

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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JUL 6 4 34 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

West Virginia Division of Environmental Protection
Office of Air Quality

AGENCY: _____ TITLE NUMBER: 45CSR25

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution From
Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: August 9, 1994 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality

1558 Washington Street, East

Chapelston, WV 25311

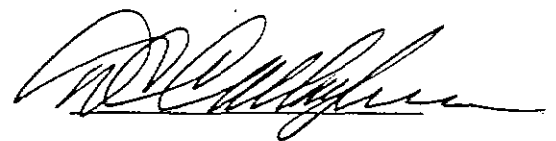
COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as Above.

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



12.40

45CSR25

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

STATEMENT OF CIRCUMSTANCE

Hercules Aerospace Corporation petitioned the West Virginia Division of Environmental Protection, Office of Air Quality, on June 2, 1994, to modify 45CSR6 and 45CSR25. The modification request resolves certain inconsistencies between the two rules and, in addition, sets forth a standard to allow the open burning of spent propellants. The rule being proposed also updates certain sections of the federal counterpart regulations which are referenced in the rule. The modifications also update the rule in accordance with the new Division of Environmental Protection legislation.

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: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There- after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The Office of Air Quality will not incur additional expense as a result of the proposed modification to this rule.
3. Objectives of these rules: (1) To resolve inconsistencies between 45CSR6 and 45CSR25, which will allow Hercules Aerospace Corporation to open burn spent propellant in accordance with the provision of 40 CFR §265.382; (2) to update the federal section referenced; and (3) to update the rule in accordance with the new DEP legislation.

Appendix B
Fiscal Note For Proposed Rules
Page Two

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

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

None

B. Economic impact on political subdivisions; specific industries; specific
groups of citizens.


None

C. Economic impact on citizens/public at large.

None

Date: July 6, 1994

Signature of agency head or authorized representative:


G. Dale Farley
Chief, Office of Air Quality

45CSR25

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

SUMMARY

The purpose of this rule is to establish 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.

The proposed rule changes will update references to the counterpart federal regulations, incorporate references to the new Division of Environmental Protection legislation and also resolve inconsistencies between 45CSR6 and 45CSR25 which will allow Hercules Aerospace Corporation to burn spent propellant in accordance with the provisions of 40 CFR §265.382, a rule which applies, in part, to the open burning of military explosives.

Changes are indicated by strikeout and underlines.

BRIEFING DOCUMENT - RULES AND POLICY

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

45CSR25

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

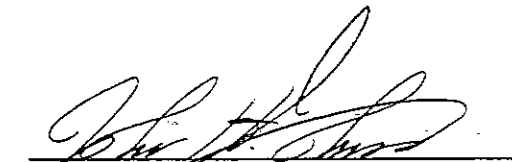
JULY 6, 1994

- A. AUTHORITY: W. Va. Code §§22-5-1 et seq. and
W. Va. Code §§22-18-1 et seq.
- B. SCOPE: The purpose of this rule is to establish 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.
- C. JUSTIFICATION: The proposed rule changes will update references to the counterpart federal regulations, incorporate references to the new Division of Environmental Protection legislation and also resolve inconsistencies between 45CSR6 and 45CSR25 which will allow Hercules Aerospace Corporation to burn spent propellant in accordance with the provisions of 40 CFR §265.382, a rule which applies, in part, to the open burning of military explosives.
- D. CSR CITE: 45CSR6
- E. FEDERAL CITE: See Attached copy to Table 25-A.
The rule is no more or no less stringent than the federal counterpart regulation.
- F. TIME SCHEDULE: Filing with the Secretary of State's office on or about July 6, 1994.

Date of Public Hearing: August 9, 1994

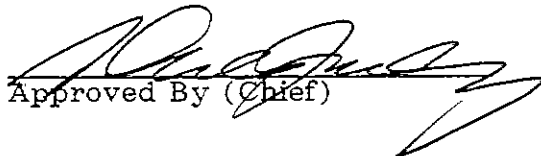
Filing with the LRMRC: on or about August 12, 1994.

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


Prepared By

Air Quality
Office of

558-3286
Telephone


Approved By (Chief)

Approved By (Director)

FILED

45CSR25

JUL 6 4 34 PM '94

TITLE 45
LEGISLATIVE RULES
~~WEST-VIRGINIA-AIR-POLLUTION-CONTROL-COMMISSION~~
BUREAU OF ENVIRONMENT
DIVISION 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.

a. The intent and purpose of this rule is to establish 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. 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.

b. 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 manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction.

c. This rule is promulgated pursuant to W. Va. Code ~~§20-5E-1~~ §§22-18-1; et seq., and ~~§16-20-1~~ §§22-5-1; et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Commission Director that enforcement shall be implemented in accordance with W. Va. Code ~~§20-5E-1~~ §§22-18-1; et seq., where practicable. ~~The Chief shall retain all powers conferred by W. Va. Code §20-5E-1, et seq., and §16-20-1, et seq., and the rules of the Commission or the Division of Environmental Protection and shall exercise such powers as necessary.~~

d. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code ~~§20-5E-1~~ §§22-18-1; et seq., and this rule.

1.2. Authority -- W. Va. Code ~~§16-20-5 and §20-5E-7(e)~~ §§22-5-1 et seq. and §§22-18-1 et seq.

1.3. Filing Date -- ~~August 13, 1993~~

1.4. Effective Date -- ~~April 27, 1994~~

1.5. ~~Former Rule.--- This legislative rule amends and replaces 45CSR25-1 To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" which became effective July 14, 1989. Incorporation By Reference. -- This rule incorporates by reference the provision contained in the Code of Federal Regulation as listed in Table 25-A.~~

1.6. Determination of Stringency -- Federal Counterpart Regulations - The Director has determined that this rule is no more or no less stringent than the federal counterpart rule.

1.7. Constitutional Takings Determination - The Director has determined that this rule will not result in the constitutional taking of real property.

§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' shall have the meaning ascribed to it in W. Va. Code §16-20-22-5-2.; ~~as amended.~~

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. "BACT", 'Best Available Control Technology' means an emissions limitation 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 Chief Director, on a case-to-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Chief Director 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 standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. ~~--- "Boiler" means an enclosed device using controlled flame combustion which the Chief has determined, on case-by-case basis, to be a boiler, after considering the standards in subsection 3.4.3 of 47 CSR 35, or which has the following characteristics:~~

a. ~~--- The unit must have physical provisions for recording and exporting thermal energy in the form of steam, heated fluids, or heated gases; and~~

b. ~~--- The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion~~

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

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

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

2.6---"Carbon Regeneration Unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

2.7---"Certification" means a statement of professional opinion based upon knowledge and belief.

2.8---"Chief" means the Chief of the West Virginia Office of Air Quality, Division of Environmental Protection.

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

2.10---"Constituents" or "Hazardous Waste Constituent" means a constituent identified in Appendix VII of section 3 of 47 CSR 35 or constituents that caused the DEP Director to list the waste as hazardous in section 3 of 47 CSR 35 or constituents listed in Table II of subsection 3.3.5 of 47 CSR 35.

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

2.127. "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.

