii) meets the definition of a tank, container, or transport vehicle in this section;

~~(29)~~ "Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the Director, or the Chief;

~~(30)~~ "EPA" means the United States Environmental Protection Agency;

~~(31)~~ "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Section 3.4 of these regulations and to each characteristic identified in Section 3.3 of these regulations;

~~(32)~~ "EPA identification number" means the number assigned by EPA to each hazardous waste generator, hazardous waste transporter or hazardous waste facility;

~~(33)~~ "Equivalent method" means any testing or analytical method approved by the EPA Administrator under 40 CFR Section 260.20, and 260.21;

~~(34)~~ "Existing hazardous waste management facility or existing facility" means a facility which was in operation or for which construction commenced on or before July 10, 1981. Under this authority a facility has commenced construction if: (a) the owner or operator has obtained all necessary Federal, State and local approvals or permits to begin physical construction; and either (i) a continuous physical, on-site construction program has begun, or (ii) the owner or operator has entered into contractual obligations (which cannot be cancelled or modified without substantial loss) for construction of the facility to be completed within a reasonable time;

(34) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit;

(35) "Facility". See "hazardous waste management facility."

(36) (40) "Federal agency" means any department, agency, or other instrumentality of the Federal government, any independent agency or establishment of the Federal government including any government corporation and the Government Printing Office;

(37) "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances;

(38) "Final cover" means cover material that is applied upon closure of a landfill and is permanently exposed at the surface;

(39) "Flash point" means the minimum temperature at which a liquid or solid gives off sufficient vapor to form an ignitable vapor-air mixture near the surface of the liquid or solid. An ignitable mixture is one that, when ignited, is capable of the initiation and propagation of flame away from the source of ignition. Propagation of flame means the spread of the flame from layer to layer independent of the source of ignition;

(40) "Food chain crops" means tobacco, crops grown for human consumption, or crops grown for pasture, forage or feed for animals whose products are consumed by humans;

(41) "Foreign source" means a source outside the geographical boundaries of the continental United States;

(42) "Freeboard" means the vertical distance between the top of a surface impoundment, open tank, or other containment device and the surface of the waste contained therein;

(43) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure;

(44) "Generator" means any person, by site location, whose actor process produces hazardous waste identified or listed in Section 3 of these regulations or whose act first causes a hazardous waste to become subject to these regulations;

(45) "Groundwater" means water below the land surface in a zone of saturation;

(46) "Hazardous constituent" or "constituent" are constituents

identified in Appendix VIII of Section 3 of these regulations or constituents that caused the Director to list the hazardous waste in Section 3.4 of these regulations or constituents listed in Table 1 of Section 3.3.5 of these regulations, that are reasonably expected to be in or derived from waste contained in a regulated unit or that have been detected in groundwater in the uppermost aquifer underlying a regulated unit;

~~(47)~~ "Hazardous Waste" means a hazardous waste as defined in Section 3.1.2 except as 3.1b provides otherwise;

~~(48)~~ "Hazardous waste activity" means the handling of hazardous waste as in the generation, transportation, treatment, storage, or disposal of any hazardous waste;

~~(49)~~ "Hazardous waste generation" means the act or process of producing hazardous waste materials;

~~(50)~~ "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

~~(51)~~ "Hazardous waste management facility (facility)" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units;

~~(52)~~ "Inactive Portion" means that portion of a facility which has not been in operation since the effective date of Section 3 of these regulations;

(57) "Incinerator" means any enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

~~(52)~~ "Incompatible waste" means a hazardous waste which is unsuitable for: (a) placement in a particular device or facility because it may cause corrosion or decay of containment materials; or (b) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases;

~~(53)~~ "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous;

+54+ "In operation" means facilities that are treating, storing or disposing of hazardous waste;

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(1) Cement kilns

(2) Lime Kilns

(3) Aggregate kilns

(4) Phosphate kilns

(5) Coke ovens

(6) Blast furnaces)

(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)

(8) Titanium dioxide chloride process oxidation reactors.

(9) Methane reforming furnaces.

(10) Pulping liquor recovery furnaces. (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.

(11) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks; (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

(44) "Injection well" means a well or bore hole into which fluids are injected;

(45) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste;

(46) "Interim status" means the status obtained by any person who owns or operates a facility in existence, or existing on July 10, 1981, and required to have a permit under these regulations. Such facilities will be treated as having been issued a permit until such time as final administrative disposition is made with respect to an applicant for such permit provided that such facility is operating and continues to operate in compliance with interim status requirements of Section 3005 of the Federal Solid Waste Disposal Act, and in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment;

(47) "International shipment" means the transportation of hazardous waste, into or out of the jurisdiction of the United States;

(48) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well;

(49) "Landfill cell" See "cell".

(50) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure;

(51) "Leachate" means liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste;

(52) "Liner" means a continuous layer of natural or man-made materials beneath or on the sides of a surface impoundment, landfill, or landfill cell which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents or leachate;

(53) "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to 1,000 tons during a calendar year, and any storage facility



having a storage capacity for 1,000 tons of hazardous waste or more;

(65) "Manifest" means the shipping document originated and signed by the generator, which contains the information required by Section 6.2.

(66) "Manifest document number" means the serial number assigned to the manifest by the generator for recordkeeping and reporting purposes;

(67) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine;

(68) "Monitoring" means all procedures used to inspect and quantify the chemical or physical characteristics of the air, State waters or soils;

(69) "Movement" means transportation of hazardous waste to a facility in an individual transportation vehicle;

(70) "New hazardous waste management facility" or "New facility" means a facility which began operation, or for which construction commenced after July 10, 1981. (See also, "existing hazardous waste management facility");

(71) "Not in service" means a regulated unit that has ceased receiving hazardous waste and has been emptied to the point that portions of the liner(s) are exposed below the normal operating level;

(72) "NPDES (National Pollutant Discharge Elimination System)" means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits and imposing and enforcing pre-treatment requirements pursuant to Sections 307, 402, 318 and 405 of the CWA. The term includes any approved State program;

(73) "On site" means on the same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the rights-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property;

(74) "Operator" means the person responsible for the overall operation of a hazardous waste management facility;

{75} "Owner" means the person who owns a hazardous waste management facility or part of a hazardous waste management facility;

{76} "Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with the minimum packaging requirements under 49 CFR 173, 178, and 179 and includes containers (other than freight containers or overpacks), portable tanks, cargo tanks, tank cars and multi-unit tank car units;

{77} "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of these regulations;

{78} "Permit by rule" means the provision of these regulations stating that a "facility or activity" is deemed to have a permit if it meets the requirements of such provision;

{79} "Permit" means a control document issued by this state pursuant to the State Act and these regulations, or by other states having an authorized program pursuant to Section 3006 of RCRA or by the EPA Administrator pursuant to applicable Federal regulations, or a facility having "interim status";

{80} "Permitted hazardous waste management facility (or permitted facility)" means a hazardous waste treatment, storage, or disposal facility that has received an EPA RCRA permit, a RCRA permit from an authorized state pursuant to Section 3006 of RCRA, or a State permit in accordance with the requirements of these regulations, or a facility having "interim status";

{81} "Person" means an individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, State or Federal agency, the United States government, this State or any other State, municipality, county commission or any other political subdivision of a State or any interstate body;

{82} "Personnel or facility personnel" means all persons who work at, or oversee the operations of a hazardous waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of these regulations;

{83} "Physical construction" or "construct" means excavation, movement of earth, erection of forms or structures, or similar activity involving the actual preparation of a hazardous waste management facility;

{84} "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage;

(85) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture;

(86) "Publicly owned treatment works (POTW)" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment;

(87) "Representative sample" means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole;

(88) "Retrofitting" means the act of installing or upgrading a regulated unit with liners, leachate collection, detection, and removal systems not installed at the time of original construction;

(89) "Revocation," when the term is used in Section 11 in the context of a permit action, means an action which renders a permit permanently null and void;

(90) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility;

(91) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility;

