



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

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SECRETARY OF STATE

ARCH A. MOORE, JR.
Governor

August 6, 1985

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

Dear Mr. Hechler:

Re: Filing of Emergency Rules and
Notice of Comment and Public
by the Department of Natural
Resources and Department of
Highways

Enclosed please find for your filing a copy of amendments to the legislative rules of both the Department of Highways and the Department of Natural Resources. These amendments are filed on an emergency basis and will remain in effect for fifteen months or until final regulations are promulgated.

Also enclosed please find a Notice of Public Hearing or Comment Period on a Proposed Rule. We are initiating the public comment period and Notice of Public Hearing for the enclosed emergency rule immediately.

If you have any questions, please contact Mr. Ron Shipley, State Hazardous Waste Coordinator at 304-348-2754.

Sincerely,

Ronald R. Potesta
Director

RRP/rsb

Enclosure

cc: Bill Ritchie, Commissioner
Department of Highways



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DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

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APPENDIX G

RONALD R. POTESA
Director

MICHAEL A. FOTOS
Deputy Director

NOTICE OF EMERGENCY RULE

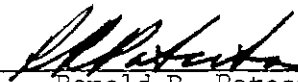
RULE TITLE: Hazardous Waste Management, Chapter 20, Article 5E, Series XV

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

On November 8, 1984, Congress enacted the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). This act enacted comprehensive revisions to the Resource Conservation and Recovery Act of 1976 (RCRA). West Virginia has received primacy to operate the federal program in West Virginia in lieu of the federal Environmental Protection Agency.

One of the principal benefits of receiving primacy is that West Virginia's state government is more familiar than the federal government with the hazardous waste problems and the regulated industry in our state. Administrative efficiencies and better environmental results are achieved by authorization.

Under the federal primacy delegation, states need to modify their hazardous waste management programs whenever the federal program changes. In addition, the State Hazardous Waste Management Act (Chapter 20, Article 5E) requires each state agency to revise their rules and regulations within either six months of any amendment to the federal law, if necessary, or within six months of the effective date of any revisions to federal regulations. The state agencies could not comply with the mandated time periods without resorting to emergency rulemaking. By incorporating the EPA program changes (published in the Federal Register on July 15, 1985), the state will avoid confusion about the new responsibilities as well as produce immediate benefits for protecting human health and the environment in West Virginia by enabling the state agencies to enforce such new program requirements.



Ronald R. Potesa
Director

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 C.F.R. Part 265, provided the generator complies with the requirements of paragraphs (g) or (j) of this section.

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.

3.1.4d In determining the quantity of hazardous waste he generates, a generator need not include:

3.1.4.d.1 His hazardous waste when it is removed from on-site storage; or

3.1.4.d.2 Hazardous waste produced by on-site treatment of his hazardous waste.

3.1.4e If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are fully subject to these regulations:

3.1.4.e.1 A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in 3.4.4(e), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.4.4(e);

3.1.4.e.2 A total of 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in 3.4.4(e), 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 commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.4.4(e).

3.1.4f A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than those set forth in paragraphs (e)(1) or (e)(2) of this section all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to these regulations. The time period of Section 6.3.5 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

3.1.4g In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section 6, the generator must:

3.1.4.g.1 Comply with Sections 4 and 6.1.1 of these regulations;

3.1.4.g.2 If he stores his hazardous waste on-site, store it in compliance with the requirements of paragraph (f) of this section;

3.1.4.g.3 Establish and maintain on-site a written record specifying the quantity and types of hazardous wastes disposed of, the dates the wastes were transported off-site, and the final disposition of the wastes; and (Comment: This recordkeeping requirement is only applicable to manufacturing facilities. Non-manufacturing facilities such as schools, service stations, etc. are not required to comply with this subsection.)

3.1.4.g.4 Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

3.1.4.g.4.i Permitted under 40 CFR Part 270 of the federal code;

3.1.4.g.4.ii In interim status under either 40 CFR Parts 270 and or 265 20-5E-10 of the West Virginia Code;

3.1.4.g.4.iii Permitted by this State under Section 11.00 of these regulations;

3.1.4.g.4.iv Permitted by this State to manage industrial wastes under the Water Pollution Control Act; (Comment: After March 31, 1986 a small quantity generator will not be allowed to send its hazardous waste to this type of facility.)

