



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

September 26, 1986

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Governor

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Director

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NOTICE OF EMERGENCY RULE

RULE TITLE: Hazardous Waste Management Regulations

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

Changes made in federal hazardous waste regulations on August 25, 1985 have not been adopted by the State within the one-year time limit established by 40 C.F.R. §271.21(e)(1)(iii). The emergency rule, which incorporates those changes, is necessary in order to prevent further delay in complying with federal regulations that could result in a loss of State primacy over the administration of federal hazardous waste management regulations.

Director

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 20-5E
1986
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I. STATE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Hazardous Waste Management Regulations

Section 1. General

1.1 Scope and Purpose. The purpose of these regulations is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2 Authority. These regulations are promulgated under the authority of the West Virginia Code Chapter 20, Article 5E, Sections 4, 5, 6, and 7.

1.3 Effective Date. These regulations will become effective on September 26, 1986.

1.4 Filing Date. These regulations were filed in the Office of the Secretary of State on September 26, 1986.

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Section 2. Definitions

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 indicates otherwise:

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"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 internally 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.);

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"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 C.F.R. Parts 270 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;

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"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;
- (12) Such other devices as the Director 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.

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"RCRA" means by Subtitle C, the Resource Conservation and Recovery Act, as amended by the Federal Solid Waste Disposal Act, as amended.

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Section 3. Identification and Listing of Hazardous Waste

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3.1.1 Definitions of Waste

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 granted 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.

3.1.1.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.

3.1.1.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 Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases 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 or are otherwise 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

	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 (3.4.4)	*	*		
Scrap metal	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products" and "scrap metal" are defined in Section 3.1.c.

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 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;

3.1.1.e.1.iii Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw 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 a 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 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.

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3.1.4 Special Requirements for Hazardous Waste Generated by Small Quantity Generators

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

3.1.4.b 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 Section 4 and paragraph (g) and, if applicable (j) of this section.

3.1.4.c Hazardous waste that is recycled and that is excluded from regulation 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.

3.1.4.d 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.

3.1.4.e 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).

3.1.4.f 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.

3.1.4.g In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section 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 C.F.R. Part 270 of the Code of Federal Regulations.

3.1.4.g.4.ii In interim status under 40 C.F.R. Parts 270 and 265 and 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 C.F.R. 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 Section 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 3.1.4.e 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), and (d) and 6.4.4; and

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

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 (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 regulation under §§4 through 8 and are not subject to the notification requirements of W.Va. Code §20-5E-10.

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 but is recycled in some other manner than being burned for energy recovery; or

3.1.5.a.3.iv Scrap metal.

3.1.5.a.3.v Fuels produced from the refining of oil bearing hazardous wastes along with normal process streams at a petroleum refining facility, if such wastes result from normal petroleum refining, production, and transportation practices;

3.1.5.a.3.vi Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices which oil is to be refined along with normal process streams at a petroleum refining facility; or

3.1.5.a.3.vii Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

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 3.1.5.a of this section. Generators and transporters of recyclable materials are also subject to the applicable provisions of West Virginia Administrative Regulations, Department of Highways, Series 7, Transportation of Hazardous Wastes by Highway Transporters, and West Virginia Administrative Regulations, Public Service Commission, Series 11, Transporting Hazardous Waste by Rail.

3.1.5.c.1 Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Sections 4, 8.1 through 8.10, 8.13, 11, and 13 of these regulations, except as provided in paragraph 3.1.5.a of this section (the recycling process itself is exempt from regulations).

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 3.1.5.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).

3.1.5.d 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.1.b 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.i 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.i.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.i.B. If the person is accumulating the recyclable material at 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 Section 11.25 of the regulations and in any subsequent hearing.

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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 3.1.1.a.2 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 original intended use, or when they are contained in products that are applied to land in lieu of their original intended use.

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

3.4.4.b 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.

3.4.4.c 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.)

3.4.4.d 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 substances 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.)

3.4.4.e 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 3.1.4(a).

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3.4.4.f 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	3-(alpha-acetonylbenzyl)-4 hydroxycoumarin and salts, when present at concentrations of 0.3% or less
	* * * * *
U248	Warfarin, when present at concentrations of 0.3% or less
U200	Yohimban-16-carboxylic acid, 11,17-di- methoxy-18-((3,4,5-trimethoxy- benzoyl)oxy)-, methyl ester,
U249	Zinc phosphide, when present at concentrations of 10% or less
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Section 5. Standards Applicable to Transporters of Hazardous
Waste by Air and/or Water

The Director hereby adopts and incorporates by reference 40 C.F.R. Part 263, as published in the Code of Federal Regulations on April 15, 1986 insofar as such regulations relate to the transportation of hazardous waste by air and water.

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

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

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8.3.7.a.1 Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

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8.11.2.j If the owner or operator determines that the corrective action program being implemented under Section 8.13.09 is insufficient for causing cessation of hazardous waste constituents migration, then the unit must be closed. However, if it is determined that the corrective action will adequately arrest and remove the contamination, the owner may choose one of the four options which will become part of the conditions of the permit:

8.11.2.j.1 Retrofit the unit with liners; in accordance with Section 8.11.01(a)(1);

8.11.2.j.2 Stop the leak;

8.11.2.j.3 Continue the operation of the unit, (while concurrently developing/implementing an alternate treatment, storage, or disposal method), for a period of five years at which time the unit must be closed; or

8.11.2.j.4 Continue the operation of the unit provided a demonstration can be made and approved by the Chief that no adverse impact to human health or to the environment will result from the continued operation of the unit during the active life and closure and post closure period, provided that the facility continue to comply with an approved corrective action program. Such demonstration must include and discuss the following:

8.11.2.j.4.i Potential adverse effects on ground water quality, considering:

8.11.2.j.4.i.A The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

8.11.2.j.4.i.B The hydrogeological characteristics of the facility and surrounding land;

8.11.2.j.4.i.C The quantity of ground water and the direction of ground water flow;

- 8.11.2.j.4.i.D The proximity and withdrawal rates of groundwater users;
- 8.11.2.j.4.i.E The current and future uses of ground water in the area;
- 8.11.2.j.4.i.F The existing quality of ground water, including other sources of contamination and their cumulative impact on ground water quality;
- 8.11.2.j.4.i.G The potential for health risks caused by human exposure to waste constituents;
- 8.11.2.j.4.i.H The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
- 8.11.2.j.4.i.I The persistence and permanence of the potential adverse effects; and
- 8.11.2.j.4.ii Potential adverse effects on hydraulically connected surface water quality, considering:
 - 8.11.2.j.4.ii.A The volume and physical and chemical characteristics of the waste in the regulated unit;
 - 8.11.2.j.4.ii.B The hydrogeological characteristics of the facility and surrounding land;
 - 8.11.2.j.4.ii.C The quantity and quality of ground water, and the direction of ground water flow;
 - 8.11.2.j.4.ii.D The patterns of rainfall in the region;
 - 8.11.2.j.4.ii.E The proximity of the regulated unit to surface waters;
 - 8.11.2.j.4.ii.F The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - 8.11.2.j.4.ii.G The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
 - 8.11.2.j.4.ii.H The potential for health risks caused by human exposure to waste constituents;
 - 8.11.2.j.4.ii.I The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - 8.11.2.j.4.ii.J The persistence and permanence of the potential adverse effects.

8.11.2.j.4.iii In making any determination under paragraph (4) of this section concerning the use of ground water in the area around the facility, the Chief will consider any identification of underground sources of drinking water and exempted aquifers made under the West Virginia Administrative Regulations of the State Water Resources Board, Chapter 20, Article 5A, Series IX (1983).

* * * * *

8.12.7 Food Chain Crops

The Chief may allow the growth of food chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Chief will specify in the facility permit the specific food chain crops which may be grown.

8.12.7.a.1 The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

8.12.7.a.1.i Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

8.12.7.a.1.ii Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

8.12.7.a.2 The owner or operator must make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in Appendix VIII of Section 3 of these regulations that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

8.12.7.a.3 In making a demonstration under this paragraph, the owner, or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and must;

8.12.7.a.3.i Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (e.g., pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

8.12.7.a.3.ii Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

8.12.7.a.4 If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he must obtain a permit for conducting such activities.

* * * * *

8.13.6 Compliance Period

8.13.6.a The compliance period is the active life of the waste management area, the closure period and the post closure period.

8.13.6.b The compliance period begins when the owner or operator initiates a groundwater monitoring program meeting the requirements of Section 8.13.8.

8.13.6.c If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 has not been exceeded for a period of three (3) consecutive years.

* * * * *

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

* * * * *

9.3 Recyclable Materials Used in a Manner Constituting Disposal

9.3.1 Applicability

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

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

9.3.1.a.2 after mixing with any other substances that are not hazardous wastes, unless the recyclable material undergoes a chemical reaction so as to become inseparable from the other substances by physical means; or

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

9.3.1.a.4 The materials identified in paragraphs 9.3.1.a.1 through 9.3.1.a.3 will be referred to throughout this Section as "materials used in a manner that constitutes disposal."

9.3.1.b 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 as well as the applicable provisions of West Virginia Administrative Regulations, Department of Highways, Series 7, Transportation of Hazardous Wastes by Highway Transporters, and West Virginia Administrative Regulations, Public Service Commission, Series 11, Transporting Hazardous Waste by Rail.

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, 11, and 13 of these regulations, and 40 C.F.R. 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, 11, and 13 of these regulations, and 40 C.F.R. Part 265, Subparts A through N. (These requirements do not apply to products which contain these recyclable materials under the provisions of paragraph 9.3.1.b of these regulations.)

9.4 Hazardous Waste Burned for Energy Recovery

9.4.1 Applicability

9.4.1.a The regulations of this section apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace 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. The regulations of this section apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace 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 section:

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 Section 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 Wastes that are exempt from regulation under the provisions of Section 3.1.3.b 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.

9.4.2 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 waste 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:

9.4.5.a 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, 11, and 13 of these regulations or 40 C.F.R. Subparts A through L of Part 265 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, 11, and 13 of these regulations or 40 C.F.R. Subparts A through L of Part 265 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

9.4.6.a (Reserved)

9.4.6.b Notification. (Reserved)

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

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

9.4.7.a 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 Section 4 of these regulations or the generator, transporter, or storage requirements of Chapter 20, Article 5E.

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

* * * * *

9.6 Recyclable Materials Utilized for Precious Metal Recovery

9.6.a 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.

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

9.6.b.1 notification requirements of Section 4;

9.6.b.2 Section 6.2 for generators, 40 C.F.R. 263.20 and 263.21 for transporters, and 40 C.F.R. 265.71 and 265.72 for persons who store recyclable materials.

9.6.c 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):

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

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

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

9.6.d Recyclable materials that are regulated under this section that are accumulated speculatively (as defined in Section 3.1b of these regulations) are subject to all applicable provisions of Sections 5 through 8, 11, and 13 of these regulations and 40 C.F.R. Part 265.

9.7 Reclaimed Spent Lead-Acid Batteries

9.7.a 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, 11, or 13 of these regulations, nor 40 C.F.R. Part 265.

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

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

9.7.b.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, and Section 13 of these regulations.

9.7.b.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 C.F.R. Part 265; and

9.7.b.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:

11.1.2.a Generators who accumulate hazardous waste on site for less than ninety (90) days as provided in Section 6.3.5.

11.1.2.b Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 6.5.2.

11.1.2.c 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 3.1.3 or 3.1.4.

11.1.2.d Owners or operators of totally enclosed treatment facilities, as defined in Section 2.

11.1.2.e Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 2.

11.1.2.f Transporters 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.

11.1.2.g A person is not required to obtain a hazardous waste management permit for treatment or containment activities 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 section for those activities.

11.1.2.h 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 8.2.8(b), 8.7.2, and 8.7.3 are complied with.

* * * * *

11.3.4 Interim Status Standards

During interim status, owners or operators shall comply with the interim status standards at 40 C.F.R Part 265 as of April 15, 1986.

11.3.5 Grounds for Termination of Interim Status

Interim status terminates when final disposition of a permit application is made; or when interim status is terminated by the Chief. Interim status may be terminated for:

11.3.5.1 Failure to furnish requested Part B application on time, or to furnish in full the information required by the Part B application; or

11.3.5.2 A determination is made by the Chief that the facility poses a substantial risk of a health hazard or a significant risk of an adverse effect upon the environment.

11.3.5.3 A determination is made that the facility has failed to comply with the requirements of 20-5E-10 and the corresponding federal requirements at 40 C.F.R. 270.73 and 40 C.F.R. Part 265.

* * * * *

11.7 Signatories to Permit Applications and Reports

* * * * *

11.7.2 Reports

All reports required by permits and other information requested by the Chief shall be signed by a person described in Section 11.7.1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

11.7.2.a The authorization is made in writing by a person described in Section 11.7.1;

11.7.2.b 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 and permits; and

11.7.2.c The written authorization is submitted to the Chief.

* * * * *

Section 13. Financial Requirements

The Director hereby adopts and incorporates by reference 40 C.F.R. Parts 264 and 265, Subparts H, as published in the Code of Federal Regulations on April 15, 1986 with the following modifications: Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), 264.147(f), and 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 C.F.R. 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 Director

16.3 Variances from Classification as a Waste

* * * * *

16.3.2 Standards and Criteria

(a) The Director may grant requests for a variance from classification as a waste for 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 under this subsection 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) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Director may grant requests for a variance from classifying 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. This determination 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 practice 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 classifying 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). This determination will be based on the following factors:

(1) The degree of processing the material has undergone and the degree of further processing that 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 has been like an analogous raw material;

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

(5) The extent to which the reclaimed material is handled to minimize loss, 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.



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

September 26, 1986

ARCH A. MOORE, JR.
Governor

FILED
1986 SEP 26 PM 1:01
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON, WEST VIRGINIA
RONALD R. POTESTA
Director
MICHAEL A. FOTOS
Deputy Director

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

Re: Filing of Emergency Rules
Hazardous Waste Management
Regulations (Series 15) 30
by the Department of
Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of amendments to the legislative rules of the Department of Natural Resources adopted and filed on an emergency basis.

If you have any questions, please contact Mr. Ronald A. Shipley, Special Assistant to the Director and State Hazardous Waste Coordinator, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jhb

Enclosures

cc: Legislative Rule-Making Review Committee
Hazardous Waste Task Group

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

November 7, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Natural Resources

RULE: Amendments to Series ³⁵ 15 Hazardous Waste Management Rules,

DATE FILED AS AN EMERGENCY RULE: September 26, 1986

DECISION NO. 21-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Nov 7, 1986
ADMINISTRATIVE LAW DIVISION

A handwritten signature of Ken Hechler in dark ink, written over a horizontal line.
KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
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VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 21-86)

AGENCY: Department of Natural Resources

RULE: Amendments to Series 15 Hazardous Waste Management

DATE FILED AS AN EMERGENCY RULE: September 26, 1986

- par. 1 The Department of Natural Resources (DNR) has filed as emergency rule the above titled amendment.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The DNR has filed this emergency rule with supporting documents with the Secretary of State on September 26, 1986.
- par. 7 It is the determination of the Secretary of State that the Department of Natural Resources has complied with the procedural requirements of WV Code §29A-3-15.
- par. 8 (B) Statutory Authority -- WV Code §20-5E-6(a) reads:
§20-5E-6. Promulgation of regulations by director.
(a) The director has overall responsibility for the promulgation of rules and regulations under this article. Within six months of the effective date of this article (July 9, 1981) the director shall promulgate the following rules and regulations; in consultation with the department of health, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the department of highways, the department of agriculture, the water resources board and the department of mines office of oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-A (§29A-1-1 et seq.) of this Code, shall avoid duplication in the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five [§20-5E-5(b)] of this article and shall be consistent with the rules and regulations promulgated by the federal environmental protection agency pursuant to the federal Solid Waste Disposal Act, as amended.
- par. 9 It is the determination of the Secretary of State that the Department of Natural Resources has not exceeded its statutory authority by adopting this rule.
- par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 12 The Department of Natural Resources claims this rule is "to prevent substantial harm to the public interest."

par. 13 The DNR states the following:

Changes made in federal hazardous waste regulations on August 25, 1985 have not been adopted by the State within the one-year time limit established by 40 C.F.R. §271-21(e)(1)(iii). The emergency rule, which incorporates those changes, is necessary in order to prevent further delay in complying with federal regulations that could result in a loss of State primacy over the administration of federal hazardous waste management regulations.

par. 14 As stated in ERD 1-86 par. 19 and 20, such economic factors are sufficient to justify emergency filing.

par. 16 The Secretary of State determines that the Department of Natural Resources has demonstrated the need to make effective this proposal.

par. 17 It is the decision of the Secretary of State that this proposal by the Department of Natural Resources is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Natural Resources; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 18 This decision shall be cited as Emergency Rule Decision 21-86 or ERD 21-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Natural Resources, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Nov 7, 1986

Entered _____

ADMINISTRATIVE LAW DIVISION