



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

ARCH A. MOORE, JR.  
Governor

March 3, 1987

RONALD R. POTESTA  
Director

ROBERT K. PARSONS  
Deputy Director

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Hazardous Waste Management Regulations

The attached legislative rule constitutes the official rule approved by the West Virginia Department of Natural Resources on 3rd day of March, 1987 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

A handwritten signature in cursive script, appearing to read "R.R. Potesta", written over a horizontal line.

Ronald R. Potesta  
Director

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

Re: Filing of Approved Rules  
(Hazardous Waste Management  
Regulations, Series 35) by the  
Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of approved amendments to the legislative rules of the Department of Natural Resources.

If you have any questions, please contact Mr. Ron Shipley, Special Assistant to the Director, at 348-2761.

Sincerely,

Ronald R. Potesta  
Director

RRP/jhb

Enclosures

cc: Legislative Rule-Making Review Committee  
State Hazardous Waste Management Agencies

FILED  
MAR - 3 PM 2:30  
SECRET

DATE: March 3, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

LEGISLATIVE RULE TITLE: Hazardous Waste Management Regulations

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 5E, Section 6

2. a. Date filed in State Register with Notice of Hearing:

January 7, 1987

b. What other notice, including advertising, did you give of the public hearing?

An official Department News Release was sent to all West Virginia newspapers and radio and television stations.

c. Date(s) of hearing(s): February 9, 1987

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached   X   No comments received       

Comments received, amendments, and reasons for amendments appear in the Response to Comments filed with the agency-approved proposed Legislative Rule.

e. Date you filed in State Register the agency-approved proposed Legislative Rule following public hearing:

March 3, 1987

f. Name and phone number of agency person to contact for additional information:

Mr. Ron Shipley  
Special Assistant to the Director  
348-2761

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

NOT APPLICABLE

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing: \_\_\_\_\_

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

PREAMBLE TO APPROVED LEGISLATIVE RULES  
HAZARDOUS WASTE MANAGEMENT REGULATIONS

Program: Hazardous Waste Management

Regulations: West Virginia Administrative Regulations, Department of Natural Resources, Hazardous Waste Management Regulations, Series 35

Authority: West Virginia Code, Chapter 20, Article 5E, Section 6

Action: Approval of rules and response to comments

Summary: The Department of Natural Resources (DNR) is adopting regulations designed to be consistent and equivalent with the regulations of the United States Environmental Protection Agency (EPA). The Department proposed these regulations on January 7, 1987. The proposed changes primarily contained regulations comparable to the non-HSWA "Cluster 2" regulations. Cluster 2 regulations contain all RCRA regulations promulgated between July 1, 1985 and June 30, 1986. These regulations must be adopted by the State for the West Virginia hazardous waste program by June 30, 1987. In addition to the Cluster 2 regulations, the Department also proposed to adopt regulations governing the requirements of small quantity generators, as well as other miscellaneous changes.

Contact: Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, Room 842, 1800 Washington Street, East, Charleston, WV 25305, telephone (304) 348-2761.

Supplemental Information: The proposed regulations elicited comments from five commenters. Most comments centered around (1) typographical changes, (2) issues of identity or equivalency with the federal rules, or (3) the impact of the proposed rules upon a particular facility. The Department appreciates receiving all of the comments and responds to the substantive comments as follows:

Section 3.4.2 Listing of Hazardous Waste from Nonspecific Sources

The Department received two comments concerning this section. One dealt with our inadvertently not specifying industrial sources which were previously specified as (3) and (4). We have reinserted those two industrial sources. The second comment dealt with specifying the effective date of the proposed changes. The commenter noted that we were specifying the effective date for waste K061 rather than K062. We have corrected this effective date provision by not only specifying the waste as K062 but also by moving the effective date provision for this listed waste to Section 3.4.3.

Section 3.4.3 Hazardous Waste from Specific Sources

Two comments were also received concerning this section. Both dealt with the proper wording of the industry designated in this listing.

The first comment suggested that the Department use the disjunctive word "or" rather than the word "and" in describing the "iron and steel" industry. The second comment informed the Department that the EPA corrected this listing in a September 22, 1986 rulemaking designed to restrict the listing to wastes generated only by manufacturing facilities in SIC groups 331 and 332. This commenter suggested that we adopt the later EPA rule. We have adopted this latter suggestion and therefore did not need to adopt the former suggestion.

#### Section 3.4.4.f (Listing of Discarded Toxic Chemical Products, etc.)

One commenter pointed out that the reference to section 10.1.a should be to 10.2.1. We made this change.

#### Section 6.1.a.1 Purpose, Scope and Applicability of Generator Standards

One commenter suggested that the reference to Section 10.1 in this subsection was inappropriate because it was not broad enough to cover exemptions in other subsections of Section 10.

Section 6.1.a.1 deals with generators who produce more than 100 kilograms of hazardous waste per month. The only subsection of Section 10 which needs to be referenced is Section 10.1. Section 10.2 deals with generators who produce less than 100 kilograms of hazardous waste per month.

#### Section 8.1.5 Purpose and Scope of TSD Facility Standards

One commenter pointed out that not all of the requirements of newly added Section 10 or existing Section 3.1.5 would be applicable to generators accumulating hazardous waste and therefore urged that we include the word "applicable" in this subsection. Although we did not check this claim, we do not intend that inapplicable provisions be applicable to such generators; thus we adopted this suggestion.

#### Section 8.6.3.a.2 Closure Plan; Approval by the Chief

Two comments were received by the Department on this provision. The first comment suggested that the language used was redundant since both the initial language of the provision and the last clause of that provision stated that it applied "until closure is completed and certified." We concurred and deleted the clause at the end of the sentence.

The second comment pointed out that the Department did not include the first sentence of the federal regulation requiring the Regional Administrator (Chief) to "insure that the approved closure plan is consistent" with specified sections of the regulations.

The Department intentionally left out that language when we proposed the rule reasoning that the statutory provision of §20-5E-8(a) of the West Virginia Code confers the same responsibility on the Chief. That section of the Hazardous Waste Management Act (HWMA) states:

No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the chief for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the chief may direct if the application, together with all supporting information and data and other evidence establishes that the construction, modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules and regulations promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the chief shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of section seven of this article, and which need not be regulated in order for the chief to perform his duties under this article. (emphasis supplied)

Based on the comment we reviewed our decision and have decided to add similar language designed to be identical with the federal language. Several issues are involved in this decision. They center around why the language is needed and how the Chief's responsibility coincides with other agency responsibilities alluded to in the proviso to §20-5E-8(a) of the West Virginia Code.

In order for the State to operate the hazardous waste management program in lieu of the federal program, we must adopt statutory or regulatory provisions which are consistent and equivalent to the federal program. The federal hazardous waste management statute, RCRA, vests the permitting and enforcement authority in the Administrator of the United States Environmental Protection Agency. The Administrator has, in turn, delegated responsibility for specific activities to the various EPA Regional Administrators (RA) across the country. Thus it is sometimes necessary for the Administrator to direct the RAs on the manner in which they should exercise the powers which have been delegated to them.

The West Virginia statute is different. Authority to operate the hazardous waste management program was not concentrated in a single individual or agency. The Department of Natural Resources was designated as the lead agency for the program and its Director was given the responsibility to promulgate regulations. Other agencies and individuals, however, were granted rulemaking authority for their agencies as well as permitting authority. For example, the Chief of the Division of Water Resources was granted authority to issue permits to hazardous waste treatment, storage, and disposal facilities as quoted above.

The Director's rulemaking authority includes, among other things, establishing standards for the operation of treatment, storage, and disposal facilities; compliance with the permitting provisions of Section 8 of Article 5E; and procedures and requirements for the submission and approval of a closure plan applicable to owners and operators of treatment, storage, and disposal facilities. The Director also has authority to promulgate rules and regulations "specifying the terms and conditions under which the Chief shall issue, modify, suspend, revoke or deny permits required by this article." Consequently, although the Chief has authority to issue permits, the Director has the authority to specify conditions which will be in those permits provided he establishes those conditions through the rulemaking process which allows for public comment.

Thus the HWMA delegates authority differently than the federal statute and fixes the Chief's responsibility to issue permits only if they are in compliance with the HWMA and the Director's regulations. Consequently, a state regulation which corresponds to the federal language may not be necessary since the Legislature has already accomplished the delegation contained in the federal regulation.

The federal rule, however, requires that an RA's approval of the closure plan ensure compliance with performance standards in regulations which, under the West Virginia regulatory scheme, are promulgated by agencies other than the DNR. For example, 40 C.F.R. §264.351 relates to closure of incinerators -- an area regulated by the West Virginia Air Pollution Control Commission (WVAPCC). In addition, ensuring compliance with the provisions of 40 C.F.R. §264.90 et seq. brings into play the groundwater protection standards of the Water Resources Board. It is therefore necessary for the Director to be specific as to the regulations which the Chief must consider when granting closure approval.

Including such a provision raises other questions concerning the overlap of authority between the several different agencies. While enacting a regulatory scheme involving five State agencies, the Legislature included admonitions to the various agencies that they should "avoid duplication" to the maximum extent practicable and, in this specific section, a direct prohibition against the Chief issuing permits regulating those aspects of hazardous waste treatment, storage and disposal facilities "which are the subject of the permitting or licensing requirements" of other agencies.

The groundwater protection standards of the Water Resources Board are not subject to permitting and licensing by the Board, since the Board does not have permitting authority. Rather these standards are made applicable to TSD facilities through permitting by the Chief. The closure provisions contained in 40 C.F.R. §264.351, however, are different since they pertain to incinerators which are permitted by the WVAPCC (See West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01). However, the WVAPCC does not review closure plans for the incinerators; the DNR carries out this program function.



Thus, we have adopted the suggestion and, for clarity and completeness, have included a reference to all state provisions paralleling this federal provision.

#### Section 8.6.3.c.3 Permit Modifications for Closure Plans

One commenter pointed out that the Department misplaced the phrase "waste piles" in the middle of the section and also sought clarifying language concerning submission of an amended closure plan. We have adopted the suggested clarification. The phrase waste pile, however, is correct in this section and we offer the following explanation of its retention.

This section is designed to parallel 40 C.F.R. §264.112(c)(3) which deals with unexpected events impacting on the closures of all TSD facilities. It also contains specific provisions relating to both surface impoundments and waste piles.

#### Sections 8.6.4.b And 8.6.4.c (Time of Closure)

The proposed regulations add the word "hazardous" to this section so that a facility must close within one hundred and eighty days of the final receipt of hazardous waste rather than one hundred and eighty days after the final receipt of waste. EPA considers this change to be a clarification of an existing regulation rather than a substantive change of any requirement.

Three commenters made suggestions regarding this section. One commenter informed the Department that the change to this provision would severely impact the operation of its publicly owned treatment works (POTW). Currently, this commenter sends sludge from its POTW to a surface impoundment that does not plan to receive hazardous waste after October 30, 1988. Thus, the proposed rule would make it emphatically clear that the surface impoundment could not remain open to receive its non-hazardous sludge.

Another commenter suggested that the DNR delay rulemaking on this issue since the parallel EPA regulatory provision (40 C.F.R. §264.113) is being appealed to the United States Circuit Court of Appeals and settlement negotiations are underway.

Finally, the owner of the surface impoundment impacted by this regulation urged that the Department allow its facility to remain open to receive wastes by placing specific operating and closure requirements on the facility.

The EPA's rationale for adopting its clarifying rule was based on several points. First, they considered the change to be merely a clarification since the closure rule adopted a two-step process that called for removal or disposal of all hazardous waste from the facility within 90 days after receipt of hazardous waste and compliance with the closure performance standards within 180 days. In essence, the reference made to waste rather than hazardous waste in the 180 day

provision was inadvertent and should have been construed to mean hazardous waste. Thus, such clarification was made merely for consistency.

Second, the EPA claims that this nonsubstantive change is consistent with the "two-part 'prevention and care' system whose goal is to minimize formation of leachate and migration of leachate to the adjacent subsurface soil, ground water, or surface water."

Under the EPA regulatory scheme the goal of minimizing the formation and migration of leachate is achieved through performance standards for a surface impoundment which include the use of a liner, the removal or solidification of the hazardous waste and the placement of a final cover (cap) on top of the surface impoundment to minimize percolation of liquids such as rainwater into the unit. This cap, in the EPA's opinion, will also: (a) prevent the filling of the unit with leachate and overflowing; (b) protect surface water from runoff, and (c) discourage direct access to the hazardous waste.

Finally, the EPA claims that placement of the cap will reduce leachate generation in the case of units which do not contain liners, and that, since even lined units will "eventually leak," the cap is "critical for the long term control of the unit." The EPA also notes that it is often not known whether the unit is leaking until it is detected by groundwater monitoring and, therefore, the cap should be applied as soon as possible.

It is axiomatic that in order for a state to retain authorization, its hazardous waste management program must be consistent, equivalent, and no less stringent than the federal program. Consistency of programs is judged by the provisions of 40 C.F.R. §270.4. Equivalency of the state and federal programs is judged by the state's Attorney General and EPA by comparing specific provisions of the programs. However, no principles have been established concerning how to determine whether a state's program, which adopts provisions similar to the federal requirements, is equivalent to the federal provision.

Deciding whether a state regulatory provision is no less stringent than its federal counterpart is also a judgment made by EPA which does not have any guiding principles except to recognize that state exemptions to federal requirements cannot be mandatory; rather, they must be discretionarily given by the state authority.

Thus, in deciding upon approved regulations, the Department must consider not only the comments received but also this scheme of federal-state relationships.

The Department recognizes the dilemma faced by the owner and users of this necessary facility. We have adopted a new Section 8.6.4.c which places stringent provisions on any surface impoundment which continues to remain open to receive wastes after its final receipt of hazardous wastes.

In our opinion, the Department's approved regulation is consistent, equivalent and no less stringent than the federal provision even though it allows the surface impoundment to remain open after receipt of the final volume of hazardous waste. The Department is hopeful that the state Office of the Attorney General and the EPA will judge equivalency and stringency in a manner which considers the environmental and health protections achieved by both programs rather than an analysis which merely considers that the State program allows the facility to remain in operation.

The rule that is being approved today will allow a hazardous waste surface impoundment which ceases to receive hazardous waste prior to November 8, 1988 to remain in operation after final receipt of hazardous waste if six conditions are met. The Department is placing this time limitation on the variance for several reasons. The variance is a mechanism to address a change in the regulations. Owners and operators, however, must not be given an unlimited amount of time to make adjustments to their waste disposal practices. Secondly, by selecting a date of November 8, 1988 we are limiting this variance to facilities which are or could be in "interim status" (i.e. facilities which, by virtue of their existence prior to enactment of the law, are not required to be in compliance with the full requirements of the law). In this way facilities which are caught in the transition period are not unduly disrupted, provided the Department is assured that the facility will not harm health and environmental concerns. This philosophy is consistent with the federal program.

The first condition is that the facility will close, in accordance with an approved closure plan, within 180 days after final receipt of its last volume of waste. Other than applying this provision to the receipt of waste, this language is identical to the EPA provision which relates to final receipt of hazardous waste.

Second, the owner or operator of the surface impoundment must have a valid hazardous waste permit for the unit which requires compliance with all applicable State regulatory provisions as though it were an operating hazardous waste surface impoundment. This requirement makes the provisions of the State's current program applicable to such unit even though it is no longer receiving hazardous waste. The State's current operating standards are more stringent than the EPA program in many ways, especially as the program protects against off-site migration of groundwater.

The State program establishes a groundwater protection standard which triggers corrective action to prevent migration of groundwater whenever a "statistically significant increase" of a hazardous constituent is discovered in the groundwater. The EPA program, on the other hand, allows the EPA to specify "alternate concentration limits" which could allow contamination of the groundwater and still not require corrective action. Thus the State program requires that corrective action designed to prevent migration of contaminated groundwater must always be taken whenever a "statistically significant increase" is detected. Considered together, the first two requirements mean that the State

program will require more stringent groundwater protection standards for a longer period of time at the unit than the EPA program requires.

The third condition which the facility must meet is that the owner or operator must institute procedures to minimize the amount of head created by any liquid in the surface impoundment. When considered together with permit requirements concerning maintenance of adequate freeboard to prevent overtopping, these provisions will also prevent overflow and minimize the pressure which may force liquid out of the unit and into the groundwater.

The fourth and fifth conditions are modeled after the conditions for receiving a variance from the minimum technology requirements imposed by the federal Hazardous and Solid Waste Amendments of 1984 (HSWA). The State is adopting these requirements to reflect its concerns for the same values and to implement the same kinds of protections for a surface impoundment as Congress directed the federal program to implement for operating surface impoundments disposing of hazardous waste.

Ensuring that the facility is actually in compliance with all applicable groundwater monitoring requirements generally applicable to this facility means that the unit will have in place an adequate system for detecting whether the impoundment is leaking. This creates an additional incentive for the owner or operator to operate the facility in compliance with critical provisions of the program.

The fifth condition is that the surface impoundment is located at least one-quarter mile from an underground source of drinking water as that term is defined in the federal Safe Drinking Water Act. This provision helps to ensure that if a leak occurs it will not immediately affect the source of drinking water.

The sixth condition is that the owner or operator must make a demonstration to the Chief sufficient to show that no adverse impact to human health or to the environment will result from the continued operation, closure, and post closure periods for the facility. Such a demonstration requires the same elements as the EPA would require for a facility to be exempt from corrective action (i.e. to receive an alternate concentration limit). In this manner the Department places into effect an extra layer of protection. Under the Department's policy corrective action must be taken to keep the leak from migrating off-site. This sixth condition, however requires that the Chief agree that the unit is in a location where even if off-site migration did occur, such migration would not be harmful.

As an alternative to this demonstration, the owner or operator could demonstrate that the unit has a synthetic liner which does not show evidence of leaking or the owner or operator can make a demonstration that the unit has design and operating procedures which, together with its location characteristics, will prevent the migration of hazardous constituents into the groundwater or surface water beyond the point of compliance. This is the same demonstration that the HSWA would allow a

facility to make to be exempted from the double liner requirements. The Department is allowing this condition as an alternative for the sixth condition because it is directed at the same goal as the sixth condition -- preventing impact from a leaking surface impoundment.

We believe that these six conditions implement provisions that are equivalent to and no less stringent than the EPA's requirements for the closure of a hazardous waste surface impoundment.

Allowing the unit to remain open as a waste management unit regulated by the Hazardous Waste Management Act means that the unit will be governed by the State's more stringent program for a period of time which is longer than the coverage that the unit will receive under the less stringent federal program. For example, if the facility ceases to receive hazardous waste under the federal program, it would be covered by the federal program for thirty years under the post-closure care period. Under the State's scheme, a facility which remained open to receive waste would be covered for the entire time it received waste and then for the thirty year post-closure care period. Due to the relatively slow rates of lateral migration in groundwater, this extra time may be significant for detecting leakage from the unit.

Not only is the regulatory time lengthened for the facility but the facility will also be subjected to the same provisions as an operating unit, rather than as a closed unit. This means that the facility will be subjected to more stringent regulations than a closed unit as well as more frequent inspections and attention.

Comparing the State's regulatory scenario with the federal "prevention and care" regulatory scenario discussed by the EPA in its preamble is difficult since the federal regulatory scenario does not apply to "interim status" units. Indeed the federal program allows "interim status" hazardous waste management units to close without either the liners or the leachate collection system which the EPA discussed as a part of their regulatory scenario. In addition, the cap for interim status facilities does not need to meet as stringent requirements as the final cover which the State program will require.

The State variance process is not mandatorily applied. The Chief can reject the request for the variance if the owner's or operator's demonstration does not convince the Chief that the continued operation of the unit will not have an "adverse impact to human health and the environment." This is the same demonstration that EPA requires to allow a leaking facility to continue operation without corrective action. The State program, of course, would not allow a leaking facility to continue without corrective action. Rather, the demonstration is used by the State as a test to ensure that the unit is located in an area where harm could not occur to human health or the environment if a leak did occur, rather than a test occurring after a leak has occurred. Furthermore, it is only one basis for allowing continued operation of the unit as a waste disposal unit.

If the owner or operator chooses to seek a variance from the time of

closure rule based on the liner requirement, the Chief must also review the documentation and approve it before the variance is granted. We should note that an owner or operator seeking the variance on these grounds must meet the same requirements as a facility seeking a variance from the "minimum technology requirements" under the HSWA and thus could remain open to receive hazardous waste under the federal program without installing a double liner.

#### Section 9.4.1.b.2 Hazardous Wastes Burned for Energy Recovery

One commenter pointed out that the exemption contained in this section is intended to apply only to "conditionally exempt" small quantity generators and therefore suggested that we add that phrase into this provision. We have done so.

#### Section 10.2.7 Small Quantity Generator Exclusion From Regulation

One commenter questioned the scope of the phrase "manufacturing facilities" in the parenthetical comment contained in this section. We have included a reference to the SIC Manual for clarity.

#### Section 15.1.b Notification of Transfer of Property Containing Hazardous Waste

One commenter urged that we retain this provision since it was the only place where the State required such notice. After analysis we decided to keep this provision rather than delete it as originally proposed.

#### Section 15.4.c.1 Ability to Remove Notation on Deed

A commenter urged us to not allow removal of the notation in the deed that hazardous waste was disposed of at the site, even if the hazardous waste was properly removed. We have deleted that ability so that the only option is for the owner or operator to add the notation that hazardous wastes have been removed from this site. In that way all future owners can be notified that hazardous waste was disposed of at that site at some point in time.

Section 2. Definitions (Definitions of "active life", "final closure", "hazardous waste management unit", "partial closures", and "small quantity generator" were added or amended effective May 1, 1987.)

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

"Active life" of a facility means the period from the initial receipt of a hazardous waste at the facility until the Chief receives certification of final closure.

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

\* \* \* \* \*

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

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Section 8 of these regulations and 40 C.F.R. Part 265 are no longer conducted at the facility unless subject to the provisions in Section 6.3.5 of these regulations.

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

\* \* \* \* \*

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

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank (including its associated piping and underlying containment system), and a container storage area. A container alone does not constitute a unit; a unit includes containers and the land or pad upon which they are placed.

"Flash point" means the minimum temperature at which a liquid or solid gives off sufficient vapor to form an ignitable vapor-air mixture near

the surface of the liquid or solid. An ignitable mixture is one that, when ignited, is capable of the initiation and propagation of flame away from the source of ignition. Propagation of flame means the spread of the flame from layer to layer independent of the source of ignition;

\* \* \* \* \*

"Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of these regulations a hazardous waste management unit in accordance with the applicable closure requirements of Section 8 of these regulations and 40 C.F.R. Part 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment system), a landfill cell, a surface impoundment, a waste pile, or other hazardous waste management unit while other units of the same facility continue to operate.

\* \* \* \* \*

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

"Small quantity generator" means a generator who generates less than one thousand (1000) kilograms of hazardous wastes in a calendar month.

"State act" means the Hazardous Waste Management Act, W. Va. Code §20-5E-1, et seq.

\* \* \* \* \*

### Section 3. Identification and Listing of Hazardous Waste

\* \* \* \* \*

#### 3.1.4 Special Requirements for Hazardous Waste Generated by Small Quantity Generators (Reserved effective May 1, 1987)

3.1.4a-A generator is a small quantity generator in a calendar month if he generates less than 4000 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 paragraph (g) and, if applicable, (j) of this section.

3.1.4c-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



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subject to the requirements of Sections 3.4.5(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.

3.4.4d-In determining the quantity of hazardous waste he generates, a generator need not include:

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

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

3.4.4e-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:

3.4.4.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);

3.4.4.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 clean-up 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);

3.4.4f-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 these 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.

3.4.4g-In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

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

3.4.4.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.-Nonmanufacturing-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-federal-code;

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-nonhazardous-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-3.1.4e 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:

3.4.4.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;

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

3.4.4.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);

3.4.4.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);

3.4.4.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

3.4.4.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);

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

3.4.4.j.3-The-recordkeeping-requirements-of-Section-6.4.1(a),--(e),--and (d)--and-6.4.4;--and

3.4.4.j.4-The-special-conditions-of-Section-6.5.

\* \* \* \* \*

### 3.2.2 Criteria for Listing Hazardous Waste

3.2.2.c The Director will use the criteria for listing, specified in this section, to establish the exclusion limits referred to in 3.4.4e Section 10.2.3 of these regulations.

\* \* \* \* \*

### 3.4 Lists of Hazardous Wastes

\* \* \* \* \*

3.4.1.d The following hazardous wastes listed in Section 3.4.2 or 3.4.3 of these regulations are subject to the exclusion limits for acutely hazardous wastes established in Section-3.4.4 Section 10.2.5 of these regulations: (Reserved)

\* \* \* \* \*

3.4.2 Hazardous Waste from Nonspecific Sources (F006 amended effective May 1, 1987)

<u>Hazardous Waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
----------------------------	------------------------	--------------------

F006 . . . . .	Wastewater treatment sludges from electroplating operations except from the following processes: (1) <u>sulfuric acid anodizing of aluminum</u> ; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)
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\* \* \* \* \*

3.4.3 Hazardous Waste from Specific Sources (K062 amended effective May 1, 1987)

<u>Hazardous Waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
----------------------------	------------------------	--------------------

\* \* \* \* \*

K061 . . . . .	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K062 . . . . .	Spent pickle liquor <del>from</del> generated by steel finishing operations <u>of facilities within the iron and steel industry (SIC Groups 331 and 332)</u>	(C,T)

\* \* \* \* \*

3.4.4.e The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Sections 3.4.4.a through 3.4.4.d of these regulations, are identified as acute hazardous wastes (H) and are subject to be the small quantity exclusion defined in ~~3.04.04(a)~~ Section 10.2.5 of these regulations.

\* \* \* \* \*

3.4.4.f The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Sections 3.4.4.a through 3.4.4.d of these regulations,

are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ~~Section--3.4.4~~ Section 10.2.1 of these regulations.

\* \* \* \* \*

#### Section 4. Notification of Hazardous Waste Activity Regulations

##### 4.2 Notification

4.2.c Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in ~~3.4.4-and-3.4.5~~ Sections 3.1.5 and 10 of these regulations shall notify the Chief in writing of their hazardous waste activities within ninety (90) days of the effective date of these regulations or the date of initiation of such activities, whichever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

\* \* \* \* \*

#### Section 5. Standards Applicable to Transporters of Hazardous Waste by Air or Water or Both (Repromulgated effective May 1, 1987)

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

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

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

##### 6.1 Purpose, Scope, and Applicability (Section 6.1.a.1 amended effective May 1, 1987)

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

6.1.a.1 Generators that generate more than 4000 one hundred (100) 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 ~~3.4.4.e~~ Section 10.1.5 of these regulations are subject to all sections of these regulations, except as otherwise provided in Sections 6 and 10.1 of these regulations.

~~6.1.a.2-Small-quantity-generators-that-generate-between--400--and--4000 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--3.4.4(j)--of--these~~

regulations.

\* \* \* \* \*

6.3.5 Accumulation Time (Section 6.3.5.b amended effective May 1, 1987)

\* \* \* \* \*

6.3.5.b A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the applicable requirements of Sections 4, 8, and 12 of these regulations, the permit requirements of Section 11 of these regulations and 40 C.F.R. Part 265 unless he has been granted an extension to the ninety (90) day period. Such an extension may be granted by the ~~Director~~ Chief if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the ~~Director~~ Chief on a case-by-case basis. Before the end of ninety (90) days, or any extension period granted by the ~~Director~~ Chief (not to exceed thirty days), the generator must either transport all such hazardous waste off-site to a designated facility, or, if held on-site for more than ninety (90) days, place such hazardous waste in an on-site facility that is either permitted under Section 11 of these regulations or under 40 C.F.R. Part 270 or which has interim status or which is authorized to manage hazardous waste by a state with a hazardous waste program approved by EPA.

\* \* \* \* \*

Section 8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

8.1 General, Purpose, Scope and Applicability

\* \* \* \* \*

8.1.5.b A generator accumulating waste on site in compliance with Section 6.3.5 of these regulations provided the applicable requirements of Sections 3.1.4 and 3.1.5 of these regulations are complied with.

\* \* \* \* \*

8.5.7 Unmanifested Waste Report

If a facility accepts for treatment, storage or disposal any hazardous waste from an off-site source without an accompanying manifest or shipping paper and if the waste is not excluded from the manifest requirement by ~~Section 3.1.4~~ Section 10 of these regulations, then the owner or operator shall prepare and submit a single copy of a report to the Chief within fifteen (15) days after receiving the waste, on a form prescribed by the Chief. The report must be designated "Unmanifested Waste Report" and shall include the following information:

\* \* \* \* \*

## 8.6 Closure and Post-Closure (Amended effective May 1, 1987)

### 8.6.1 Applicability

Except as Section 8.1 of these regulations provides otherwise:

8.6.1.a Sections 8.6.2, 8.6.8, 15.4 and 15.3 Sections 8.6.2 through 8.6.6, 15.3, and 15.4 of these regulations (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

8.6.1.b Sections 8.6.2, 8.6.8, 15.4 and 15.3 Sections 8.6.7 through 8.6.9, 15.3, and 15.4 of these regulations (which concern post-closure care) apply to the owners and operators of: (1) all hazardous waste disposal facilities; and (2) waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Sections 8.9.7 and 8.10.9 of these regulations.

### 8.6.2 Closure Performance Standard

The owner or operator must close the facility in a manner that:

8.6.2.a Minimizes the need for further maintenance;

8.6.2.b Controls, minimizes or eliminates, to the extent necessary to prevent threats to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall runoff, or hazardous waste decomposition products to the State waters or to the atmosphere; and

8.6.2.c Complies with the closure requirements of this Section 8.6.2 of these regulations including, but not limited to, the requirements of Sections 8.7.10, 8.8.5, 8.9.7, 8.10.9, 8.11.11, and 8.12.11 of these regulations and West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01.

### 8.6.3 Closure Plan; Amendment of Plan

~~8.6.3.a The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with Part B of the permit application in accordance with Section 11.5.4 of these regulations, and become a condition of the permit. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:~~

~~8.6.3.a.4 A description of how and when the facility will be partially~~

closed,--if--applicable,--and--finally--closed,---The--description--must identify--the--maximum--extent--of--the--operation--which--will--be--unclosed during--the--life--of--the--facility,--and--how--the--applicable--requirements--of this--section--will--be--met;

8.6.3.a.2-An-estimate-of-the-maximum-inventory-of-wastes-in-storage-and treatment-at-any-time-during-the-life-of-the-facility;

8.6.3.a.3-A-Description-of-the-steps-needed-to--decontaminate--facility equipment-during-closure;

8.6.3.a.4-An-estimate-of-the-expected-year-of-closure--and--a--schedule for--final-closure,---The--schedule--must--include,--at--a--minimum,--the--total time--required--to--close--the--facility--and--the--time--required--for intervening--closure--activities--which--will--allow--tracking--of--the progress--of--closure,---(Comment:---For--example,--in--the--case--of--a landfill,--estimates--of--the--time--required--to--treat--and--dispose--of--all waste--inventory--and--of--the--time--required--to--place--a--final--cover--must--be included);

8.6.3.a.5-And-must-satisfy--the--applicable--requirements--of--Sections 8.6.2,--8.6.4,--8.6.6,--8.7.10,--8.8.5,--8.9.7,--8.9.10,--8.10.9,--8.11.11, 8.12.11-and-Air-Pollution-Control-Regulation-XXV,--Section-24.

8.6.3.b-The-owner-or-operator-may-amend-the-closure-plan--at--any--time during--the--active--life--of--the--facility,---(The-active-life-of-the facility-is-that-period-during-which-waste-are-periodically--received.) The-owner-or-operator-must-amend-the-plan-when-ever-changes-in-operating plans--or--facility-design-affect-the-closure-plan,--or--when-ever-there-is a-change-in-the-expected-year-of-closure,---When-the-owner--or--operator requests-a-permit-modification-to-authorize-a-change-in-operating-plans or--facility-design,--a-modification-of-the-closure-plan-must-be-made-at the-same-time,--If-a-permit-modification-is-not-needed-to-authorize-the change--in--operating--plans--or--facility--design,--the--request--for modification--of--the--closure-plan-must-be-made-within-sixty-(60)-days after-the-change-in-operating-plans-or-facility-design-occurs.

8.6.3.c-The-owner-or-operator-must-notify-the-Chief-at-least--180--days prior-to-the-expected-closure-date.

8.6.3.d-All-closure-plans-must-be-approved-by-the-Chief--based--on--the determination--of--compliance--with--the--applicable--requirements--of Sections-8.6.2,--8.6.4,--8.6.6,--8.7.10,--8.8.5,--8.9.7,--8.9.10,--8.10.9 8.11.11,--8.12.11-and-Air-Pollution-Control-Regulation-XXV,--Section-24. Upon-approval,--the--closure--plan--shall--become--a--condition--of--the Hazardous-Waste-Management-Permit.

#### 8.6.3.a Written Plan.

8.6.3.a.1 The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are



required by Section 8.9.7.c of these regulations to have a contingent closure plan. The plan must be submitted with Part B of the permit application in accordance with Section 11.5.1 of these regulations and approved by the Chief as part of the permit issuance procedures under Section 11 of these regulations and will become a condition of the permit.

8.6.3.a.2 The Chief's approval of the plan must ensure that the approved closure plan is consistent with Sections 8.6.2 through 8.6.6 of these regulations, the applicable requirements of Sections 8.7.10, 8.8.5, 8.9.7, 8.9.10, 8.10.9, 8.11.11, 8.12.11, 8.13, and 13 of these regulations, and the requirements of West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01. Until final closure is completed and certified, a copy of the approved plan and all revisions of the plan must be furnished to the Chief upon request (including request by mail).

8.6.3.b Content of Plan. The plan must identify steps necessary to perform partial or final closure, or both, of the facility at any point during its active life. The closure plan must include at least:

8.6.3.b.1 A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 8.6.2 of these regulations; and

8.6.3.b.2 A description of how final closure of the facility will be conducted in accordance with Section 8.6.2 of these regulations. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

8.6.3.b.3 An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes and identification of the type(s) of the off site hazardous waste management units to be used, if applicable; and

8.6.3.b.4 A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards; and

8.6.3.b.5 A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards including, but not limited to, groundwater monitoring, leachate collection, and run-on and runoff control; and

8.6.3.b.6 A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and the time required to place a final cover must be included.

8.6.3.b.7 For facilities that use trust funds to establish financial assurance under Section 13 of these regulations, and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

8.6.3.c Amendment of Plan. The owner or operator must submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Section 11 of these regulations. The written request must include a copy of the amended closure plan for approval by the Chief.

8.6.3.c.1 The owner or operator may submit a written request to the Chief for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

8.6.3.c.2 The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

8.6.3.c.2.A Changes in operating plans or facility design affect the closure plan, or

8.6.3.c.2.B There is a change in the expected year of closure, if applicable, or

8.6.3.c.2.C In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

8.6.3.c.3.A The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan.

8.6.3.c.3.B If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than thirty (30) days after the unexpected event.

8.6.3.c.3.C An owner or operator of a surface impoundment who intends to remove all hazardous waste at closure and who is not otherwise required to prepare a contingent closure plan under Section 8.9.7.c of these regulations must submit an amended closure plan to the Chief no

later than sixty (60) days from the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 8.11.11 of these regulations, or no later than thirty (30) days from that date if the determination is made during partial or final closure.

8.6.3.c.3.D The owner or operator of a waste pile who intends to remove all hazardous waste at closure must submit an amended closure plan to the Chief no later than sixty (60) days from the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 8.11.11 of these regulations, or no later than thirty (30) days from that date if the determination is made during partial or final closure.

8.6.3.c.3.E The Chief will approve, disapprove, or modify the amended plan in accordance with the procedures in Section 11 of these regulations. In accordance with Section 11.5.1 of these regulations, the approved closure plan will become a condition of any permit issued.

8.6.3.c.4 The Chief may request modifications to the plan under the conditions described in Section 8.6.3.c.2 of these regulations. The owner or operator must submit the modified plan within sixty (60) days of the Chief's request, or within thirty (30) days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Chief will be approved in accordance with the procedures in Section 11 of these regulations.

8.6.3.d Notification of Partial Closure and Final Closure:

8.6.3.d.1 The owner or operator must notify the Chief in writing at least sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, a waste pile, or a land treatment or landfill unit or the final closure of a facility with such a unit. The owner or operator must notify the Chief in writing at least forty-five (45) days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

8.6.3.d.2 The date when he "expects to begin closure" must be either no later than thirty (30) days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one (1) year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Chief that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that he has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Chief may approve an extension to this one-year limit.

8.6.3.d.3 If the facility's permit is terminated, or if the facility is otherwise ordered by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of Section 8.6.3.d of these regulations do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in Section 8.6.4 of these regulations.

8.6.3.e Removal of Wastes and Decontamination or Dismantling of Equipment. Nothing in Section 8.6.3 of these regulations shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

#### 8.6.4 Closure; Time Allowed for Closure

8.6.4.a Within ninety (90) days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the site unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Chief may approve a longer period if the owner or operator demonstrated--that complies with all applicable requirements for requesting a modification of the permit and demonstrates that:

8.6.4.a.1 The activities required to comply with this subsection will, of necessity, take longer than ninety (90) days to complete or

8.6.4.a.2.A The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and

8.6.4.a.2.B There is a reasonable likelihood that a person--other--than the owner or operator he or another person will recommence operation of the site hazardous waste management unit or the facility within one year and

8.6.4.a.2.C Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

8.6.4.a.3 He has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

~~8.6.4.a.2.b~~ 8.6.4.b The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within one hundred and eighty (180) days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The Chief may approve a longer closure period if the owner or operator an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

~~8.6.4.a.2.b.1~~ 8.6.4.b.1 The partial or final closure activities will,

of necessity, take longer than one hundred and eighty (180) days to complete or

~~8.6.4.a.2.b.4.iii.A~~ 8.6.4.b.2.A The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and

~~8.6.4.a.2.b.4.iii.B~~ 8.6.4.b.2.B There is reasonable likelihood that a person--other--than--the--owner--or--operator he or another person will recommence operation of the site hazardous waste management unit or facility within one year and

~~8.6.4.a.2.b.4.iii.C~~ 8.6.4.b.2.C Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

~~8.6.4.a.2.b.2~~ 8.6.4.b.3 He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive not operating hazardous waste management unit or facility including compliance with all applicable permit requirements.

8.6.4.c Notwithstanding the provisions of Section 8.6.4.b of these regulations, the owner or operator of a surface impoundment, used for disposal of hazardous waste, ceasing the receipt of hazardous waste prior to November 8, 1988 need not close the surface impoundment within one hundred and eighty (180) days after receiving the final volume of hazardous waste but may continue to receive waste provided that owner or operator can satisfy the Chief that the following requirements are or will be met:

8.6.4.c.1 The owner or operator of such surface impoundment will complete closure activities in accordance with the approved closure plan and within one hundred and eighty (180) days after receiving the final volume of waste at the surface impoundment. The Chief may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification of the permit and demonstrates that the closure activities will, of necessity, take longer than one hundred and eighty (180) days to complete;

8.6.4.c.2 The owner or operator has a valid hazardous waste management permit, with an approved closure plan under section 8.6.4.c of these regulations, for such facility requiring compliance with all applicable provisions of these regulations as though it were an operating hazardous waste surface impoundment;

8.6.4.c.3 The owner or operator institutes approved operating procedures designed to minimize the head created by any liquid in the surface impoundment.

8.6.4.c.4 The surface impoundment is in compliance with generally applicable groundwater monitoring requirements for facilities with permits at the time of initial receipt of waste until a permit is issued;

8.6.4.c.5 The surface impoundment is located more than one-quarter mile from an underground source of drinking water (as that term is defined in 40 C.F.R. §144.3); and

8.6.4.c.6 The owner or operator makes a demonstration which is approved by the Chief under Section 8.9.2.f.4.iv of these regulations; or

8.6.4.c.7 The surface impoundment contains a liner which is either:

8.6.4.c.7.A A synthetic liner for which there is no evidence of leakage; or

8.6.4.c.7.B A liner of compacted material at least three (3) feet thick with a permeability of no more than  $1 \times 10^{-7}$  centimeters per second; or

8.6.4.c.7.C If the owner or operator demonstrates to the Chief and the Chief finds for the surface impoundment that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water beyond the point of compliance at least as effectively as such liners.

8.6.4.d The demonstration referred to in Sections 8.6.4.a, 8.6.4.b, and 8.6.4.c.1 of these regulations must be made as follows:

8.6.4.d.1 The demonstrations in Section 8.6.4.a of these regulations must be made at least thirty (30) days prior to the expiration of the ninety-day period in Section 8.6.4.a of these regulations; and

8.6.4.d.2 The demonstration in Sections 8.6.4.b and 8.6.4.c.1 of these regulations must be made at least thirty (30) days prior to the expiration of the one hundred eighty-day period in Section 8.6.4.b of these regulations.

#### 8.6.5 Disposal or Decontamination of Equipment

When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues. During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated unless otherwise specified in Section 8.9.7, 8.10.9, 8.11.11, or 8.12.11 of these regulations. By removing any hazardous wastes or hazardous constituents during partial or final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Section 6 of these regulations.

#### 8.6.6 Certification of Closure

When closure is completed, the owner or operator must submit to the Chief certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

Within sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, and land treatment or landfill unit, and within sixty (60) days of the completion of final closure, the owner or operator must submit to the Chief by registered mail a certification that the hazardous waste management unit or facility has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Chief upon request until he releases the owner or operator from the financial assurance requirements for closure under Section 13 of these regulations.

#### 8.6.7 Post-Closure Care and Use of Property

8.6.7.a.1 Post-closure care must continue for thirty (30) years after the date of completing closure and must consist of at least the following: Post-closure care for each hazardous waste management unit subject to the requirements of Sections 8.6.7 through 8.6.9 and 15.4 of these regulations must begin after the completion of closure of the unit and continue for thirty (30) years after that date and must consist of at least the following:

8.6.7.a.1.A Groundwater monitoring and reporting as applicable.

8.6.7.a.1.B Maintenance of monitoring and waste containment systems as applicable.

8.6.7.a.1.C All applicable post-closure regulations of Sections 8.9, 8.10, 8.11, 8.12, and 8.13 of these regulations.

8.6.7.a.2.i During the 180-day period preceding closure or at any time thereafter, the Chief may reduce the post-closure care period to less than thirty (30) years if it is found that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure).

8.6.7.a.2.ii Prior to the time that the post-closure period is due to expire, the Chief may extend the post-closure care period if it is found that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

8.6.7.b The Chief may require, at closure, continuation of any of the security requirements of Section 8.2.5 during part or all of the post-closure period after the date of completing closure when access by the public or domestic livestock may pose a hazard to human health.

8.6.7.a.2 Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final

closure, or any time during the post-closure period for a particular unit, the Chief may, in accordance with the permit modification procedures in Section 11 of these regulations:

8.6.7.a.2.A Shorten the post-closure care period applicable to the hazardous waste management unit or facility if all disposal units have been closed if he finds that the reduced period is sufficient to protect human health and the environment. For example, leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure; or

8.6.7.a.2.B Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment. For example, leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment.

8.6.7.b The Chief may require at partial and final closure the continuation of any of the security requirements of Section 8.2.5 of these regulations during part or all of the post-closure period when:

8.6.7.b.1 Hazardous wastes may remain exposed after completion of partial or final closure; or

8.6.7.b.2 Access by the public or domestic livestock may pose a hazard to human health.

8.6.7.c Post-closure use of property on or in which hazardous wastes remain after closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the Chief finds that the disturbance:

8.6.7.c.1 Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

8.6.7.c.2 Is necessary to reduce a threat to human health or the environment.

8.6.7.d All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 8.6.8 of these regulations.

#### 8.6.8 Post-Closure Plan; Amendment of Plan

8.6.8.a The owner or operator of a disposal facility must have a written post-closure plan. The plan must be submitted with Part B of the permit application and approved by the Chief as a part of the permit issuance proceeding. The approved post-closure plan will become



a--condition-of-any-permit-issued,--A-copy-of-the-approved-plan-and-all revisions-must-be-kept-at-the--facility--until--the--post-closure--care period--begins,---This--plan-must-identify-the-activities-which-will-be carried-on-after-closure-and-the-frequency--of--these--activities,--and include-at-least:

8.6.8.a.1--A--description--of--the---planned---groundwater---monitoring activities-and-frequencies-at-which-they-will-be-performed.

8.6.8.a.2-A-description-of--the--planned--maintenance--activities,--and frequencies-at-which-they-will-be-performed,~to-ensure:

8.6.8.a.2.i--The--integrity--of--the--cap--and--final--cover--or--other containment-structures-where-applicable; and

8.6.8.a.2.ii-The-function-of-the-facility-monitoring-equipment.

8.6.8.a.3-The-name,-address,-and-phone-number-of-the-person--or--office to--contact-about-the-disposal-facility-during-the-post-closure-period. This-person-or-office-must-keep-an-updated-post-closure-plan-during-the post-closure-period.

8.6.8.b-The-owner-or-operator-may-amend-the-post-closure--plan--at--any time--during--the--active--life--of-the-disposal-facility-or-during-the post-closure-care-period,---The-owner-or-operator-must--amend--the--plan whenever-changes-in-operating-plans-or-facility-design,-or-events-which occur-during-the-active-life-of-the-facility-or-during-the-post-closure period,--affect--the--post-closure--plan,---This--plan--must-be-amended whenever-there-is-a-change-in-the-expected-year-of-closure.

8.6.8.c-When-a-permit-modification-is-requested-during-the-active--life of--the--facility--to-authorize-a-change-in-operating-plans-or-facility design,-modification-of-the-post-closure-plan-must-be-requested-at--the same--time,---In-all--other-cases,-the-request-for-modification-of-the post-closure-plan-must-be-made-within-sixty-(60)-days-after-the--change in--operating--plans--or-facility-design-or-the-events-which-affect-the post-closure-plans-occur.

8.6.8.a Written Plan. The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 8.9.7.c of these regulations to have contingent post-closure plan. Owners or operators of surface impoundments not otherwise required to prepare contingent post-closure plans and owner and operators of waste piles must submit a post-closure plan to the Chief within ninety (90) days from the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill subject to the requirements of Sections 8.6.7 through 8.6.8 and 15.4 of these regulations. The plan must be submitted with the Part B of the permit application in accordance with Section 11.5.1 of these regulations and will become a condition of the permit.

8.6.8.b For each hazardous waste management unit subject to the requirements of Section 8.6.8 of these regulations, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and frequency of these activities, and include at least:

8.6.8.b.1 A description of the planned groundwater monitoring activities and frequencies at which they will be performed.

8.6.8.b.2 A description of the planned maintenance activities and frequencies at which they will be performed to ensure:

8.6.8.b.2.A The integrity of the cap and final cover or other containment systems and

8.6.8.b.2.B The functioning of the monitoring equipment.

8.6.8.b.3 The name, address, and telephone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

8.6.8.c Until the final closure of a facility, a copy of the approved post-closure plan must be furnished to the Chief upon request, including request by mail. After final closure has been certified, the person or office specified in Section 8.6.8.b.3 of these regulations must keep the approved post-closure plan during the remainder of the post-closure period.

8.6.8.d Amendment of Plan. The owner or operator must request a permit modification to authorize a change in the approved post-closure plan in accordance with Section 11 of these regulations. The written request must include a copy of the amended post-closure plan for approval by the Chief.

8.6.8.d.1 The owner or operator may submit a written request to the Chief for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

8.6.8.d.2 The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan whenever:

8.6.8.d.2.A Changes in operating plans or facility design affect the approved post-closure plan or

8.6.8.d.2.B There is a change in the expected year of final closure, if applicable, or

8.6.8.d.2.C Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

8.6.8.d.3 The owner or operator must submit a written request for a permit modification at least sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the post-closure plan. The owner or operator of a surface impoundment that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under Section 8.9.7.c of these regulations and owners and operators of waste piles must submit a post-closure plan to the Chief no later than ninety (90) days after the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 8.11.11 of these regulations. The Chief will approve, disapprove, or modify this plan in accordance with the procedures in Section 11 of these regulations and the approved post-closure plan will become a part of the permit.

8.6.8.d.4 The Chief may request modifications to the plan under the conditions described in Section 8.6.8.d.2 of these regulations. The owner or operator must submit the modified plan no later than sixty (60) days after the Chief's request, or no later than ninety (90) days if the unit is a waste pile or a surface impoundment not previously required to prepare a contingent post-closure plan. Any modifications requested by the Chief will be approved, disapproved or modified in accordance with the procedures in Section 11 of these regulations.

8.6.9 Certification of Completion of Post Closure Care. No later than sixty (60) days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Chief by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Chief upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under Section 13 of these regulations.

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

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### 9.4 Hazardous Waste Burned for Energy Recovery

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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 conditionally exempt small

quantity generators under the provisions of ~~Section-3.4.4~~ Section 10 of these regulations.

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Section 10. Special Requirements for Hazardous Waste Generated by Small Quantity Generators (Effective May 1, 1987)

10.1 Except as provided in Sections 10.1.1 through 10.1.5 of these regulations, hazardous wastes generated by small quantity generators who generate greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous wastes are subject to all provisions of these regulations.

10.1.1 Reclaimed Waste. The requirements of Section 6.2 of these regulations do not apply to hazardous waste produced by generators of greater than one hundred (100) kilograms but less than one thousand (1000) kilograms in a calendar month where:

10.1.1.a The waste is reclaimed under a contractual agreement pursuant to which:

10.1.1.a.1 The type of waste and frequency of shipments are specified in the agreement;

10.1.1.a.2 The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

10.1.1.b The generator maintains a copy of the reclamation agreement in his files for a period of at least three (3) years after termination or expiration of the agreement.

10.1.2 Recordkeeping. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month is exempt from the requirements of Section 6.4 of these regulations except for the recordkeeping requirements in Sections 6.4.1.a, 6.4.1.c, 6.4.1.d and 6.4.4 of these regulations.

10.1.3 Accumulation Time; Contingency Plan and Emergency Procedures. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for one hundred and eighty (180) days or less without a permit or without having interim status provided that:

10.1.3.a The quantity of waste accumulated on site never exceeds six thousand (6000) kilograms;

10.1.3.b The generator complies with the requirements of Section 6.3.5.a.1 of these regulations, except the generator need not comply with 40 C.F.R. 265.176;

10.1.3.c The generator complies with the requirements of Sections 6.3.5.a.2 and 6.3.5.a.3 of these regulations and the requirements of 40 C.F.R. 265 Subpart C; and

10.1.3.d The generator complies with the following requirements:

10.1.3.d.1 At all times there must be at least one employee either on the premises or on call (i.e. available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in Section 10.1.3.d.4 of these regulations. This employee is the emergency coordinator.

10.1.3.d.2 The generator must post the following information next to the telephone:

10.1.3.d.2.A The name and telephone number of the emergency coordinator;

10.1.3.d.2.B Location of fire extinguishers and spill control material, and, if present, fire alarm; and

10.1.3.d.2.C The telephone number of the fire department, unless the facility has a direct alarm.

10.1.3.d.3 The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

10.1.3.d.4 The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

10.1.3.d.4.A In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

10.1.3.d.4.B In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

10.1.3.d.4.C In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center at (800) 424-8802. The report must include the following information:

10.1.3.d.4.C.i The name, address, and EPA identification number of the generator;

10.1.3.d.4.C.ii Date, time and type of incident (e.g., spill or fire);

10.1.3.d.4.C.iii quantity and type of hazardous waste involved in the incident;

10.1.3.d.4.C.iv Extent of injuries, if any; and

10.1.3.d.4.C.v Estimated quantity and disposition of recovered materials, if any.

10.1.4 Extended Accumulation Time. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of two hundred (200) miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for two hundred and seventy (270) days or less without a permit or without having interim status provided that he complies with the requirements of Section 10.1.3 of these regulations.

10.1.5 Small Quantity Generator Storage Facilities. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding six thousand (6000) kilograms or accumulates hazardous waste for more than one hundred and eighty (180) days (or for more than two hundred and seventy (270) days if he must transport his waste, or offer his waste for transportation over a distance of two hundred (200) miles or more) is an operator of a storage facility and is subject to the requirements of Section 8 of these regulations and 40 C.F.R. Part 265 and the extension to the one hundred eighty-day (or two hundred seventy-day if applicable) period. Such extension may be granted by the Chief if hazardous wastes must remain on-site for longer than one hundred and eighty (180) days (or two hundred and seventy (270) days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the Chief on a case-by-case basis.

10.2 Special requirements for hazardous wastes generated by conditionally exempt small quantity generators.

10.2.1 A generator is conditionally exempt small quantity generator in a calendar month if he generates no more than one hundred (100) kilograms of hazardous waste in that month.

10.2.2 Except for those wastes identified in Sections 10.2.5, 10.2.7, and 10.2.10 of these regulations, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Sections 6, 8, 9, and 11 of these regulations and 40 C.F.R. Part 265, provided the generator complies with the requirements of Sections 10.2.6, 10.2.7, and 10.2.10 of these regulations.

10.2.3 Hazardous waste that is not subject to regulation or that is subject only to Sections 6.1.1, 6.1.2, 6.4.1.c, and 6.4.2 of these regulations is not included in the quantity determinations of this section and Sections 6, 8, 9, and 11 of these regulations and 40 C.F.R. Part 265 and is not subject to any of the requirements of those sections or part. Hazardous waste that is subject to the requirements

of Sections 3.1.5.b, 3.1.5.c, 9.3, 9.4, and 9.6 of these regulations is included in the quantity determination of all provisions of these regulations.

10.2.4 In determining quantity of hazardous wastes generated a generator need not include:

10.2.4.a Hazardous waste when it is removed from on-site storage; or

10.2.4.b Hazardous waste produced by on-site treatment (including reclamation) or his hazardous waste so long as the hazardous waste that is treated was counted once; or

10.2.4.c Spent materials that are generated, reclaimed and subsequently reused on-site so long as such spent materials have been counted once.

10.2.5 Acutely Hazardous Wastes. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of acute hazardous wastes are fully subject to these regulations.

10.2.5.a A total of one kilogram of acute hazardous waste listed in Section 3.4.4.e of these regulations.

10.2.5.b A total of one hundred (100) kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill into or on any land or water of any acute hazardous wastes listed in Section 3.4.4.e of these regulations.

10.2.6 Accumulation of Hazardous Waste in Quantities Greater Than Small Quantity Amounts. A conditionally exempt small quantity generator may accumulate hazardous waste on site. If he accumulates at any time more than a total of one thousand (1000) kilograms of his hazardous wastes or his acutely hazardous wastes in quantities greater than those set forth in Sections 10.2.5.a and 10.2.5.b of these regulations, all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to these regulations. If he accumulates at any time more than a total of one thousand (1000) kilograms of his hazardous wastes which are not acutely hazardous, all of those accumulated wastes are subject to regulation under the special provisions of Section 10.1 of these regulations applicable to generators of between one hundred (100) kilograms and one thousand (1000) kilograms of hazardous waste in a calendar month. The time period of Section 10.1.3 of these regulations for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed the applicable exclusion level for acutely hazardous wastes or when the accumulated wastes exceeds one thousand (1000) kilograms for hazardous wastes not acutely hazardous.

10.2.7 Exclusion from Regulation. In order for hazardous waste generated by a conditionally exempt small quantity generator generating less than one hundred (100) kilograms of hazardous wastes per month or less than or equal to the quantities of acutely hazardous wastes set

forth in Section 10.2.5 of these regulations to be excluded from full regulation under this section, the generator must comply with the following requirements:

10.2.7.a Sections 4 and 6.1.1 of these regulations.

10.2.7.b Store on-site hazardous waste in compliance with the requirements of Section 10.2.6 of these regulations.

10.2.7.c 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. This recordkeeping requirement is only applicable to manufacturing facilities listed in Standard Industrial Classification Major Groups 20 through 39.

10.2.7.d 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:

10.2.7.d.1 Is permitted under 40 C.F.R. Part 270

10.2.7.d.2 Is in interim status under 40 C.F.R. Parts 270 and 265 or §20-5E-10 of the West Virginia Code;

10.2.7.d.3 Is permitted under Section 11 of these regulations;

10.2.7.d.4 Is authorized to manage hazardous waste by a state with a hazardous waste program approved under 40 C.F.R. Part 271;

10.2.7.d.5 Is permitted, licensed, or registered by a state other than West Virginia to manage municipal or industrial solid waste;

10.2.7.d.6 Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

10.2.7.d.7 Treats his waste prior to beneficial use or re-use or legitimate recycling or reclamation.

10.2.8 Hazardous waste subject to the reduced requirements of Section 10.2 of these regulations may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in Section 10.2 of these regulations, unless the mixture meets any of the characteristics of hazardous wastes identified in Section 3.3 of these regulations.

10.2.9 If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of Section 10.2 of these regulations, the mixture is subject to full regulation.

10.2.10 If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Section 9.5 of these regulations if it is destined to be burned for energy recovery. Any



material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

11.1 Scope of the Hazardous Waste Management Permit Requirements.

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11.1.2 Specific Exclusions (Amended effective May 1, 1987)

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 the time periods provided in Sections 6.3.5.a, 10.1.3, and 10.1.4 of these regulations.

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

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 Section 3.1.3 or ~~3.4.4~~ 10 of these regulations.

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11.2.4 Existing Hazardous Waste Management Facilities (Amended effective May 1, 1987)

11.2.4.a Not later than thirty (30) days from the effective date of these regulations, all owners and operators of existing hazardous waste treatment, storage or disposal facilities shall submit Part A (see Section 11.4 of these regulations) of their permit application to the Chief or a copy of Part A if it was already submitted to EPA.

11.2.4.b For generators generating greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month and treats, stores or disposes of these wastes, Part A or a copy of Part A if it was already submitted to EPA shall be submitted not later than thirty (30) days from the effective date of these regulations or by March 24, 1987, whichever is later.

~~44.2.4.b~~ 11.2.4.c At any time, but not later than five (5) years, after the effective date of these regulations, the owner and operator of an existing hazardous waste management facility may be requested to submit Part B (see Section 11.5 of these regulations) of their permit application by the Chief. Any owner or operator shall have six (6) months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.

~~44.2.4.e~~ 11.2.4.d Failure to furnish a requested part B application on

time, or to furnish in full the information required by the Part B application, are grounds for termination of interim status under Section 11.3.5 of these regulations.

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### 11.3 Interim Status

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#### 11.3.3 Changes During Interim Status (Section 11.3.3.d amended effective May 1, 1987)

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11.3.3.d Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with all applicable financial requirements until the new owner or operator has demonstrated to the Chief that it is complying with such financial requirements. The new owner or operator must demonstrate compliance with applicable financial requirements within six (6) months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Chief by the new owner or operator of compliance with the financial requirements, the Chief shall notify the old owner or operator in writing that it no longer needs to comply with those requirements as of the date of demonstration. All other interim status duties are transferred effectively immediately upon the date of the change of ownership or operational control of the facility.

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#### 11.5 Contents of Part B (Sections 11.5.1.o, 11.5.1.p, and 11.5.1.q amended effective May 1, 1987)

\* \* \* \* \*

11.5.1.o For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 15.1 of these regulations. For hazardous waste disposal units that have been closed, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Sections 15.1 and 15.4 of these regulations.

11.5.1.p The most recent closure cost estimate for the facility prepared in accordance with Section 13 of these regulations plus a copy of the financial assurance mechanism adopted in compliance with Section 13 of these regulations. For a new facility, a copy of the required documentation may be submitted sixty (60) days prior to the initial receipt of hazardous wastes, if that is later than the submission of Part B.

11.5.1.q Where applicable, the most recent post-closure cost estimates for the facility prepared in accordance with Section 13 of these regulations plus a copy of the financial assurance mechanism adopted in compliance with Section 13 of these regulations. For a new facility a copy of the required documentation may be submitted sixty (60) days prior to the initial receipt of hazardous wastes, if that is later than the submission of Part B.

\* \* \* \* \*

11.20 Minor Modification of Permits (Section 11.20.g amended effective May 1, 1987)

\* \* \* \* \*

11.20.g Change of Ownership. Allow for a change in ownership or operational control of a facility where the Chief determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Chief. Changes in the ownership or operational control of the facility may be made if the new owner or operator submits a revised application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of Section 13 of these regulations, until the new owner or operator has demonstrated to the Chief that he is complying with all the requirements of that section. The new owner or operator must demonstrate compliance with Section 13 of these regulations within six (6) months of the date of change in the ownership or operational control of the facility. Upon demonstration to the Chief by the new owner or operator of compliance with Section 13 of these regulations, the Chief shall notify the old owner or operator in writing that he no longer needs to comply with Section 13 of these regulations as of the date of demonstration.

\* \* \* \* \*

Section 13. Financial Requirements (Repromulgated effective May 1, 1987)

13.1 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 the effective date of these regulations with the following modifications:

13.1.1 The adopted provisions contained in Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 264.147(f), 265.147(f) of the Code of Federal Regulations 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."

13.1.2 The provisions contained in Sections 264.149, 265.149, 264.150 and 265.150 of the Code of Federal Regulations shall be deleted.

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

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

13.1.5 The adopted provisions contained in Sections 264.147(b)(4)(iii) and 265.147(b)(4)(iii) of the Code of Federal Regulations shall be amended to read: "All other owners or operators, thirty (30) days after the effective date of these regulations."

\* \* \* \* \*

Section 15. Deed and Lease Disclosures; Approval for Land Disturbance (Amended effective May 1, 1987)

15.1 Notice in Deed to Property

15.1.a The owner of the property on which a hazardous waste management facility is located must record, in accordance with State law, a notation on the deed or lease to the facility property or on some other instrument which is normally examined during title search that will in perpetuity notify any potential purchaser of the property that:

15.1.a.1 The land has been used to manage hazardous wastes, and

15.1.a.2 Its use is restricted under Section 8.6.7.c of these regulations.

~~15.1.a.3 The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility have been filed with the Chief.~~

15.1.b Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the Chief in writing of such transfer. ~~except if such wastes have been properly removed as outlined in Section 15.1(e)~~

~~15.1.c If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located obtained approval by the Chief to remove the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he~~

may remove the notation on the deed to the facility property or other instrument normally examined during title search, or he may add a notation to the deed or instrument indicating the removal of the waste. (Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can be demonstrated that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.)

#### 15.2 Approval for Land Disturbance

15.2.a Before the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located, engages in filling, grading, excavating, building, drilling, or mining on the property, or engaging in any activity which will disturb the closure of said area, the Chief of the Division of Water Resources must be notified and the owner or operator must obtain authorization prior to commencing such activity.

15.2.b If the owner or operator removes the waste from the property, a notation may be added to the deed or lease indicating such removal. (Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can be demonstrated that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.)

#### 15.3 Notice to Local Land Authority

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Chief a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 8-6-7(e). In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Chief a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Chief.

#### 15.4 Other Requirements

~~Nothing contained herein shall relieve any person from complying with the requirements on deed and lease disclosures set forth in 20-5E-20.~~

15.3 Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Chief a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with Section 8.6.7.c of these regulations.

#### 15.4 Post-Closure Notices

15.4.1 No later than sixty (60) days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Chief a record of the type, locations, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

15.4.2 Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

15.4.2.a Record, in accordance with State law, a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity notify any potential purchaser of the property that:

15.4.2.a.1 The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Sections 15.3 and 15.4.1 of these regulations have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Chief, and

15.4.2.b Submit a certification, signed by the owner or operator, that he has recorded the notation specified in Section 15.4.2.a of these regulations, including a copy of the document in which the notation has been placed to the Chief.

15.4.3 If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner (if

any), or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Section 11 of these regulations. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8.6.7.c of these regulations. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage that waste in accordance with all applicable requirements of these regulations. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Chief approve the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

15.5 Other Requirements. Nothing contained in Section 15 of these regulations shall relieve any person from complying with the requirements on deed and lease disclosures set forth in §20-5E-20 of the West Virginia Code.

PUBLIC HEARING ATTENDANCE

DATE: February 9, 1987

RULE TITLE: HWM Regulations (Cluster 2)

NAME

AFFILIATION OR ADDRESS

WOULD YOU LIKE TO  
MAKE A STATEMENT?

Yes [ ] No

Freddie B. Sizemore APCC  
Charleston

[ ] ☒

Robert G. Worden WKMA  
Charleston, WV

☒ [ ]

Robert L. Foster  
Charleston, WV UCC

[ ] ☒

[ ]

[ ]

[ ]

[ ]





STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306

September 26, 1986

ARCH A. MOORE, JR.  
Governor

FILED  
1986 SEP 26 PM 1:02  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON, WV

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

NOTICE OF AGENCY APPROVAL

AGENCY: West Virginia Department of Natural Resources

RULE TYPE: Legislative

RULE TITLE: Hazardous Waste Management Regulations *1st Amend*

The attached legislative rule constitutes the official rule approved by the West Virginia Department of Natural Resources on the 26th day of September, 1986 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

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



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

September 26, 1986

ARCH A. MOORE, JR.  
Governor

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 Approved Rules  
Hazardous Waste Management  
Regulations, (Series 15)  
by the Department of  
Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of approved amendments to the legislative rules of the Department of Natural Resources.

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

FISCAL NOTE FOR APPROVED RULES

FILED

1986 SEP 26 PM 1:03

Rule Title: Hazardous Waste Management Regulations

Type of Rule:     X   Legislative                   Interpretive                   Procedural

Agency:   Department of Natural Resources

Address:   1800 Washington Street East, Charleston, West Virginia 25305

1. Effect of Proposed Rule (Estimated Total Cost)	ANNUAL		Current \$	FISCAL YEAR	
	Increase \$	Decrease \$		Next \$	Thereafter \$

Personal Services

Current Expense

Repairs and Alterations

No Impact

Equipment

Other

2. Explanation of Above Estimates: No impact

3. Objectives of These Rules:

The proposed rules will make minor technical changes in the current legislative rules that are necessary in order to retain State primacy over the administration of hazardous waste regulations in West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: No impact

C. Economic Impact on Citizens/Public at Large: No impact

Date: September 26, 1986



Director

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
DEPARTMENT OF NATURAL RESOURCES  
CHAPTER 20-5E  
1986  
SERIES XV

FILED  
1003 SEP 26 PM 1:03  
DEPT. OF NAT. RES.  
DIVISION 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 \_\_\_\_\_.

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

1.5 Certification. These regulations are certified authentic by the Director of the Department of Natural Resources.

1.6 Incorporation by Reference. Whenever either federal statutes or regulations or State statutes or regulations are incorporated by reference into these regulations, the reference is to the statute or regulation in effect on the date of enactment of the legislation authorizing these regulations (\_\_\_\_\_).

1.7 Promulgation History. (Reserved)

\* \* \* \* \*

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:

\* \* \* \* \*

"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.);

\* \* \* \* \*

"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 274 270 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;

\* \* \* \* \*

"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 ~~Administrator~~ 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.

\* \* \* \* \*

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

\* \* \* \* \*

Section 3. Identification and Listing of Hazardous Waste

\* \* \* \* \*

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 ~~Contained-in-products-that-are-applied-to--the--land--(in which case the product itself remains a waste)~~ 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.

\* \* \* \* \*

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 ~~Federal Code~~ 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 3.1.4e.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, and 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.1b The method of accumulation or storage;

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

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

3.1.5.d.1.e Other relevant factors.

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

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

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

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



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

3.1.5.d.2.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.

\* \* \* \* \*

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).

\* \* \* \* \*

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.

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(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 <u>0% of 10% or less</u>
	* * * * *

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

The Director hereby adopts and incorporates by reference 40 C.F.R. Part 263, as published in the Code of Federal Regulations on the effective date ~~of these regulations~~ specified in Section 1.6 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.

\* \* \* \* \*

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

\* \* \* \* \*

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.

\* \* \* \* \*

8.11.2.j If the owner or operator determines that the corrective action program being implemented under Section 8.13.09 is ~~in~~ 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 8-43-9 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.

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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, and 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, and 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 ~~Subpart~~ 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 ~~3-3-2~~ 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.

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

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

#### 9.4.2 Prohibitions. (Reserved)

#### 9.4.3 Standards applicable to generators of hazardous waste fuel.

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

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

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

#### 9.4.4 Standards applicable to transporters of hazardous waste fuel.

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

9.4.4.b Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous 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, and ~~Section 11, and 13~~ of these regulations or 40 C.F.R. Subparts A through L of Part 265 ~~and Parts-270-and-424~~, 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 ~~Section 13~~ of these regulations or 40 C.F.R. Subparts A through L of Part 265 ~~and Parts-270-and-424~~, 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 ~~this chapter~~ these regulations, or to all applicable requirements in Sections 8.1 through 8.10, 8.13, and ~~Section 13~~ of these regulations or 40 C.F.R. Subparts A through L of Part 265 ~~or 40-C.F.R.--Part-265--of--this--chapter~~ with respect to such storage, except as provided by Section 9.4.7 of this ~~subpart~~ 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 ~~Chapter-20, Article-5E, Section-40~~, 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 ~~(analog to 262, Subpart B) (for generators), (analog to 263.20 and 263.21) (for transporters), and 40 C.F.R. Sections 265.71 and 265.72 (for persons who store).~~ 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, and 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, ~~or 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--Part--these~~ regulations 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 the date specified in Section 1.6.

#### 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 the effective date of ~~these regulations~~ specified in Section 1.6 with the following modifications: Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 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.

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PREAMBLE TO HAZARDOUS WASTE MANAGEMENT REGULATIONS  
EMERGENCY AND APPROVED RULES

Program: Hazardous Waste Management

Regulations: Hazardous Waste Management Regulations, Series 15

Authority: West Virginia Code, Chapter 20, Article 5E, Section 6

Action: Approval of rule and response to comments; emergency promulgation of the approved rules.

Summary: On June 9, 1986 the Director proposed rulemaking addressing (1) corrections promulgated by the United States Environmental Protection Agency (EPA) on August 20, 1985 to their January 4, 1985 regulations relating to redefinition of "solid waste," (2) corrections requested by EPA to the State's application for final authorization, and (3) minor corrections to regulations effective on April 15, 1986. The approved regulations are also being promulgated as an emergency rule with one minor change.

Dates: Agency approval of these regulations occurred on September 26, 1986. These regulations are being promulgated as an emergency rule, effective September 26, 1986.

Contact: Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, Room 842, 1800 Washington Street, East, Charleston, WV 25305, phone (304) 348-2761.

Supplemental Information: State adoption of the EPA corrections of August 20, 1985 is necessary in order to retain primacy over the administration of hazardous waste regulations in West Virginia. EPA delegated primacy of the RCRA hazardous waste management program effective May 29, 1986. While authorizing the program, EPA did not approve the State's redefinition of 'wastes.' This failure is causing problems in implementing the authorized program. Today's approved rule corrects the deficiencies in the State's redefinition of 'wastes.' The State must now modify its program and seek EPA's approval of the redefinition immediately. To facilitate that approval, today's approved rule is also filed for emergency promulgation with one change: section 1.6 (Incorporation by Reference) is not included in the rule filed for emergency promulgation. The emergency rule becomes effective on September 26, 1986.

### Response to Comments:

The Department received comments from two entities. One submitted six comments; the other submitted 20 comments, fourteen of which related to typographical changes. These comments and the Department's responses are as follows:

#### Section 1. General

1. Comment:

Sections 1.3 and 1.4 - Dates included in these sections are incorrect.

Response: Corrected.

2. Comment:

Section 1.6 - Change the language in the first sentence to "whenever federal statutes or regulations are incorporated into these regulations. . ."

Response: Done.

3. Comment:

Section 1.6 - The date chosen for incorporation by reference (i.e. date of authorization of the regulations by the Legislature) will cause confusion and will lead to "in futuro" incorporation by reference. A more definitive statement of the effective date is urged.

Response:

DNR understands the commenter's concern. First, the Department has modified its proposal so that incorporation occurs as of the date of passage of the legislation authorizing this rule. This change avoids "in futuro" incorporation by reference and avoids problems concerning the public's ability to comment since the Legislature is the public's representative. Second, according to the commenter, the confusion would arise due to the regulated community not knowing the date of legislative authorization. The Department will place such date in Section 1.6 upon final promulgation.

#### Section 3. Identification and Listing of Hazardous Waste

4. Comment:

Section 3.1.4.b - One commenter objected to "the imposition in past versions of this particular subsection and the language being proposed, to what amounts to a more stringent requirement

than counterpart federal regulations." Federal regulations exempt small quantity generators from notification requirements.

Response:

The proposed language only reiterates what is already required under Sections 3.1.4.g and 3.1.4.j, which are not subject of the proposed changes. DNR cannot approve a modification to regulations that already exist.

5. Comment:

Subsections 3.1.5.a.3.v and 3.1.5.a.3.vi - The phrase "which oil is to be refined along with normal process streams at a petroleum refining facility" should be removed from Section 3.1.5.a.3.v and placed at the end of Section 3.1.5.a.3.vi.

Response: Done.

6. Comment:

Subsections 3.1.5.a.3.v, 3.1.5.a.3.vi, and 3.1.5.a.3.vii - The Department has wrongly arranged the subsections and the language corrections have been made at inappropriate places.

Response: Corrected to reflect the recommended changes.

7. Comment:

Section 3.1.5.b - By cross-referencing the Department of Highways' regulations, the language used is unnecessary and exposes the transporter to duplicative penalties.

Response: Corrected as recommended by the commenter.

8. Comment:

Section 3.4.4.f - Both commenters pointed out that the language change made to hazardous waste No. U-249 is incorrect. Hazardous waste No. U-249 should read as follows: "Zinc phosphide, when present at concentrations of 10% or less."

Response: Corrected as recommended by the commenters.

Section 8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

9. Comment:

Section 8.3.7.a.1 - A comma should be placed between the words "facility" and "properties."



Response: Done

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

10. Comment:

Section 9.0 and Section 3.1.5 - Effect of DNR's regulations on Air Pollution Control Commission (APCC) regulations is not clear. Some coordination is needed. Section 5.2 of APCC regulations exempt facilities pursuant to Section 3.1.5(a) of DNR regulations. Does this refer to old or new Section 3.1.5? APCC should have some authority over burning of hazardous waste fuel. DNR's Section 9.0 should reference APCC's requirements.

Response:

APCC will be repromulgating their regulations to include the redefinition of wastes. The exemption contained in Section 5.02 of the APCC regulations is for facilities pursuant to Section 3.1.5(a) of the previous DNR regulations which are no longer effective. Section 9.4 of DNR's regulations gives the State full authority to regulate burning of hazardous waste fuel; therefore, there is no need to reference APCC regulations.

Section 11. Hazardous Waste Permitting

11. Comment:

Section 11.1.2.g.2 - Replacement of the words "this part" by the word "these regulations" causes imposition of a broader universe of requirements than necessary.

Response: Corrected as recommended by the commenter.

12. Comment:

Typographical errors - Sections 2 (Table 1), 3.1.4.c, 3.1.4.j, 3.1.5.d.2.i.b, 8.3.7.a.1, 8.11.2.j, 9.3.3, 9.4.1.a, 9.4.4.b, 9.4.6.c, 11.3.5.1, and 11.7 have typographical errors.

Response: Corrected.



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

ARCH A. MOORE, JR.  
Governor

June 4, 1986

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

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

Re: Filing of Approved Rules  
(Hazardous Waste Management,  
Series 15) and Response to  
Comments

Dear Mr. Hechler:

Enclosed please find for your filing a copy of approved amendments to the legislative rules of the Department of Natural Resources and a Response to Comments. This material was previously filed with your office on March 5, 1986. We are refiling this approval at the direction of the Legislative Rulemaking Review Committee and provide the following explanation.

After filing our approved regulations on March 5, 1986, we requested the LRRC's recommendation that the rule be authorized by this year's Legislature. The LRRC concurred with our request and the Legislature authorized our approved rules in SB 434 at §64-2-20(5e)(6)(e). However, the LRRC could only conduct a cursory review of the approved rules. They, therefore, directed the Department to refile the rules in a manner which once again brought the rules before the LRRC for their review. The Department was perplexed at how to accomplish this. After research and discussion with Mr. Hartman of your office, we decided to file another approval of these regulations. The other options we explored and our reasons for rejecting them are discussed in the attached preamble (§I. Reason for Re-approval). Consequently, we are filing another approval of the rules originally approved March 5, 1986.

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The Honorable Ken Hechler  
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June 4, 1986

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

Sincerely,



Ronald R. Potesta  
Director

RRP/rsb

Enclosures

cc: David W. Robinson  
Timothy T. Laraway  
All State Hazardous Waste  
Management Agencies  
Legislative Rulemaking Review Committee

PREAMBLE TO HAZARDOUS WASTE MANAGEMENT REGULATIONS

PROGRAM: Hazardous Waste Management

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

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

ACTION: Re-approval of Rule and Response to Comments

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

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

DATES: Agency approval of these regulations occurred on March 5, 1986 and re-approval occurred on June 4, 1986.

CONTACT: Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, West Virginia Department of Natural Resources, 1800 Washington Street, East, Building 3, Room 842, Charleston, West Virginia 25305, (304) 348-2761.

SUPPLEMENTARY INFORMATION:

I. Reason for Re-approval

The Department of Natural Resources is taking the extraordinary action of reapproving a rule already approved and legislatively authorized based on a directive of the Legislative Rulemaking Review Committee (LRRRC).

On March 5, 1986, DNR filed approved regulations with the

Secretary of State's Office. According to the State Administrative Procedures Act, agency approved regulations are legislative regulations which have been proposed, subjected to public comment and public hearing, and represent the agency's request for legislative authorization to promulgate such rule (See W. Va. Code §§29A-3-9 and 29A-3-11). In the case at hand, DNR proposed the regulations on January 24, 1986 and the comment period lasted until February 24, 1986 with a public hearing being held on that date. After receipt and consideration of comments, the Department modified the proposed regulation and filed approved regulations with the Secretary of State and the LRRC on March 5, 1986.

As explained in the preamble to the proposed regulations on January 24, 1986, many of the approved regulations were essential to the State's effort to receive final authorization of the federal hazardous waste program. Accordingly, the Department requested that the LRRC review the Department's approved regulations and make a recommendation to the Legislature that the rules be authorized. The LRRC agreed to do so because it understood the importance of the rules to the State's final authorization effort. However, because the time for LRRC review was extremely abbreviated, they directed that the Department refile the rules after the legislative session with them in a manner which (1) illustrated the new and superceded regulations and (2) permitted the LRRC to exercise their authority to review the rule and make appropriate recommendations under W. Va. Code §29A-3-11.

The Department was unsure how to effectuate the LRRC's directive in this situation, since, after the session, the rules are legislatively authorized. We identified three (3) options: (1) repropose the rules, proceed with public notice and comment and reapprove the rules for submission to the Secretary of State and the LRRC; (2) reapprove the rules for submission to the Secretary of State and the LRRC; or (3) refile the approved regulations with the Committee without further formal action.

We rejected options one and three for the following reasons: Option 1 would be more time consuming, administratively burdensome, confusing to the public and unnecessary for the committee to exercise its authority under W. Va. Code §29A-3-11. The regulations at issue have already been subject to public notice and comment. The Department received comments from three organizations concerning sixty-six different subsections of the proposed regulations. The Department changed more than forty provisions of its regulations in response to these comments. Consequently, reproposing the rules for public comment would result in a time consuming exercise with little benefit. Re-proposing rules which are already in effect is confusing and misleading since the Department cannot, in good faith, hold out the possibility that major revisions could be made based on public

comment. In addition, the key action which triggers the LRRC's jurisdiction appears to be agency approval of regulations rather than proposal.

The third option did not appear to satisfy a majority of the members of the LRRC. At the time of the LRRC's decision to recommend authorization of the rules to the Legislature, many members of the LRRC and its counsel expressed concern with this option. That concern stemmed from the statutory provision which appears to limit the LRRC's jurisdiction to reviewing approved rules. That section states:

"(a) When an agency finally approves a proposed legislative rule for submission to the legislature, pursuant to the provisions of section nine of this article, the agency shall submit to the legislative rulemaking review committee at a regular meeting of such committee fifteen copies of (1) the full text of the legislative rule as finally approved by the agency...." (emphasis supplied).

Consequently, many members of the Committee felt that their authority to make recommendations concerning regulations was limited to the review of approved rules. Consequently, the Department rejected this third option.

Therefore, the Department opted for the second option, i.e. filing another approval of the regulations. This action accomplishes the LRRC's objectives. It places before them the text of the superceded rule as well as the new rule in a manner consistent with W. Va. Code §29A-3-11.

In addition to this reapproval, the Department will be proposing, in the near future, amendments to its hazardous waste rules. Some of these proposed amendments will involve sections covered in today's reapproval.

## II. Response to Comments

The following Response to Comments is an exact reproduction of the Department's Response to Comments filed on March 5, 1986:

The Department received comments from three organizations concerning sixty-six different sections or paragraphs of the proposed regulations. Twenty-one comments were deemed clerical or typographical changes and were adopted. In addition, one commenter provided a copy of the proposed regulations identifying typographical and clerical errors. These were also utilized. We appreciate the assistance.

The remaining changes are based either on clarification suggestions or on suggestions that the Department should parallel federal regulations more closely. A synopsis of these changes follows:

§2 - Definitions.

We have adopted a definition of the term RCRA. This term appears throughout the regulations but was heretofore undefined.

§3 - Identification and Listing of Hazardous Wastes

§3.1.b - One commenter pointed out that the proposed regulation omitted the word "wastes" from this subsection. This was inadvertant and we have included this word in our adopted version.

3.1.1.c.4 - Table - One commenter suggested that we include a note at the end of the Table which is identical to the note in EPA's analogous Table. We have done so.

3.1.1.e.1.iii - One commenter suggested that we make the second sentence of this subsection conform to the EPA analogous provision. We have done so.

3.1.5.a.2.ii - Two comments were received about this section which conflicted with each other. We have adopted the recommendations of the West Virginia Air Pollution Control Commission and deleted the reference to their regulations in this section. The reason is that hazardous wastes which are burned for energy recovery are presently exempt from APCC Regulation 25. The reference to their regulations, therefore, is unnecessary and may be confusing.

3.1.5.c.1 - One commenter pointed out that EPA made a correction to this regulation on August 20, 1985 and urged that we make the same adjustment. We did so.

3.4.4 - One commenter pointed out that the reference to Section 3.1.1.a.2.i was incorrect since "discarded materials" were covered by subsections ii and iii also. We have changed the reference accordingly.

§5. Transportation of Hazardous Waste by Air or Water

One commenter suggested that the Department's incorporation by reference of EPA regulations was not specific enough. The Department proposed to incorporate by reference all appropriate EPA regulations except those that are adopted pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA). We proposed this exception because the State is currently seeking final authorization to implement the EPA program in existence prior to the passage of HSWA. We are fearful that adopting by reference regulations pursuant to HSWA may confuse EPA and delay

authorization. Upon reflection we agree with the commenter that such an exception is unclear. The exception not only requires knowledge of the regulations but also the date and authority under which they were promulgated. The regulation, therefore, would be difficult for the regulated community to understand and therefore ineffective.

One suggested alternative was to list those EPA regulations which are not adopted pursuant to HSWA. Although possible to do, this regulatory scheme would require the State to amend its regulations whenever EPA adjusts its regulations pursuant to RCRA and not HSWA authority. This is also confusing and would result in ineffective regulations. We have, therefore, deleted the exception referencing HSWA. We have made the same change in Section 13.

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

6.3.5.b - One commenter requested that the Department adopt the thirty-day extension for storage which EPA may grant but that the State did not previously recognize. We have adopted an extension analogous to the EPA program.

#### §8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

8.1.2 - The Air Pollution Control Commission commented that our reference to the coverage of their regulations was inaccurate since we limited it only to incinerators. We have corrected our explanation of their coverage.

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

9.3.1.a.2 - One commenter suggested that we clarify that this section make it clear that the mixture was one of recyclable materials and other substances which are not hazardous wastes. We have done so by adding the phrase "that are not hazardous wastes" after the phrase "other substances".

9.4.1.a - Two commenters (including the APCC) urge that we delete any reference to the Air Pollution Control Commission regulations. We have done so.

#### §11. Hazardous Waste Permitting Program

11.1.2.g - One commenter pointed out that this section did not contain language delineating the action to which this applied and suggested that we add "taken during immediate response to any of the following situations." Such omission was inadvertant. We have added this language.

11.7.1.a.2 - One commenter suggested that we add a "Note" to this



section which parallels the EPA regulations. We have done so because it provides more guidance to the regulated community.

16.3.2.a - One commenter suggested that we add the word "accumulation" in the last sentence for clarification. We have done so.

In addition to the above suggestions which we accepted, the Department rejected several suggestions.

Variance for Boilers. One commenter argued that our failure to adopt the variance for boilers was inconsistent with our adoption of the boiler definition and therefore we should include the boiler variance provision. In our proposed rulemaking we declined to adopt the variance provision because we believe that such a provision is more appropriately left to the APCC. We still believe so and have not adopted the boiler variance.

The commenter argued that if we had the ability and expertise to define and establish regulations for boilers then we also have the ability and expertise to decide on whether a variance should be allowable under the regulations. Although we may have the ability and expertise we decline to do so and offer the following explanation.

As the lead agency for the hazardous waste program we have a responsibility for coordinating and implementing Chapter 20, Article 5E. One purpose of Article 5E is to assume regulatory primacy of the federal RCRA program. See W. Va. Code §20-5E-2(b)(4). See also: W. Va. Code §§20-5E-4 and 20-5E-5a. Secondly, W. Va. Code §20-5E-6(c) states that "...the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rulemaking authority pursuant to section seven of this article." The APCC is one of those agencies.

The issue for the Department, however, was how do we meet the primary purpose of the article, i.e. assuming primacy while also retaining the proper roles of the various agencies?

The EPA regulations governing boilers are split into two categories by EPA when examining a State's program for delegation purposes. First are those provisions which must be in a State's program to make it "consistent and equivalent" with the federal program. Secondly are those provisions which a state may adopt or omit which would make the state program more stringent than the federal program.

In order to meet the goal of Article 5E concerning primacy assumption, the Department decided that it had to adopt those boiler provisions which EPA considers necessary for delegation. We have done so in this rulemaking.

The variance rules, however, are not mandatory for delegation. Omission of them leaves the State's program more stringent. The APCC has advised the Department, however, that the "APCC director will propose a Regulation XXV boiler variance classification procedure when the Commission amends Regulation XXV.

#### Incinerator Definition

One commenter pointed out that the definition of incinerator in our regulation is different than the APCC's definition. Again, we are adopting this definition to satisfy EPA in the State's attempt to gain regulatory primacy. We have discussed this problem with the APCC and both agencies will work together to resolve the conflict.

#### Spent Materials and By-Products

All three commenters pointed out that EPA has amended its regulations concerning spent materials and by-products and urged the Department to do so also. Although that action will be necessary the Department declined to do so in this rulemaking since these provisions are significant additions to the regulations not subject to notice and rulemaking procedures. We plan to put such rules out for notice and comment shortly and promulgate such regulations under emergency rulemaking procedures if justifiable.

The Department did, however, add one section from the November 29, 1985 EPA rulemaking which was a clarification. We added subsection (B) to §3.1.2.c.2.ii which clarifies that wastes resulting from burning any of the exempt recyclable materials are not hazardous wastes.

#### Conclusion

Accordingly, the Department is filing the following rules as approved regulations.

## 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 indicate otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The unit must export and utilize at least seventy-five percent (75%) of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used 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.);

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

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

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

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

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

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

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

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

{44} "Container" means any portable device in which a material is stored, transported, treated, disposed of or otherwise handled;

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

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

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

{48} Designated facility (designated hazardous waste management facility)" means a hazardous waste treatment, storage or disposal facility which has received a permit from the Environmental Protection Agency in accordance with 40 CFR Parts 271, 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;

{49} "Dike" means an embankment or ridge of either natural or man-made materials used to contain liquids, sludges, solids, or other materials;

{20} "Director" means the director of the department of Natural Resources;

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

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

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

{24} "Division" means the Division of Water Resources of the Department of Natural Resources;

{25} "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

{26} "DOT" means the United States Department of Transportation;

{424} "Draft permit" means a document prepared under Section 11.21 indicating the Chief's tentative decision to issue, deny, modify, revoke and reissue, revoke, or reissue a permit;

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

{28} "Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the Director, or the Chief;

{29} "EPA" means the United States Environmental Protection Agency;

{30} "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Section 3.4 of these regulations and to each characteristic identified in Section 3.3 of these regulations;

{34} "EPA identification number" means the number assigned by EPA to each hazardous waste generator, hazardous waste transporter or hazardous waste facility;

{32} "Equivalent method" means any testing or analytical method approved by the EPA Administrator under 40 CFR Section 260.20, and 260.21;

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

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

{35} "Facility". See "hazardous waste management facility."

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

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

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

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

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

{41} "Foreign source" means a source outside the geographical boundaries of the continental United States;

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

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

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

{45} "Groundwater" means water below the land surface in a zone of saturation;

{46} "Hazardous constituent" or "constituent" are constituents

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

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

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

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

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

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

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

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

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

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



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

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

- (1) Cement kilns
- (2) Lime Kilns
- (3) Aggregate kilns
- (4) Phosphate kilns
- (5) Coke ovens
- (6) Blast furnaces)
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
- (8) Titanium dioxide chloride process oxidation reactors.
- (9) Methane reforming furnaces.
- (10) Pulping liquor recovery furnaces.
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
- (12) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:
  - (i) The design and use of the device primarily to accomplish recovery of material products;
  - (ii) The use of the device to burn or reduce raw materials to make a material product;
  - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
  - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

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

(vi) Other factors, as appropriate.

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

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

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

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

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

(60) "Landfill cell" See "cell".

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

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

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

{64} "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to 1,000 tons during a calendar year, and any storage facility having a storage capacity for 1,000 tons of hazardous waste or more;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

{89} "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility;

{90} "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility;

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

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

{93} "SIC" means standard industrial classification,

{94} "Sludge" means any solid, semi-solid or liquid waste

generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant;

(95) "~~Spill~~" means ~~the accidental spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water;~~

(96) "State act" means the hazardous waste management act, 20-5E-1, et seq.

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

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

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

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

(425) "Suspension," when used in Section 11 in the context of a permit action, means an action which renders a permit temporarily null and void until such time as the Chief reinstates, modifies, revokes, or revokes and reissues the permit in accordance with the

applicable provisions of Section 11 of these regulations.

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

{424} "Termination," when the term is used in Section 11 in the context of a permit action, means the same as the term "revocation;"

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

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

{404} "Transportation" means the movement of hazardous waste by air, rail, highway or water;

{405} "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water;

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

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

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

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

{422} "Underground injection" means the sub-surface emplacement of

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

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

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

(449) "Vessel" means every description of water craft used or capable of being used as a means of transportation on the water;

(442) "Waste" means waste as defined in section 3.1.1.

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

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

(445) "Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to atmospheric pressure;

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

### Section 3. Identification and Listing of Hazardous Waste

#### 3.1 Purpose and Scope

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

~~3.1b This section identifies only some of the materials which are hazardous wastes for purposes of Sections 5, 12, 13, and 17 of the West Virginia Code, Chapter 20, Article 5E. A material which is not a hazardous waste identified or listed in this section may still be a hazardous waste for purposes of these sections if the~~



~~Director has reason to believe that the material may be a hazardous waste within the meaning of 20-5E-3(6) of the State Act.~~

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

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

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

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

3.1c For the purposes of Sections 3.1.1 and 3.1.5:

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

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

3.1.c.3 A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slag or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process;

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

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

3.1.c.5A Employed as an ingredient (including use as an

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

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

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

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

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

### 3.1.1 Definitions of Waste

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

3.1.1.a.1 A waste is any discarded material that is not excluded by Section 3.1.3.a or that is not excluded by variance 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-An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:~~

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

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

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

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

3.1.1.b.1 Disposed of; or

3.1.1.b.2 Burned or incinerated; or

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

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

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

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

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

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

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

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

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

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

	Use constituting disposal (1)	Energy recovery/ fuel (2)	Reclamation (3)	Speculative accumulation (4)
Spent materials	*	*	*	*
Sludges (listed in Sections (3.4.2 and 3.4.3)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*		*
By-products (listed in Section (3.4.2 and 3.4.3)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*		*
Commercial chemical products listed in Section (3.4.4)	*	*		
Scrap metal	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products" and "scrap metal" are defined in Section 3.1.6.

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

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

3.1.1.d.1 (Reserved)

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

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

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

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

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

3.1.1.e Materials that are not waste when recycled.

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

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

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

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.

### 3.1.2 Definition of Hazardous Waste

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.1.2.c.2.ii The following wastes are not hazardous wastes even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332); (B) wastes from burning any of the materials exempted from regulation by Section 3.1.5.a.3.

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

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

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

3.1.3 Exclusions

3.1.3a Materials which are not wastes.



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

3.1.3.a.1.i Domestic sewage; and

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

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

3.1.3.a.3 Irrigation return flows.

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

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

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

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

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

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

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

- 3.1.3.b.2.i The growing and harvesting of agricultural crops.
- 3.1.3.b.2.ii The raising of animals, including animal manures.
- 3.1.3.b.3 Mining overburden returned to the mine site.
- 3.1.3.b.4 Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.
- 3.1.3.b.5 Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.
- 3.1.3.b.6.i Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in 3.4 due to the presence of chromium which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:
  - 3.1.3.b.6.i.A The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
  - 3.1.3.b.6.i.B The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
  - 3.1.3.b.6.i.C The waste is typically and frequently managed in non-oxidizing environments.
- 3.1.3.b.6.ii Specific wastes which meet the standard in paragraphs (b) (6) (i), (A), (B), and (C), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:
  - 3.1.3.b.6.ii.A Chrome (blue) trimmings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish/ hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
  - 3.1.3.b.6.ii.B Chrome (blue shavings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish/ hair save/chrome tan/retan/wet finish/ retan/wet finish/ no beamhouse; through-the-blue; and shearling.
  - 3.1.3.b.6.ii.C Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair

pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish/ retan/wet finish/ no beamhouse; through-the-blue.

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

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

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

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

3.1.3.b.6.ii.H Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

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

3.1.3.b.8 Cement kiln dust waste.

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

\* \* \* \* \*

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

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

3.1.4b Except for those wastes identified in paragraphs (e) and (f) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Sections 6, 8, and 11 of these

regulations and 40 CFR Part 265, provided the generator complies with the requirements of Section 4 and paragraph (g) or and (j) of this section, whichever applies.

~~3.1.4e-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.~~

3.1.4.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.

\* \* \* \* \*

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

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

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

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

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

~~3.5.1.a.3.i-Spent-pickle-liquor-which-is-reused-in-wastewater-treatment-at-a-facility-holding-a-National-Pollutant-Discharge-Elimination-System-(NPDES)-permit,-or-which-is-being-accumulated, stored,-or-physically, chemically, or biologically-treated-before-such-reuse.~~

~~3.5.1b-Except-for-these-wastes-listed-in-paragraph-(a)(3),-a~~

hazardous--waste--which-is-a-sludge,-or-which-is-listed-in-3.4,-or  
which-contains-one-or-more-hazardous--wastes--listed--in--3.4--and  
which--is--transported--or--stored--prior--to--being-used,-reused,  
recycled,-or-reclaimed-is-subject-to--the--following--requirements  
with-respect-to-such-transportation-or-storage:

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

3.5.4.b.2-Requirements-for-generators-under-Section-6;

3.5.4.b.3-Sections-8.1,-8.2,-8.3,-8.4,-8.5,-8.6,-8.7,-8.8,-8.9,  
8.10,-8.13-and-13;

3.5.4.b.4-Storage-facility-requirements-Section-11;

3.5.4.b.5-40-CFR-265-Subpart-A,-B,-C,-D,-E,-F,-G,-H,-I,-J,-K--and  
L;

3.5.4.b.6-Location-standards-in-Section-12-where-applicable;-and

3.5.4.b.7-Transportation-regulations--promulgated--by--the--Public  
Service--Commission--and--the--Department--of--Highways--and--the  
Director.

### 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.

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 processes.

3.1.5.b Generators and transporters of recyclable materials shall comply with all applicable provisions of West Virginia Administrative regulations Series VII, Transportation of Hazardous Wastes by Highway Transporters, promulgated by WV Department of Highways and Regulations Governing Transportation of Hazardous Waste by Rail, promulgated by WV Public Service Commission; and Sections 4, 5 and 6 of these regulations, except as provided in paragraph 3.1.5.a of this section.

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, and 11 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.2.1 Notification requirements of Section 4;

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

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

3.1.5.d.1 The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 3.1.5.a.2.iv should be regulated under 3.1.5.b and 3.1.5.c. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

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

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

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

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

3.1.5.d.1.e Other relevant factors.

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

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

3.1.5.d.2.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 11.25 of the regulations and in any subsequent hearing.

\* \* \* \* \*

### 3.3 Characteristics of Hazardous Waste

\* \* \* \* \*

#### 3.3.2 Characteristic of Ignitability

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

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

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



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

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

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

### 3.3.3 Characteristic of Corrositivity

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

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

3.3.3.a.2 It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 C (130 F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method (see Section 2.00 (32)).

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

### 3.3.4 Characteristic of Reactivity.

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

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

3.3.4.a.2 It reacts violently with water;

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

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

health or the environment;

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

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

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

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

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

\* \* \* \* \*

### 3.4 Lists of Hazardous Wastes

#### 3.4.1 General

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

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

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

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

3.4.1c Each hazardous waste listed in this section is assigned a Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification

requirements of Section 4 of these regulations and certain recordkeeping and reporting requirements under Section 6, Section 8 and Section 11 of these regulations.

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

3.4.2 Hazardous Waste from Non-specific sources.

<u>Hazardous Waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
F001 . . . . .	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations. (T)	
F002 . . . . .	The following spent halogenated solvents: tetra-chloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, and trichlorofluoromethane; and the still bottoms from the recovery of these solvents. (T)	
F003 . . . . .	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents. (I)	
F004 . . . . .	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; and the still bottoms from the recovery of these solvents. (T)	
F004 . . . . .	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents. (I,T)	
F005 . . . . .	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents. (I,T)	
F006 . . . . .	Wastewater treatment sludges from electroplating operations except from acid anodizing of aluminum;	

(2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)

F019 . . . . . Wastewater treatment sludges from the chemical conversion coating of aluminum (T)

F007 . . . . . Spent cyanide plating bath solutions from electroplating operations ~~(except-for-precious-metals electroplating-spent-cyanide-plating-bath solutions)~~. (R,T)

F008 . . . . . Plating bath ~~sludges~~ residues from the bottom of plating baths from electroplating operations where cyanides are used in the process ~~(except-for-precious metals-electroplating-plating-bath-sludges)~~. (R,T)

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

\* \* \* \* \*

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

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded: as described in Section 3.1.1.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.

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

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

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

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

Comment: The phrase "commercial chemical product or manufacturing

chemical intermediate having the generic name listed in . . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the 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.

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

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

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

These wastes and their corresponding Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
P023 . . . . .	Acetaldehyde, chloro-
P002 . . . . .	Acetamide, N-(aminothioxomethyl)-
P057 . . . . .	Acetamide, 2-fluoro-
P058 . . . . .	Acetic acid, fluoro-, sodium salt
P066 . . . . .	Acetimidic acid, N-((methylcarbamoyl)oxy) thio-, methyl ester
P001 . . . . .	3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts, <u>when present at concentrations greater than 0.3%</u>
* * * * *	
P001 . . . . .	Warfarin (when present at concentrations <u>greater than 0.3%</u> )
P121 . . . . .	Zinc cyanide
P122 . . . . .	Zinc phosphide (R,T)
P122 . . . . .	<u>Zinc phosphide when present at concentrations</u>

greater than 10%

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

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

These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous  
Waste No.

Substance

U001 . . . . .	Acetaldehyde (i)
U034 . . . . .	Acetaldehyde, trichloro-
U187 . . . . .	Acetamide, N-(4-ethoxyphenyl)-
U005 . . . . .	Acetamide, N-9-H-fluoren-2-yl-
U112 . . . . .	Acetic acid, ethyl ester (i)
U144 . . . . .	Acetic acid, lead salt
U214 . . . . .	Acetic acid, thallium(i) salt
U002 . . . . .	Acetone (i)
U003 . . . . .	Acetonitrile (I,T)
U248 . . . . .	<u>3-(alpha-acetonylbenzyl)-4 hydroxycoumarin</u> <u>and salts, when present at concentrations</u> <u>of 0.3% or less</u>

\* \* \* \* \*

U248 . . . . .	<u>Warfarin, when present at concentrations of</u> <u>0.3% or less</u>
U200 . . . . .	Yohimban-16-carboxylic acid, 11,17-di- methoxy-18-((3,4,5-trimethoxy- benzoyl)oxy)-, methyl ester,
U249 . . . . .	<u>Zinc phosphide, when present at</u> <u>concentrations of 10%</u>

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

The Director hereby adopts and incorporates by reference 40 CFR Part 263, as published in the Code of Federal Regulations on July 4, 1982 the effective date of these regulations 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.

Section 6. Standards Applicable to Generators of Hazardous Waste

\* \* \* \* \*

6.3.5 Accumulation Time

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

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

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

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

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

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

6.3.5.a.65 The generator complies with the requirements for owners or operators in Subparts C and D in 40 C.F.R. Part 265 and with 265.16; and,

6.3.5.b A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the applicable requirements of Sections 4, 8, and 12 of these regulations, 40 C.F.R. Part 265 and the permit requirements of Section 11 and 40 C.F.R. Part 265 unless he has been granted an extension to the ninety (90) day period. Such an extension may be granted by the Director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may

be granted at the discretion of the Director on a case-by-case basis. Before the end of ninety (90) days, or any extension period granted by the Director (not to exceed thirty days), the generator must either transport all such hazardous waste off-site to a designated facility, or, if held on-site for more than ninety (90) days, place such hazardous waste in an on-site facility that is either permitted under section 11.00 of these regulations or under 40 C.F.R. Part 270 or which has interim status or which is authorized to manage hazardous waste by a state with a hazardous waste program approved by EPA.

#### 6.3.5.c Satellite Area Accumulation

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

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

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

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

\* \* \* \* \*

#### 6.5 Special Conditions

##### 6.5.1 International Shipments

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

6.5.1 When shipping hazardous waste outside the United States the

generator shall:

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

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

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

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

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

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

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

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

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

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

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

6.5.1.d.2 In place of the generator's signature on the

certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

\* \* \* \* \*

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

### 8.1 General, Purpose, Scope and Applicability

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

8.1.2 The standards in this section apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as Section 8.1.5 provides otherwise. In addition to the standards in this section, the regulations of the Air Pollution Control Commission, Series 25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities apply to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as 8.1.5 provides otherwise. For purposes of this section the following persons are to be incinerating hazardous waste:

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

8.1.2.b Owners or operators of in boilers or industrial furnaces used to destroy the wastes.

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

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

8.1.5 The requirements of this section do not apply to:

8.1.5a ~~The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in~~

Section 3.04.05(a), except to the extent that Section 3.1.5(b) provides otherwise, managing recyclable materials described in Section 3.1.5a.2 and 3.1.5a.3 of these regulations (except in cases or situations in which the requirements of Section 3 of these regulations are referred to in Section 9 of these regulations).

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

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

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

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

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

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

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

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

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

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

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

8.1.5.g.3 Any person who is covered by paragraph g.1 of this

subsection and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Chapter 20, Article 5E of these activities.

8.1.5h The addition of absorbent material to hazardous waste in a container or the addition of hazardous waste to absorbent material in a container, provided that these actions occur at the time hazardous waste is first placed in the container and Section 8.2.8 (b), 8.7.2 and 8.7.3 are complied with.

\* \* \* \* \*

#### 8.2.6 General Inspection Requirements

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

9.1 (Reserved)

9.2 (Reserved)

9.3 Recyclable Materials Used in a Manner Constituting Disposal

9.3.1 Applicability

9.3.1.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."

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

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

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

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

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

under all applicable provisions of Sections 4, 8 and 11 and 13 of these regulations, and 40 CFR Part 265, subparts A through L.

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

Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are subject to all applicable provisions of Sections 4, 8 and 11 and 13 of these regulations, and 40 CFR Part 265, Subparts A through N. (These requirements do not apply to products which contain these recyclable materials under the provisions of paragraph 9.3.1b of these regulations.)

9.4 Hazardous Waste Burned for Energy Recovery

9.4.1 Applicability.

9.4.1.a The regulations of this Subpart apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace 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 3-3-2 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.

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

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

9.4.2 Prohibitions. (Reserved)

9.4.3 Standards applicable to generators of hazardous waste fuel.

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

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

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

9.4.4 Standards applicable to transporters of hazardous waste fuel.

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

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

9.4.5 Standards applicable to marketers of hazardous waste fuel.

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

9.4.5a Prohibitions (Reserved).

9.4.5.b Prohibitions (Reserved).

9.4.5.a.1 Storage. Marketers who are generators are subject to the requirements of Section 6.3.5 of these regulations or to Sections 8.1 through 8.10, 8.13 and Section 11 and Section 13 of these regulations or 40 CFR Subparts A through L of Part 265 and Parts 270 and 124, except as provided by Section 9.4.7 of this Section for certain spent materials and by-products;

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

9.4.6 Standards applicable to burners of hazardous waste fuel.

9.4.6a (Reserved)

9.4.6.b Notification. (Reserved)

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

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

9.4.7a Except as provided in paragraph (b), hazardous waste fuels that are spent materials and by-products and that are hazardous only because they exhibit a characteristic of hazardous waste are

not subject to the notification requirements of Chapter 20, Article 5E, Section 10, the generator, transporter, or storage requirements of Chapter 20, Article 5E.

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

9.5 (Reserved)

9.6 Recyclable Materials Utilized for Precious Metal Recovery

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

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

9.6b.1 notification requirements of Section 4;

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

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

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

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

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

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

#### 9.7 Reclaimed Spent Lead-Acid Batteries

9.7a This section applies to persons who reclaim spent lead-acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to the requirements of Sections 4 through 9 or 11 or 13 of these regulations, nor 40 CFR Part 265.

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

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

9.7b.2 all applicable provisions of Sections 8.1 through 8.10 of these regulations, except Section 8.2.3 concerning waste analysis and 8.5.2 and 8.5.3 concerning use of the manifest and manifest discrepancies and Section 13 of these regulations.

9.7b.3 all applicable provisions of Subparts A, B (but not

Section 265.13 (waste analysis)), C, D, E (but not Sections 265.71 and 265.72 (dealing with use of the manifest and manifest discrepancies)), and F through L of 40 CFR Part 265; and

9.7b.4 all applicable provisions of Section 11 of these regulations. Section 11. Hazardous Waste Permitting Program

\* \* \* \* \*

#### 11.1.2 Specific Exclusions

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

11.1.42a Generators who accumulate hazardous waste on site for less than ninety (90) days as provided in Section 6.03.05.

11.1.42b Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 6.05.02.

11.1.42c Persons who own or operate facilities operated solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this section by Sections 3.01.03 or 3.01.04.

11.1.42d Owners or operators of totally enclosed treatment facilities, as defined in Section 2.00.

11.1.42e Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 2.00.

11.1.42f Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 6.03.01 at a transfer facility for a period of ten (10) days or less.

11.1.42g A person is not required to obtain a hazardous waste management permit for these treatment or containment activities he carries out to immediately contain or treat a spill of hazardous waste or material, which, when spilled, becomes a hazardous waste. After the immediate response activities are completed, any treatment, storage or disposal of spilled material or spill residue or debris that is undertaken must be covered by a Hazardous Waste Management Permit, an emergency Hazardous Waste Management Permit or interim status taken during immediate response to any of the following situations:

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

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

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

11.1.2.g.2 Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part for those activities.

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

\* \* \* \* \*

### 11.3 Interim Status

#### 11.3.1 Qualifying for Interim Status

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

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

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

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

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

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

application. If, after such notification and opportunity for response, the Chief determines that the application is deficient he may take appropriate enforcement action.

11.3.1c Any person who owns or operates an existing facility which was not previously required to have a permit under the Act because it managed no hazardous wastes identified or listed under Section 3.00 of these regulations, but which due to a revision of Section 3.00 is later required to have a permit, shall also have interim status and shall be treated as having been issued a permit to the extent such person:

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

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

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

\* \* \* \* \*

## 11.7 Signatories to Permit Applications and Reports

### 11.7.1 Applications

All permit applications shall be signed as follows:

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

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

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

11.7.1.a.2 The manager of one or more manufacturing, production or

operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. NOTE: The Director does not require specific assignments or delegations of authority to responsible corporate officers identified in §11.7.1.a.1 The Director will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified procedures governing authority to assign permit applications may provide for assignment or delegation to applicable corporate positions under §11.7.1.a.2 rather than to specific individuals.

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

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

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

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

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

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

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

11.7.2c The written authorization is submitted to the chief.

#### 11.7.3 Changes to Authorization

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or because a new individual or position has responsibility for the facility's compliance with environmental laws and permits, a new authorization satisfying the



requirements shall be submitted to the Chief prior to or together with any reports, information or applications to be signed by an authorized representative.

#### 11.7.4 Certification

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

~~"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~

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

\* \* \* \* \*

#### 11.10.3 Duty Need to Halt or Reduce Activity Not a Defense

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

#### 11.10.4 Duty to Mitigate

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

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

\* \* \* \* \*

#### 11.10.8 Duty to Provide Information

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

\* \* \* \* \*

#### Section 13. Financial Requirements

The Director hereby adopts and incorporates by reference 40 CFR Parts 264 and 265, Subparts H, as published in the Code of Federal Regulations on July 4, 1982 the effective date of these regulations with the following modifications: Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 264.147(f), 265.147(f) shall be amended by the addition of the following paragraph:

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

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

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

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

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

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

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

Persons desiring to call to the attention of the ~~Board-of~~ Director

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

#### 16.2 Petitions for Waste Exclusions

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

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

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

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

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

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

#### 16.3 Variances from Classification as a Waste

##### 16.3.1 General

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

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

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

or

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

#### 16.3.2 Standards and Criteria

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