3.1.4.g.4.v Authorized to manage hazardous waste by a state with a hazardous waste program approved under 40 CFR Part 271;

3.1.4.g.4.vi A facility which:

3.1.4.g.4.vi.A. Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

3.1.4.g.4.vi.B. Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

3.1.4.h Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Sections 3.3.

3.1.4.i If a small quantity generator mixes a waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

3.1.4.j A small quantity generator that generates more than 100, but less than 1000 kilograms of hazardous waste or who generates acutely hazardous waste in an amount greater than specified in Section 3.1.4e in any calendar month shall be subject to the following requirements, in addition to those requirements enumerated in paragraphs (a) through (i) of this section:

3.1.4.j.1 The manifest requirements of Section 6.2, except that such small quantity generators are only required to complete the following items on the generator segment of the Uniform Hazardous Waste Manifest prior to shipping hazardous waste off-site for treatment, storage, disposal or recycling:

3.1.4.j.1.i. Generator name, address, and signature (items 3 and 16 on the Uniform Hazardous Waste Manifest form).

3.1.4.j.1.ii. The name and address of the facility designated to receive the hazardous waste (item 9 on the Uniform Hazardous Waste Manifest form).

3.1.4.j.1.iii. The DOT description of the waste, including the proper shipping name, hazard classification, and the "UN" or "NA" identification number (item 11 on the Uniform Hazardous Waste Manifest form).

3.1.4.j.1.iv. The number and type of containers of hazardous wastes (item 12 on the Uniform Hazardous Waste Manifest form). (COMMENT: Each container must be properly marked, labeled, and meet all DOT specifications), and

3.1.4.j.1.v. The total quantity of hazardous waste to be transported off-site (items 13 and 14 on the Uniform Hazardous Waste Manifest form);

3.1.4.j.2. The pre-transport DOT packaging, labeling, marking and placarding requirements described in Section 6.3 of these regulations:

3.1.4.j.3. The recordkeeping requirements of Section 6.4.1(a), (c), (d) and 6.4.4; and

3.1.4.j.4. The special conditions of Section 6.5.

Section 6. . Standards Applicable to Generators of Hazardous Waste

6.1 Purpose, Scope and Applicability

6.1a This Section establishes standards and regulations for generators of hazardous wastes.

6.1a.1. Generators that generate more than 1000 kilograms of hazardous waste, identified or listed in Section 3 of these regulations, in any calendar month or who generate acutely hazardous waste in quantities greater than the amounts listed in 3.1.4.e are subject to all sections of these regulations, except as otherwise provided in Section 6 of these regulations.

6.1a.2. Small quantity generators that generate between 100 and 1000 kilograms of hazardous waste, identified or listed in Section 3 of these regulations, in any calendar month are subject to the requirements of Section 6 listed in Section 3.1.4(j) of these regulations.

6.1b A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following subsections of this Section with respect to that waste: 6.1.1 for determining whether his waste is hazardous; 6.1.2 for obtaining an EPA identification number; 6.4.1(c) and (d) for recordkeeping; 6.4.4 for additional reporting; and, if applicable; 6.5.2 for farmers.

6.1c Any person who imports hazardous waste into West Virginia shall comply with the standards applicable to generators established in this section.

6.1d A farmer who generates waste pesticides which are hazardous wastes and who complies with all the requirements of Section 6.5.1 is not required to comply with the remainder of these regulations with respect to such pesticides.

6.1e A person who generates a hazardous waste, as defined in Section 3 is subject to the compliance requirements and penalties prescribed in Sections 14, 15 and 16 of the Hazardous Waste Management Act if he does not comply with the requirements of this section.

6.1f An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this section.

6.2 The Manifest

6.2.1 General Requirements

6.2.1.a A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest, OMB control number 2000-0404 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the requirements adopted in Appendix I of this section.