(92) "Saturated zone (zone of saturation)" means that part of the earth's crust in which all voids are filled with water;

(93) "SDWA" means the safe drinking water act (public law 95-523, as amended by Public Law 95-1900);

(94) "SIC" means standard industrial classification,

(95) "Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant;

(96) "Spill" means the accidental spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or

~~materials-which, when-spilled,-become-hazardous-wastes-into-or-on  
any-land-or-water;~~

{96} "State act" means the hazardous waste management act, 20-5E-1,

{97} "State waters" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this State, or bordering this State and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, water-courses and wetlands;

{98} "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere;

{99} "Storm" means the 5-year, 24-hour rainfall event for a particular location as it relates to the inspection requirements specified in Sections 8.9.5, 8.10.5 and 8.11.3; "storm" for the purposes specified in the design requirements of Sections 8.9.2, 8.10.2, and 8.11.2 shall mean a 25-year, 24-hour rainfall event for a particular location. Both definitions are as defined by the National Weather Service in Technical Paper #40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments thereto or equivalent region or State rainfall probability information developed therefrom;

{100} "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons;

{125} "Suspension," when used in Section 11 in the context of a permit action, means an action which renders a permit temporarily null and void until such time as the Chief reinstates, modifies, revokes, or revokes and reissues the permit in accordance with the applicable provisions of Section 11 of these regulations.

{101} "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support;

{124} "Termination," when the term is used in Section 11 in the

context of a permit action, means the same as the term "revocation;"

(102) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents release of any hazardous waste or any constituent thereof into the environment during treatment;

(103) "Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation;

(104) "Transportation" means the movement of hazardous waste by air, rail, highway or water;

(105) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water;

(106) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle;

(107) "Treatment" means any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste non-hazardous, safer to transport, store or dispose of, or amenable to recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste as to render it non-hazardous;

(108) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized;

(109) "Triple rinsed" means containers which have been flushed three (3) times, each time using a volume of ~~dilutant~~ diluent at least equal to ten percent (10%) of the container's capacity;

(112) "Underground injection" means the sub-surface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension (see also "injection well");

(110) "Unsaturated zone" or "zone of aeration" means the zone between topographic surface and the water table;

{111} "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary;

{119} "Vessel" means every description of water craft used or capable of being used as a means of transportation on the water;

{112} "Waste" means waste as defined in section 3.1.1.

{113} "Wastewater treatment unit" means a device which: (i) is part of a wastewater treatment facility which is subject to regulation under the CWA; (ii) receives and treats or stores an influent wastewater which is a hazardous waste as defined in this section, or generates and accumulates, or treats or stores a wastewater treatment sludge that is defined as a hazardous waste; and (iii) meets the definition of a tank as defined in this section;

{114} "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels;

{115} "Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to atmospheric pressure;

{116} "Well" means any shaft or pit dug, drilled, jetted, driven or bored into the earth, generally of a cylindrical form, and often cased with bricks or tubing to prevent the earth from caving in, whose depth is greater than the largest surface dimension;

## Section 3. Identification and Listing of Hazardous Waste

### 3.1 Purpose and Scope

3.1a This section identifies those wastes which are subject to regulation as hazardous wastes.

~~3.1b This section identifies only some of the materials which are hazardous wastes for purposes of Sections 5, 12, 13, and 17 of the West Virginia Code, Chapter 20, Article 5E. A material which is not a hazardous waste identified or listed in this section may still be a hazardous waste for purposes of these sections if the Director has reason to believe that the material may be a hazardous waste within the meaning of 20-5E-3(6) of the State Act.~~

3.1.b The definition of waste contained in this section applies only to wastes that are hazardous for purposes of the State Act and the regulations implementing the State Act. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles or rubber) that are not otherwise hazardous and that are recycled.

3.1.b.1 This section identifies only some of the materials which are wastes and hazardous wastes under Sections 5, 12, 13, and 17 of the State Act. A material which is not defined as a waste in this section, or is not a hazardous waste identified or listed in this section, is still a waste and a hazardous waste for purposes of these sections if:

3.1.b.2 In the case of Sections 20-5E-12 and 20-5E-13 of the State Act, the Director has reason to believe the material may be a waste within the meaning of Section 20-5E-3(12) of the State Act and a hazardous waste within the meaning of Section 20-5E-3(6) of the State Act; or

3.1.b.3 In the case of Section 20-5E-17, the statutory elements are established.

3.1c For the purposes of Sections 3.1.1 and 3.1.5:

3.1.c.1 A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

3.1.c.2 "Sludge" has the same meaning used in Section 2 of these regulations;

3.1.c.3 A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slag or distillation column bottoms. The

term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process;

3.1.c.4 A material is "reclaimed" if it is processed to recover a usable product or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents;

3.1.c.5 A material is "used or reused" if it is either;

3.1.c.5A Employed as an ingredient (including use as an intermediate in an industrial process to make a product. For example, distillation bottoms from one process used as feedstock for another process.) However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

3.1.c.5B Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorus precipitant and sludge conditioner in wastewater treatment);

3.1.c.6 "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled;

3.1.c.7 A material is "recycled" if it is used, reused or reclaimed;

3.1.c.8 A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under Section 3.1.3(c) are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation.) Materials are no longer in this category once they



are removed from accumulation for recycling, however.

### 3.1.1 Definitions of Waste

~~3.1.1a-A waste is any garbage, refuse, sludge or any other waste material which is not excluded under 3.1.3(a).~~

3.1.1.a.1 A waste is any discarded material that is not excluded by Section 3.1.3.a or that is not excluded by variance under Section 16.3.

3.1.1.a.2 A discarded material is any material which is:

3.1.1.a.2.i Abandoned, as explained in paragraph b of this subsection; or

3.1.1.a.2.ii Recycled, as explained in paragraph c of this subsection; or

3.1.1.a.2.iii Considered inherently waste-like, as explained in paragraph d of this section.

~~3.1.1b-An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:~~

~~3.1.1.b.1--is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or~~

~~3.1.1.b.2-Has served its original intended use and sometimes is discarded; or~~

~~3.1.1.b.3-Is a manufacturing or mining by-product and sometimes is discarded.~~

3.1.1.b Materials are waste if they are abandoned by being:

3.1.1.b.1 Disposed of; or

3.1.1.b.2 Burned or incinerated; or

3.1.1.b.3 Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.

~~3.1.1c-A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:~~

~~3.1.1.c.1-Disposed of; or~~

3.1.1.c.2-Burned-or-incinerated,--except--where--the--material--is being burned--as--a--fuel--for--the--purpose-of-recovering-usable energy--or

3.1.1.c.3-Physically,chemically,or-biologically--treated--(other than burned-or-incinerated)-in-lieu-of-or-prior-to-being--disposed of-

3.1.1.c Materials are waste if they are recycled - or accumulated, stored or treated before recycling - as specified in paragraphs c.1 through c.4 of this section.

3.1.1.c.1 Used in a manner constituting disposal.

3.1.1.c.1.i Materials noted with a "\*" in column 1 of Table 1 are wastes when they are:

3.1.1.c.1.i.A Applied to or placed on the land in a manner that constitutes disposal; or

3.1.1.c.1.i.B Contained in products that are applied to the land (in which case the product itself remains a waste).

3.1.1.c.1.i.C However, commercial chemical products listed in Section 3.4.4 are not wastes if they are applied to the land and that is their ordinary manner of use.

3.1.1.c.2 Burning for energy recovery.

3.1.1.c.2.i Materials noted with a "\*" in column 2 of Table 1 are wastes when they are:

3.1.1.c.2.i.A Burned to recovery energy;

3.1.1.c.2.i.B Used to produce a fuel;

3.1.1.c.2.i.C Contained in fuels (in which case the fuel itself remains a waste).

3.1.1.c.2.ii However, commercial chemical products listed in Section 3.4.4 are not wastes if they are themselves fuels.

3.1.1.c.3 Reclaimed. Materials noted with a "\*" in column 3 of Table 1 are wastes when reclaimed.