2.128. "Director" means the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.139. "Division of Environmental Protection or DEP" means that Division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of West Virginia W. Va. Code §§22-1-1; et seq.

2.1410. "EPA" means the United States Environmental Protection Agency.

2.15. "Hazardous Waste Management Facility"; "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing or disposing of hazardous wastes. A facility may consist of several treatment, storage or disposal operational units.

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

2.17. "Incinerator" means any enclosed device that:

a.----Uses controlled flame combustion and does not meet the criteria for classification as a boiler, sludge dryer, carbon reactivation unit, nor listed as an industrial furnace; or

b.----Meets the definition of infrared incinerator or plasma arc incinerator.

2.18. "Industrial Furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

a.----Cement kilns;

b.----Lime kilns;

c.----Aggregate kilns;

d.----Phosphate kilns;

e.----Coke ovens;

f.----Blast furnaces;

g.----Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

h.----Titanium dioxide chloride process oxidation reactors;

i.----Methane reforming furnaces;

j.----Pulping liquor recovery furnaces;

k.----Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

l.----Halogen acid furnaces (HAF's) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated.

m.----Such other devices as the Commission or Chief of the Office of Air Quality may, after notice and comment, add to the list on the basis of one or more of the following factors:

A.----The design and use of the device primarily to accomplish recovery of material products;

B.----The use of the device to burn or reduce raw materials to make a material product;

C.----The use of device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

D.----The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

E.----The use of the device in common industrial practice to produce a material product; and

F.----Other factors, as appropriate.

2.1911.--- "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

2.20.---"Infrared Incinerator" means any enclosed device that uses electrical powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.

2.21.---"Manufacturing or Mining By-Product" means a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

2.22.---"Miscellaneous Unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, or unit eligible for a research, development, and demonstration permit under 40 CFR 270.65.

2.23.---"Open Burning" means the combustion, or partial combustion, of any material without the following characteristics:

a.----Control of combustion air to maintain adequate temperature for efficient combustion;

b.----Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

c.----Control of emissions of the gaseous combustion products. (See also "incinerator" and "thermal treatment").

2.24--"Operator"--means the person responsible for the overall operation of a facility.

2.25--"Owner"--means the person who owns a facility or part of a facility.

2.2612. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.2713. "Pathological Incinerator" means an incinerator used to thermally treat infectious medical waste. Note: The owner or operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, such pathological waste incinerator must be designed, constructed, and operated to meet all other applicable regulations promulgated by the Air--Pollution--Control Commission/Director including, but not limited to, 45 CSR 6 and 13.

2.28--"Plasma-Arc-Incinerator"--means any enclosed device using a high intensity electrical discharge or arc as a source of heat and which is not listed as an industrial furnace.

2.2914. "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.

2.30--"Sludge-Dryer"--means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 BTU/Hr of sludge treated on a wet-weight basis.

2.3115. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

2.32--"Tank"--means a stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non earthen materials (e.g. concrete, wood, steel, plastic) which provide structural support.

2.33--"Thermal Treatment"--means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "Incinerator" and "Open Burning").

2.34--"Totally Enclosed Treatment Facility"--means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents release of any hazardous waste or any constituent thereof into the environment during treatment.

2.35--"Treatment"--means any method, technique, or process including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous, safer to transport, store, or dispose of, or

~~amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or process designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.~~

~~2.36. "Waste" shall have the same meaning ascribed in subsection 3-1-2 of 47 CSR-35.~~

~~2.37. "Wastewater Treatment Unit" means a device which:~~

~~a. --- Is part of a wastewater treatment facility which is subject to regulation under either Section 402 or 307 (b) of the Clean Water Act;~~

~~b. --- Receives and treats or stores an influent wastewater which is a hazardous waste as defined in 47 CSR 35, or generates and accumulates, or treats or stores a wastewater treatment sludge that is defined as a hazardous waste;~~

~~c. --- Meets the definition of a tank as defined in Section 2 of this rule.~~

2.3816. All other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code ~~16-20-1~~, §§22-5-1 et seq., or W. Va. Code 20-5E-1, §§22-18-1 et seq., or 47 CSR 35 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 47 CSR 35 "Hazardous Waste Management Regulations", effective ~~August 9, 1993~~ July 1, 1994 are hereby adopted by reference.

a. ~~In making a determination of whether a material is a waste, and if so, whether that material is a hazardous waste, the chief of the office of waste management shall consult with the chief of the office of air quality in making such determination. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director will make the determination to resolve the conflict.~~

3.2. The provisions contained in the Code of Federal Regulations (~~1991~~ July 1, 1993), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the ~~Chief of the Office of Air Quality~~ Director of the West Virginia Division of Environmental Protection.

c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection, ~~Office of Air Quality~~.

d. The distance provisions of 40 CFR 165.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The distance provisions of the American Table of Distances for Commercial Explosives apply otherwise.

§45-25-4. Facility Requirements.

4.1. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities, including but not limited to:

a. Generators accumulating hazardous waste on-site for periods of less than ninety (90) days;

b. Owners and operators of wastewater treatment units as defined in this rule; and

c. Owners and operators which burn hazardous wastes in incinerator, boilers and industrial furnaces in order to destroy the wastes.

4.2. Owners and operators of hazardous waste management facilities regulated by the provisions of this rule shall 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, where appropriate:

a. Hazardous Waste Management Program under RCRA and 47 CSR 35;

b. Prevention of Significant Deterioration (PSD) program under 45 CSR 14 or the Federal Clean Air Act;

c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;

d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;

e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and

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

4.3. Owners and operators of hazardous waste ~~management facilities~~ treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by ~~Subsection 8.2.7 of 47 CSR 35-40~~ CFR 264.16. An outline of the training program ~~required by Subsection 8.2.7 of 47 CSR 35~~ and a description of how the training program is designed to meet actual job tasks must be submitted to the ~~Chief Director~~ with Part B of the permit application.

4.4. Owners and operators of hazardous waste tanks, surface impoundments, landfills, waste piles, land treatment, incinerators, and boiler and industrial furnace

facilities must design, construct, maintain, and operate such 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.

4.5. 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:

- a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and
- b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.6. Owners and operators of all hazardous waste tanks shall have treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment from toxic or otherwise harmful fumes, mists, or gases resulting from:

- a. Volatilization of wastes stored or treated in the tank;
- b. Chemical reactions in the tank, either routine or resulting from process upsets; and
- c. Physical agitation or other forms of treatment in the tank.

4.7. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 ~~kilo-Pascals~~ kilopascals (1.52 psia) at 25°C and 760 mmHg shall be equipped with an emission control system meeting the following requirements:

- a. Storage or treatment in open (uncovered) tanks is prohibited.
- b. External floating roofs shall be equipped with double mechanical seals.
- c. Fixed roof tanks shall be equipped with an internal floating roof with appropriate seals, a vapor recovery system, or an equally effective alternative emission control system approved by the Chief Director.

4.8. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 ~~kilo-Pascals~~ kilopascals (1.52 psia) at 25°C, 760 mmHg shall be controlled during loading or unloading of tank trucks, railroad tank cars, and barges by the methods listed as follows:

- a. Venting all displaced vapors and gases to a vapor recovery system or an alternative emission control system approved by the Chief Director;
- b. Providing a means to prevent liquid drainage from the loading (unloading) device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

c. Equipping all loading and vapor lines with fittings which make vapor tight connections that close automatically when disconnected.

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 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 include prevention of adverse effects on air quality considering:

a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

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

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

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

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

f. The persistence and permanence of such potential adverse effects.

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

a. Process turn-arounds;

b. Cleaning of process equipment;

c. Planned process shutdowns; and

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

4.13. a. The Chief Director may, on 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 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 Chief Director may require the following data from the permit applicant:

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

- (a) Mass emission rates from the stack, and
- (b) Concentration in the gas stream exiting the stack; and

B. Air dispersion estimates for those substances, including:

- (a) Meteorological data, and
- (b) Description of the air dispersion models, and
- (c) Assumptions underlying the air dispersion models

used; and

C. Expected human and environmental exposure, including:

- (a) Topographic considerations,
- (b) Population distributions,
- (c) Population activities, and
- (d) Modes, intensity, and duration of exposure; and

D. Consequences of exposure, including:

- (a) Dose-response curves for carcinogens,
- (b) Health effects based on human or animal studies for other toxic constituents,
- (c) Potential for accumulation of toxic constituents in the human body, and
- (d) Statements of expected risk to individuals or populations.

4.14. Emergency Permit. Notwithstanding any other provision in ~~Section 11 of 47 GSR-3540~~ CFR 270.61, in the event the Chief Director finds an imminent and substantial danger to human health or the environment, the Chief Director 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:

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

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

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

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

e. Shall be accompanied by public notice which shall be published by the permittee as described under Section 7 of this rule and shall include the following:

- A. Name and address of the office granting the emergency authorization,
- B. Name and location of the permitted hazardous waste management facility,
- C. A brief description of the wastes involved,
- D. A brief description of the action authorized and reasons for authorizing it,
- E. Duration of the emergency permit; and
- f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

§45-25-5. Exclusion and Exemptions.

5.1. Wastes and/or materials excluded in Section 3-1-4 of 47 CSR 35, are also excluded from the requirements of this rule, except that mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the requirements of this rule.

~~5.2. Except for those wastes identified in Sections 10-2-5, 10-2-7 and 10-2-10 of 47 CSR 35, a conditionally exempt small quantity generator's wastes as defined by Section 10-2-1 of 47 CSR 35 are not subject to the requirements of this rule provided that the generator complies with Section 10-2-6, 10-2-7 and 10-2-10 of 47 CSR 35.~~

5.32. Except for recyclable materials exempt pursuant to Section 3-1-6 of 47 CSR 35, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4.

§45-25-6. Confidential Information.

6.1. Any records, reports, or information and any permit, permit applications, and related documents within the ~~Chief's~~ Director's possession shall be available to the public for inspection and copying: provided, however, that upon satisfactory showing to the ~~Chief~~ Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the ~~Chief~~ Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code ~~§20-5E-1~~ §22-18-1, et seq., and ~~§16-20-1~~ §22-5-1, et seq.

§45-25-7. Public Notice.

Public notice of the preparation of a draft permit shall be given by the methods contained in 47 CSR 35 Section ~~11-24~~ 12, except that the owner or operator shall place a Class I-0 legal advertisement in two (2) newspapers of general circulation in the county where the source is located. In addition, the applicant shall have such notice broadcast over local radio stations. Upon publication and broadcasting, the

applicant shall send the ~~Chief~~Director a copy of the certificate of publication and confirmation of broadcasting.

§45-25-8. Application Fees.

8.1. Any person who applies for a permit for the construction and/or operation of a hazardous waste management facility shall submit as part of said application a money order or cashier's check payable to the "Hazardous Waste Management Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

ACTIVITY	FEES
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	\$2,500
b. Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

All fees required under this section shall be in addition to fees required under any other rule of the ~~Commission or the~~West Virginia Division of Environmental Protection.

§45-25-9. Inconsistency Between Rules.

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

45 CSR 25
TABLE 25-A

CFR No.	Part No.	Subpart No.	Title
40 CFR	- 264, 265	- O	Incinerator
	- 270.19	- B	Specific Requirements for Incinerators
	- 270.62	- F	Hazardous Waste Incinerator Permits
40 CFR	- 264	- X	Miscellaneous Units
	- 270.23	- B	Specific Requirements for Miscellaneous Units
40 CFR	- 264, 265	- AA	Air Emission Standards for Process Vents
	- 270.24	- B	Specific Requirements for Process Vents
40 CFR	- 264, 265	- BB	Air Emission Standards for Equipment Leaks
	- 270.25	- B	Specific Requirements for Equipments <u>Leaks</u>
40 CFR	- 265	- P	Thermal Treatment
40 CFR	- 266	- H	Hazardous Waste Burned in Boilers and Industrial Furnaces
	- 270.22	- B	Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
	- 270.66	- F	Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
40 CFR	- 266 279.23	- BC	Hazardous Waste Burned for Energy Recovery On-site Burning In Space Heater
	- <u>279.61</u> <u>279.63</u>	- <u>G</u>	Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
	-----266-----	E-----	Used Oil Burned for Energy Recovery

7/6/93

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF NATURAL RESOURCES

SERIES 35
HAZARDOUS WASTE MANAGEMENT REGULATIONS

§ 47-35-1. SCOPE AND AUTHORITY.

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

1.2 Authority. -- These regulations are promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, § 20-5E-1, et seq.

1.3 Filing Date. May 20, 1994.

1.4 Effective Date. June 1, 1994

1.5 Repeal of Former Rule - This rule repeals and replaces the Hazardous Waste Management Regulations, 47 CSR 35, in effect on the date this rule becomes effective.

1.6 Incorporation by Reference. -- Whenever either federal statutes or regulations or state statutes or regulations are incorporated by reference into this rule, the reference is to that statute or regulation in effect on July 1, 1993, unless otherwise noted in the text of this rule.

1.6.1 In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise:

1.6.1.a "Office of Waste Management, West Virginia Division of Environmental Protection" shall be substituted for "Environmental Protection Agency."

1.6.1.b "Chief of the Office of Waste Management, West Virginia Division of Environmental Protection" shall be substituted for "Administrator," "Regional Administrator," and "Director."

1.6.1.c Whenever the regulations require publication in the "Federal Register" compliance shall be accomplished by

publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, § 29A-2-2.

1.6.1.d Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 § 3010, as amended (42 U.S.C. § 6930), the reference should be to Section 4 of this regulation.

1.7 Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and regulations, if any, control to the extent of any conflict or inconsistency. For example, cross reference to 40 CFR part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia Air Pollution Control rule on incineration of hazardous waste, 45 CSR 25.

1.8 In the event a provision of the Code of Federal Regulations incorporated by reference herein includes a section which is inconsistent with the West Virginia Code, the West Virginia Code controls to the extent federal law does not preempt the state law. In the event a provision of the Code of Federal Regulations incorporated by reference herein is beyond the scope of authority granted the Division of Environmental Protection pursuant to statute, or is in excess of the statutory authority, such provision shall be and remain effective only to the extent authorized by the West Virginia Code.

1.9 The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted, approved or allowed to become effective by the Chief, and which are in effect on the date this regulation becomes effective, shall continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

§ 47-35-2. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL.

2.1 The provisions of 40 CFR part 260 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

2.1.1 The definitions of terms used in this regulation shall have the meaning ascribed to them in 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.1.a "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste

exceeding or equal to one (1000) tons during a calendar year, and any storage facility having a storage capacity for one thousand (1,000) tons of hazardous waste or more.

2.1.1.b "Full regulation" means those regulations applicable to generators of greater than one thousand (1000) kilograms of non-acutely hazardous waste in a calendar month.

2.2 The provisions of 40 CFR § 260.2 are excepted from incorporation by reference. Availability of information provided under these rules is controlled by the provisions of W. Va. Code, § 20-5E-11.

2.3 The provisions of 40 CFR § 260.21(d) are excepted from incorporation by reference.

2.4 Petitions for Waste Exclusions.

2.4.1 Persons desiring to exclude as waste at a particular generating facility from the lists set forth in 40 CFR part 261 may petition the chief for such an exclusion. The petition shall include:

2.4.1.a A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 CFR § 260.22, including all demonstration information;

2.4.1.b A copy of the Administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and

2.4.1.c Any other additional information which may be required for the chief to evaluate the petition.

2.4.2 Within one hundred and twenty (120) days of the filing of the petition the chief shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the chief shall notify the petitioner of such action in writing, setting forth the reasons therefor.

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

§ 47-35-3. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

3.1 The provisions of 40 CFR part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.1 In order for a mixture of a waste and one or more hazardous wastes identified in 40 CFR §§ 261.3(a)(2)(iv)(A), (B), or (C) to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

3.1.1.a Provide a certification in writing to the chief that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the chief, is or will be in place at the wastewater treatment facility identified in 40 CFR §§ 261.3(a)(2)(iv)(A), (B), or (C). A time schedule for the installation of such groundwater monitoring must be included. This requirement does not apply to wastewater treatment units or containers.

3.1.1.b Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 CFR §§ 261.3(a)(2)(iv)(A), (B), or (C) shall notify the chief of the receipt of such wastes on a form prescribed by the chief.

3.1.1.C Annually submit to the chief a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2 The provisions of 40 CFR § 261.5 are excepted from incorporation by reference and in lieu thereof the language of this Section 3.2 is inserted. All references to 40 CFR § 261.5 and subparagraphs thereof, shall be deemed references to Section 3.2 and the subparagraphs herein, as appropriate. The provisions of this Section 3.2 are the exclusive requirements for small quantity generators and conditionally exempt small quantity generators notwithstanding any provision of the Code of Federal Regulations or these regulations to the contrary.

3.2.1 Special Requirements for Hazardous Waste Generated by Small Quantity Generators and Conditionally Exempt Small Quantity Generators.

3.2.1.a. Small Quantity Generators.

3.2.1.a.A A Small Quantity Generator is a generator of hazardous waste that generates more than 100 kilograms but less than 1000 kilograms of hazardous waste per month.

3.2.1.a.B Hazardous Waste Determination. A person who generates wastes must determine if that waste is hazardous by:

(a) Applying knowledge of the waste in light of the materials or processes used and knowledge of the characteristic and listed hazardous wastes contained in 40 CFR part 261.

(b) Testing the waste according to methods set forth in 40 CFR part 261.

(c) Voluntarily declaring the wastes as hazardous and subject to regulation.

3.2.1.a.C The Small Quantity Generator must notify the chief of hazardous waste generation activities in accordance with the provisions of Section 4 of this regulation. A small quantity generator may not treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA Identification number.

3.2.1.a.D The Small Quantity Generator may accumulate hazardous waste on site for 180 days unless the distance that waste must be shipped for proper treatment, storage or disposal is more than 200 miles in which case the generator may accumulate hazardous waste on site for 270 days provided that the quantity of waste accumulated on site does not exceed 6,000 kilograms.

(a) If, due to unforeseen, temporary and uncontrollable circumstances hazardous waste must remain on site for longer than 180 or 270 days, an extension of up to 30 days may be granted by the chief.

3.2.1.a.E Containers. The Small Quantity Generator must store hazardous waste in containers or tanks that must meet the following requirements.

(a) Containers must be in good condition as defined by Department of Transportation Regulations.

(b) Containers must be kept closed except when adding or removing waste.

(c) Containers must be handled in a way which will not cause them to rupture or leak.

(d) The owner or operator of a Small Quantity Generator facility must inspect hazardous waste container storage areas weekly for leaks and/or deterioration and must remediate these conditions, upon detection.

(e) Incompatible wastes (such as oxidizers and petroleum based degreasers) must not be placed in the same container. (Other examples of potentially incompatible wastes can be found at 40 CFR part 265, Appendix V).

(f) Storage containers for incompatible wastes must be separated by means of a dike, berm, wall or other device.

3.2.1.a.F *Tanks*. Small Quantity Generators who store hazardous waste in tanks must comply with 40 CFR § 265.201.

3.2.1.a.G *If a Small Quantity Generator closes* (permanently removes from service) a container or tank storage area 40 CFR § 265.114 must be followed to insure that no contamination exists or remains at the storage location.

3.2.1.a.H *Labeling*. Containers and Tanks storing hazardous waste must comply with the following labeling requirements:

(a) On containers, the date upon which each period of accumulation began must be clearly marked and visible for inspection on each container.

(b) Each container and tank must be clearly labeled or marked with the words "Hazardous Waste" while in use on site.

3.2.1.a.I *Manifest*. Small Quantity Generators that transport or offer for transportation, hazardous waste for off site treatment, storage or disposal must prepare a manifest on the currently approved EPA form according to the instructions that accompany that form unless the waste is reclaimed under a contractual agreement where:

(a) The type of waste and frequency of shipments are specified in the agreement;

(b) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(c) The generator maintains a copy of the reclamation agreement on site for a period of at least three (3) years.

3.2.1.a.J *Record Keeping*. The Small Quantity Generator must comply with the following record keeping requirements:

(a) A copy of each properly completed manifest must be kept on site for at least three (3) years from the date that the waste was accepted by the initial transporter.

(b) Any test results, waste analyses or other record of a method used to make a hazardous waste determination must be kept on site for at least three (3) years from the date that the waste was sent to on site or off site treatment, storage or disposal.

(c) The three (3) year record retention time is automatically extended during the course of any unresolved enforcement action regarding regulated activity or as requested by the chief.

(d) If a copy of the manifest with the handwritten signature of the owner or operator of the designated facility has not been received by the generator within 60 days of the date the waste was accepted by the initial transporter, the generator must submit a legible copy of the manifest with some indication that the generator has not received confirmation of delivery to the chief.

(e) The chief, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes.

3.2.1.a.K *Preparedness and prevention.* Facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous wastes or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment.

(a) Required Equipment - All facilities must be equipped with the following unless none of the hazardous posed by the wastes handled at the facility could require a particular kind of equipment specified below:

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(ii) A device such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments or State or local emergency response teams.

(iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment), spill control equipment and decontamination equipment.

(iv) Water at adequate volumes and pressure to supply water hose streams, or foam producing equipment or automatic sprinklers or water spray systems.

(b) All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment where required must be tested and maintained as necessary to assure its proper operation in time of emergency.

(c) Whenever hazardous waste is being handled all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another unless such a device is not required by Section 3.2.1.a.K.(a) of these regulations. If there is just one employee on the premises while the facility is operating, that employee must have immediate access to a device referenced by Section 3.2.1.a.K.(a) of these regulations.

(d) The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency unless aisle space is not needed for any of these purposes.

(e) The owner or operator must attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for these services of these organizations.

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

(ii) Arrangements designating primary emergency authority to a specific police and a specific fire department where more than one police or fire department might respond and arrangements with any others to provide support to the primary emergency authority.

(iii) Agreements with State emergency response teams, emergency response contractors and equipment suppliers.

(iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

(f) Where State or local authorities decline to enter into such agreements, the owner or operator must document the refusal in the operating record.

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

(h) The following information must be posted next to the telephone:

(i) The name and telephone number of the emergency coordinator.

(ii) The location of fire extinguishers and spill control equipment and, if present, the fire alarm.

(iii) The telephone number of the fire department unless the facility has a direct alarm.

(i) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(j) The emergency coordinator or his designee must respond to any emergencies that arise and initiate the proper response to the emergency.

(k) In the event of a fire, explosion or other release that could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must notify the National Response Center at 1-800-424-8802. The report must contain the following information:

(i) The name, address and EPA identification number of the generator.

(ii) The date, time and type of incident.

(iii) Type and quantity of hazardous waste involved in the incident.

(iv) Extent of injuries, if any.

(v) Estimated quantity and disposition of recovered materials, if any.

3.2.1.a.L If a Small Quantity Generator treats (other than elementary neutralization or other excluded methods), stores for longer than the time frames set forth in Section 3.2.1.a.C or disposes of hazardous waste on-site, the generator becomes subject to the permitting requirements of 40 CFR part 265, part 270 and all other applicable parts.

3.2.1.b Conditionally Exempt Small Quantity Generators.

3.2.1.b.A A Conditionally Exempt Small Quantity Generator is a generator of hazardous waste that produces no more than 100 kilograms of waste per month and that meets the requirements stipulated below.

(a) If the generator generates a total of one (1) kilogram or more of acute hazardous waste identified in 40 CFR part 261 in a calendar month, the waste shall be subject to full regulation.

3.2.1.b.B The Conditionally Exempt Small Quantity Generator must make a proper hazardous waste determination as specified in Section 3.2.1.a.B of these regulations. When

determining the amount of hazardous waste generated, a generator need only include those wastes that are generated on site prior to reclamation, are not excluded under 40 CFR part 261, and are not generated, reclaimed and reused on site.

3.2.1.b.C The Conditionally Exempt Small Quantity Generator must notify the chief of its hazardous waste generation activity. No generator shall treat, store or dispose of, transport or offer for transportation hazardous waste without having received an EPA identification number.

3.2.1.b.D A Conditionally Exempt Small Quantity Generator may accumulate up to 1000 kilograms of hazardous waste on site before becoming subject to the requirements of Sections 3.2.1.a.D and 3.2.1.a.H of these regulations.

(a) A total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill into or on any land or water of any acute hazardous wastes listed in 40 CFR part 261 may be accumulated before becoming subject to full regulation.

3.2.1.b.E Record Keeping. The generator must establish and maintain on site a written record specifying the quantity and types hazardous wastes disposed of, the dates the wastes were transported off site and the final disposition of the wastes. The preferred method for this requirement is via the manifest.

3.2.1.b.F The generator must either treat or dispose of hazardous waste in an on site facility or ensure delivery to an off site treatment storage or disposal facility which:

(a) Is permitted to treat, store or dispose of hazardous waste by a state or the federal government or both;

(b) Is permitted, licensed or registered by a state other than West Virginia to manage waste generated by conditionally exempt small quantity facilities;

(c) Beneficially uses or re-uses or legitimately recycles or reclaims the waste; or,

(d) Treats the waste prior to beneficial use or re-use of legitimate recycling or reclamation.

3.2.1.b.G Hazardous waste subject to the reduced requirements of Section 3.2.1.b may be mixed with non-hazardous waste and remain subject to the reduced requirements even though the resultant mixture exceeds the quantity limitations in Section 3.2.1.b.D of these regulations unless the mixture meets any of the

characteristics of hazardous waste identified in 40 CFR part 261 with the following modifications:

(a) If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of Section 3.2.1.b.D of these regulations, the mixture is subject to full regulations.

(b) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part 266, subpart E if it is designated to be burned for energy recovery. Any material produced from such a mixture by processing, blending or other treatment is also so regulated if it is destined to be burned for energy recovery.

3.2.1.b.H If a Conditionally Exempt Small Quantity Generator does not meet all of the requirements set forth herein, the exemption does not apply and the generator will be subject to full regulation.

§ 47-35-4. NOTIFICATION OF HAZARDOUS WASTE ACTIVITY REGULATIONS.

4.1 *Applicability.* Any person that engages in a hazardous waste activity in the State of West Virginia shall notify the chief of these activities, unless such activities are exempted from the requirements of these regulations.

4.1.1 Any person as described in Section 4.1 of these regulations that has notified the EPA or is subject to the requirements to notify EPA as specified in Volume 45, Number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of Section 4 of these regulations.

4.1.2 The purpose of Section 4 of these regulations is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in Section 4.1.1 of these regulations or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in Section 4.1.1 of these regulations shall notify the chief of their hazardous waste activities.

4.2 *Notification.* Any person that notified EPA of hazardous waste activities as referenced above in Section 4.1 of these regulations shall provide a copy of that notification to the chief.

4.2.1 Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in Section 4.1 of the regulations, but is subject to those requirements shall notify the chief in writing of their hazardous waste activities within thirty (30) days of the effective

date of these regulations. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.2 Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in 40 CFR §§ 261.6(b) and 261.5 shall notify the chief in writing of their hazardous waste activities within ninety (90) days of the effective date of these regulations or the date of initiation of such activities, whichever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.3 One notification form is required for each generator.

4.2.4 A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.5 Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, treatment, and disposal activities, unless such activities are exempted from the requirements of these regulations.

4.2.6 New generators and those initiating activities subsequent to the EPA notification period referenced in Section 4.1.1 of these regulations shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Administrator.

§ 47-35-5. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

5.1 The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2 The provisions of 40 CFR § 262.10(e) shall be excepted from incorporation.

5.2.1 A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code, § 20-5E-1 et seq. if he does not comply with the requirements of this regulation.

5.2.2 All references to 40 CFR § 262.10(e) shall be deemed references to Section 5.2 and the subparagraphs herein, as appropriate.

5.3 The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are excepted from incorporation by reference and in addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart E.

5.4 The provisions of 40 CFR part 262, subpart F -- Imports of Hazardous Waste are excepted from incorporation by reference and in addition to the requirements contained therein, any person subject to the provisions of subpart F shall file with the chief copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA, the administrator or the regional administrator as required by and within the timeframes set forth in subpart F.

§ 47-35-6. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

6.1 The provisions of 40 CFR part 263 are hereby adopted and incorporated by reference insofar as said regulations relate to the transportation of hazardous waste by air and water.

6.2 Note -- The use of railroads for the transportation of hazardous waste is regulated by the West Virginia Public Service Commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail", 150 CSR 11. The use of the state highways for the transportation of hazardous waste is regulated under the West Virginia Division of Highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

§ 47-35-7. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

7.1 The standards in Section 7 of these regulations apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in Section 7 of these regulations, the regulation of the Air Pollution Control Commission, 45 CSR 25, apply to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of Section 7 of these regulations, the following persons are considered to be incinerating hazardous waste:

7.1.1 Owners or operators of hazardous waste incinerators;
and

7.1.2 Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2 The provisions of 40 CFR part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3 The provisions of 40 CFR part 264, subpart F -- Releases From Solid Waste Management Units are incorporated by reference with the following modifications, exceptions and additions.

7.3.1 For purposes of 40 CFR § 264.92, reference to the "Regional Administrator" shall be to the "Water Resources Board." The Water Resources Board establishes ground-water protection standards pursuant to the authority granted the Board in W. Va. Code, § 20-5M-4.

7.3.2 For purposes of 40 CFR § 264.94 and subparagraphs thereof, the Water Resource Board rule on Groundwater Protection Standards, 46 CSR 7 and the subparagraphs therein, shall apply as required pursuant to the authority granted the Water Resource Board in W. Va. Code, § 20-5M-4.

7.4 The provisions of 40 CFR part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.4.1 The provisions of 40 CFR §§ 264.149 and 264.150 are excepted from incorporation by reference.

7.5 The provisions of 40 C.F.R. §§ 264.343, 264.344, 264.345 and 264.347 relating to incinerators are excepted from incorporation by reference. Consult the regulations of the Air Pollution Control Commission regarding emissions from incinerators.

7.5.1 Consult the Air Pollution Control Commission regulations, 45 CSR 25, Regulations to Prevent & Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities.

7.6 The provisions of 40 CFR part 264, subparts AA and BB are excepted from incorporation by reference.

§ 47-35-8. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES.

8.1 The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2 The provisions of 40 CFR §§ 265.149 and 265.150 are excepted from incorporation by reference.

8.3 The provisions of 40 CFR part 265, subpart J -- Tank Systems are adopted and incorporated by reference with the following modification:

8.3.1 The provisions of 40 CFR § 265.193(a)(4) is excepted from incorporation by reference and in lieu thereof the following language shall be inserted:

"(4) For those existing tank systems for which the age cannot be documented, within eight years of April 1, 1988; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of April 1, 1988, whichever comes later; and"

8.4 The provisions of 40 C.F.R. § § 265.345, 265.347 and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the regulations of the Air Pollution Control Commission regarding emissions from incinerators.

8.5 The provisions of 40 CFR part 265, subpart P -- Thermal Treatment are incorporated by reference except for 40 CFR § 265.383 which is excepted from incorporation by reference. Consult the regulations of the Air Pollution Control Commission regarding emissions from thermal treatment units.

8.6 The provisions of 40 CFR part 265, subparts AA and BB are excepted from incorporation by reference. Consult the regulations of the Air Pollution Control Commission regarding air emission standards for process vents and air emissions standards for equipment leaks.

§ 47-35-9. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES.

9.1 The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. *except § 266.11*

§ 47-35-10. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF NEW HAZARDOUS WASTE LAND DISPOSAL FACILITIES.

10.1 The provisions of 40 CFR part 267 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2 The provisions of 40 CFR part 267, subpart G -- Underground Injection are excepted to the extent the rules set forth therein

conflict or are inconsistent with the provisions of West Virginia Water Resources Board, Underground Injection Control 46 CSR 9.

§ 47-35-11. LAND DISPOSAL RESTRICTIONS.

11.1 The provisions of 40 CFR part 268 are hereby adopted and incorporated by reference.

§ 47-35-12. THE HAZARDOUS WASTE PERMIT PROGRAM.

12.1 The provisions of 40 CFR part 270 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

12.2 For purposes of this section, the term "RCRA permit" means "West Virginia Hazardous Waste Permit." The following additional requirements shall apply to obtain a hazardous waste permit in West Virginia. All references in 40 C.F.R. Part 270 to 40 C.F.R. Part 124 shall be deemed to be references to the applicable provisions of Sections 12.2.2 through 12.2.9 of this regulation. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein shall control to the extent of the inconsistency, if any.

12.2.1 Application Fees.

12.2.1.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of said application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the State Treasury. Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.

12.2.1.b. Such fee shall be determined by the schedule set forth in Table I of these regulations.

12.2.1.c. The chief reserves his right to promulgate rules and regulations establishing a permit renewal fee at a later date.

12.2.2 Draft Permits.

12.2.2.a Once an application is complete, the chief shall tentatively decide whether to prepare a draft permit or to deny the application.

12.2.2.b If the chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

and 270.32; 12.2.2.b.A All conditions under 40 CFR §§ 270.30

§ 270.33; 12.2.2.b.B All compliance schedules under 40 CFR

CFR § 270.31; and 12.2.2.b.C All monitoring requirements under 40

disposal and other permit conditions under 40 CFR part 270.

12.2.2.c A fact sheet prepared in accordance with Section 12.2.3 of these regulations shall accompany the draft permit.

12.2.3 Fact Sheet.

12.2.3.a A fact sheet shall be prepared by the chief for every draft permit for each hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The chief shall send this fact sheet to the applicant and, upon request, to any other person.

12.2.3.b The fact sheet shall include, when applicable:

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

12.2.3.b.B The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not limited to, the characteristics of the waste materials and the potential effects on public health and the environment;

12.2.3.b.C A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

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

12.2.3.b.E A description of the procedures for reaching a final decision on the draft permit including:

(a) The beginning and ending dates of the comment period and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision; and

12.2.3.b.F Name and telephone number of a person to contact for additional information.

12.2.4 Public Access to Information.

12.2.4.a Any records, reports, or information and may permit, permit applications, and related documentation within the chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the chief that such 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 chief shall consider, treat, and protect such records as confidential.

12.2.4.b It shall be the responsibility of the person claiming any information as confidential under the provisions of Section 12.2.4 of these regulations to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

12.2.4.c Any document submitted to the chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and address to the chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

12.2.4.d No information shall be protected as confidential information by the chief unless it is submitted in accordance with the provisions of Section 12.2.4.c of these regulations and no information which is submitted in accordance with the provisions of Section 12.2.4.c of these regulations shall be afforded protection as confidential information unless the chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the chief as to whether the information has been accepted as confidential or not.

12.2.4.e All information which meets the tests of Section 12.2.4.d of these regulations shall be marked with the term

"ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the chief that such information in the form presented to him meets the criteria of Section 12.2.4.e of these regulations, the chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

12.2.4.f Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the chief or his designee.

12.2.4.g Nothing in Section 12.2.4 of these regulations may be construed as limiting the disclosure of information by the division to any officer, employee, or authorized representative of the State or federal government concerned with effecting the purposes of Section 12.2.4 of these regulations.

12.2.4.h Persons interested in obtaining information pursuant to Section 12.2.4 of these regulations should submit a request in accordance with Title 46, Water Resources Board, Series 8 (46 C.S.R. 8).

12.2.4.i Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

12.2.5 Public Participation in Permit Process.

12.2.5.a Scope. Public notice shall be given that the following actions have occurred:

12.2.5.a.A A draft permit has been prepared; or

12.2.5.a.B A hearing has been scheduled.

12.2.5.b Timing.

12.2.5.b.A Public notice of the preparation of a draft permit required under Section 12.2.5 of these regulations shall allow at least forty-five (45) days for public comment.

12.2.5.b.B Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

12.2.5.c Methods. Public notice of activities described in Section 12.2.5 of these regulations shall be given by the following methods:

12.2.5.c.A By mailing a copy of the notice to the following persons:

- (a) The applicant;

(b) Any federal or state agency which the chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the facility or activity including, but not limited to, the U.S. Environmental protection Agency and the U.S. Army Corps of Engineers;

(c) Each State agency having authority under State law with responsibility to the construction or operation of such facility;

(d) Any unit of local government having jurisdiction over the area where the facility is proposed to be located;

(e) Other appropriate federal or State agencies including, but not limited to, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the West Virginia Department of Culture and History, the West Virginia Department of Health, other governmental authorities including any affected states, and the Advisory Council on Historic Preservation (Suite 430, 1522 K Street, N.W., Washington, D.C. 20005); and

(f) Persons on the mailing list developed by:

(i) Including those who request in writing to be on the list.

(ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area.

(iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the State. The chief may update the mailing list by requesting written indication of continued interest from those listed. The chief may delete from the list the name of any person who fails to respond to such a request.

(g) By publishing the public notice, in the form of a Class I legal advertisement in a qualified daily or weekly newspaper of general circulation and broadcasting the public notice over local radio stations in the area in which the facility is or is proposed to be located. A qualified daily or weekly newspaper is, for the purpose of Section 12.2.5 of these regulations, any newspaper which meets the provisions of W. Va. Code, § 59-3-1(b).

(h) By 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 of medium to elicit public participation.

(i) Any person otherwise entitled to receive notice under Section 12.2.5 of these regulations may waive the right to receive notice for any classes and categories of permits.

12.2.5.d Personal Notification by Facility Owner or Operator to Individual Residents.

12.2.5.d.A Following the submittal of a Part B application which is deemed complete by the chief, and before the public notice of the preparation of a draft permit as required under Section 12.2.5.a of these regulations, the facility owner or operator shall serve notice upon the residence of all persons residing within one-quarter mile of the boundaries of the specific hazardous waste management facility.

12.2.5.d.B Service of such notice as herein provided shall be made by delivering a copy to the residence of each person upon whom service must be made or by mailing it by registered mail to the last known address of each person or by such other reasonable means as the chief and the owner or operator agree will provide an effective and practical method of notification.

12.2.5.d.C Following completion of service of notice as set forth herein, and no later than the date of public notice required in Section 12.2.5.a of these regulations, the owner or operator shall certify in writing to the chief that service has been completed, describe the method of service, and provide a copy of the written notice employed to the chief.

12.2.5.d.D The personal notice required herein shall be a written notice containing at a minimum:

- (a) The name and address of the permit applicant;
- (b) The name, location, and type of hazardous waste management facility for which the application has been submitted;
- (c) A statement advising the recipients of the notice that a complete application for permit has been submitted; and
- (d) A statement advising the notice recipients that an opportunity for public comment upon the application and draft permit will be made available to them upon completion of division review of the application and that such notice will be published as a legal advertisement in a local newspaper and broadcast over the radio.

12.2.5.e Contents.

12.2.5.e.A All public notices issued under Section 12.2.5 of these regulations shall contain the following information:

(a) Name and address of the office processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility described in the permit application or the draft permit;

(d) The name, address, and telephone number of a person from whom interested persons may obtain further information including copies of the draft permit or fact sheet, and the application; and

(e) A brief description of the comment procedures required by Sections 12.2.6 and 12.2.7 of these regulations and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

12.2.5.e.B In addition to the general public notice described in Section 12.2.5.e.A of these regulations, the public notice of a hearing shall contain the following information:

(a) Reference to the date of previous public notices relating to the permit;

(b) Date, time and place of the hearing;

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(d) Name and address of the nearest district office where the file will be available for inspection.

12.2.6 Public Comment and Request for Public Hearings. During the public comment period provided that 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 be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Sections 12.2.8 and 12.2.9 of these regulations.

12.2.7 Public Hearings.

12.2.7.a The chief shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The chief may also hold a public

hearing at his discretion whenever, for instance, such hearing may clarify one or more issues involved in the permit decision.

12.2.7.b The chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for public hearing within forty-five (45) days of the public notice. Whenever possible the chief shall schedule a hearing under Section 12.2.7 of these regulations at a location convenient to the nearest such proposed facility. Public notice of the hearing shall be given as specified in Section 12.2.5 of these regulations.

12.2.8 Reopening of the Public Comment Period.

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

12.2.8.a.A Prepare a new draft permit, appropriately modified, under Section 12.2 of these regulations.

12.2.8.a.B Prepare a revised fact sheet under Section 12.2 of these regulations and reopen the comment period.

12.2.8.a.C Reopen or extend the comment period under Section 12.2 of these regulations to give interested persons an opportunity to comment on the information or arguments submitted.

12.2.8.b Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 12.2 of these regulations shall define the scope of the reopening.

12.2.9 Response to Comments.

12.2.9.a At the time that any final permit is issued, the chief shall issue a response to comments. This response shall be in writing and shall:

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

12.2.9.a.B Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or hearing.

12.2.9.b The response to comments shall be delivered to any person who commented or any person who requests the same.

12.3 The provisions of 40 CFR § 270.12 are excepted from incorporation by reference. Availability of information provided under these rules is controlled by the provisions of W. Va. Code, § 20-5E-11 and section 12.2.4 of these regulations.

12.4 The provisions of 40 C.F.R. § 270.24 are excepted from incorporation by reference. Consult the regulations of the Air Pollution Control Commission regarding emissions from process vents.

12.5 The provision of 40 C.F.R. §§ 270.60(b) and 270.64 are excepted from incorporation by reference. Consult the regulations of the Office of Water Resources and the Water Resources Board regarding the requirements for underground injection wells.

§ 47-35-13. DEED AND LEASE DISCLOSURE; NOTICE IN DEED TO PROPERTY.

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

13.1.1 The land has been used to manage hazardous wastes; and

13.1.2 Its use is restricted under 40 CFR § 264.117(c).

13.2 Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the chief in writing of such transfer.

13.3 Other Requirements. Nothing contained in this Section 13 of these regulations shall relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code, § 20-5E-20.

§ 47-35-14. STANDARDS FOR THE MANAGEMENT OF USED OIL.

14.1 The provisions of 40 CFR part 279 are hereby adopted and incorporated by reference. Notwithstanding the effective date of this rule, the effective date of the provisions of this Section 14 shall be July 1, 1995.

§ 47-35-15. MISCELLANEOUS PROVISIONS.

15.1 The provisions set forth in Appendix 1 are incorporated as a part of these regulations.

APPENDIX 1

§ 1 The provisions contained in this Appendix apply to existing surface impoundments which met the demonstration requirements set forth below by January 1, 1993.

(a) Notwithstanding the provisions of 40 CFR § 264.113 (b), the owner or operator of a surface impoundment used for disposal of hazardous waste ceasing the receipt of hazardous waste prior to November 8, 1988 need not close such surface impoundment within one hundred and eighty (180) days after receiving the final volume of hazardous waste but may continue to receive waste provided that the owner or operator satisfy the chief that the following requirements are or will be met:

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

(2) The owner or operator has a hazardous waste management permit with an approved closure plan for such facility requiring compliance with all applicable provisions of these regulations as though it were an operating hazardous waste surface impoundment;

(3) The owner or operator institutes approved operating procedures designed to minimize the head created by any liquid in the surface impoundment; and either,

(4) The owner and operator makes a demonstration which is approved by the chief under § 2(b)(9)(D); or

(5) The surface impoundment contains a liner which is either :

(A) A synthetic liner for which there is no evidence of leakage;

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

(C) If the owner or operator demonstrates to the chief and the chief finds for the surface impoundment that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous

constituents into the groundwater or surface water beyond the point of compliance at least as effectively as such liners.

§ 2 In addition to the design and operating requirements set forth in 40 CFR § 264.221, the following design and operation requirements shall be applicable to existing surface impoundments which made the demonstration referenced above.

Specific Design and Operating Requirements for Surface Impoundments.

(a) In the event of a conflict or inconsistency between the provisions of 40 CFR § 264.221 and this section, the provisions of this section control to the extent of any conflict or inconsistency.

(b) Design Requirements. (1) A surface impoundment must be designed and constructed to provided maintenance of sufficient freeboard, and to prevent overtopping resulting from wave or wind action; normal and abnormal operation; malfunctions of level controllers, alarms, and other equipment; precipitation; human error; or any combination thereof. The freeboard shall not be less than sixty centimeters (60 cm) (2 feet) or an amount of freeboard other than sixty centimeters (60 cm) based on documentation acceptable to the chief that the specified amount of freeboard will prevent overtopping.

(2) A surface impoundment must be designed and constructed so that any flow of waste into the impoundment can be immediately shut off in the event of overtopping or liner failure.

(3) A surface impoundment must be designed and constructed to prevent discharge into or on the land, and to State waters (except discharges authorized by an NPDES permit during the life of the impoundment) by use of a liner system and leachate detection, collection and removal system which complies with 40 CFR § 264.221.

(4) Dikes must be designed and constructed with sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design.

(5) A leachate detection, collection, and removal system must be designed and constructed so that liquid will flow freely from the collection system to prevent the creation of pressure head within collection system in excess of that necessary to cause the liquid to flow freely.

(6) Existing facilities are exempt from the requirements outlined in §§ 2(b)(3) and (b)(5) of this Appendix,

and 40 CFR §§ 264.221(a), 264.221(d), 264.227(d)(2), provided that the provisions of §2(b)(7) of this Appendix are complied with.

(7) The owners or operator, in order to qualify for the exemption in §2(b)(6), must demonstrate that statistically significant increases of hazardous constituents do not occur in the groundwater or surface water during its active life and the post closure period, except as provided in § 1(a) of this Appendix.

(8) If statistically significant increases of hazardous constituents are detected in the groundwater beneath the facility (including the regulated unit) the owner or operator must comply with the corrective action outlined in 40 CFR § 264.100 (if groundwater contamination has been determined).

(9) If the owner or operator determines that the corrective action plan being implemented under 40 CFR § 264.100 is insufficient for causing cessation of hazardous waste constituents migration, then the unit must be closed. However, if it is determined that the corrective action will adequately arrest and remove the contamination, the owner may choose one of the four (4) options which will become part of the conditions of the permit:

(A) Retrofit the unit with liners in accordance with 40 CFR § 264.221(a);

(B) Stop the leak;

(C) Continue the operation of the unit, while concurrently developing and implementing an alternate treatment, storage or disposal method, for a period of five (5) years at which time the unit must be closed; or

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

(i) Potential adverse effects on groundwater quality, considering:

(A) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity of groundwater and the direction of groundwater flow;

(D) The proximity and withdrawal rates of groundwater users;

(E) The current and future uses of the groundwater in the area;

(F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) The potential for health risks caused by human exposure to hazardous constituents;

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(I) The persistence and permanence of the potential adverse effects; and

(ii) Potential adverse effects on hydraulically-connected surface water quality, considering:

(A) The volume and physical and chemical characteristics of the waste in the regulated unit;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity and quality of groundwater and the direction of groundwater flow;

(D) The patterns of rainfall in the region;

(E) The proximity of the regulated unit to surface waters;

(F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) The potential for health risks caused by human exposure to waste constituents;

(I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) The persistence and permanence of the potential adverse effects.

(iii) In making any determination under section §1(a) concerning the use of groundwater in the area around the facility, the chief will consider any identification of underground sources of drinking water and exempted aquifers made under Title 46, Water Resources Board, Series 9 (46 C.S.R. 9)

(c) Operating Requirements. (1) A surface impoundment must be operated and maintained to prevent any overtopping resulting from wind and wave action; overfilling; normal and abnormal operation; malfunctions of level controllers, alarms, or other equipment; precipitation; human error; or any combination thereof.

(2) A surface impoundment must be operated to maintain at least the amount of freeboard specified by the chief in the permit.

(3) A leachate detection, collection, and removal system installed to comply with 40 CFR § 264.221(a) must be operated so that leachate flows freely from the collection system and is removed as it accumulates or with sufficient frequency to prevent backwater within the collection system.

(4) Earthen dikes must be kept free of:

(A) Perennial woody plants with root systems which could affect the structural integrity of the dike; and

(B) Burrowing mammals which could remove earthen materials upon which the structural integrity of the dike is dependent or creates leaks through burrows in the dike.

(5) Run-on must be diverted away from a surface impoundment.

TABLE 1
PERMIT APPLICATION FEE SCHEDULE

-Storage-

EPA Code	Activity	Fee	
S01	Drum	100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
S02	Tank	100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
S03	Waste Pile	100 tons capacity \$1,500.00	≥100 tons capacity \$3,000.00
S04	Surface Impoundment	1,000 tons capacity \$2,500.00	≥1,000 tons capacity \$3,000.00

-Disposal-

EPA Code	Activity	Fee	
D80	Landfill	1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00
D81	Land Application	1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00
D83	Surface Impoundment	1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00

-Treatment-

EPA Code	Activity	Fee	
T01	Tank	100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
T02	Surface Impoundment	1,000 tons/year \$2,500.00	≥1,000 tons/year \$3,000.00
T03	Incinerator	1,000 tons/year \$1,000.00	≥1,000 tons/year \$3,000.00
T04	Other	(Reserved)	(Reserved)