6.2.1.b A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

6.2.1.c Beginning on September 1, 1985, and thereafter, generators shall insert on the manifest, at item 16 "Generator Certification", in addition to the certification already exists at item 16, the following waste minimization certification:

"Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage or disposal currently available to me which minimizes the present and future threat to human health and the environment."

6.2.1.d A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

6.2.1.e If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

Dept. of Nat. Res.
Leg. Rule, 20-5E (Emergency Rule)
Series XV, Sec. 6

APPENDIX I

The Director hereby adopts and incorporates by reference 40 CFR Part 262, Appendix - Uniform Hazardous Waste Manifest and Instructions, as published in the Federal Register on July 15, 1984 (attached).

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.

APPENDIX

Please print or type. (Form designed for use on elite (12 pitch) typewriter.)

Form Approved, OMB No. 2000-0404, Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of	Information in the shaded areas is not required by Federal law.
3. Generator's Name and Mailing Address				A. State Manifest Document Number	
4. Generator's Phone ()				B. State Generator ID	
5. Transporter 1 Company Name	6. US EPA ID Number			C. State Transporter ID	
7. Transporter 2 Company Name	8. US EPA ID Number			D. State Transporter ID	
9. Designated Facility Name and Site Address	10. US EPA ID Number			E. State Facility ID	
11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No.	Type	13. Total Quantity	14. Unit Wt/Vol
a.					
b.					
c.					
d.					
15. Special Handling Instructions and Additional Information					
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.					
Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.					
Printed/Typed Name		Signature		Month Day Year	
17. Transporter 1 Acknowledgement of Receipt of Materials		Signature		Month Day Year	
Printed/Typed Name		Signature		Month Day Year	
18. Transporter 2 Acknowledgement of Receipt of Materials		Signature		Month Day Year	
Printed/Typed Name		Signature		Month Day Year	
19. Discrepancy Indication Space					
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in item 19.					
Printed/Typed Name		Signature		Month Day Year	

EPA Form 8700-22 (Rev. 4-85) Previous edition is obsolete.

8.5.4. Operating Record

8.5.4a The owner or operator shall keep a written operating record at the facility.

8.5.4b The following information shall be recorded, as it becomes available, and maintained in the operating record until measure of the facility:

8.5.4.b.1. A description and the quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility, as required by Appendix I;

8.5.4.b.2. The location of each hazardous waste within the facility and the quantity of each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by manifest.

8.5.4.b.3. Records and results of waste analyses performed as specified in Sections 8.2.4 and 8.2.8.

8.5.4.b.4. Summary reports and details of all incidents that require implementing the contingency plan, as required by Section 8.4.7(j).

8.5.4.b.5. Records and results of inspections as required by Section 8.2.6.

8.5.4.b.6. For off-site facilities, notices to generators as specified in Section 8.2.3(b).

8.5.4.b.7. All closure cost estimates, and for disposal facilities all post-closure cost estimates.

8.5.4.b.8. Monitoring, testing, or analytical data where required by Sections 8.13, 8.9.5, 8.10.4, 8.10.5, 8.12.7, 8.12.9, 8.12.11, 8.11.3(a), 8.11.3(b), 8.11.10(a), and 8.11.10(b).

8.5.4.b.9. A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.

11.10.10 Monitoring and Records

11.10.10a Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

11.10.10b The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, the certification required by 8.5.4.b.9, and records of all data used to complete the application for the permit, for a period of three (3) years from the date of the sample, measurement, report, or application. This period may be extended by the Chief, at any time.

11.10.10c The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

11.10.10d Records of monitoring information shall include:

11.10.10.d.1. The date, exact place, and time of sampling or measurements.

11.10.10.d.2. The individual(s) who performed the sampling or measurements.

11.10.10.d.3. The date(s) analyses were performed.

11.10.10.d.4. The individual(s) who performed the analyses.

11.10.10.d.5. The analytical techniques or methods used.

11.10.10.d.6. The results of such analyses.