3.1.1.c.4 Accumulated speculatively. Materials noted with a "\*" in column 4 of Table 1 are wastes when accumulated speculatively.

Table 1  
(All new language.)

	Use constituting disposal (1)	Energy recovery/ fuel (2)	Reclamation (3)	Speculative accumulation (4)
Spent materials	*	*	*	*
Sludges (listed in Sections (3.4.2 and 3.4.3)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*		*
By-products (listed in Section (3.4.2 and 3.4.3)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*		*
Commercial chemical products listed in Section (261.33)	*	*		
Scrap metal	*	*	*	*

~~3.1.1.d--A--material--is--"disposed--of"--if--it--is--discharged,  
deposited, injected, dumped, spilled, leaked or placed into or on  
any land or water so that such material or any constituent thereof  
may enter the environment or be emitted into the air or discharged  
into ground or surface waters.~~

3.1.1.d Inherently waste-like materials. The following materials  
are wastes when they are recycled in any manner:

3.1.1.d.1 (Reserved)

3.1.1.d.2 The Director will use the following criteria to add wastes to  
that list:

3.1.1.d.2.i.A The materials are ordinarily disposed, burned or  
incinerated; or

3.1.1.d.2.i.B The materials contain toxic constituents listed in Appendix VIII of this Section and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

3.1.1.d.2.ii The material may pose a substantial hazard to human health and the environment when recycled.

3.1.1.e-A-"manufacturing-or-mining-by-product"-is-a-material--that is not--one-of-the-primary-products-of-a-particular-manufacturing or-mining operation;-is-a-secondary-and-incidental-product-of--the particular operation--and--would--not--be--solely--and--separately manufactured-or-mined by-the-particular--manufacturing--or--mining operation.----The---term---does---not include---an---intermediate manufacturing-or-mining-product-which---results from--one--of--the steps--in--a--manufacturing--or--mining--process--and-is typically processed-through-the-next-step-of--the--process--within--a--short time.---(Note:---This--definition-of-waste-currently-excludes-from regulations-materials-which-are-burned-as-fuel-for-the-purpose--of recovering-usable-energy.--The-Director-believes-that--elimination of this-exclusion-may,-at-some-future-time,-be-necessary-in-order to protect-the-public-health-and-safety-and--the--environment,-as required-by-statute.)

3.1.1.e Materials that are not waste when recycled.

3.1.1.e.1 Materials are not wastes when they can be shown to be recycled by being:

3.1.1.e.1.i Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

3.1.1.e.1.ii Used or reused as effective substitutes for commercial products; or

3.1.1.e.1.iii Returned to the original process from which they are generated, without first being reclaimed. The material feedstock, and the process must use raw materials as principal feedstocks.

3.1.1.e.2 The following materials are wastes, even if the recycling involves use, reuse or return to the original process (described in paragraphs e.1.i through iii of this subsection):

3.1.1.e.2.i Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

3.1.1.e.2.ii Materials burned for energy recovery, used to produce fuel, or contained in fuels; or

3.1.1.e.2.iii Materials accumulated speculatively; or

3.1.1.e.2.iv Reserved)

3.1.1.f Documentation of claims that materials are not wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing the State Act who raise a claim that a certain material is not a waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

### 3.1.2 Definition of Hazardous Waste

3.1.2a A waste as defined in Section 3.1.1 as a hazardous waste if:

3.1.2.a.1 It is not excluded from regulation as a hazardous waste under Section 3.1.3(b); and

3.1.2.a.2 It meets any of the following criteria:

3.1.2.a.2.i It is listed in Section 3.4 and has not been excluded from the list in Section 3.4 pursuant to Section 16.

3.1.2.a.2.ii It is a mixture of waste and one or more hazardous wastes listed in Section 3.4 and has not been excluded under Section 16; or

3.1.2.a.2.iii It exhibits any of the characteristics of hazardous waste identified in Section 3.3.

3.1.2.b A waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

3.1.2.b.1 In the case of a waste listed in Section 3.4 when the waste first meets the listing description set forth in Section 3.4;

3.1.2.b.2 In the case of a mixture of a waste and one or more listed hazardous wastes, when a hazardous waste listed in Section 3.4 is first added to the waste;

3.1.2.b.3 In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Section 3.3.

3.1.2.c Unless and until it meets the criteria of paragraph (d):

3.1.2.c.1 A hazardous waste will remain a hazardous waste.

~~3.1.2.c.2 Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.~~

3.1.2.c.2.i Except as otherwise provided in paragraph 3.1.2.c.2.ii of this section, any waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emissions control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from waste and that are used beneficially are not wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

3.1.2.c.2.ii The following wastes are not hazardous wastes even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

3.1.2.d Any waste described in paragraph (c) is not a hazardous waste if it meets the following criteria:

3.1.2.d.1 In the case of any waste, it does not exhibit any of the characteristics identified in Section 3.3.

3.1.2.d.2 In the case of a waste which is a listed waste under Section 3.4, contains a waste listed under Section 3.4 or is derived from a waste listed in section 3.4, it also has been excluded from paragraph (c) under Section 16.

### 3.1.3 Exclusions

3.1.3a Materials which are not wastes.

The following materials are not wastes for the purposes of this section:

3.1.3.a.1.i Domestic sewage; and

3.1.3.a.1.ii Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

3.1.3.a.2 Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. (Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)

3.1.3.a.3 Irrigation return flows.

3.1.3.a.4 Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, et seq.

3.1.3.a.5 Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

3.1.3.a.6 Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Section 3.1.c.8 of these regulations.

3.1.3.a.7 Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 3.1.c.8 of these regulations.

3.1.3.b Wastes which are not hazardous wastes. The following wastes are not hazardous wastes:

3.1.3.b.1 Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse/derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

3.1.3.b.2 Wastes generated by any of the following, and which are returned to the soil as fertilizers:

3.1.3.b.2.i The growing and harvesting of agricultural crops.

3.1.3.b.2.ii The raising of animals, including animal manures.

3.1.3.b.3 Mining overburden returned to the mine site.

3.1.3.b.4 Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

3.1.3.b.5 Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

3.1.3.b.6.i Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in 3.4 due to the presence of chromium which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

3.1.3.b.6.i.A The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

3.1.3.b.6.i.B The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

3.1.3.b.6.i.C The waste is typically and frequently managed in non-oxidizing environments.

3.1.3.b.6.ii Specific wastes which meet the standard in paragraphs (b) (6) (i), (A), (B), and (C), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

3.1.3.b.6.ii.A Chrome (blue) trimmings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish/ hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

3.1.3.b.6.ii.B Chrome (blue shavings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish/ hair save/chrome tan/retan/wet finish/ retan/wet finish/ no beamhouse; through-the-blue; and shearling.

3.1.3.b.6.ii.C Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish/ retan/wet finish/ no beamhouse; through-the-blue.

3.1.3.b.6.ii.D Sewer screenings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet



finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

3.1.3.b.6.ii.E Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

3.1.3.b.6.ii.F Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

3.1.3.b.6.ii.G Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

3.1.3.b.6.ii.H Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.

3.1.3.b.7 Waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

3.1.3.b.8 Cement kiln dust waste.

3.1.3.b.9 Waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.

\* \* \* \* \*

3.1.4 Special Requirements for Hazardous Waste Generated by Small Quantity Generators.

3.1.4a A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

3.1.4b Except for those wastes identified in paragraphs (e) and (f) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Sections 6, 8, and 11 of these regulations and 40 CFR Part 265, provided the generator complies with the requirements of paragraph (g) ~~or~~ and (j) of this section, whichever applies.

~~3.1.4c-Hazardous-waste-that-is-beneficially-used-or-re-used-or-legitimately-recycled-or-reclaimed-and-that-is-excluded-from~~

regulation by Section 3.1.5(a) is not included in the quantity determinations of this section, and is not subject to any requirements of this section if the notification requirements of Section 4 are complied with. Hazardous waste that is subject to the special requirements of Section 3.1.5(b) is included in the quantity determinations of this section and is subject to the requirements of this section.

