

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.

Charleston, West Virginia 25304
Phone: 304-926-0499 ext. 1237

LEGISLATIVE RULE TITLE: 45CSR25 - To Prevent and Control Air Pollution from
Hazardous Waste Treatment, Storage, or Disposal Facilities

1. Authorizing statute(s) citation W.Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 15, 2005

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

Published notice on June 17th and 21st in the Charleston Newspapers; The Charleston Daily
Mail and The Charleston Gazette. Sent Public Hearing Notice via e-mail to an
extensive Division of Air Quality mailing list and posted on the Department of Environmental
Protection's web site under "Calendar of Events".

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 18, 2005

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

Attached X No comments received

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

July 29, 2005

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304

Tamra Mowrer, Administrative Secretary
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499
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- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Lucia Pontiveros, Environmental Resource Program Manager
601 57th Street, S.E.
Charleston, WV 25304

Phone: 304 926-0499 ext. 1243
Fax: 304 926-0479

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:

- 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.

N/A

b. Date of hearing or comment period:

_____ N/A _____

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

_____ N/A _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY**

BRIEFING DOCUMENT

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

A. AUTHORITY: W.Va. Code §§22-5-4 and 22-18-6.

B. SUMMARY OF RULE:

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management Program, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Promulgation of this rule will enable the Department of Environmental Protection to continue to be the primary enforcement authority State RCRA Hazardous Waste Management Program promulgated by U.S. EPA as of June 1, 2005. Promulgation of this rule by the Legislature is necessary for the State to maintain consistency with current federal regulations, the Office of Waste Management's hazardous waste rule 33CSR20, and to fulfill its responsibilities under the CAA, as amended. Revisions to the rule include annual incorporation by reference updates, general language clarification and correction.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. In accordance with the Secretary's recommendation, and with limited exception, the Division of Air Quality proposes that the rule incorporate by reference the federal counterparts. Because the proposed rule incorporates by reference the federal counterpart, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005

601 57th Street, SE, Charleston, WV

Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:

Larry Harris

Jackie Hallinan

Rick Roberts

Lisa Dooley

Bill Raney

Karen Price

DEP:

Stephanie R. Timmermeyer, Cabinet Secretary

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office

James Martin, Chief, WVDEP - Office of Oil & Gas

Brett Loflin, WV Oil and Gas Conservation Commission

Dave Bassage- WVDEP

Greg Adolpson – WVDEP

Jim Mason – WVDEP

Fred Durham – WVDEP

Jim Mason – WVDEP

Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle

Don Garvin – WVEC

Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 “Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors”**

This rule partially fulfills the State’s obligations in response to U.S. EPA’s final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

Comments:

How will this relate to the new rule 40?

Rule 40 will repeal Rule 1 in 2009.

Are these kinds of trading effective in lowering NO_x emission?

Yes, West Virginia has dropped from one of the highest to one of the lowest states.

If one is testing, how do you see which sources account for improvement?

Have CEMS on stacks so we can analyze data.

- **45CSR15 – “Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61”**

This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and section 112 of the federal clean Air Act, as amended (CAA). This rule codifies general procedures and

criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – “Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines; Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – “To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities.”**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

Comments:

What does the term “constituents” mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

Look at the definition of “hazardous waste” and prevention language is meant to set forth overall purpose of the rule.

Does the agency consult with DHHR or other public health officials?

No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.

- **45CSR33 – “Acid Rain Provisions and Permits”**

This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the United States Environmental Protection Agency (USEPA) under title IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions. Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or

cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – “Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products, Effluent Limitations Guidelines and Standards for Timber Products Point Source Category, List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial,

Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – “Mercury Budget Trading Program to Reduce Mercury Emissions”**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%

2018 – 69%

WV:

2010 – 43%

2018 – 77%

- **45CSR39 – “Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides”**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_x).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce annual emissions through the constraint of set

budgets. U.S. EPA is specifying that annual NO_x emission reductions be implemented in two phases. The first phase of NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind NO_x emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_x Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

• **45CSR40 – "Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides"**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_x Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_x).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_x reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_x emission reductions be implemented in two phases. The first phase of ozone season NO_x reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_x emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-

based "cap and trade" provisions which allow sources to buy or sell NO_x emission allowances from or to other program participants. Reducing upwind ozone season NO_x emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_x SIP Call trading program, existing NO_x SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_x reduction provisions must be "sunsetting" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively "sunset" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW, generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_x SIP Call ozone season NO_x emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_x Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO₂ Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO₂).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO₂ reduce annual emissions based upon the implementation of retirement ratios for SO₂ allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO₂ emission reductions be implemented in two phases. The first phase of SO₂ reductions starts in 2010 and requires retiring SO₂ allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO₂ allowances at a 2.86:1 ratio, and continues thereafter. The SO₂ emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO₂ emission allowances from or to other program participants. Reducing upwind SO₂ emissions will assist downwind PM_{2.5} and 8-hour ozone nonattainment

areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – “Solid Waste Management Rule”**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq.

The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – “Hazardous Waste Management”**

The purpose of this rule 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. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – “Coalbed Methane Wells Rule”**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – “Rules of the Commission”**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 “Environmental Excellence Program Rule”**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the \$1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from \$250 to \$400; the permit fees for deep wells from \$250 to \$650; and the reclamation fees for all well activity from \$100 to \$150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from \$250 to \$650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately \$350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. HB 2723. Environmental Rules Bundle.

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. HB 3236. Thin Seam Coal Tax Applicability.

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. HB 2333. Environmental Good Samaritan Act.

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. HB 3033. Continuation of Special Reclamation Tax.

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. SB 154. Beneficial Reuse of Water Treatment Plant Sludge.

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. SB 287. Transfer of Rulemaking Authority for Water Quality Standards.

This legislation transfers the authority to promulgate water quality standards and the authority to grant remining variances from the Environmental Quality Board to the department.

11. SB 748. Credit for Mitigation.

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned meeting.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

Type of Rule: X Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE
Charleston, WV 25304

Phone Number: 926-0475

Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2006 Increase/Decrease (use "-")	2007 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: 45CSR25 - "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

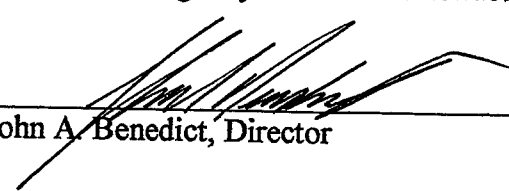
The above estimates reflect that there will be no anticipated changes in costs to administer this rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 15, 2005

Signature of Agency Head or Authorized Representative



John A. Benedict, Director

RECEIVED

05 JUL 29 PM 2:34

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§45-25-1. General.

1.1. Scope.

1.1.a. This rule establishes and adopts a program of regulation over air emissions from and emission standards for the treatment, storage and disposal of hazardous wastes waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A. The Secretary hereby adopts these standards by reference. The Secretary also adopts associated reference methods, performance specifications and other test methods which are appended to these standards.

1.1.b. The purpose of this rule is in order to achieve and maintain such levels of air quality as that will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes waste. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.b. ~~The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.~~

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such a manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone any person from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and 22-5-1 et seq. Recognizing that each ~~Chapter~~ article has its own enforcement sections, it is the intent of the Secretary that enforcement ~~shall~~ will be implemented in accordance with W.Va. Code §22-18-1 et seq., where practicable.

1.1.e. Permit applications ~~shall~~ will be processed in accordance with the permitting procedures as set forth in W.Va. Code §§22-18-1 et seq., 33CSR20, and this rule.

1.2. Authority. -- W.Va. Code §§22-5-4 and 22-18-1 et seq.

1.3. Filing Date. -- ~~May 20, 2005.~~

1.4. Effective Date. -- ~~June 1, 2005.~~

1.5. Incorporation By Reference.

1.5.a. Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists, and in accordance with the Secretary's recommendation, with limited exception, this rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A: Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of July 1, 2004, effective June 1, 2005.

1.5.b. This rule ~~also~~ incorporates by reference the provisions contained in 33CSR20, effective ~~June 1, 2005~~ June 1, 2006, except for any ~~provisions~~ provision in 33CSR20 which incorporate by reference the Code of Federal Regulations.

1.5.c. This rule incorporates by reference the provisions of 40 CFR 262 as amended and finalized at 69 Federal Register 62217 (October 25, 2004).

1.6. Former Rules. -- This legislative rule amends 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal" which was filed ~~April 30, 2004~~ May 20 2005, and which became effective ~~June 1, 2004~~ June 1, 2005.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", "statutory air pollution" has the meaning ascribed to it in W.Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means

any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "Best Available Control Technology" or "BACT", means an ~~emissions limitation~~ emission standard based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for ~~such the~~ the facility through application of production processes or available methods, systems, or techniques. If the Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof; may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such The~~ Such standard ~~shall will~~, to the ~~degree~~ extent possible, set forth the ~~emissions~~ emission reduction achievable by implementation of ~~such the~~ the design, equipment, work practice or ~~operation~~ operational standard, and ~~shall must~~ provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "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.

2.8. "Department of Environmental Protection" or "DEP" means that Department of the West Virginia Department of Environmental Protection which is created by the provisions of W.Va. Code §22-1-1 et seq.

~~2.9. "EPA" means the United States Environmental Protection Agency.~~

~~2.10.2.9.~~ "Facility mailing list" means the mailing list for a facility maintained by U.S. EPA in accordance with 40 CFR §124.10(c)(1)(ix).

2.10. "Hazardous waste" means a hazardous waste as defined in 40 CFR §261.3.

2.11. "Infectious Medical Waste" ~~shall~~ will have the meaning ascribed to it in 64CSR56 "Infectious Medical Waste", (July 1, 1999), promulgated by the West Virginia Division of Health.

2.12. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.13. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.14. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.15. "RCRA Permit" means "West Virginia hazardous waste permit". The following additional requirements ~~shall~~ will apply to obtain a hazardous waste management permit in West Virginia. All references in 40 CFR Part 270 to 40 CFR Part 124 ~~shall~~ will be deemed to be references to the applicable provisions of subsections 5.1 through 5.14. To the extent of any inconsistency with 40 CFR Part 270, the specific provisions contained herein ~~shall control~~ will govern.

2.16. "Secretary" means the Secretary of the West Virginia Department of Environmental Protection or ~~such~~ other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.17. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.18. "U.S. EPA" means the United States Environmental Protection Agency.

~~2.18.2.19.~~ Other words or phrases not herein defined and used in this rule ~~shall~~ will have the meaning as ascribed in W.Va. Code §§22-5-1 et seq., or 22-18-1 et seq., or 33CSR20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption ~~By~~ Reference of Standards.

3.1. The Secretary hereby adopts and incorporates by reference the Definitions definitions, lists, tables, appendices, conditions, or requirements from 33CSR20 "Hazardous Waste Management Rule", effective June 1, 2005 June 1, 2006, are hereby adopted by reference, except for any provisions in 33CSR20 which incorporate by reference the Code of Federal Regulations.

~~3.1.a.~~ In case of a conflict between the Division of Air Quality and the Division of Water and Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Secretary has final administrative authority to resolve the conflict.

3.2. Unless otherwise indicated, the Secretary hereby adopts and incorporates by reference the provisions contained in the Code of Federal Regulations, effective July 1, 2004 June 1, 2005, as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

3.2.a. Whenever the term "United States"

is used, it ~~shall~~ will also mean the State of West Virginia;

3.2.b. Whenever the terms "Administrator," "Regional Administrator," "Assistant Administrator for Solid Waste and Emergency Response" or "Secretary" are used, the term means the Secretary of the West Virginia Department of Environmental Protection;

3.2.c. Whenever the term "Environmental Protection Agency" is used the term also means the West Virginia Department of Environmental Protection; and

3.2.d. The distance provisions of 40 CFR §265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule ~~shall~~ will maintain a listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State Secretary, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33CSR20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45CSR14 or the CAA;

4.1.c. Nonattainment program under 45CSR19 or the CAA ~~and 45CSR19~~;

4.1.d. National Emission Standards for Hazardous Air Pollutants (NESHAP) preconstruction approval under 45CSR15, 45CSR34 or the CAA;

4.1.e. Standards of Performance for New Stationary Sources under 45CSR16 or the CAA; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule ~~shall~~ must comply with the personnel training requirements as specified by 40 CFR §264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Secretary with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate ~~such~~ these facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities ~~shall~~ must manage all hazardous waste placed in a container in accordance with the applicable air emission requirements as listed in Table 25-A.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities ~~shall~~ must manage all hazardous waste placed in a tank in accordance with the applicable air emission requirements as listed in Table 25-A.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities ~~shall~~ must manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission requirements as listed in Table 25-A.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities ~~shall~~ must manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities ~~shall~~ must be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment ~~shall~~ must include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the

facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of ~~such~~ the potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities ~~shall~~ must utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Secretary may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that ~~such~~ the standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Secretary may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. ~~==~~ Notwithstanding any other provision in 40 CFR §270.61, in the event the Secretary finds an imminent and substantial danger to human health or the environment, the Secretary may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it ~~shall~~ must be followed within five (5) days by written emergency permit;

4.14.b. ~~Shall~~ Must not exceed ninety (90) days in duration;

4.14.c. ~~Shall~~ Must clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Secretary at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. ~~Shall~~ Must be accompanied by public notice as described under section 7 and ~~shall~~ include the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted hazardous waste management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it,

4.14.e.5. Duration of the emergency permit; and

4.14.f. ~~Shall~~ Will incorporate, to the

extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. -- The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of ~~such a facility shall~~ a pathological waste incinerator must design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Secretary including, but not limited to, 45CSR6 and 45CSR13.

§45-25-5. Permit Process.

5.1. Pre-application Public Meeting and Notice

5.1.a. Applicability. -- The requirements of subsection 5.1 ~~shall will~~ apply to West Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements ~~shall will~~ also apply to West Virginia hazardous waste management Part B permit applications seeking renewal of permits for ~~such hazardous waste management~~ units, where the renewal application is proposing a significant change in facility operations. A "significant change" is any change that would qualify as a Class 3 permit modification pursuant to 40 CFR §270.42. These requirements do not apply to permit modifications under 40 CFR §270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.1.b. Prior to the submission of a West Virginia hazardous waste management Part B permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and

inform the community of proposed hazardous waste management activities. The applicant ~~shall~~ will post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

5.1.c. The applicant ~~shall~~ will submit a summary of the meeting, along with the list of attendees and their addresses developed under subdivision 5.1.b, and copies of any written comments or materials submitted at the meeting, to the ~~permitting agency~~ Secretary as a part of the Part B application, in accordance with 40 CFR §270.14(b).

5.1.d. The applicant must provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant must maintain, and provide to the ~~permitting agency~~ Secretary upon request, documentation of the notice.

5.1.d.1. The applicant ~~shall~~ will provide public notice in all of the following forms:

5.1.d.1.A. A newspaper advertisement. -- The applicant ~~shall~~ will publish a notice, fulfilling the requirements in paragraph 5.1.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary ~~shall~~ will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that ~~such the~~ publication is necessary to inform the affected public. The notice must be published as a display advertisement.;

5.1.d.1.B. A visible and accessible sign. -- The applicant ~~shall~~ will post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 5.1.d.2. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.;

5.1.d.1.C. A broadcast media announcement. ~~==~~ The applicant ~~shall~~ will broadcast a notice, fulfilling the requirements in paragraph 5.1.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary; and

5.1.d.1.D. A notice to the permitting agency. ~~==~~ The applicant ~~shall~~ will send a copy of the newspaper notice to the ~~permitting agency~~ Secretary and the Secretary ~~shall~~ will forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is, or is proposed to be, located; and to each state agency having any authority under State law with respect to the construction or operation of the facility.

5.1.d.2. The notices required under paragraph 5.1.d.1 must include:

5.1.d.2.A. The date, time, and location of the meeting;

5.1.d.2.B. A brief description of the purpose of the meeting;

5.1.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

5.1.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

5.1.d.2.E. The name, address, and telephone number of a contact person for the applicant.

5.2. Public Notice Requirements at the Application Stage.

5.2.a. Applicability. ~~==~~ The requirements of subsection 5.2 ~~shall~~ will apply to all West

Virginia hazardous waste management Part B permit applications seeking initial permits for hazardous waste management units. These requirements ~~shall~~ will also apply to hazardous waste management Part B permit applications seeking renewal of permits for ~~such~~ hazardous waste management units upon the expiration of the existing permit. These requirements do not apply to permit modifications under 40 CFR §270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

5.2.b. Notification at application submittal. ~~==~~ The Secretary ~~shall~~ will provide public notice as required in subsection 5.2 when a Part B permit application has been submitted. The Secretary ~~shall~~ will provide public notice to:

5.2.b.1. The applicant;

5.2.b.2. All persons on a mailing list developed under subparagraph 5.8.d.1.D; ~~and~~

5.2.b.3. The appropriate units of state and local government having jurisdiction over the area where the facility is proposed to be located; and to each state agency having any authority under State law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Secretary and is available for review; and

5.2.b.4. Any person otherwise entitled to receive notice under subdivision 5.2.b may waive the right to receive notice for any classes and categories of permits.

5.2.c. The notice ~~shall~~ will be published within a reasonable period of time after the application is received by the Secretary. The notice must include:

5.2.c.1. The name and telephone number of the applicant's contact person;

5.2.c.2. The name and telephone number of the ~~permitting agency~~ Secretary's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

5.2.c.3. An address to which people can write in order to be put on the facility mailing list;

5.2.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

5.2.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

5.2.c.6. The date that the application was submitted.

5.2.d. Concurrent with the notice required under subdivision 5.2.b, the Secretary must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the ~~permitting agency~~ Secretary's office.

5.3. Information Repository.

5.3.a. Applicability. -- The following requirements apply to all applicants seeking West Virginia hazardous waste management permits for hazardous waste management units.

5.3.b. The Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary ~~shall~~ will consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary ~~shall~~ will notify the

facility that it must establish and maintain an information repository.

5.3.c. The information repository ~~shall~~ will contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary ~~shall~~ will have the discretion to limit the contents of the repository.

5.3.d. The information repository ~~shall~~ will be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary ~~shall~~ will specify a more appropriate site.

5.3.e. The Secretary ~~shall~~ will specify requirements for informing the public about the information repository. At a minimum, the Secretary ~~shall~~ will require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

5.3.f. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary may close the repository at his or her discretion, based on the factors in subdivision 5.3.b.

5.4. Application for a Permit.

5.4.a. Any person who requires a permit ~~shall~~ must complete, sign, and submit to the Secretary an appropriate application. Applications are not required for hazardous waste permits by rule pursuant to 40 CFR §270.60. The Secretary ~~shall~~ will not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Permit applications must comply with the signature and certification requirements of 40 CFR §270.11.

5.4.b. The Secretary ~~shall~~ will review every application for completeness. Each application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Secretary within 30 days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Secretary ~~shall~~ will notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary ~~shall~~ will list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary ~~shall~~ will specify in the notice of deficiency a date for submitting the necessary information. The Secretary ~~shall~~ will notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary may request additional information from the applicant but only when necessary to clarify, modify or supplement previously submitted materials. Request The request for ~~such~~ additional information will not render an application incomplete.

5.4.c. If the applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions of W.Va. Code §§22-18-1 et seq. and 22-5-1 et seq.

5.4.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she ~~shall~~ will notify the applicant and a date ~~shall~~ will be scheduled.

5.4.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 5.4.b.

5.4.f. For each application the Secretary

~~shall~~ will, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule ~~shall~~ will specify target dates by which the Secretary intends to:

5.4.f.1. Prepare a draft permit;

5.4.f.2. Give public notice;

5.4.f.3. Complete the public comment period, including any public hearing; and

5.4.f.4. Issue a final permit.

5.5. Modification, Revocation and Reissuance, or Termination of Permits.

5.5.a. Permits may be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§270.41 or 270.43. All requests ~~shall~~ must be in writing and ~~shall~~ contain facts or reasons supporting the request.

5.5.b. If the Secretary decides the request is not justified, he or she ~~shall~~ will send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Secretary may be appealed to the Air Quality Board in accordance with W.Va. Code §22B-1-1 et seq.

5.5.b.1. If the Secretary tentatively decides to modify or revoke and reissue a permit under 40 CFR §§270.41 or 270.42(c), he or she ~~shall~~ will prepare a draft permit under subsection 5.6 incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary

shall will require the submission of a new application.

5.5.b.2. In a permit modification, only those conditions to be modified shall will be reopened when a new draft permit is prepared. All other aspects of the existing permit shall will remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall must comply with all conditions of the existing permit until a new final permit is reissued.

5.5.b.3. "Classes 1 and 2 Modifications" as defined in 40 CFR §§270.42(a) and (b) are not subject to the requirements of this subsection.

5.5.c. If the Secretary tentatively decides to terminate a permit under 40 CFR §270.43, he or she shall will issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under subsection 5.6.

5.6. Draft Permits.

5.6.a. Once an application is complete, the Secretary shall will tentatively decide whether to prepare a draft permit or to deny the application.

5.6.b. If the Secretary tentatively decides to deny the permit application, he or she shall will issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit which follows the same procedures as a draft permit. If the Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he or she shall will withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

5.6.c. If the Secretary tentatively decides to issue a permit, he or she shall will prepare a draft

permit that contains the following information:

5.6.c.1. All conditions under 40 CFR §§270.30 and 270.32;

5.6.c.2. All compliance schedules under 40 CFR §270.33;

5.6.c.3. All monitoring requirements under 40 CFR §270.31; and;

5.6.c.4. Standards for treatment, storage, ~~and/or~~ disposal and other permit conditions under 40 CFR §270.30.

5.6.d. All draft permits prepared by the Secretary shall must be accompanied by a fact sheet if required under subdivision 5.7.a and shall will be based on the administrative record, publicly noticed and made available for public comment.

5.6.e. In addition to the requirements of subsection 5.6, public notice of the preparation of a draft permit shall will be given by the methods contained in 40 CFR §§270.2, 270.14, 270.30, 270.62, and 270.66.

5.7. Fact Sheet.

5.7.a. A fact sheet shall will be prepared for each draft permit which the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall will briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall will send the fact sheet to the applicant and, on request, to any other person.

5.7.b. The fact sheet shall must include when applicable:

5.7.b.1. A brief description of the type of facility or activity which is the subject of the draft permit;

5.7.b.2. The type and quantity of waste, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

5.7.b.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

5.7.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5.7.b.5. A description for reaching a final decision on a draft permit including;

5.7.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

5.7.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

5.7.b.5.C. Any other procedures by which the public may participate in the final decision-; and

5.7.b.6. Name and telephone number of a person to contact for additional information.

5.8. Public Notice of Permit Actions and Public Comment Period.

5.8.a. Scope. The Secretary shall give public notice if the following actions have occurred:

5.8.a.1. A draft permit has been prepared-; and

5.8.a.2. A hearing has been scheduled.

5.8.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under

subsection 5.5. Written notice of that denial shall will be given to the requester and to the permittee.

5.8.c. Timing. = Public notice of the preparation of a draft permit, including a Notice of Intent to Deny a Permit Application, required under subdivision 5.8.a shall must allow at least forty-five (45) days for public comment. Public notice of a public hearing shall must be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

5.8.d. Methods. = Public notice of activities described in subdivision 5.8.a shall will be provided by the following methods:

5.8.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

5.8.d.1.A. The applicant;

5.8.d.1.B. Any other agency which the Secretary knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), W.Va. Code §22-5-1 et. seq., NPDES, 33 U.S.C. §1344, or sludge management permit for the same facility or activity;

5.8.d.1.C. Federal and state agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable;

5.8.d.1.D. Persons on a mailing list developed by:

5.8.d.1.D.i. Including those who request in writing to be on the list;

5.8.d.1.D.ii. Soliciting persons for

"area lists" from participants in past permit proceedings in that area; and

5.8.d.1.D.iii. Notifying the public of the opportunity to be put on the mailing list through periodic public publication in the public press and in ~~such publications as~~ regional and state funded newsletters, environmental bulletins, or state law journals. The Secretary may update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary may delete from the lists the name of any person who fails to respond to such the request;

5.8.d.1.E. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

5.8.d.1.F. To each state agency having any authority under state law with respect to the construction or operation of such the facility.

5.8.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

5.8.d.3. In a manner constituting legal notice to the public under state laws; and

5.8.d.4. Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

5.8.e. ~~All public~~ Public notices. -- All public notices issued ~~shall must~~ contain the following minimum information:

5.8.e.1. Name and address of the office processing the permit action for which notice is being given;

5.8.e.2. Name and address of the permittee or the permit applicant and, if different,

of the facility or activity regulated by the permit;

5.8.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

5.8.e.4. Name, address and telephone number of a person from who interested persons may obtain further information, including copies of the draft permit and fact sheet and the application; ~~and~~

5.8.e.5. A brief description of the comment procedures required by subsections 5.9 and 5.10 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision;

5.8.e.6. The location of the administrative record, the times that which the record will be open for public inspection; and

5.8.e.7. Any additional information considered necessary or proper.

5.8.f. Public notices for hearings. -- In addition to the general public notice described in subdivision 5.8.e, the public notice of a hearing ~~shall must~~ contain the following information:

5.8.f.1. Reference to the date of previous public notices relating to the permit;

5.8.f.1.A. Date, time, and place of the hearing; and

5.8.f.1.B. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures;

5.8.g. In addition to the general public notice described in subdivision, all persons identified in subparagraphs 5.8.d.1.A, 5.8.d.1.B,

and 5.8.d.1.C ~~shall~~ will be mailed a copy of the fact sheet, the permit application and the draft permit, as applicable.

5.9. Public Comments and Requests for Public Hearings Hearing. -- During the public comment period provided under subsection 5.8, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing ~~shall~~ must be in writing and ~~shall~~ state the nature of the issues proposed to be raised in the hearing. All comments ~~shall~~ will be considered in making the final decision and ~~shall~~ will be answered as provided in subsection 5.13.

5.10. Public Hearings.

5.10.a. The Secretary ~~shall~~ will hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

5.10.b. The Secretary may also hold a public hearing at his or her discretion, whenever, for instance, ~~such~~ a hearing might clarify one or more issues involved in the permit decision.

5.10.c. The Secretary ~~shall~~ will hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 5.8.c; whenever possible the Secretary ~~shall~~ will schedule a hearing at a location in convenient to the nearest population center to the proposed facility.

5.10.d. Public notice of the hearing ~~shall~~ will be given as specified in subsection 5.8.

5.10.e. Whenever a public hearing will be held the Secretary ~~shall~~ will designate a presiding officer for the hearings who ~~shall~~ will be responsible for its scheduling and orderly conduct.

5.10.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection 5.8 ~~shall~~ will automatically be extended to the close of any public hearing. The hearing officer may also extend the comment period by so stating at the hearing.

5.10.g. A tape recording or written transcript of the hearing ~~shall~~ will be made available to the public.

5.11. Reopening of the Public Comment Period.

5.11.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary may take one or more of the following actions:

5.11.a.1. Prepare a new draft permit, appropriately modified, under subsection 5.6;

5.11.a.2. Prepare a revised fact sheet under subsection 5.7 and reopen the comment period; and

5.11.a.3. Reopen or extend the comment period under subsection 5.11 to give interested persons an opportunity to comment on the information or arguments submitted.

5.11.b. Comments filed during the reopened comment period ~~shall~~ will be limited to the substantial new questions that caused its reopening. The public notice under subsection 5.8 ~~shall~~ will define the scope of the reopening.

5.11.c. Public notice of any of the above actions ~~shall~~ will be issued under subsection 5.8.

5.12. Issuance and Effective Date of Permit.

5.12.a. After the close of the public comment period on a draft permit the Secretary ~~shall~~ will issue a final permit decision. The Secretary ~~shall~~ will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice ~~shall~~ will include reference to the procedures for appealing a decision on the permit. A final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

5.12.b. A final permit decision ~~shall~~ will become effective thirty (30) days after the service of Notice of Decision unless:

5.12.b.1. A later effective date is specified in the decision;

5.12.b.2. Review is requested or an evidentiary hearing is requested; or

5.12.b.3. No comments requested change in the draft permit, in which case the permit ~~shall~~ will become effective immediately upon issuance.

5.13. Response to Comments.

5.13.a. At the time that any final permit decision is issued, the Secretary ~~shall~~ will issue a response to comments. This response ~~shall~~ will:

5.13.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

5.13.a.2. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

5.13.b. The response to comments ~~shall~~ will be available to the public.

5.14. Administrative Record.

5.14.a. The provisions of a draft permit prepared under subsection 5.6 ~~shall~~ will be based on the administrative record consisting of:

5.14.a.1. The application and any supporting data furnished by the applicant;

5.14.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

5.14.a.3. The fact sheet if required;

5.14.a.4. All documents cited in the fact sheet; and

5.14.a.5. Other documents contained in the supporting file for the draft permit.

5.14.b. The Secretary ~~shall~~ will base final permit decisions on the administrative record consisting of:

5.14.b.1. Administrative record for the draft permit;

5.14.b.2. All comments received during the public comment period provided under subsection 5.5, including any extension or reopening under subsection 5.11;

5.14.b.3. The tape or transcript of any hearing(s) held under subsection 5.10;

5.14.b.4. Any written material submitted at ~~such~~ the hearing;

5.14.b.5. The response to comments required by subsection 5.13 which identified and supports any change made in the draft permit and any new material placed in the record under subsection 5.13;

5.14.b.6. Other documents contained in the supporting file for the permit;

5.14.b.7. An addendum to the fact sheet

if needed; and

5.14.b.8. The final permit.

5.14.c. The administrative record ~~shall~~ will be complete on the date the final permit is issued.

5.14.d. Material readily available at the issuing agency office or published material that is generally available, and that is included in the administrative record under subdivisions 5.14.a and 5.14.b, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

5.15. Public Access to Information.

5.15.a. Any ~~records, reports, record, report,~~ or information and any permit, permit ~~applications~~ application, and related documentation within the Secretary's possession ~~shall will~~ be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Secretary that ~~such the~~ records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary ~~shall will~~ consider, treat, and protect ~~such the~~ records as confidential pursuant to W.Va. Code §§22-18-1-et seq. and 22-5-1-et seq.

5.15.b. It ~~shall will~~ be the responsibility of the person claiming any information as confidential under the provision of ~~subsection 5-15~~ subdivision 5.15.a to comply with the requirements of 45CSR31.

5.16. The provisions of 40 CFR §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W.Va. Code, §§22-18-1 et seq. and 22-5-1 et seq.

§45-25-6. Exclusions and Exemptions.

6.1. Wastes and materials excluded in 33CSR20, are excluded from the requirements of this rule.

6.2. Except for recyclable materials exempt pursuant to 33CSR§20-3, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of section 4.

6.3. The provisions of 62 Federal Register 52622-52642, dated October 8, 1997 (Project XL Site-Specific Rulemaking for Merck & Co., Inc., Stonewall Plant, Elkton, VA: Final Rule) are hereby excluded. These provisions include 40 CFR §§264.1030(d), 264.1050(g), 264.1080(e), 265.1030(c), 265.1050(f), and 265.1080(e).

§45-25-7. Application Fee.

7.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility ~~shall must~~ submit as part of ~~said~~ the application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. ~~Such The~~ fee ~~shall will~~ be determined by the schedule set forth below:

<u>Activity</u>	<u>Fee</u>
a. Hazardous Waste Management Facilities:	
Treatment design capacity more than 1,000 ton/yr	\$5,000
Treatment design capacity less than 1,000 ton/yr	\$5,000
b. Class 2, 3 Modifications or Renewals of Permits and 40 CFR §270.41 for Hazardous Waste Management Facilities	\$1,000
c. Class 1 Modifications	\$ 500

7.2. These application fees ~~shall will~~ be in

addition to any fee required under any other rule of the West Virginia Department of Environmental Protection.

§45-25-8. Inconsistency Between Rules.

8.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, ~~such the~~ inconsistency ~~shall~~ will be resolved by the determination of the Secretary and ~~such the~~ determination ~~shall~~ will be based upon the application of the more stringent provision, term, condition, method or rule.

TABLE 25-A

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
1.	40 CFR	- 264, 265	- O	- Incinerator
2.	40 CFR	- 270.19	- B	- Specific Requirements for Incinerators
		- 270.42	- D	- Permit Modification at the Request of the Permittee
			- Appendix	- Appendix I
3.	40 CFR	- 270.62	- F	- Hazardous Waste Incinerator Permits
4.	40 CFR	- 270.72	- G	- Changes During Interim Status
5.	40 CFR	- 264	- X	- Miscellaneous Units
6.	40 CFR	- 270.23	- B	- Specific Requirements for Miscellaneous Units
7.	40 CFR	- 264, 265	- AA	- Air Emission Standards for Process Vents
8.	40 CFR	- 270.24	- B	- Specific Requirements for for Process Vents
9.	40 CFR	- 264, 265	- BB	- Air Emission Standards for Equipment Leaks
10.	40 CFR	- 270.25	- B	- Specific Requirements for Equipment Leaks
11.	40 CFR	- 264, 265	- CC	- Air Emission Standards
		264.179, 265.178	I	for Tanks, Surface
		264.200, 265.202	J	Impoundments, and Containers
		264.232, 265.231	K	
		265	- Appendix	- Appendix VI
12.	40 CFR	- 270.14(b)(5)	- A	- General Information
13.	40 CFR	- 270.27	- B	- Specific Requirements for Air Emissions Control for Tanks, Surface Impoundments and Containers
14.	40 CFR	- 265	- P	- Thermal Treatment

45CSR25

<u>Item No.</u>	<u>CFR No.</u>	<u>Part No.</u>	<u>Subpart No.</u>	<u>Title</u>
15.	40 CFR	- 266	- H	- Hazardous Waste Burned in Boilers and Industrial Furnaces
			- Appendices	- Appendix 1 to XIII
16.	40 CFR	- 270.22	- B	- Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
17.	40 CFR	- 270.66	- F	- Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
18.	40 CFR	- 279.23	- C	- On-site Burning In Space Heater
19.	40 CFR	- 279	- G	- Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
20.	40 CFR	- 270.14(b)(22)	- B	- Permit Application
21.	40 CFR	- 270.1(c)(2)(viii)(C)-	- A	- General Information
22.	40 CFR	- 270.30(m)	- B	- Information repository
23.	40 CFR	- 261.6(c)(1)	- A	- Requirements for Recyclable Materials
		261.4	-	- Exclusions
24.	40 CFR	- 261.38	- D	- Comparable/Syngas Fuel Exclusion
25.	40 CFR	- 262.34(a)(1)(i) & 262.34(a)(1)(ii)	- C	- Accumulation Time
26.	40 CFR	- 260.11	- B	- References
27.	40 CFR	- 264.15(b)(4)	- B	- General Inspection Requirement
28.	40 CFR	- 264.73(b)(6)	- E	- Operating Records
29.	40 CFR	- 270.235	- I	- Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY
CHARLESTON, WEST VIRGINIA

IN RE:

ACCEPT COMMENTS ON PROPOSED REVISIONS
TO EXISTING LEGISLATIVE RULE 45CSR15 -
EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS; 45CSR16-STANDARDS OF
PERFORMANCE FOR NEW STATIONARY SOURCES;
45CSR25 - TO PREVENT AND CONTROL AIR
POLLUTION FROM HAZARDOUS WASTE TREATMENT,
STORAGE, OR DISPOSAL FACILITIES; 45CSR33
- ACID RAIN PROVISIONS AND PERMITS; 45CSR34
- EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES; 45CSR37 -
MERCURY BUDGET TRADING PROGRAM TO REDUCE
MERCURY EMISSIONS; 45CSR39 - CONTROL OF
ANNUAL NITROGEN OXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF OZONE AND NITROGEN
OXIDES; 45CSR40 - CONTROL OF OZONE SEASON
NITROGEN OXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF OZONE AND NITROGEN
OXIDES; AND 45CSR41 - CONTROL OF ANNUAL
SULFUR DIOXIDE EMISSIONS TO MITIGATE
INTERSTATE TRANSPORT OF FINE PARTICULATE
MATTER AND SULFUR DIOXIDE.

TRANSCRIPT OF PROCEEDINGS had and/or testimony adduced
in the public hearing regarding the above-referenced
matter, held on the 18th day of July, 2005, commencing at
6:00 p.m. and concluding at 6:35 p.m., at the West Virginia
Department of Environmental Protection, Cooper's Rock
Training Room, 601 57th Street, S.E., Charleston, Kanawha
County, West Virginia, with Jeanie Chandler, presiding.

NANCY MCNEALY
CERTIFIED COURT REPORTER

Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

1 MS. CHANDLER: This public hearing will now come
 2 to order on this 18th day of July, 2005, at the West
 3 Virginia Department of Environmental Protection, Cooper's
 4 Rock Training Room, 601 57th Street S.E., Charleston, West
 5 Virginia. This public is being held to accept comments on
 6 proposed revisions to existing legislative rule 45CSR15-
 7 Emission Standards for Hazardous Air Pollutants pursuant to
 8 40 CFR Part 61; 45CSR16 - Standards of Performance for New
 9 Stationary Sources pursuant to to 40 CFR Part 60; 45CSR25 -
 10 To Prevent and Control Air Pollution from Hazardous Waste
 11 Treatment, Storage, or Disposal Facilities; 45CSR33; Acid
 12 Rain Provisions and Permits; 45CSR34 - Emission Standards
 13 for Hazardous Air Pollutants for Source Categories pursuant
 14 to 40 CFR Part 63; 45CSR37 - Mercury Budget Trading Program
 15 to Reduce Mercury Emissions; 45CSR39 - Control of Annual
 16 Nitrogen Oxide Emissions to Mitigate Interstate Transport
 17 of Ozone and Nitrogen Oxides; 45CSR40 - Control of Ozone
 18 Season Nitrogen Oxide Emissions to Mitigate Interstate
 19 Transport of Ozone and Nitrogen Oxides; and 45CSR41 -
 20 Control of Annual Sulfur Dioxide Emissions to Mitigate
 21 Interstate Transport of Fine Particulate Matter and Sulfur
 22 Dioxide.

23 A notice for the hearing was filed in the
 24 Secretary of State's office on June 15, 2005, and noticed

1 in the *State Register* on June 17, 2005. A class 1 legal
2 advertisement was published in both the *Charleston Daily*
3 *Mail* and *Charleston Gazette* on June 17, 2005, and the
4 notice was posted on the Division of Air Quality's web
5 site.

6 This public hearing is being held pursuant to the
7 provisions of 29A of the West Virginia Code. My name is
8 Jeanne Chandler with the Division of Air Quality,
9 Department of Environmental Protection. I will be the
10 moderator for the proceedings this evening.

11 Each rule will be considered separately this
12 evening. Comments and testimony will be accepted until the
13 close of this hearing and will be made part of the rule
14 making record.

15 The court reporter is Nancy McNealy. If anyone
16 desires a transcript of this proceeding, please contact Ms.
17 McNealy at 988-2873.

18 The purpose of this hearing is to accept comments
19 on proposed revisions to rule 45CSR25 - To Prevent and
20 Control Air Pollution from Hazardous Waste Treatment,
21 Storage, or Disposal Facilities.

22 This rule establishes and adopts emission
23 standards for the treatment, storage and disposal of
24 hazardous waste promulgated by the U. S. Environmental

1 Protection Agency pursuant to the Resource Conservation and
 2 Recovery Act, as amended (RCRA). This rule codifies
 3 general procedures and criteria to implement emission
 4 standards set forth in the *Code of Federal Regulations* as
 5 listed in Table 25-A of the rule. The rule also adopts
 6 associated appendices, reference methods, performance
 7 specifications and other test methods which are appended to
 8 these standards. Any person who constructs, reconstructs,
 9 modifies or operates any hazardous waste treatment, storage
 10 or disposal facility must comply with the West Virginia
 11 Hazardous Waste Management Program, the codified federal
 12 emission standards and this rule.

13 45CSR25 establishes a program of regulation over
 14 the treatment, storage, and disposal of hazardous waste in
 15 order to achieve and maintain such levels of air quality as
 16 will protect the public health and safety and the
 17 environment from the effects of improper, inadequate or
 18 unsound treatment, storage, or disposal of hazardous
 19 wastes.

20 This revised rule incorporates by reference the
 21 following provisions of 40 CFR Part 262 promulgated as of
 22 June 1, 2005: National Environmental Performance Track
 23 Program.

24 The floor is now open for public comment. Please

1 identify yourself and affiliation, if any, prior to making
2 comments.

3 (No response.)

4 There being nothing further, this public hearing
5 for the proposed 45CSR25 is concluded.)

6 (WHEREUPON, the hearing was concluded.)

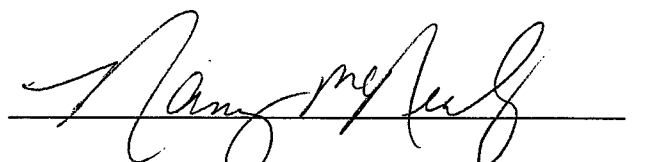
REPORTER'S CERTIFICATE

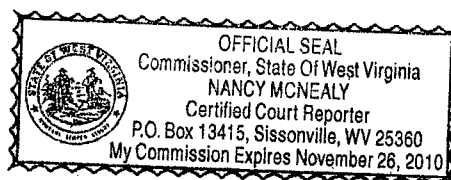
STATE OF WEST VIRGINIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court
Reporter and Commissioner of West Virginia, do hereby
certify that the foregoing is, to the best of my skill and
ability, a true and accurate transcript of all the
proceedings as set forth in the caption hereof.

Given under my hand this 21st day of July, 2005.

My commission expires November 26, 2010.


Certified Verbatim Court Reporter



[illegible]



WEST VIRGINIA CHAMBER OF COMMERCE

The Voice of Business in West Virginia

July 18, 2005

07-18-05P05

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Comments on Proposed Regulations 45CSR15, 45CSR16, 45CSR25, 45CSR33, 45CSR34, 45CSR37, 45CSR39, 45CSR40, 45CSR41

Dear Director Benedict:

The West Virginia Chamber of Commerce is pleased to have the opportunity to comment on the proposed referenced rules. The West Virginia Chamber of Commerce has as its mission statement the goal of being an action-taking business organization. It is the state's largest business trade organization. We represent companies that employ more than half the state's private sector work force. The members of the Chamber seek not only to improve the state's business climate, but also to improve the state's quality of life.

As the amendments to Rules 15, 16, 25, 33 and 34 involve the incorporation of updates and amendments to federal regulations, the Chamber expresses its support for your efforts to maintain West Virginia's Air Quality Regulations in accord with the nation's regulatory structure. Moreover, we support the Division of Air Quality's efforts to issue the new regulations (45 CSR 37, 39, 40, 41), which incorporate the requirements contained in EPA's Clean Air Interstate Rule and the Clean Air Mercury Rule. Our review shows that these rules are in substantial agreement with the letter and purpose of these federal rules. The Chamber considers these proposed regulations to represent an important effort to link the goals of increased air quality with a reasonable and achievable program of emission control.

The Chamber would, however, like to express puzzlement and, to some degree of concern, about the change in language in 45 CSR 25. In Section 1.1.b there is a modification of the section that appears to significantly change the meaning of the requirement imposed. The existing language states:

"all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof."

John A. Benedict

Comments on Proposed Regulations 45CSR15, 45CSR16, 45CSR25, 45CSR33, 45CSR34,
45CSR37, 45CSR39, 45CSR40, 45CSR41.

Page 2 of 3

July 18, 2005

This phrase has been eliminated in the proposed section and replaced by:

“all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property.”

The new language certainly seems to be much more stringent than existing language, it is quite broad as well as vague. Such poorly defined and overly broad language could lead to subjectivity and as a consequence arbitrarily applied regulatory actions. We would like to better understand the reason the Division feels the need to introduce this change.

In summary, with the exception noted above, the West Virginia Chamber of Commerce supports the agency's proposed changes to the West Virginia Air Quality Regulations.

Sincerely

A handwritten signature in black ink, appearing to read "Tim P. Mallan", written in a cursive style.

West Virginia Chamber of Commerce
Timothy P. Mallan, Chair, Air Subcommittee ,
1624 Kanawha Blvd, E.
Charleston, WV 25301



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311

Telephone: (304) 342-2123

FAX: (304) 342-4552

wvma@wvma.com

July 18, 2005

07-18-05P06:00 RCVD

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th SE
Charleston, WV 25304

RE: Comments on proposed 45 C.S.R. 15, 45
C.S.R. 16, 45 C.S.R. 25, 45 C.S.R. 33, 45
C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45
C.S.R. 40, and 45 C.S.R. 41.

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION ON THE PROPOSED DIVISION OF AIR QUALITY RULES

The West Virginia Manufacturers Association ("WVMA") has many members operating sources which are affected by the West Virginia Department of Environmental Protection's Division of Air Quality ("DAQ") rules. In general, WVMA supports the DAQ's proposed rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 25, 45 C.S.R. 33, 45 C.S.R. 34, 45 C.S.R. 37, 45 C.S.R. 39, 45 C.S.R. 40, and 45 C.S.R. 41 which update and create new rules to incorporate the recent revisions to the federal air quality rules by the United States Environmental Protection Agency ("EPA"). Specifically, the WVMA supports the revisions to current rules 45 C.S.R. 15, 45 C.S.R. 16, 45 C.S.R. 33, and 45 C.S.R. 34, which update the rules to conform with the revisions to their respective federal

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counterparts. In addition, the WVMA supports the promulgation of new rules 45 C.S.R. 39, 45 C.S.R. 40 and 45 C.S.R. 41, which incorporate by reference the new Clean Air Interstate Rules promulgated by the EPA and new rule 45 C.S.R. 37, which incorporates the federal Clean Air Mercury Rule. However, WVMA has some concerns regarding the changes to proposed rule 45 C.S.R. 25, *et seq.*, To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities ("Rule 25"). The WVMA also suggests certain uniform amendments to Rules 15, 16 and 34 to comport with the requirements of W.Va. Code §22-5-4(a)(4). The WVMA appreciates the opportunity to submit the following comments in response to the proposed rules by DAQ:

I. Clean Air Interstate Rule and Clean Air Mercury Rule

The EPA has recently promulgated the Clean Air Interstate Rule ("CAIR") to reduce the interstate transport of fine particulate matter ("PM 2.5") and ozone. Under the CAIR rule, EPA requires that certain States that are not meeting the annual PM 2.5 national ambient air quality standards ("NAAQS") or the 8-hour ozone NAAQS adopt and submit revisions to their State Implementation Plan ("SIP") that would eliminate specified amounts of SO₂ and/or NO_x emissions. The DAQ has proposed to incorporate the EPA's CAIR rule in the proposed new Rules 39, 40, and 41. In addition, EPA has recently promulgated the Clean Air Mercury Rule as a means of reducing mercury emissions. The DAQ has incorporated this rule in the new proposed Rule 37. We support the incorporation of these revisions to the federal rules by West Virginia in these new rules.

II. Rule 25

The WVMA is concerned with the DAQ's proposed revisions to Rule 25. Specifically, we object to the proposed language in Section 1.1.b. Currently, the language states that "all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof." The proposed revisions state as follows: "all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property."

We believe that the proposed language is vague and overly stringent. The current language does not require affirmative action of the regulated sources to "prevent" such emissions. In addition, the DAQ has not offered any basis or reasoning for the proposed revisions. The WVMA is concerned that this provision could be applied subjectively to regulated sources as a "catch all" citation for alleged violations. All sources are bound by law not to cause a "statutory air pollution", but this rule goes beyond that obligation without necessary definitions.

Specifically, "constituent" is not defined in the proposed rule. The definition of "hazardous waste" in Rule 25 refers to the general definition in the federal regulations for "hazardous waste" which includes characteristic hazardous wastes and listed hazardous wastes. See, 40 CFR §261.3. The definition of "hazardous waste constituent" in the federal regulations only includes constituents that cause a hazardous waste to be listed or constituents specifically listed in the federal regulations. See, 40 CFR §260.10

Therefore, the definition of “hazardous waste constituent” in the federal regulations does not include constituents of *characteristic* hazardous wastes set forth under the general hazardous waste definition. The provision proposed in Rule 25 would not provide notice to a regulated entity as to what constitutes a constituent of a hazardous waste. As proposed, the term is so broad that it could literally include water or simple calcium, for example. In order to provide adequate clarification, the proposed rule would need to include a definition of “hazardous waste constituent” or, at the least, incorporate the definition of “hazardous waste constituent” under 40 CFR §260.10, which limits hazardous waste constituents to either those constituents listed under the federal regulations or those that cause a hazardous waste to be listed under the federal regulations.

In addition, “emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property” is very subjective, especially since there are no ambient air quality standards for “hazardous waste.” Since the proposed provision would require sources to prevent such emissions, a definition of the term would be necessary to provide due process notice to the regulated sources. In order to comply with the proposed rule, a source must be able to understand its obligation. As proposed, the rule does not provide the clarity required under due process rights of the Constitution. Under the void-for-vagueness doctrine, constitutional due process requires that statutes and rules set forth impermissible conduct with sufficient clarity so that a person of ordinary intelligence knows what conduct is prohibited. See, State v. Appleby, 583 S.E.2d 800, 815 (W.Va. 2002). The West Virginia Supreme Court of Appeals has held that:

Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.

State v. Appleby, 583 S.E.2d at 815 (quoting State v. Miller, 476 S.E.2d 535, 546 (W.Va. 1996); BMW of North American, Inc. v. Gore, 517 U.S. 559, 574, 116 S.Ct. 1589, 1598 (1996)). Likewise, a rule which creates an affirmative obligation should do so with clarity sufficient that the regulated entity can clearly implement compliance. The proposed language in Section 1.1.b in Rule 25 does not clearly define the prohibited conduct and would, therefore, be void-for-vagueness. The WVMA urges the DAQ to withdraw the proposed revisions to Section 1.1.b. At the very least, if these revisions remain, the DAQ should further clarify the provision by including specific definitions of “constituent” of hazardous waste and for those levels of “emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property”, all consistent with W.Va. Code §22-5-4(a)(4) as well. We do not believe that federal rules for hazardous waste management contain such stringent provisions.

III. Opacity Stringency Conformity

The WVMA believes that in order to comply with the mandate of W.Va. Code §22-5-4(a)(4), that the “stringency” provisions in Rules 15, 16, and 34, in Section 7.1 of those rules, must be modified with respect to opacity. Opacity is not a regulated pollutant; it is not a pollutant at all. Rather, it is a measure of light transmission used as an indicator of compliance with underlying pollutant emission limits. The federal counterpart rules for sources regulated by NESHAP, NSPS and MACT standards all contain opacity limits of 20%, not the 10% opacity reflected in Rule 2 for boilers.

Accordingly, we request that Section 7.1 in each of Rules 15, 16 and 34 be amended to add the following phrase at the end thereof: "Notwithstanding the foregoing principle, any affected source governed by this rule shall be subject to the opacity (visible emissions) limits contained in the United States Environmental Protection Agency's rules herein adopted by reference in lieu of any other opacity limit established in the rules of the Department of Environmental Protection."

The WVMA appreciates the opportunity to comment on the proposed revisions to the rules and supports the DAQ's proposal to adopt the recent revisions to the federal rules by the EPA. However, the WVMA recommends that the DAQ reconsider the adoption of the additional proposals as discussed hereinabove.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Pitner" with a stylized flourish at the end.

The West Virginia Manufacturers Association
John Pitner, Air Team Leader
2001 Quarrier Street
Charleston, WV 25311

cc: Karen S. Price, President, WVMA
Air Team Members

David W. White
8204 Asbury Hills Drive
Cincinnati, Ohio 45255

July 18, 2005

Mr. John Benedict
Director
West Virginia Division of Air Quality
601 57th Street SE
Charleston, West Virginia 25304

Re: Proposed Regulations and Revisions
45 CSR 15, 16, 25, 33, 34, 37, 39, 40 and 41

Dear Mr. Benedict,

Thank you for the opportunity to provide comments on the proposed revisions to 45 CSR 15, 16, 25, 33 and 34 and the proposed new regulations 45 CSR 37, 39, 40 and 41. Unfortunately, such proposed revisions and new regulations fail to meet the requirements of the enabling legislation under which they are proposed for promulgation.

The West Virginia Code provides that the director of the division of environmental protection, or such other person to whom the director has delegated authority, is authorized to promulgate legislative rules not inconsistent with the provisions of the Air Pollution Control Act. W. Va. Code § 22-5-4(a)(4). The Code also provides that it shall be unlawful to cause a statutory air pollution. W. Va. Code § 22-5-3. A statutory air pollution is defined as the discharge in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property. W. Va. Code § 22-5-2(6).

For decades residents of communities along the Kanawha and Ohio River valleys have been assaulted by noxious emissions from coke batteries, steel mills, chemical plants and other sources subject to 45 CSR 15, 16, 25, and 34. Residents of towns such as Follansbee, Nitro, Institute, and Belle have historically and continue to have the quiet enjoyment of their property disturbed by toxic and noxious emissions. Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code.

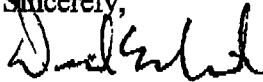
What are needed are regulations reflecting unique topographic conditions peculiar to West Virginia. The chronic and acute impacts on the health and welfare of West Virginians must be evaluated before any one of the regulations can be considered to have

been promulgated in accordance with the law. But no medical or toxicological evaluation has been conducted to make such a determination. Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements.

Similarly the proposed programs under 45 CSR 37, 39, 40 and 41 do not provide for the protection of all residents of the state from adverse effects of power plant emissions. As research by past personnel of the Division of Air Quality has demonstrated, the vast majority of power plant emission impacts will occur at distances considerably less than 250 kilometers, generally within 50 kilometers. As such, trading programs such as 45 CSR 37 and transport programs such as 45 CSR 39, 40 and 41 are ineffective in controlling emission impacts of those residents adjacent to a paper reduction purchased on the open market, in contrast to an actual reduction required by the language of the West Virginia Code preventing creation of a statutory air pollution.

In short, the DAQ needs to quit permitting pollution and start enforcing the clear language of the law. Thank you again for the opportunity to provide these comments.

Sincerely,



David White

45CSR25

TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

RESPONSE TO COMMENTS

On June 17, 2005, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 18, 2005 to accept oral comments on revisions to proposed rule 45CSR25. Written comments were also accepted through 6:00 PM on Monday, July 18, 2005. No one verbally commented at the public hearing concerning proposed rule 45CSR25. Three commenters submitted written comments regarding proposed revisions to rule 45CSR25. DAQ addresses the written comments below.

I. COMMENTER: West Virginia Chamber of Commerce

COMMENT A. *The commenter states, "The Chamber would, however, like to express puzzlement and, to some degree of concern, about the change in language in 45 CSR 25. In Section 1.1.b there is a modification of the section that appears to significantly change the meaning of the requirement imposed. The existing language states:*

"all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such hazardous waste or constituent thereof."

This phrase has been eliminated in the proposed section and replaced by:

"all persons engaged in the treatment, storage, or disposal of hazardous waste or any constituent thereof, will prevent emissions to the air in quantities which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property."

The new language certainly seems to be much more stringent than existing language, it is quite broad as well as vague. Such poorly defined and overly broad language could lead to subjectivity and as a consequence arbitrarily applied regulatory actions. We would like to better understand the reason the Division feels the need to introduce this change."

RESPONSE A. DAQ does not believe the proposed language in subdivision 1.1.b vague or overly broad. Indeed, the proposed language made clear that operators must not allow (prevent) air pollution from hazardous waste treatment, storage or disposal facilities which may cause statutory air pollution, rather than just being required to give careful consideration not to do so. The commenter also truncates the existing language, ending with a period after the word "thereof", when the existing sentence continues with "in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or

property.” This may result in an unfair comparison between the existing and proposed language. DAQ will further review the issue, following the intent of the federal enabling language and 22-5-1 et.seq, and may revise the language in future rulemaking. Until such time, the existing language in subdivision 1.1.b will remain, as follows, in the proposed rule:

“Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.”

II. COMMENTER: West Virginia Manufacturer's Association

COMMENT A. *The commenter states, “The WVMA is concerned with the DAQ’s proposed revisions to Rule 25. Specifically, we object to the proposed language in Section 1.1.b.We believe that the proposed language is vague and overly stringent. The current language does not require affirmative action of the regulated sources to “prevent” such emissions.The WVMA is concerned that this provision could be applied subjectively to regulated sources as a “catch all” citation for alleged violations. All sources are bound by law not to cause a “statutory air pollution”, but this rule goes beyond that obligation without necessary definitions.*

Specifically, “constituent” is not defined in the proposed rule. The definition of “hazardous waste” in Rule 25 refers to the general definition in the federal regulations for “hazardous waste” which includes characteristic hazardous wastes and listed hazardous wastes. See, 40 CFR §261.3. The definition of “hazardous waste constituent” in the federal regulations only includes constituents that cause a hazardous waste to be listed or constituents specifically listed in the federal regulations. See, 40 CFR §260.10 Therefore, the definition of “hazardous waste constituent” in the federal regulations does not include constituents of characteristic hazardous wastes set forth under the general hazardous waste definition. The provision proposed in Rule 25 would not provide notice to a regulated entity as to what constitutes a constituent of a hazardous waste. As proposed, the term is so broad that it could literally include water or simple calcium, for example. In order to provide adequate clarification, the proposed rule would need to include a definition of “hazardous waste constituent” or, at the least, incorporate the definition of “hazardous waste constituent” under 40 CFR §260.10, which limits hazardous waste constituents to either those constituents listed under the federal regulations or those that cause a hazardous waste to be listed under the federal regulations.

In addition, “emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property” is very subjective, especially since there are no ambient air quality standards for “hazardous waste.” Since the proposed provision would require sources to prevent such emissions, a definition of the term would be necessary to provide due process notice to the regulated sources. In order to comply with the proposed rule, a source must be able to understand its obligation. As proposed, the rule does not provide the clarity required under due process rights of the Constitution. Under the void-for-vagueness doctrine, constitutional due process requires that statutes and rules set forth impermissible conduct with sufficient clarity so that a person of ordinary intelligence knows what

conduct is prohibited.Likewise, a rule which creates an affirmative obligation should do so with clarity sufficient that the regulated entity can clearly implement compliance. The proposed language in Section 1.1.b in Rule 25 does not clearly define the prohibited conduct and would, therefore, be void-for-vagueness. The WVMA urges the DAQ to withdraw the proposed revisions to Section 1.1.b.

At the very least, if these revisions remain, the DAQ should further clarify the provision by including specific definitions of "constituent" of hazardous waste and for those levels of "emissions to the air which cause ambient air concentrations that may be injurious to human health or welfare or would interfere with the enjoyment of life or property", all consistent with W.Va. Code §22-5-4(a)(4) as well. We do not believe that federal rules for hazardous waste management contain such stringent provisions."

RESPONSE A. DAQ is reverting to the existing rule language and refers the commenter to response I.A.

III. COMMENTER: David W. White

COMMENT A. *The commenter states, "Adoption of federal standards does not rise to the level of consistency with the law of West Virginia. These regulations are adopted under the authority of the West Virginia Code and must comply with its requirements.Revising these regulations in their present forms will only serve the farce that they are somehow consistent with the requirements of the West Virginia Code"*

RESPONSE A. The DAQ believes the adoption of federal standards under the Resource Conservation and Recovery Act is the primary means of achieving the objectives set forth in the State Air Pollution Control Act, including the prohibition against statutory air pollution. DAQ notes, however, that 45CSR25 contains several performance standards in section 4 of the rule that are not addressed in the federal regulations. The agency's initial proposed revisions to the rule were not intended to affect these performance standards, but upon further consideration, DAQ believes the proposed rule could have been interpreted at subdivision 1.1.a to have that effect. The agency is therefore restoring the current rule language referring to "a program of regulation over air emissions" in addition to the new language that clarifies the rule's incorporation by reference of certain federal regulations.