The Department of Highways regulations, Chapter 20, Article 5E, Series VII, Sections 1.03, 1.04 and 3.03 are amended and subsequent sections are renumbered as follows:



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Deputy Director

PREAMBLE TO EMERGENCY REGULATIONS

PROGRAM: HAZARDOUS WASTE
AUTHORITY: WEST VIRGINIA CODE, CHAPTER 20, ARTICLE 5E
THE WEST VIRGINIA HAZARDOUS WASTE MANAGEMENT ACT
ACTION: EMERGENCY RULE
TOPIC: SMALL QUANTITY GENERATOR REQUIREMENTS AND WASTE MINIMIZATION
CERTIFICATION

SUMMARY: The Department of Natural Resources and the Department of Highways are jointly amending their respective rules relating to the West Virginia Hazardous Waste Management Act. The regulations will establish requirements on small quantity generators and require hazardous waste generators other than small quantity generators to provide a waste minimization certification. Both items are required by the federal Hazardous and Solid Waste Amendments of 1984. Both the Department of Natural Resources and the Department of Highways are promulgating emergency regulations which impose requirements by August 5, 1985 and September 1, 1985. The two departments are also proposing final rulemaking on these regulatory changes.

DATES: The emergency rulemaking is effective on August 6, 1985. The proposed rules are available for public comment beginning today until the close of business September 19, 1985.

CONTACT: All comments should be submitted to the Department of Natural Resources, 1800 Washington Street, East, Room 669, Charleston, West Virginia 25305. Attention: Mr. Ron Shipley, State Hazardous Waste Coordinator.

PUBLIC HEARING: A public hearing will be held on Thursday, September 19, 1985 at 7:00 p.m. in Room 674, 1800 Washington Street, East, Charleston, West Virginia.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On November 8, 1985 the President signed the Hazardous and Solid Waste Act Amendments of 1984 (HWSA). HWSA enacted comprehensive revisions to the Resource Conservation and Recovery Act of 1976 (RCRA) and most extensively to the hazardous waste program under Subtitle C.

In HWSA Congress placed new requirements on generators, transporters, and persons who store, treat or dispose of hazardous waste. Some of the requirements were effective immediately; others have delayed effective dates up to three years from date of enactment.

Under RCRA, Subtitle C, Congress enacted a regulatory program which can be shared with the states. Any state may apply to the federal government for permission to implement the hazardous waste program in lieu of the federal agency (U.S. Environmental Protection Agency). The state must demonstrate, however, that its program is "consistent and equivalent" to the federal RCRA Subtitle C program.

Federal program authorization has been divided into interim and final authorization. Interim authorization gives states the authority to operate portions of the federal program; final authorization allows states to operate the entire federal program. West Virginia received Phase I, IIa and IIb interim authorization on March 28, 1984. Phase I interim authorization allows the State to implement the EPA hazardous waste management program (HWMP) which commenced on November 1980 (universe of hazardous wastes, generator standards, transporter standards, interim status standards); Phase II applies to the EPA HWMP commencing July 26, 1981 (procedures and standards for permitting). On May 10, 1985 the State applied to EPA for approval of final authorization.

One of the principle benefits of attaining final authorization is that states are more familiar with the hazardous waste problems and the regulated industry in their state. Administrative efficiencies and better environmental results are achieved by authorization. In addition, authorization eliminates dual federal and state regulation.

In West Virginia HWMP responsibilities are shared by several state agencies. Under the State Hazardous Waste Management Act, Chapter 20, Article 5E (SHWMA), the Department of Natural Resources is designated as the "lead agency." In addition, the SHWMA requires each state agency to revise their rules and regulations within either six months of any amendment to the federal law, if necessary, or within six months of the effective date of any revision to federal regulations. Finally, the SHWMA requires the Director to submit written comments to the legislative rulemaking review committee regarding all rules and regulations promulgated pursuant to the SHWMA.

To continue achieving both the benefits of authorization as well as maintaining a "consistent and equivalent" program, states need to modify their HWMP whenever the federal program changes. See 40 CFR §271.21. Accordingly, the Departments of Natural Resources and Highways are promulgating emergency regulations to conform with federal program changes.