3.1.4c Hazardous waste that is recycled and that is excluded under Sections 3.1.5(a)(2)(iii) and (v), (a)(3), or 9.4 is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the requirements of Sections 3.1.5(b) and (c) and 9.3, 9.4, and 9.6 is included in the quantity determination of this section and is subject to the requirements of this section.

\* \* \* \* \*

3.1.5-Special-Requirements-for-Hazardous-Waste-Which-is-Used, Reused, Recycled-or-Reclaimed

3.1.5a-Except-as-otherwise-provided-in-paragraph-(b)-of-this section, a hazardous waste which meets any of the following criteria is not subject to the full requirements of these regulations until such time as the Director promulgates regulations to the contrary:

3.5.1.a.1-It-is-beneficially-used-or-reused-or-legitimately recycled or reclaimed;

3.5.1.a.2-It-is-being-accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation;

3.5.1.a.3-It-is-one-of-the-following materials being used, reused, recycled, or reclaimed in the specified manner;

3.5.1.a.3.1-Spent-pickle-liquor-which-is-reused-in-wastewater treatment at a facility holding a National Pollutant Discharge Elimination System (NPDES) permit, or which is being accumulated, stored, or physically, chemically, or biologically treated before such reuse;

3.5.1.b-Except-for-those-wastes-listed-in-paragraph-(a)(3), a hazardous waste which is a sludge, or which is listed in 3.4, or which contains one or more hazardous wastes listed in 3.4 and which is transported or stored prior to being used, reused, recycled, or reclaimed is subject to the following requirements with respect to such transportation or storage:

3.5.1.b.1-Notification requirements under Section 4;

~~3.5.1.b.2-Requirements-for-generators-under-Section-67~~

~~3.5.1.b.3-Sections-8.17-8.27-8.37-8.47-8.57-8.67--8.77--8.87--8.97  
8.107 8.13-and-137~~

~~3.5.1.b.4-Storage-facility-requirements-Section-117~~

~~3.5.1.b.5-40-CFR-265-Subpart-A7-B7-C7-D7-E7-F7-G7-H7-I7-J7--K--and  
B7~~

~~3.5.1.b.6-Location-standards-in-Section-12-where-applicable7-and~~

~~3.5.1.b.7-Transportation-regulations--promulgated--by--the--Public  
Service Commission--and--the--Department--of--Highways--and--the  
Director7~~

### 3.1.5 Requirements for Recyclable Materials

3.1.5.a.1 Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled will be known as "recyclable materials."

3.1.5.a.2 The following recyclable materials are not subject to the requirements of this section but are regulated under (Sections 9.3 through 9.7) and all applicable provisions of Section 11 of these regulations:

3.1.5.a.2.i Recyclable materials used in a manner constituting disposal (Section 9.3):

3.1.5.a.2.ii Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Air Pollution Control Commission Regulation Series XXV, Section 9.4);

3.1.5.a.2.iii (Reserved);

3.1.5.a.2.iv Recycled materials from which precious metals are reclaimed (Section 9.6);

3.1.5.a.2.v Spent lead-acid batteries that are reclaimed (Section 9.7).

3.1.5.a.3 The following recyclable materials are not subject to these regulations:

3.1.5.a.3.i Reclaimed industrial ethyl alcohol;

3.1.5.a.3.ii Used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

3.1.5.a.3.iii Used oil that exhibits one or more of the characteristics of hazardous waste; or

3.1.5.a.3.iv Scrap metal.

3.1.5.b Generators and transporters of recyclable materials shall comply with all applicable provisions of Sections 4, 5 and 6 of these regulations, except as provided in paragraph (a) of this section.

3.1.5.c.1 Owners or operators of facilities that store recyclable materials are regulated under all applicable provisions of Sections 4, 8.10 through 8.10, 8.13, and 11 of these regulations, except as provided in paragraph (a) of this section.

3.1.5.c.2 Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

3.1.5.c.2.i Notification requirements of Section 4;

3.1.5.c.2.ii Sections 8.5.2 and 8.5.3 (concerning use of the manifest and manifest discrepancies).

3.1.5d Additional Regulation of Certain Hazardous Waste Recycling Activities on a case-by-case basis.

3.1.5.d.1 The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 3.1.5.a.2.iv should be regulated under 3.1.5.b and 3.1.5.c. 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 director will consider the following factors:

3.1.5.d.1.a The types of materials accumulated or stored and the amounts accumulated or stored;

3.1.5.d.1b The method of accumulation or storage;

3.1.5.d.1.c The length of time the materials have been accumulated or stored before being reclaimed;

3.1.5.d.1.d Whether any contaminants are being released into the environment, or are likely to be so released; and

3.1.5.d.1.e Other relevant factors.

The procedures for this decision are set forth in 3.1.5.d.2.

3.1.5.d.2 Procedures for case-by-case regulation of hazardous waste recycling activities.

3.1.5.d.2.1 The director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Section 3.1.5.a.2.iv under the provisions of 3.1.5.b and 3.1.5.c, rather than under the provisions of 9.6.

3.1.5.d.2.1.A If a generator is accumulating the waste, the director will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Sections 6.1, 6.3, 6.4, and 6.5 of these regulations. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with Section 6 is required. The order becomes effective 30 days after service of the decision unless the director specifies a later date or unless review by the director is requested. The order may be appealed to the director by any person who participated in the public hearing. The director 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.

3.1.5.d.2.1.B If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable revisions of Section 11 of these regulations. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his 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 director's decision was proper will remain open for consideration during the public comment period discussed under 11.25 of the regulations and in any subsequent hearing.

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### 3.3 Characteristics of Hazardous Waste

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#### 3.3.2 Characteristic of Ignitability

3.3.2a A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

3.3.2.a.1 It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flashpoint less than 60 C (140 F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM standard D-3278-78, or as determined by an equivalent method. (See Section 2.00 (32) and 40 CFR Section 260.11 for test method information)

3.3.2.a.2 It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

3.3.2.a.3 It is an ignitable compressed gas as defined in 49 CFR Section 173.3 and as determined by the test method described in that regulation or an equivalent test methods (see Section 2.0 (32)).

3.3.2.a.4 It is an oxidizer as defined in 40 CFR Section 173.51.

3.3.2b A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste by the Administrator, or the Director has the Hazardous Waste Number of D001.

#### 3.3.3 Characteristic of Corrositivity

3.3.3a A waste exhibits the characteristic of corrositivity if a representative sample of the waste has either of the following properties:

3.3.3.a.1 It is an aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/chemical Methods," or an equivalent test method approved by the Administrator under the procedures set forth in 40 CFR Sections 260.20 and 260.21.

3.3.3.a.2 It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature

of 55 C (130 F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method (see Section 2.00 (32)).

3.3.3.b A waste that exhibits the characteristics of corrosivity, but is not listed as a hazardous waste by the Administrator, or Director has the Hazardous Waste Number of D002.

#### 3.3.4 Characteristic of Reactivity.

3.3.4a A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

3.3.4.a.1 It is normally unstable and readily undergoes violent changes without detonating;

3.3.4.a.2 It reacts violently with water;

3.3.4.a.3 It forms potentially explosive mixtures with water;

3.3.4.a.4 When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

3.3.4.a.5 It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

3.3.4.a.6 It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

3.3.4.a.7 It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure;

3.3.4.a.8 It is a forbidden explosive as defined in 49 CFR Section 173.51, or a Class A explosive as defined in 49 CFR Section 173.53 or a Class B explosive as defined in 49 CFR Section 173.88.

3.3.4.b A waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste by the Administrator or Director has the Hazardous Waste Number of D003.

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#### 3.4 Lists of Hazardous Wastes

### 3.4.1 General

3.4.1a A waste is a hazardous waste if it is listed in this section unless it has been excluded from this list under Section 16.

3.4.1b The Director will indicate his basis for listing the classes or types of wastes listed in this section by employing one or more of the following hazard codes:

3.4.4 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof

Ignitable Waste . . . . .	(I)
Corrosive Waste . . . . .	(C)
Reactive Waste . . . . .	(R)
EP Toxic Waste . . . . .	(E)
Acute Hazardous Waste . . . . .	(H)
Toxic Waste . . . . .	(T)

Appendix VII identifies the constituent which caused the Director to list the waste as an EP Toxic Waste (E) or Toxic Waste (T) in Sections 3.4.2 and 3.4.3.

3.4.1c Each hazardous waste listed in this section is assigned a Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 4 of these regulations and certain recordkeeping and reporting requirements under Section 6, Section 8 and Section 11 of these regulations.

3.4.1d The following hazardous wastes listed in Section 3.4.2 or 3.4.3 are subject to the exclusion limits for acutely hazardous wastes established in Section 3.1.4: (Reserved)

### 3.4.2 Hazardous Waste from Non-specific sources.

Hazardous Waste No.	Hazardous Waste	Hazard Code
F001 . . . . .	The following spent halogenated solvents used in degreasing: tetra-chloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations. (T)	
F002 . . . . .	The following spent halogenated solvents: tetra-chloroethylene, methylene chloride,	



trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, and trichlorofluoromethane; and the still bottoms from the recovery of these solvents. (T)

- F003 . . . . . The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents. (I)
- F004 . . . . . The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; and the still bottoms from the recovery of these solvents. (T)
- F004 . . . . . The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents. (I,T)
- F005 . . . . . The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents. (I,T)
- F006 . . . . . Wastewater treatment sludges from electroplating operations except from acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)
- F019 . . . . . Wastewater treatment sludges from the chemical conversion coating of aluminum (T)
- F007 . . . . . Spent cyanide plating bath solutions from electroplating operations ~~(except for precious metals electroplating-spent-cyanide-plating-bath solutions)~~. (R,T)
- F008 . . . . . Plating bath ~~sludges~~ residues from the bottom of plating baths from electroplating operations where cyanides are used in the process ~~(except for precious metals-electroplating-plating-bath-sludges)~~. (R,T)

- F009 . . . . . Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process ~~(except-for-precious-metals electroplating-spent-stripping-and-cleaning-bath solutions)~~. (R,T)
- F010 . . . . . Quenching bath ~~sludge~~ residues from oil baths from metal heat treating operations where cyanides are used in the process ~~(except-for-precious-metals-heat-treating-quenching-bath-sludges)~~. (R,T)
- F011 . . . . . Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations ~~(except-for-precious-metals-heat-treating-spent cyanide-solutions-from-salt-bath-pot-cleaning)~~. (R,T)
- F012 . . . . . Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process ~~(except-for-precious-metals-heat treating-quenching-wastewater-treatment-sludges)~~. (T)
- F019 . . . . . Wastewater treatment sludges from the chemical conversion coating of aluminum. (T)
- F020 . . . . . (Reserved)
- F021 . . . . . (Reserved)
- F022 . . . . . (Reserved)
- F023 . . . . . (Reserved)
- F024 . . . . . Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having a carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts and waste listed in 3.4.3.) (T)
- F026 . . . . . (Reserved)
- F027 . . . . . (Reserved)
- F028 . . . . . (Reserved)

\* \* \* \* \*

#### 3.4.4 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded: as described in Section 3.1.1a.2.i of these regulations, when they are burned for purposes of energy recovery in lieu of their original intended use, when they are used to produce fuels in lieu of their original intended use, when they are applied to land in lieu of their intended use, or when they are contained in products that are applied to land in lieu of their intended use.

3.4.4a Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section.

3.4.4b Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section.

3.4.4c Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless the container is empty as defined in 3.01.06(b)(3) of this chapter. Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard, and thus a hazardous waste. An example of a + legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

3.4.4d Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section.

Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substance listed in paragraphs (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraphs (e) or (f), such waste will be listed in either 3.04.02 or 3.04.03 or will be identified as a hazardous waste by the characteristics set forth in 3.03 of these regulations.

3.4.4e The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes

(H) and are subject to be the small quantity exclusion defined in 3.01.04(a).

Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity.

These wastes and their corresponding Hazardous Waste Numbers are:

Hazardous  
Waste No.

Substance

P023 . . . . .	Acetaldehyde, chloro-
P002 . . . . .	Acetamide, N-(aminothioxomethyl)-
P057 . . . . .	Acetamide, 2-fluoro-
P058 . . . . .	Acetic acid, fluoro-, sodium salt
P066 . . . . .	Acetimidic acid, N-((methylcarbamoyl)oxy) thio-, methyl ester
P001 . . . . .	3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts, <u>when present at concentrations greater than 0.3%</u>

\* \* \* \* \*

P001 . . . . .	Warfarin <u>(when present at concentrations greater than 0.3%)</u>
P121 . . . . .	Zinc cyanide
P122 . . . . .	Zinc phosphide (R,T)

P122 . . . . . Zinc phosphide when present at concentrations greater than 10%

3.4.4f The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in Section 3.1.4 of these regulations.

(Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.)

These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
U001 . . . . .	Acetaldehyde (i)
U034 . . . . .	Acetaldehyde, trichloro-
U187 . . . . .	Acetamide, N-(4-ethoxyphenyl)-
U005 . . . . .	Acetamide, N-9-H-fluoren-2-yl-
U112 . . . . .	Acetic acid, ethyl ester (i)
U144 . . . . .	Acetic acid, lead salt
U214 . . . . .	Acetic acid, thallium(i) salt
U002 . . . . .	Acetone (i)
U003 . . . . .	Acetonitrile (I,T)
U248 . . . . .	<u>3-(alpha-aceloaylphenyl)-4 hydroxycoumarin</u> <u>and salts, when present at concentrations</u> <u>of 0.3% or less</u>
	* * * * *
U248 . . . . .	<u>Warfarin, when present at concentrations of</u> <u>0.3% or less</u>
U200 . . . . .	<u>Yohimban-16-carboxylic acid, 11,17-di-</u> <u>methoxy-18-((3,4,5-trimethoxy-</u> <u>benzoyl)oxy)-, methyl ester,</u>
U249 . . . . .	<u>Zinc phosphide, when present at</u> <u>concentrations of 10% or less</u>

Section 5. Standards Applicable to Transporters of Hazardous Waste by Air and/or Water

The Director hereby adopts and incorporates by reference 40 CFR Part 263, as published in the Code of Federal Regulations on ~~July 17-1982~~ the effective date of these regulations insofar as such regulations relate to the transportation of hazardous waste by air and water are not promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984.

Whenever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

## Section 6. Standards Applicable to Generators of Hazardous Waste

\* \* \* \* \*

### 6.3.5 Accumulation Time

6.3.5a A generator may accumulate hazardous waste on site for ninety (90) days or less without a permit or without having interim status, provided that:

~~6.3.5.a.1 All such waste is within ninety (90) days, either shipped off-site to a designated facility or placed in an on-site facility that is permitted under Section 11 of these regulations, or permitted under 40 C.F.R. Part 270 of the federal regulations, or has interim status under Section 11 of these regulations, or is authorized to manage hazardous waste by a state with a hazardous waste program approved by EPA; and~~

6.3.5.a.21 The waste is placed either in containers which meet the standards of Section 6.3.1 and are managed in accordance with 40 CFR Part 265 Subpart I, or in tanks, and ~~provided~~ the generator complies with Subpart J of 40 C.F.R. Part 265 except 265.193;

6.3.5.a.32 The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

6.3.5.a.43 Each container is properly labeled and marked according to Sections 6.3.2 and 6.3.3;

6.3.5.a.54 While being accumulated, on site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

6.3.5.a.65 The generator complies with the requirements for owners or operators in Subparts C and D in 40 C.F.R. Part 265 and with 265.167 ~~and~~.

6.3.5.b A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the applicable requirements of Sections 4, 8, and 12 of these regulations, ~~40 C.F.R. Part 265 and~~ the permit requirements of Section 11 and 40 C.F.R. Part 265. After ninety (90) days, the generator must either transport all such hazardous waste off-site to a designated facility or place such hazardous waste in an on-site facility that is either permitted under section 11.00 of these regulations or under 40 C.F.R. Part 270 or which has interim status or which is authorized to manage hazardous waste by a state with a hazardous waste program approved by EPA.

### 6.3.5.c Satellite Area Accumulation

6.3.5.c.1 A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in Section 3.4.4(e) in containers at or near any point of generation where wastes initially accumulate, which is under control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section, provided he:

6.3.5.c.1.i Complies with 40 CFR Sections 265.171, 265.172, and 265.173(a) of the federal regulations; and

6.3.5.c.1.ii Marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

6.3.5.c.2 A generator who accumulates either hazardous waste or acutely hazardous waste listed in 3.4.4(e) of these regulations in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three (3) days with paragraph (a) of this section or other applicable provisions of these regulations. During the three day period the generator must comply with paragraphs (c)(1)(i)-(ii) of this section. The generator must mark each container holding the excess accumulation of hazardous waste with the date the excess amount of hazardous waste began accumulating.

\* \* \* \* \*

### 6.5 Special Conditions

#### 6.5.1 International Shipments

6.5.1a Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into West Virginia shall comply with 40 CFR Part 262 and this section.

6.5.1. When shipping hazardous waste outside the United States the generator shall:

6.5.1.b.1 Notify the chief and the EPA administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year. The waste shall be identified by its EPA hazardous waste identification number and its Department of Transportation shipping description. The name and address of the foreign consignee shall be included in the notice.



6.5.1.b.2 Send the original of the notice to ~~hazardous--waste Export, Division--of-Oceans-and-Regulatory-Affairs-(A-107)~~ Office of International Activities (A-106), U.S. Environmental Protection Agency, Washington, D.C. 20460, and one copy to the Chief, Division of Water Resources.

6.5.1.b.3 Require that the foreign consignee conform the delivery of the waste in the foreign country. A copy of the manifest, signed by the foreign consignee, may be used for this purpose.

6.5.1.b.4 Meet the requirements under Section 6.2.2 for the manifest, except that:

6.5.1.b.4.ii In place of the name, address and EPA identification number of the designated facility, the name and address of the foreign consignee shall be used;

6.5.1.b.4.ii The generator shall identify the point of departure from the United States through which the waste shall travel before entering a foreign country.

6.5.1c A generator shall file an exception report, if:

6.5.1.c.1 He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or

6.5.1.c.2 Within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

6.5.1d When importing hazardous waste, a person shall meet all requirements of Section 6.2.2 for the manifest except that:

6.5.1.d.1 In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

6.5.1.d.2 In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

\* \* \* \* \*

Section 8. Standards for owners and operators of Hazardous Waste Treatment, Storage and Disposal Facilities

8.1 General, Purpose, Scope and Applicability

8.1.1 The purpose of these regulations is to establish minimum standards which define the acceptable management of hazardous waste.

8.1.2 The standards in this section apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as Section 8.1.5 provides otherwise. In addition to the standards in this section, the regulations of the Air Pollution Control Commission, Series 25 - "To prevent and control air pollution from hazardous waste treatment, storage or disposal facilities apply to owners or operators of facilities that incinerate hazardous waste except as 8.1.5 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:

8.1.2.a Owners or operators of hazardous waste incinerators (as defined in Section 2.00 of these regulations; and

8.1.2.b Owners or operators of hazardous waste in boilers or in industrial furnaces in order to destroy the wastes.

8.1.3 The requirements of this section apply to a person disposing of hazardous waste by means of underground injection only to the extent that they are required to comply with certain portions of this section under the Underground Injection Control Program establish pursuant to the Water Pollution Control Act, 20-5A, et seq.

8.1.4 The requirements of this section apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a Hazardous Waste Management Permit by Rule granted to such a person under Section 11.8.

8.1.5 The requirements of this section do not apply to:

8.1.5a ~~The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in Section 3.01-05(a), except to the extent that Section 3.1.5(b) provides otherwise.~~ managing recyclable materials described in Section 3.1.5a.2 and 3.1.5a.3 of these regulations (except in cases or situations in which the requirements of Section 3 of these regulations are referred to in Section 9 of these regulations).

8.1.5b Generator accumulating waste on site in compliance with Section 6.03.05 provided the requirements of Sections 3.1.4 and 3.1.5 are complied with.

8.1.5c A farmer disposing of waste pesticides from his own use in compliance with Section 6.5.2.

8.1.5d The owner or operator of a totally enclosed treatment facility, as defined in Section 2.

8.1.5e The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section 2.

8.1.5f A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section 6.3.1, at a transfer facility for a period of ten (10) days or less.

~~8.1.5g Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste, except that, with respect to such activities, the appropriate requirements of Sections 8.3 and 8.4 are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this section. (Comment: After the immediate response activities are completed, the applicable regulations apply fully to the management of any spill residue or debris which is a hazardous waste under Section 3.)~~

8.1.5g Except as provided in paragraph (g) (2) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

8.1.5.g.1.i A discharge of a hazardous waste;

8.1.5.g.1.ii An imminent and substantial threat of a discharge of hazardous waste;

8.1.5.g.1.iii A discharge of a material which, when discharged, becomes a hazardous waste.

8.1.5.g.2 An owner or operator of a facility otherwise regulated by this Section must comply with all applicable requirements of Section 8.3 and 8.4.

8.1.5.g.3 Any person who is covered by paragraph g.1 of this subsection and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Chapter 20, Article 5E.

8.1.5h The addition of absorbent material to hazardous waste in a container or the addition of hazardous waste to absorbent material

in a container, provided that these actions occur at the time hazardous waste is first placed in the container and Section 8.2.8 (b), 8.7.2 and 8.7.3 are complied with.

\* \* \* \* \*

#### 8.2.6 General Inspection Requirements

8.2.6a The owner or operator must inspect the facility formal functions and deterioration, operator errors, and discharges which may be causing - or may lead to:

8.2.6.a.1 Release of hazardous waste constituents to the environment; or

8.2.6.a.2 A threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

8.2.6.b.1 The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

8.2.6.b.2 This schedule must be kept at the facility.

8.2.6.b.3 The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

8.2.6.b.4 The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction ~~or~~ of any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in Sections 8.7.6, 8.8.4, 8.9.5, 8.10.5, and 8.11.3 where applicable.

8.2.6.b.5 A copy of the inspection schedule as required by Section 8.02.06(b) must be submitted to the Chief with Part B of the permit application to ensure that it adequately protects human health and the environment. As part of this review, the Chief may modify or amend the schedule as may be necessary.

8.2.6c The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals to ensure that the problem does not lead to an environmental or human health hazard. A schedule for remedial action may be allowed by the Chief. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

8.2.6.d The owner or operator must record inspections in an inspection log or summary. These records must be kept for the life of the facility. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

\* \* \* \* \*

Section 9 Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

9.1 (Reserved)

9.2 (Reserved)

9.3 Recyclable Materials Used in a Manner Constituting Disposal

9.3.1 Applicability

9.3.1a This Section applies to recyclable materials that are applied to or placed on the land;

9.3.1a.1 without mixing with any other substances; or

9.3.1a.2 after mixing with any other substances, unless the recyclable material undergoes a chemical reaction so as to become inseparable from the other substances by physical means; or

9.3.1a.3 after combination with any other substances in the resulting combined material is not produced for the general public's use.

These materials will be referred to throughout this Section as "materials used in a manner that constitutes disposal."

9.3.1b Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to these regulations if the recyclable materials have undergone chemical reaction in the course of producing the product so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recyclable material also are not presently subject to these regulations.

9.3.2 Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to applicable requirements of Sections 4, 5, and 6 of these regulations.

9.3.3 Standards Applicable to Storers of Materials that are to be Used in a Manner that Constitutes Disposal Who are not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials are regulated

under all applicable provisions of Sections 4, 8 and 11 of these regulations, and 40 CFR Part 265, subparts A through L.

#### 9.3.4 Standards Applicable to Users of Materials that are Used in a Manner that Constitutes Disposal

Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are subject to all applicable provisions of Sections 4, 8 and 11 of these regulations, and 40 CFR Part 265, Subparts A through N. (These requirements do not apply to products which contain these recyclable materials under the provisions of paragraph 9.3.1b of these regulations.)