B. Explanation of Federal Program Changes

HWSA enacted major and extensive revisions to the nation's hazardous waste program. Both the Department of Natural Resources and the Department of Highways believes that an early, clear articulation of the regulated community's new responsibilities is an essential step in any strategy for effectively carrying out the new initiatives. By incorporating the EPA program changes into the state's HWMP, the state seeks to avoid confusion

about the new responsibilities as well as produce immediate benefits for protecting human health and the environment in West Virginia by enabling the state to enforce such new program requirements.

As covered by this limited rulemaking, the federal program is changing in several ways. First, the federal HWMP is changing the definition of "small quantity generator." Secondly, the federal HWMP is imposing new requirements on small quantity generators (SQG) including the requirement that SQG's send a manifest along with any hazardous waste they transport. Both of these changes are effective August 5, 1985. Thirdly, the federal HWMP requires that by September 1, 1985 certain categories of generators must sign a certificate on the manifest that they practice "waste minimization."

In addition, HWSA requires the EPA Administrator to investigate promulgating standards for small quantity generators. HWSA also states that:

- (1) Until March 31, 1986 SQG hazardous waste can be disposed of only in a facility which either has been granted interim status or a full RCRA permit or is permitted, licensed, or registered by a state to manage municipal or industrial solid waste.
- (2) By March 31, 1986, the Administrator must promulgate standards under the generator, transporter and TSD facility standards for SQG's. These standards may vary from those applicable to larger quantity generators but must be sufficient to protect human health and the environment;
- (3) The standards to be promulgated by March 31, 1986 shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by an SQG shall occur at a facility with interim status or a permit under RCRA, except that onsite storage of hazardous waste generated by an SQG may occur without the requirement of a permit for up to 180 days. Such onsite storage may occur without the requirement of a permit for not more than 6,000 kilograms for up to 270 days if such generator must ship or haul such waste over 200 miles.
- (4) The Administrator's responsibility under RCRA Subtitle C to protect human health and the environment may require the promulgation of standards for hazardous wastes generated by any generator in quantities less than 100 kilograms of hazardous waste in a calendar month.
- (5) Nothing in HWSA effects or modifies any regulations promulgated prior to January 1, 1983, addressing acutely hazardous waste.

The Department will continue to react to these additional EPA actions as they occur.

II. Emergency Rule

On July 15, 1985, EPA published in the Federal Register (50 FR 28702) hazardous waste regulations which it labels as a "codification rule." EPA has, for the most part, simply codified into the regulations the HSWA statutory language associated with each regulatory provision. The state rulemaking undertaken today focuses only on those aspects of the codification rule affecting small quantity generators and waste minimization certifications.

The federal and state HWMP's do not subject SQG waste to the full requirements of the hazardous waste management program. Instead, SQG's are exempted from the full regulatory provisions provided they continue to meet certain obligations. See DNR Regulation § 3.1.4b. Consequently, compliance with the state's requirements will prevent an SQG from incurring more burdensome regulatory requirements.

A. Definition of Small Quantity Generator (SQG)

Currently, DNR regulations describe a SQG as any person who, in any calendar month, generates less than 1000 kilograms (2,200 lbs) in that month. (West Virginia's HWMP, like the federal HWMP, exempts household wastes.) The HWSA defines a SQG as a generator who produces hazardous waste "greater than 100 kilograms, but less than 1,000 kilograms during a calendar month." HSWA, RCRA §3001(d). Accordingly, EPA has amended its regulations at 40 CFR §§261.5(f), (g) and (h) establishing categories of small quantity waste generators. A generator is considered a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month. EPA has established three classifications of small quantity generators. The first are those SQG's who generate acutely toxic waste in an amount greater than the quantity specified in 40 CFR §261.5(e) or DNR Reg § 3.1.4(e). The second category are those SQG's who produce less than 100 kilograms during a calendar month. This category is sometimes referred to as the very small quantity generators. The third category is the remaining SQG's, i.e. persons who generate between 100-1,000 kilograms of hazardous waste in a calendar month and who do not generate acutely toxic wastes in quantities greater than the amount listed in 40 CFR §261.5(e).