#### 9.4 Hazardous Waste Burned for Energy Recovery

##### 9.4.1 Applicability.

9.4.1.a The regulations of this Subpart apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under Air Pollution Control Commission Regulation, Series 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities" except as provided by paragraph 9.4.1.b of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel". However, hazardous waste fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel are not subject to regulation at the present time.

9.4.1.b The following hazardous wastes are not regulated under this subpart:

9.4.1.b.1 Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 3.3.3 of these regulations. Such used oil is subject to regulation under Section 9.5 of these regulations rather than this section and

9.4.1.b.2 Hazardous wastes that are exempt from regulation under the provisions of Section 3.1.3 of these regulations and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of Section 3.1.4 of these regulations.

9.4.1.b.3 Hazardous waste fuels that are exempt from the labeling requirements of RCRA Section 3004(r).

9.4.1.b.4 Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

9.4.2 Prohibitions. (Reserved)

9.4.3 Standards applicable to generators of hazardous waste fuel.

9.4.3.a Generators of hazardous waste fuel are subject to the requirements of Section 6 of these regulations except that 9.4.7 exempts certain spent materials and by-products from these provisions;

9.4.3.b Generators who are marketers also must comply with Section 9.4.5.

9.4.3.c Generators who are burners also must comply with Section 9.4.6.

9.4.4 Standards applicable to transporters of hazardous waste fuel.

9.4.4.a Transporters of hazardous waste fuel from generator to marketer, or from a generator to a burner are subject to the requirements of either Section 5 of these regulations or the applicable regulations of the West Virginia Department of Highways or Public Service Commission of West Virginia regarding hazardous waste transporters, except that 9.4.7 exempts certain spent materials and by-products from these provisions.

9.4.4.b Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous wastes fuel from marketers, who are not also the generators of the waste, to burners or other marketers.

9.4.5 Standards applicable to marketers of hazardous waste fuel.

Persons who market hazardous waste fuel are called "marketers". Marketers include generators who market hazardous waste fuel directly to a burner, and persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes. Persons who distribute but do not process or blend hazardous waste fuel are also marketers, but are not presently subject to regulation. Marketers (other than distributors) are subject to the following requirements:

9.4.5a Prohibitions (Reserved).

9.4.5.b Prohibitions (Reserved).

9.4.5.c.1 Storage. Marketers who are generators are subject to the requirements of Section 6.3.5 of these regulations or to Sections 8.1 through 8.10, 8.13 and Section of these regulations



or 40 CFR Subparts A through L of Part 265 and Parts 270 and 124, except as provided by Section 9.4.7 of this Section for certain spent materials and by-products;

9.4.5.c.2 Marketers who receive hazardous wastes from generators, and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of Sections 8.1 through 8.10, 8.13 and Section 13 of these regulations or 40 CFR Subparts A through L of Part 265 and Parts 270 and 124, except as provided by Section 9.4.7 of this section for certain spent materials and by-products.

9.4.6 Standards applicable to burners of hazardous waste fuel.

9.4.6a (Reserved)

9.4.6.b Notification. (Reserved)

9.4.6.b.c Burners that store hazardous waste fuel prior to burning are subject to the requirements of Section 6.3.5 of this chapter, or to all applicable requirements in Sections 8.1 through 8.10, 8.13 and Section 13 of these regulations or 40 C.F.R. Subparts A through L of Part 265 or 40 CFR Part 265 of this chapter with respect to such storage, except as provided by Section 9.4.7 of this subpart for certain spent materials and by-products.

9.4.7 Conditional exemption for spent materials and by-products exhibiting a characteristic of hazardous waste.

9.4.7a Except as provided in paragraph (b), hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste are not subject to the notification requirements of Chapter 20, Article 5E, Section 10, the generator, transporter, or storage requirements of Chapter 20, Article 5E.

9.4.7b This exemption does not apply when the spent material or by-product is stored in a surface impoundment prior to burning.

9.5 (Reserved)

9.6 Recyclable Materials Utilized for Precious Metal Recovery

9.6a The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, irridium, osmium, rhodium, ruthenium, or any combination of these.

9.6b Persons who generate, transport, or store recyclable materials that are subject to this section are subject to the following requirements:

9.6b.1 notification requirements of Section 4;

9.6b.2 (analog to 262, Subpart B) (for generators), (analog to 263.20 and 263.21) (for transporters), and 40 CFR Sections 265.71 and 265.72 (for persons who store).

9.6c Persons who store recyclable materials that are subject to this section must keep the following records to document that they are not accumulating these materials speculatively (as defined in Section 3.1b of these regulation):

9.6c.1 records showing the volume of these materials stored at the beginning of the calendar year;

9.6c.2 the amount of these materials generated or received during the calendar year; and

9.6c.3 the amount of these materials remaining at the end of the calendar year.

9.6d Recyclable materials that are regulated under this section that accumulated speculatively (as defined in Section 3.1b of these regulations) are subject to all applicable provisions of Sections 5 through 8 and 11 of these regulations and 40 CFR Part 265.

## 9.7 Reclaimed Spent Lead-Acid Batteries

9.7a This section applies to persons who reclaim spent lead-acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to the requirements of Sections 4 through 9 or 11 of these regulations, nor 40 CFR Part 265.

9.7b Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

9.7b.1 the notification requirements of Section 4 of these regulations;

9.7b.2 all applicable provisions of Sections 8.1 through 8.10 of these regulations, except Section 8.2.3 concerning waste analysis and 8.5.2 and 8.5.3 concerning use of the manifest and manifest discrepancies.

9.7b.3 all applicable provisions of Subparts A, B (but not Section 265.13 (waste analysis)), C, D, E (but not Sections 265.71 and 265.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of 40 CFR Part 265; and

9.7b.4 all applicable provisions of Section 11 of these regulations.

## Section 11. Hazardous Waste Permitting Program

\* \* \* \* \*

### 11.1.2 Specific Exclusions

The following are not required to obtain a hazardous waste management permit:

11.1.2a Generators who accumulate hazardous waste on site for less than ninety (90) days as provided in Section 6.03.05.

11.1.2b Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 6.05.02.

11.1.2c Persons who own or operate facilities operated solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this section by Sections 3.01.03 or 3.01.04.

11.1.2d Owners or operators of totally enclosed treatment facilities, as defined in Section 2.00.

11.1.2e Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 2.00.

11.1.2f Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 6.03.01 at a transfer facility for a period of ten (10) days or less.

11.1.2g A person is not required to obtain a hazardous waste management permit for these treatment or containment activities he carries out to immediately contain or treat a spill of hazardous waste or material, which, when spilled, becomes a hazardous waste. After the immediate response activities are completed, any treatment, storage or disposal of spilled material or spill residue or debris that is undertaken must be covered by a Hazardous Waste Management Permit, an emergency Hazardous Waste Management Permit or interim status taken during immediate response to any of the following situations:

11.1.2.g.1.i A discharge of a hazardous waste;

11.1.2.g.1.ii An imminent and substantial threat of a discharge of hazardous waste;

11.1.2.g.1.iii A discharge of a material which, when discharged, becomes a hazardous waste.

11.1.2.g.2 Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response

is over is subject to all applicable requirements of this Part for those activities.

11.1.1h Persons adding absorbent material to hazardous waste in a container and persons adding hazardous waste to absorbent material in a container, provided that these actions occur at the time hazardous waste is first placed in the container and sections 8.02.08(b), 8.07.02, and 8.07.03 are complied with.

\* \* \* \* \*

### 11.3 Interim Status

#### 11.3.1 Qualifying for Interim Status

11.3.1a Any person who owns or operates an existing facility or a facility in existence as of July-10, 1981, shall have interim status and shall be treated as having been issued a permit to the extent they:

11.3.1.a.1 Comply with the interim status requirements of the Federal EPA established pursuant to Section 3005 of the Federal Solid Waste Disposal Act;

11.3.1.a.2 Operate the facility in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment; and

11.3.1.a.3 Make a timely and complete application for such permit in accordance with these rules and regulations;

11.3.1.b.1 If the chief determines that a facility is not complying with the requirements of Section 11.03.01 he may terminate interim status of any owner or operator. Such termination will be in the form of an ORDER stating the reasons for the termination and shall inform the operator that he is subject to an enforcement action for operation without a permit;

11.3.1.b.2 Failure to qualify for interim status. If the Chief has reason to believe upon examination of a Part A application that it fails to meet the requirements of Section 11.4 he shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the Chief's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, the Chief determines that the application is deficient he may take appropriate enforcement action.

11.3.1c Any person who owns or operates an existing facility which

was not previously required to have a permit under the Act because it managed no hazardous wastes identified or listed under Section 3.00 of these regulations, but which due to a revision of Section 3.00 is later required to have a permit, shall also have interim status and shall be treated as having been issued a permit to the extent such person:

11.3.1.c.1 Has notified the Chief within ninety (90) days from the effective date of any revision of Section 3.00 of these regulations of such hazardous waste activity by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier; and

11.3.1.c.2 Complies with and continues to operate compliance with the interim status requirements of the federal Environmental Protection Agency established pursuant to Section 3005 of the Federal Solid Waste Disposal Act, as amended, if applicable within ninety (90) days from the effective date of such revision to Section 3.00, and operates in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment; and

11.3.1.c.3 Makes a timely and complete application for a permit as required by Section 11.00 of these regulations.

\* \* \* \* \*

## 11.7 Signatories to Permit Applications and Reports

### 11.7.1 Applications

All permit applications shall be signed as follows:

~~(2) For a corporation: by a principal executive officer at least the level of vice-president.~~

11.7.1a For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

11.7.1.a.1 A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

11.7.1.a.2 The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

11.7.1.b For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

11.7.1.c For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

11.7.1.c.1 The chief executive officer of the agency or

11.7.1.c.2 A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

11.7.2 All reports required by permits and other information requested by the Chief shall be signed by a person described in Section 11.07.01 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

11.7.2a The authorization is made in writing by a person described in Section 11.07.01;

11.7.2b The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or an individual or a position having responsibility for the facility's compliance with environmental laws permits; and

11.7.2c The written authorization is submitted to the chief.

#### 11.7.3 Changes to Authorization

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or because a new individual or position has responsibility for the facility's compliance with environmental laws and permits, a new authorization satisfying the requirements shall be submitted to the Chief prior to or together with any reports, information or applications to be signed by an authorized representative.

#### 11.7.4 Certification

Any person signing a document under Section 11.7.1 or Section 11.7.2 shall make the following certification:

~~"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of these individuals immediately responsible for obtaining the information,~~

~~I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\* \* \* \* \*

#### 11.10.3 ~~Duty~~ Need to Halt or Reduce Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#### 11.10.4 Duty to Mitigate

~~The permittee shall take all reasonable steps to mitigate or correct any adverse impact on the environment or human health resulting from non-compliance with this permit.~~

In the event of non-compliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.

\* \* \* \* \*

#### 11.10.8 Duty to Provide Information

The permittee shall furnish to the chief within a specified time, any relevant information which the Chief or an authorized representative may request to determine whether cause exists for modifying, revoking and reissuing, suspension, revoking, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Chief or an authorized representative, upon request, copies of records to be kept as part of the permit.

\* \* \* \* \*



### Section 13. Financial Requirements

The Director hereby adopts and incorporates by reference 40 CFR Parts 264 and 265, Subparts H, as published in the Code of Federal Regulations on ~~July-17-1982~~ the effective date of these regulations and insofar as those regulations are not promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 with the following modifications: Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 264.147(f), 265.147(f) shall be amended by the addition of the following paragraph:

"Notwithstanding the above, the Director may disallow the use of this test on the basis of information that the owner or operator has violated or is in violation of any state or federal law or regulation pertaining to environmental protection. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance."

Sections 264.149, 265.149, 264.150 and 265.150 shall be deleted.

Wherever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

Wherever the term Environmental Protection Agency or EPA is used, the term shall have the meaning of the West Virginia Department of Natural Resources.

40 CFR Sections 264.147(b)(4)(iii) and 265.147(b)(4)(iii) shall be amended to read: "All other owners or operators, 30 days after the effective date of these regulations."

## Section 16. Notices of Changes to the ~~Board-of~~ the Director

### 16.1 Notices of Amendments to Federal Law or Regulations

Persons desiring to call to the attention of the ~~Board-of~~ Director amendments to the federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto, may do so by filing a notice with the ~~Board-of~~ Director, ~~as-appropriate~~, identifying the amendment which has been made to the federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto and identifying the provision of these regulations which such person believes should be amended.

### 16.2 Petitions for Waste Exclusions

16.2.a Persons desiring to exclude a waste at a particular generating facility from the lists in Section 3.04, must petition the Director for such an exclusion. The petition shall include

16.2.a.1 A copy of the petition submitted to the Administrator pursuant to 40 CFR 260.22, including all demonstration information; and

16.2.a.2 A copy of the administrator's approval granting the exclusion pursuant to 40 CFR 260.20(d); and

16.2.a.3 Any other additional information which may be required for the Director to evaluate the petition.

16.2.b Within 120 days of the filing of the petition the Director shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the Director shall notify the petitioner of such action in writing, setting forth the reasons therefor.

16.2.c The Director shall not deny a petition to exclude a waste at a particular facility that has been approved by the EPA Administrator unless scientifically supportable reasons for such denial are advanced which had not been presented to the EPA Administrator.

### 16.3 Variances from Classification as a Waste

#### 16.3.1 General

In accordance with the standards and criteria in Sections 16.3.2 and the procedures in Section 16.3.3, the Director may determine on a case-by-case basis that the following recycled materials are not wastes:

(a) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Section 3.1.c.8 of these regulations):

(b) Materials that are reclaimed and then reused within the original primary production process in which they were generated; or

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

#### 16.3.2 Standards and Criteria

(a) The Director may grant requests for a variance from classification as a waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following calendar year. A variance granted under this section is valid only from the date of approval through the following calendar year; but may be renewed on an annual basis by filing a new application for such variance. The Director will base the decision to grant or deny a variance from speculatively on the following standards and criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (e.g., because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the calendar year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) Handling methods employed by the applicant or his agent to minimize losses of the material; and

(5) Other relevant factors.

(b) The Director may grant requests for a variance from classification as a waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the material was generated if the reclamation operation is an essential part of the production process. The Director's determination for variances for such materials will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The prevalence of the recycling or reclamation process on an industry-wide basis;

(3) The extent to which the material is handled before reclamation to minimize loss;

(4) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) The location of the reclamation operation in relation to the production process;

(6) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) Whether the person who generates the material also reclaims it; and

(8) Other relevant factors.

(c) The Director may grant requests for a variance from classification as a waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and must be reclaimed further). The Director's determination to grant or deny a variance request for such material will be based on the following factors:

(1) The degree of processing the material has undergone and the degree to which further processing is required to complete recovery of the material;

(2) The value of the material after it is reclaimed;

(3) The degree to which the reclaimed material is like an analogous raw material;

(4) The extent to which an end market for the reclaimed material is guaranteed;

(5) Handling methods employed by the applicant or his agent to minimize losses of the partially or completely reclaimed material; and

(6) Other relevant factors.

### 16.3.3 Variance Procedures

(a) An applicant for a variance from classification as a waste under this section must apply to the Director. The application must address the applicable criteria or standards contained in section 16.3.2 of these regulations.

(b) The Director will evaluate the application and issue a public notice of the tentative determination to grant or deny a variance from classification as a waste. Notification of this tentative determination will be provided in the manner prescribed in paragraph 11.24.3(b) of these regulations. The Director will accept public comment on the tentative variance determination for thirty (30) days, and may also hold a public hearing upon request or at his discretion. The Director will issue a final decision after receipt of public comments and the hearing (if any). Such final decision may not be appealed to the Water Resources Board.