The Department of Natural Resources is amending its regulations governing Special Requirements for Hazardous Waste Generated by Small Quantity Generators (§3.1.4) to correspond with the federal description of SQG's.

B. A Small Quantity Generator Must Comply With Requirements to Remain Exempt From Complete RCRA Regulation

A SQG must comply with certain requirements to remain exempt from full RCRA regulation. EPA has altered some of these requirements relating to time periods for accumulating hazardous waste on-site, treatment, storage and disposal requirements and recordkeeping. The State has incorporated those changes into its program along with some additional regulations which clarify the SQG's responsibilities. SQG responsibilities include:

- (1) Complying with hazardous waste determination regulations;
- (2) Complying with conditions for on-site accumulation of hazardous waste;
- (3) Sending its wastes to a properly permitted treatment, storage or disposal facility;
- (4) Using the appropriate manifest and pre-transport requirements, recordkeeping requirements; and
- (5) Appropriate special conditions.

Each of these requirements will be briefly explained below:

(1) Hazardous Waste Determination

An SQG must comply with the waste determination requirements of 40 CFR 262.11 and state regulation 6.1.1 (See §3.1.4(g)(4)(ii).) This condition is continued in effect and not altered by today's rulemaking.

(2) On-Site Accumulation of Hazardous Waste

A SQG may accumulate hazardous waste onsite. However, if a SQG accumulates acutely toxic hazardous waste in an amount greater than the quantities listed in 40 CFR §261.5(e) or DNR Regulation 3.1.4(e) then such generator is subject to the full requirements of the HWMP. Likewise any generator who accumulates greater than 1000 kilograms also is subject to full regulation under the HWMP's.

(3) SQG Must Send Their Hazardous Waste to a Permitted Facility

Under the current state program, all generators must ensure that their waste is handled by a hazardous waste treatment, storage or disposal facility which either has interim status approval, a final RCRA permit, is an industrial waste facility permitted under Chapter 20, Article 5A, or which meets the requirements for beneficial reuse or recycling. The federal program has limited the SQG to using facilities which:

- (a) Are permitted by EPA under RCRA § 3005 or a state HWMP (final RCRA permit);
- (b) Have interim status approval under 40 CFR Parts 265 and 220;
- (c) Are permitted, licensed or registered by a state to manage municipal or industrial solid waste; or
- (d) Beneficially uses or reuses or legitimately recycles or reclaims the waste or treats the waste prior to reuse, recycling or reclamation.

The state HWMP, however, is being more restrictive than EPA and is placing the same treatment, storage and disposal on SQG's as it places on all generators of hazardous waste. Therefore, the SQG must ensure that its hazardous wastes are sent to a facility which either has interim status approval, a final RCRA permit, is permitted as an industrial waste landfill under the West Virginia Water Pollution Control Act (Chapter 20, Article 5A of the West Virginia Code) or which meets the requirements for beneficial reuse or recycling. Thus the state and federal requirements are identical on this issue except that the state will not allow hazardous waste to be stored, treated or disposed of in a municipal sanitary landfill. Regulations under the State Solid Waste Management Act (Chapter 20, Article 5F) prohibit such treatment, storage or disposal.

It should be noted that federal law will prohibit the SQG from sending hazardous waste to an industrial or municipal landfill after March 31, 1986. Accordingly, SQG's are notified that they may have to make alternate arrangements if they send their hazardous waste to an industrial waste facility which does not have the proper RCRA permit or authorization.

(4) Recordkeeping Requirements

Congress expanded the definition of small quantity generators because of the large amount of hazardous wastes which are entering the environment via many generators of small amounts of hazardous waste. One of RCRA's key mechanisms for tracking the movement of hazardous waste from "cradle to grave" (generation to disposal) is the maintenance of records. Under the current programs, generators are required to keep their records (such as manifests) for three years. This allows the State to determine where such wastes are going while providing a paper trail for disposal which eventually causes an environmental problem. The state believes that the same requirements should apply to SQG's and, therefore, has promulgated regulations (§3.1.4(g)(3)) which require SQG's to keep their records for three years also.

(5) Pre-transport Requirements

Under the Department of Transportation regulations, a transporter of hazardous materials (hazardous waste is a subset of hazardous materials) may only accept such materials if they are properly containerized, labeled, etc. Therefore, the State believes that generators should be required to relinquish the wastes to the transporter in proper form. This will help avoid confusion and conflict between the generator and transporter at the time of offer and acceptance of the wastes. It will also help ensure that wastes are transported safely.

(6) Special Conditions - International Shipments and Farm Disposal

The Department is also promulgating regulations at 3.1.4(j)(4) which requires SQG's to comply with special conditions relating to international shipments of their hazardous waste. These are the same requirements as other generators who export their hazardous waste.

In addition, the Department is requiring that an SQG farmer who disposes of pesticides is exempt from the permitting performance and location standards provided that he triple rinses the emptied container in accordance with Section 3.1.6(b)(3) and disposes of the residue on his own farm in a manner consistent with the disposal instructions on the label. This requirement currently applies to all farmers who are generators.

C. Small Quantity Generators Must Accompany Their Off-Site Hazardous Waste Shipments With a Manifest

The HSWA requires that a SQG who ships their waste "off the premises on which such waste is generated" must accompany their shipment with an EPA

Uniform Hazardous Waste Manifest signed by the generator. The Department of Natural Resources is amending its regulations at § 3.1.4 by adding a new subsection (j). One of the requirements of new subsection (j) is that a small quantity generator is subject to certain (but not all) manifest requirements. Generators who transport or who offer for transportation hazardous waste must prepare a manifest which will accompany the shipment.

D. Generators of Hazardous Waste Must Certify That They Practice Hazardous Waste Minimization

HSWA requires that, beginning September 1, 1985, certain generators must include on the manifest a signed statement certifying that to the extent economically practicable, they have a program in place to reduce the volume and toxicity of waste generated and that they have selected a method of treatment, storage or disposal which minimizes the present and future threat to human health and the environment. HSWA §224; RCRA 3002(b). The waste minimization certification must be provided by generators (other than SQG's) and a SQG who generates acutely toxic hazardous waste in quantities greater than the amounts specified in 40 CFR §261.5(e). The Department of Natural Resources has amended its manifest requirements, Section 6.2, to require that the waste minimization certification be signed on such manifests beginning September 1, 1985.

In addition, the EPA codification rule amends their recordkeeping requirements by requiring the generator to report and record information concerning their waste minimization efforts. First, EPA is requiring submission of information in the federal biennial report. Due to special needs of the State program, DNR requires such report on an annual basis. (See DNR Regulation § 6.4.2.) The State program has a specific mandate to encourage methods of waste minimization as well as conducting ongoing investigations of such techniques. See W. Va. Code § 20-5E-6(g). Accordingly, DNR is requiring that the EPA required information concerning waste minimization be submitted annually to the State instead of biennially. This requirement will help the State meet its statutory obligation regarding waste minimization as well as prevent confusion by avoiding alternating reporting requirements. Generators, therefore, will report the following in their Annual Reports:

- (1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- (2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
- (3) The certification signed by the generator or authorized representative.

The Chief will require this information by prescribing the form of the Annual Report pursuant to DNR Regulation § 6.4.2.

Secondly, EPA is requiring generators to record their waste minimization certification in the written operating record kept at the facility. See 40 CFR § 264.73(b)(9). The State is also requiring such recordkeeping. DNR Regulation § 8.5.4(b)(9).

Finally, EPA has amended its standard permit conditions to include the recordkeeping requirements of 40 CFR § 264.73(c)(9). The State is also amending its standard permit conditions to be identical to the federal program. DNR Regulation § 11.10.10.b.

The Department of Natural Resources' Regulations, Chapter 20, Article 5E, Series XV, Sections 3.1.4, 6.1, 6.2, 8.5.4, and 11.10.10 are amended as follows: