

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #1

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2006 JUN -7 P 4: 34

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WV Dept. of Environmental Protection, Division of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative CITE AUTHORITY: WV Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: ~~To Prevent and Control Air Pollution from Combustion of~~  
~~Refuse~~ Control of Air Pollution from Combustion of Refuse

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:     

TITLE OF RULE BEING PROPOSED:     

DATE OF PUBLIC HEARING: Monday, July 10, 2006 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection  
Dolly Sods Conference Room (Room 1125)  
601 57th Street, S.E.  
Charleston, WV 25304

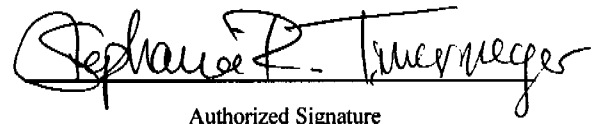
COMMENTS LIMITED TO: ORAL     , WRITTEN     , BOTH X  
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

John A. Benedict, Director  
Division of Air Quality  
WV Dept. of Environmental Protection  
601 57th Street, S. E.  
Charleston, WV 25304

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

  
Authorized Signature

\$8.00

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

**BRIEFING DOCUMENT**

**Rule Title:** 45CSR6 - "Control of Air Pollution From Combustion of Refuse"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

This rule does not prohibit bonfires, campfires or other forms of open burning for the purposes of personal enjoyment and comfort.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

45CSR6 is part of the West Virginia State Implementation Plan (SIP) approved by the U.S. Environmental Protection Agency to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter.

The Division of Air Quality intends to streamline West Virginia's waste combustion regulatory structure by revising legislative rules 45CSR6 and 45CSR18 to follow federal combustion source regulatory structure. It is the intent of the Secretary that 45CSR6 (SIP rule) cover activities involving incineration of refuse which is not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. It is also the intent of the Secretary that 45CSR18 (federal delegation rule) cover combustion sources identified in Section 129 of the Clean Air Act, with incorporation by reference of federal counterpart language promulgated under 40 CFR Part 60. Section 129 sources subject to 45CSR18 (and exempt from 45CSR6) include large municipal waste combustors, small municipal waste combustion units, hospital/ medical/ infectious waste incinerators, commercial and industrial solid waste incineration units, and other solid waste incineration units.

Therefore, the proposed revisions leave 45CSR6 as a basic open burning/ incinerator rule. Federal counterpart language for large municipal waste combustors, small municipal waste combustion units, and commercial and industrial solid waste incineration units has been relocated to 45CSR18. 45CSR6 has new provisions for open burning or incineration of animal or poultry carcasses during a declared state of emergency involving highly contagious animal or poultry disease. The rule also has revised language (and new definitions) for pathological waste incinerators burning at least 90% pathological waste, chemotherapeutic waste, or low-level radioactive waste, which are exempted from referenced federal counterpart language in 45CSR18. Other revisions to the rule include a revised title, prohibition of statutory air pollution, addition of new language for posted incinerator operating instructions, a new exemption section, and general language clarification and correction.

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

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

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

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its May 31, 2006 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

**ADVISORY COUNCIL MEETING MINUTES**

Wednesday - May 31, 2006

1:00 p.m. – 3:00 p.m.

601 57<sup>th</sup> Street, SE, Charleston, WV

West Virginia Room – 3<sup>rd</sup> Floor

**ATTENDEES:**

**Advisory Council Members:**

Larry Harris

Jackie Hallinan

Rick Roberts

Bill Raney (via conference call)

Karen Price

**DEP:**

Stephanie R. Timmermeyer, Cabinet Secretary

Randy Huffman, Deputy Cabinet Secretary/Director – Division of Mining & Reclamation

Heather A. Connolly, General Counsel

Karen G. Watson, Assistant General Counsel

Ken Ellison, Director - Division of Land Restoration

Lisa McClung, Director – Division of Water and Waste Management

John Benedict, Director – Division of Air Quality

Mike Zeto, WVDEP

Charlie Sturey, WVDEP

Lalena Price, Acting Chief Communication Officer – WVDEP – Public Information Office

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

Jim Mason – WVDEP

Bill Brannon – WVDEP

Carroll Cather – WVDEP

Terrie Sangid – WVDEP

Scott Mandirola – WVDEP

Cliff Whyte – WVDEP

John Morgan – WVDEP

Gary Rogers – WVDEP

Mike Dorsey – WVDEP

Patrick Campbell – WVDEP

Ken Politan – WVDEP

Pam Nixon – WVDEP

**VISITORS:**

Don Garvin – WVEC

Allan S. Tweddle – WVEC

Adam Webster – WVRC

Tim Mallan – Appalachian Power

Steve Keen – Bright Enterprises

Charlie Burd – IOGA – WV

Tom Boggs – WV Chamber

Stephanie R. Timmermeyer, Cabinet Secretary - West Virginia Department of Environmental Protection called the meeting to order at 1:00 p.m. Secretary Timmermeyer apologized for short time period with some of the rules getting out to Council.

Proposed rules for the 2007 legislative session are as follows:

**60CSR5 – Antidegradation Implementation Procedures**

**SUMMARY**

Antidegradation is a requirement of the federal Clean Water Act intended to preserve the existing quality of the State's waters and to prevent and/or minimize future degradation. The rule was first adopted in 2001 and establishes four levels, or tiers, of protection of State waters, Tiers 1,2,2.5 and 3. Each tier provides a graduated level of protection used during the NPDES permit issuance process.

**COMMENTS**

Secretary Timmermeyer - Procedural History – 444 Streams to 303 - 3.7% of total WV stream miles.

5.6.d. Are these absolute values (§5.6.d 1-4 of rule)?

*Yes*

Will there be another comment period after filing with Secretary of State's Office?

*Yes*

Is this the final list?

*Yes*

So §6.2 is gone?

*Yes*

Legislature has to approve the Tier 2.5 list according to the law passed last session.

How do we appeal a stream's inclusion on Tier 2.5 list?

*9.6 – Not appealable to the board, delisting a stream would require a change by the legislature through a rule change.*

Since rulemaking authority has been taken from EQB how do you appeal?

*This is like any other rule, EQB has no appellate jurisdiction.*

When does it go into effect?

*If the Legislature passes the list, we send it to EPA for approval, then it would be effective for reissuance, modifications, and 1<sup>st</sup> time issuances.*

## **47CSR2 – Requirements Governing Water Quality Standards**

### **SUMMARY**

This rule establishes requirements governing surface water quality standards for the waters of the State and establishes standards of purity and quality consistent with public health and the enjoyment thereof, the protection of animal, aquatic and plant life and the expansion of employment opportunities, agricultural expansion and a foundation for healthy industrial development.

### **COMMENTS**

Secretary Timmermeyer – Overview of nutrients criteria, EPA approved old (46CSR1) Aluminum Standard. Also includes updated list of trout waters.

How were trout streams added?

*We relied on DNR's data to come up with the list.*

Was it a scientific study or did it include streams where trout are stocked?

*The stream must be able to allow trout to survive over time. This does sometimes include stocked streams.*

Has problem with some streams listed, believes they are not reproducing streams, simply stocked, wants to see method of gathering data for list

*The list is not final, DEP will continue to regulate facilities on such streams. DEP will add and subtract streams as data becomes available.*

*6 streams are being taken off in this rule because they cannot support trout over time.*

How recent are DNR's survey's?

*The surveys range from 1975 to present.*

*We have to maintain waters that "previously sustained trout."*

Where is Watershed at in definition?

*When permits are issued they are looked at on a case by case basis to assess impact on downstream waters within a watershed (downstream usage protection.)*

*There is no definition of "water body" in State Code, only "Waters."*

### **33CSR9 - Standards for Beneficial Use of Filtrate From Water Treatment Plants**

#### **SUMMARY**

This legislative rule establishes a mechanism and requirements for the certification, permitting, siting, bonding, and use of water treatment plant sludge from water treatment plants that has beneficial properties. This rule applies to the beneficial use of water treatment plant sludge and to any person who seeks approval from the Secretary to beneficially use such sludge within the state. This rule is intended to enhance the resource recovery and recycling goals of article fifteen of chapter twenty-two of the West Virginia Code and to encourage the beneficial use of water treatment plant filtrate. Section 22-15-23 of the West Virginia Code and this rule, and not the provisions of W. Va. Code § 22-15-10 or 33 CSR 1, shall govern the beneficial use of water treatment plant sludge. This rule does not apply to sewage sludge, products derived from sewage sludge, sludges regulated under 33 CSR 8, or materials regulated as hazardous waste under W. Va. Code §§22-18-1, et seq.

#### **COMMENTS**

Can we give an example?

*Such filtrate could have been considered Hazardous Waste in the past, this rule allows for certain applications.*

### **47CSR5A – Rules for Individual State Certification of Activities requiring a Federal Permit**

#### **SUMMARY**

The proposed amendments to this rule are being made to adopt into rule requirements that have been applied through past practices for coal related activities requiring mitigation and issuance of a 401 State Certification of a 404 Permit. Ratios for monetary compensation for temporary impacts are detailed. Monetary compensation for permanent impacts to wetlands

from coal related activities are made the same as non-coal related. Additional economic and stream measurement information is being requested to be added to the 401 application.

## COMMENT

Does this apply to any other industry?

*No, it is only coal related.*

Wants to know if other industry has similar regs?

Seems contrary to what we submit to Army Corp. We want consistency across all forums. Is this different?

*No, it is information contained in other forms.*

4.2.f.a WV. Jobs creation

*Coal companies are already submitting this information to Coal Development. We use this information so we need to see it too.*

Is it on a timeframe? – Can coal meet with DEP?

Secretary Timmermeyer suggested we have another Advisory Council Meeting to give the council additional time to review certain rules.

Bill Raney agrees with Secretary Timmermeyer for the need for another meeting to address some of the rules.

The next Advisory Council Meeting will be scheduled before June 20, 2006.

## **58CSR5 – Recycling Assistance Grant Program**

### SUMMARY

Updates and streamlines recycling grant requirements. Establishes rule definitions. Consolidates the type of grants available. Simplifies the grant eligibility criteria. Clarifies uses of grant funding. Clarifies and restructures general conditions and requirements for an applicant and then for a grant recipient. Increases the maximum grant funding levels. Clarifies grant proposal content and submission requirements. Establishes agency review criteria and revises Recycling Assistance Fund Grant Review Committee.

### COMMENT

Someone worked really hard on putting this together - Really thinks they did a great job.

*The changes are a result of suggestions from grant recipients and the recycling community in general.*

## **45CSR6 – Control of Air Pollution from Combustion of Refuse**

### **SUMMARY**

This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under various federal counterpart regulations for specific combustion source categories. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

### **COMMENT**

Rule is just reorganizing and streamlining.

Wholesale look at air rules. Four decades old rule. Needed to take a look at its federal counterparts. We separated them (fed) into Rule 18. Rule 6 covers state regs. Streamlined. Did not change any limits. Left open burning and DOH jobs the same.

Both rules compared old “prevent and control” new “control” why drop the term “prevent” from the rule?

*We don't prevent air pollution we control it. There is no other specific reason, DEP just cleaned up the title.*

*The federal government doesn't use the term “prevent” and we are trying to mirror their rules for consistency.*

Does it involve timbering operations?

*No.*

## **60CSR3 – Voluntary Remediation and Redevelopment Rule**

### **SUMMARY**

The Voluntary Remediation Program proposed rule amendments focus on two primary areas: 1. Incorporating the Uniform Environmental Covenant Act provisions, and 2. Updating the DeMinimis Standard to incorporate recent changes in toxicological profiles posted by EPA for several constituents.

## **COMMENT**

We're adopting Uniform Environmental Covenant Act. We'll have to adopt as they change. Same for DeMinimus Standards (developed by consultant in excel). We've updated the tox profiles.

No questions from Council.

## **45CSR25 – Control of Air Pollution from Hazardous Waste Treatment Storage and Disposal Facilities.**

### **SUMMARY**

This rule establishes and adopts emission standards for the treatment, storage and disposal of hazardous waste promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279, as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards. Any person who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste Management System, the codified federal emission standards, and this rule.

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

This revised rule incorporates by reference the following provisions of 40 CFR Parts 260, 261, 264, 265, 266 and 270 promulgated as of June 1, 2006: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Resource Conservation and Recovery Act Burden Reduction Initiative, and Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB.

## **COMMENT**

Revisions to this rule are necessary to maintain consistency with current federal regulations.

Only federal changes this year except for one definition on pathological incinerators.

No further questions.

## **199CSR1 – Surface Mining Blasting Rule**

### **SUMMARY**

These changes are proposed for clarification of definitions, jurisdiction for underground shaft and slope development, and training/educational requirements for pre-blast surveyors and certified blasters. None of which should have any fiscal impact on the state or public above those currently experiencing. Some additional training will be required by those doing pre-blast surveys, but that training will be offered for free by Explosives and Blasting.

## COMMENT

Randy Huffman hit on highlight changes and cleanup for this rule:

- 3.2.c. 1000 ft requirement for seismograph
- 3.4. defines where DEP gives up regulatory authority as 40ft.
- 3.9 Pre blast surveyors training requirements.

Is this new or modified requirement?

*Modified – Now requiring additional criteria. DEP/OEB is the approving authority. We offer procedural training only at DEP 4.1.b. Case by case certification for qualifying experience for initial certification.*

Would that include the convicted felon requirements?

*The convicted felon exclusion remains. Felons can't get a fire marshal's license, or a license from ATF.*

Any provision for appeals on the convicted felon prohibition?

*Not at this time.*

4.5.d – Show cause why you should be allowed in West Virginia when suspended or revoked in other states.

4.9. – Allows blasting inspector to issue suspension order on site if unsafe conditions exist. 24 hour appeal process. Concerned about air blast and fly rock incidents.

Grammatical errors must be changed before we go out to public notice.

Concerns: New definition for “Other structures” and “habitable dwelling”  
Shaft and slope (40 ft)

*Other structures or “Protective structure” can house people – habitable dwelling one that can house people (snowbird example)- “shaft and slope” DEP worked with miner's health and safety to develop the distance criteria.*

We're (WVCA) probably fine with them.

Does OSM require it?

*No. Geology and blast record 3.5 Safety concerns pre-blast surveyors, they don't have to be geologists, but they do need to know what they are blasting.*

**HOLD OVER FOR NEXT MEETING.**

## **38CSR2 – Surface Mining Reclamation Rule**

### **SUMMARY**

38- 3.2.g. Notice of Technical Completeness is new language and is to provide the public an opportunity to review the application once technical review is completed. §38- 5.4.e.1 is removing language that is contrary to returning the natural drainway to its original pattern, profile, and dimensions once drainage control structure is removed. Changes to §38-2-6 removes duplication of rules for Blasting and after this change, all the requirements for blasting will be contained in Surface Mining Blasting Rule, Title 199 Series 1. Changes in §38-14.15.c.2, 14.15.d.1 and 14.15.d.3 are clarifying contemporaneous reclamation rules on excess spoil disposal. The changes in §38- 5.6 and 14.15 removes phase-in compliance schedules and the schedule in 14.15 has long past and the one in 5.6 is due to expire on June 19, 2006. §38-2-25 Coal Slurry Lines is new language and the term slurry as used in this subsection means any mixture of water and solids that are pumped to a disposal area. The purpose of this change is to minimize the potential and the impacts of slurry line spills by providing for secondary containment, monitoring etc.

### **COMMENT**

Creates standards and requirements (§38-2-25) is a new section.

Public review period 3.2.g. – currently the public has no opportunity to comment on a completed application so this rule adds a 15 day comment period in certain circumstances.

Why delete the term “databases” specifically

*Some of those databases don't exist. We have our own database now.*

Has the current notification timeframe changed?

*No, it is the same as using the existing spill line.*

What about mining related spills?

*Inspectors call spill line within 24 hour period. Companies should call immediately upon discovering a spill.*

Is there anyway to sample water for slurry spills?

*Currently DEP Inspectors take stream water samples and that data is on file.*

Is there anything dangerous in the slurry to the public?

*Not usually. We can get you data on existing samples.*

Dialysis system are bothered by trace stuff in the water.

*Coal fines are usually what kill fish, not the trace chemicals.*

## **HOLD OVER FOR NEXT AC MEETING**

### **47CSR30 – WV/NPDES RULES FOR COAL MINING FACILITIES**

#### **SUMMARY**

The proposed amendments to this rule are being made to allow general clean-up of sections referencing outdated names of agencies and references to the EQB governing rule making. This rule addresses the Secretary as being the person as head of all actions. References to the “Director” are changed to “Secretary” to eliminate the need to distinguish between the Director of Mining and Reclamation and the Director of Water and Waste Management when issuing a coal related WV/NPDES permit. This rule adds provision for storm-water coverage for certain minimal activities without the requirement for modification through application to the permit. This rule also provides for an advanced approval of transfer of a WV/NPDES Permit to coincide with the advanced approval of the corresponding Article 3 Permit.

#### **COMMENT**

Eliminates need to do a NPDES modification permit in certain instances when adding area to an existing permitted area. Reduce paperwork and manpower.

Secretary can override rule when circumstances dictate. Also, there is a provision for advanced approval of a transfer permit in certain circumstances. Consistent with SMCRA.

Why would a permit area be expanded if not to extract minerals?

*Haul roads, storage, etc.*

Does this do away with any existing public comment period?

*No. These small changes wouldn't require a hearing.*

## **HOLD FOR NEXT MEETING.**

### **35CSR3 – Coalbed Methane Wells Rule –**

## **HOLD FOR NEXT MEETING**

## **33CSR20 – Hazardous Waste Management**

### **HOLD FOR NEXT MEETING**

## **45CSR8 – Ambient Air Quality Standards**

### **SUMMARY**

The purpose of this rule is to establish ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to those national primary and secondary National Ambient Air Quality Standards (NAAQS) established by the U.S. EPA.

National primary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator of the U.S. EPA judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator of the U.S. EPA deems necessary to protect the public health and welfare.

The Division of Air Quality (DAQ) is streamlining the regulatory structure by consolidating all of the NAAQS into one rule. Consequently, this rule will repeal and replace 45CSR9 - "Ambient Air Quality Standards for Carbon Monoxide and Ozone" which was filed on April 16, 2002 and became effective on July 1, 2002, and 45CSR12 - "Ambient Air Quality Standard for Nitrogen Dioxide" which was filed May 19, 2000, and became effective June 1, 2000.

### **COMMENT**

This puts all NAAQS in one rule, acts to consolidate and streamline the rule.

Why do away with 2.2?

*It's now in 3.1 and adopts federal standards.*

Particulates are in this rule. Dr. Popper's (WVU) research shows that particulates damage kid's lungs developmentally and these standards are based on adults. Asthma on the increase and this might exacerbate our kids health.

*The federal EPA is currently reviewing fine particulate matter and we will change our standards accordingly based on their rule changes.*

## **45CSR16 – Standards of Performance for New Stationary Sources**

### **SUMMARY**

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

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of June 1, 2006: Standards of Performance for: New and Existing Stationary Sources - Electric Utility Steam Generating Units; Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978, Industrial- Commercial- Institutional Steam Generating Units, Small Industrial- Commercial- Institutional Steam Generating Units; Stationary Gas Turbines.

#### **COMMENT**

Standard Update of fed requirements.

No Questions.

#### **45CSR34 – Emission Standards for Hazardous Air Pollutants**

#### **SUMMARY**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61, 63 and 40 CFR Part 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2006. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 61 and 63. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Parts 61 or 63 must comply with the applicable NESHAPS and this rule.

This rule will repeal and replace 45CSR15 “Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61” filed April 28, 2006 and effective June 1, 2006, as 45CSR34 will now include all federal NESHAPS under 40 CFR Parts 61 and 63.

The revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2006: Miscellaneous Organic Chemical Manufacturing, Waste Management System; Testing and Monitoring Activities, Methods Innovation Rule and SW-846 Final Update IIIB, Cellulose Products Manufacturing, Primary Aluminum Reduction Plants, Cross-Media Electronic Reporting, Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), Primary Copper Smelting, Coke Ovens: Pushing, Quenching, and Battery Stacks, Cellulose Products Manufacturing, Miscellaneous Organic Chemical Manufacturing, Secondary Aluminum Production, Brick and Structural Clay Products Manufacturing, Hazardous Waste Combustors, Exemption of Certain Area Sources From Title V Operating Permit Programs, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List, Miscellaneous Coating Manufacturing, Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration, Surface Coating of Metal Cans, Refractory Products Manufacturing, Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, Miscellaneous Organic Chemical Manufacturing, Hazardous Waste Combustors, Hydrochloric Acid Production, Industrial Process Cooling Towers, Magnetic Tape Manufacturing Operations, Ethylene Oxide Emissions Standards for Sterilization Facilities, Refractory Products Manufacturing and General Provisions.

#### **COMMENT**

Standard update of fed requirements combining 45CSR\_\_\_ and 45CSR16 into this rule. Will replace Rule 15.

No Questions.

#### **45CSR39 – Control of Annual Nitrogen Oxides Emissions**

##### **SUMMARY**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are

known to be highly cost effective for electric generating units. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind NO<sub>x</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity. The CAIR NO<sub>x</sub> Ozone Season Trading Program requirements are set forth in 45CSR40.

## COMMENT

Standard update of Fed requirements.

CAIR rules

Picking up EPA rules

Are all the cross-outs just picking up federal standards?

*Yes.*

No other questions.

## 45CSR40 – Control of Ozone Season Nitrogen Oxides Emissions

### SUMMARY

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO<sub>x</sub> Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO<sub>x</sub>).

This rule partially fulfills the State’s obligations in response to the United States Environmental Protection Agency’s (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO<sub>x</sub> reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO<sub>x</sub> emission reductions be implemented in two phases. The first phase of ozone season NO<sub>x</sub> reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO<sub>x</sub> emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based “cap and trade” provisions which allow sources to buy or sell NO<sub>x</sub> emission allowances from or to other program participants. Reducing upwind ozone season NO<sub>x</sub> emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO<sub>x</sub> SIP Call trading program, existing NO<sub>x</sub> SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO<sub>x</sub> reduction provisions must be “sunsetting” by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which

effectively “sunset” these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW<sub>e</sub> generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO<sub>x</sub> SIP Call ozone season NO<sub>x</sub> emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO<sub>x</sub> Annual Trading Program requirements are set forth in 45CSR39.

#### **COMMENT**

These changes have they resulted in any change in stringency?

*No we are simply streamlining the CAIR rules*

We haven't lost any ground?

*No.*

#### **45CSR1 – Control of Annual Sulfur Dioxide Emissions**

##### **SUMMARY**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO<sub>2</sub> Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO<sub>2</sub>).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO<sub>2</sub> reduce annual emissions based upon the implementation of retirement ratios for SO<sub>2</sub> allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO<sub>2</sub> emission reductions be implemented in two phases. The first phase of SO<sub>2</sub> reductions starts in 2010 and requires retiring SO<sub>2</sub> allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO<sub>2</sub> allowances at a 2.86:1 ratio, and continues thereafter. The SO<sub>2</sub> emissions reductions requirements are based on

controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO<sub>2</sub> emission allowances from or to other program participants. Reducing upwind SO<sub>2</sub> emissions will assist downwind PM<sub>2.5</sub> and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

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

#### **COMMENT**

No questions.

#### **OTHER BUSINESS**

Appreciation to Trish White for her work on these rules.

Larry Harris wanted to know about Pocohantas Water Treatment Plant Status? Randy Huffman located Cliff Whyte from DWWM to give him the information.

Trish White will e-mail everyone with next meeting date....

Larry Harris moves we adjourn – Bill Raney seconds.

**FISCAL NOTE FOR PROPOSED RULES**Rule Title: 45CSR6 - "Control of Air Pollution from Combustion of Refuse"Type of Rule:  Legislative  Interpretive  ProceduralAgency: Division of Air QualityAddress: 601 57<sup>th</sup> Street SE  
Charleston, WV 25304Phone Number: 926-0475Email: tmowrer@wvdep.org**Fiscal Note Summary**

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

The proposed revisions to this rule should cause no additional impact on costs and revenues of state government.

**Fiscal Note Detail**

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

**FISCAL YEAR**

Effect of Proposal	2007 Increase/Decrease (use "-")	2008 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

Rule Title: 45CSR6 - "Control of Air Pollution from Combustion of Refuse"

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

The proposed revisions to this rule will have a minimal effect on the costs to the Division of Air Quality for continued implementation of this rule. Costs are covered under previous cost estimates.

### MEMORANDUM

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

Date: June 5, 2006

Signature of Agency Head or Authorized Representative

\_\_\_\_\_  
John A. Benedict, Director

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

SERIES 6  
~~TO PREVENT AND CONTROL OF~~ AIR POLLUTION FROM COMBUSTION OF REFUSE

**§45-6-1. General.**

1.1. Scope.

1.1.a. This rule establishes emission standards for particulate matter and requirements for activities involving incineration of refuse which are not subject to, or are exempted from regulation under a federal counterpart for specific combustion sources. This rule also prohibits (with limited exception) open burning and sets forth the registration, permitting, reporting, testing, emergency, natural disaster and exemption provisions for activities involving the combustion of refuse and land clearing debris.

~~1.1.a. 1.1.b. The purpose of this rule is to prevent and control air pollution from combustion of refuse.~~ 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 ~~undesirable levels of air contaminants~~ 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 over combustion of refuse or open burning.

~~1.1.b. 1.1.c.~~ All persons engaged in any form of combustion of refuse shall give careful consideration to the effects of the resultant emissions on the air quality of the area(s) affected by such burning. Important considerations include, but are not limited to, the location and time of burning, the type of material being burned

and the potential emissions and the prevailing meteorological conditions. Persons failing to give due consideration to these factors will be in violation of this rule.

~~1.1.c. 1.1.d.~~ It is the intent of the ~~Director~~ Secretary that all incorporated areas and other local governmental entities prohibit open burning and develop alternative methods for disposal of ~~waste material~~ refuse. If such action is not taken in any air basin, air quality control region or other such areas as the ~~Director~~ Secretary may designate, then such action may be taken by the ~~Director~~ Secretary to ~~insure~~ ensure compliance with air quality standards.

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

1.3. Filing Date. -- ~~June 21, 2001.~~

1.4. Effective Date. -- ~~July 1, 2001.~~

1.5. Former Rules. -- This legislative rule amends 45CSR6 "To Prevent and Control Air Pollution From Combustion of Refuse" which was filed on ~~June 2, 2000~~ June 21, 2001, and which became effective ~~August 31, 2000~~ July 21, 2001.

**§45-6-2. Definitions.**

2.1. "Air Curtain Incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are not to be confused with

conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

2.2. "Air Pollution"; or 'statutory air pollution' shall have the meaning ascribed to it in W. Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting gasborne particulate or gaseous materials for the purpose of preventing or reducing emission of these materials into the open air.

~~2.4. "Clean Lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.~~

~~2.5. "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.~~

2.4. "Chemotherapeutic waste" means waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

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

2.6. "Flare"; or 'flare stack' means and includes a combustion source normally comprised of, but not limited to, a length of stack or pipe which has an attached burner mechanism designed to destroy liquid or gaseous material with an open or semi-enclosed flame.

2.7. "Incineration" means the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of this rule, the destruction of any combustible liquid or gaseous material by burning in a flare/flare flare or flare stack, thermal oxidizer or thermal catalytic oxidizer stack shall be considered incineration.

2.8. "Incinerator" means any device used to accomplish incineration.

2.9. "Incinerator Capacity" shall be the manufacturer's or designer's guaranteed maximum charging rate or such other rate as may be determined by the ~~Director~~ Secretary in accordance with good engineering practices. In case of conflict the determination by the ~~Director~~ Secretary shall govern. For the purpose of this rule, the total of the capacities of all furnaces within one system shall be considered as the "Incinerator Capacity".

~~2.10. "Industrial Waste Incinerator" means an incinerator which is used to incinerate gaseous, liquid, semi-liquid and/or solid by-product waste from industrial sources.~~

~~2.11. "Land Clearing Debris" means that vegetative material generated by clearing of land for purposes of preparation for development, construction, mining or other such activity. Non-vegetative refuse is not included in this meaning.~~

2.11. "Low-level radioactive waste" means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

2.12. "Opacity" means the degree to which smoke ~~and/or~~ or particulate matter emissions reduce the transmission of light and obscure the

view of an object in the background.

2.13. "Open Burning" means the combustion of refuse whereby the gaseous products of combustion are not conveyed through man-made means from one point to another and are discharged directly to the open air. This term includes 'burn barrels', but does not include air curtain incinerators.

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

2.15. "~~Pathological Waste Incinerator~~" means ~~an incinerator used to dispose of animal and/or human tissue, bandages, medical wastes and medical laboratory wastes~~ waste material consisting of only human or animal remains, anatomical parts or tissue, the bags or containers used to collect and transport the waste material, and animal bedding (if applicable).

2.16. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

2.17. "Refuse" means the useless ~~and/or~~, unwanted or discarded solid, liquid ~~and/or or~~ gaseous waste materials resulting from community, commercial, industrial or citizen activities.

2.18. "~~Sewage Sludge Incinerator~~" means ~~an incinerator which is used to incinerate the sludge produced by municipal or industrial sewage treatment plants.~~ "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.19. "Smoke" means small gasborne and

airborne particles emitted as the result of the combustion of refuse in sufficient numbers to be visible.

2.20. "~~Wood Waste~~" means ~~untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:~~

~~2.20.a. Yard waste;~~

~~2.20.b. Construction, renovation, or demolition wastes; or~~

~~2.20.c. Clean lumber;~~

~~2.21. "Yard Waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, retail, institutional, or industrial sources as part of maintaining yards or other private or public lands;~~

~~2.22. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W.Va. Code §22-5-1 et seq.~~

### §45-6-3. Open Burning Prohibited.

3.1. General Provisions. -- The open burning of refuse by any person, ~~firm, corporation, association or public agency~~ is prohibited except for the following ~~exemptions~~ exclusions:

3.1.a. Vegetation grown on the premises of a home or farm, provided that there is compliance with the provisions of subdivision 1.1.b, and the health, safety, comfort and property of persons are protected from the effects of such burning.

3.1.b. Fires set for the purpose of bona fide instruction and training of public and industrial employees and members of volunteer fire departments in the methods of fighting fires, provided that approval to conduct such burning is received from the ~~Director or the Director's duly~~

~~authorized representative Secretary.~~ Burning of structures for fire training is subject to specific requirements of ~~45CSR15, in particular, 45CSR34~~ and 40 CFR Part 61 Subpart M.

3.1.c. Open burning of land clearing debris provided that all the following conditions are met:

3.1.c.1. There is no practical alternate method for the disposal of the material to be burned;

3.1.c.2. The health, safety, comfort and property of persons are protected from the effects of such burning; and

3.1.c.3. Approval to conduct such burning is received from the ~~Director or the Director's duly authorized representative~~ Secretary.

3.1.d. Open burning of propellant and explosive wastes, provided that the open burning is conducted in accordance with 45CSR25.

3.2. The exemptions listed in subsection 3.1 are subject to the following stipulation:

3.2.a. Upon notification by the ~~Director~~ Secretary, no person shall ~~cause, suffer, or allow or permit~~ any form of open burning during existing or predicted periods of atmospheric stagnation. Notification shall be made by such means as the ~~Director~~ Secretary may deem necessary and feasible.

**§45-6-4. Emission Standards for Incinerators and Incineration.**

4.1. No person shall ~~cause, suffer, or allow or permit~~ particulate matter to be discharged from any incinerator into the open air in excess of the quantity determined by use of the following formula:

$$\text{Emissions (lb/hr)} = F \times \text{Incinerator Capacity (tons/hr)}$$

Where, the factor, F, is as indicated in Table I below:

**Table I:** Factor, F, for Determining Maximum Allowable Particulate Emissions.

Incinerator Capacity	Factor F
A. Less than 15,000 lbs/hr	5.43
B. 15,000 lbs/hr or greater	2.72

4.2. ~~After September 1, 1969, in~~ In the Counties of Brooke, Hancock, Ohio, Marshall and Kanawha; and the Magisterial Districts of Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), the City of Fairmont and those portions of Union and Winfield Magisterial Districts west of I-79 (Marion County), no person shall ~~cause, suffer, or allow or permit~~ the operation of any incinerator during the period starting one (1) hour before sunset and extending until two (2) hours after sunrise. This subsection shall not apply to the operation of ~~pathological, industrial, municipal or sewage sludge waste~~ waste incinerators.

4.3. Emission of Visible Particulate Matter, -- No person shall ~~cause, suffer, or allow or permit~~ emission of smoke into the atmosphere from any incinerator which is twenty (~~20%~~) percent (20%) opacity or greater.

4.4. The provisions of subsection 4.3 shall not apply to smoke which is less than forty (~~40%~~) percent (40%) opacity, for a period or periods aggregating no more than eight (8) minutes per start-up, or six (6) minutes in any sixty (60)-minute period for stoking operations.

4.5. No person shall ~~cause, suffer, or allow or permit~~ the emission of particles of unburned or partially burned refuse or ash from any incinerator which are large enough to be individually distinguished in the open air.

4.6. Incinerators, including all associated equipment and grounds, shall be designed, operated and maintained so as to prevent the

emission of objectionable odors.

4.7. ~~Incineration of Residues and Hazardous Materials~~ Pathological Waste. -- Persons responsible for the incineration of hazardous materials such as insecticides, empty insecticide containers, toxic materials, certain chemical residues, explosives, used bandages and other medical wastes, pathological wastes, human and animal remains and other like materials waste, low-level radioactive waste, or chemotherapeutic waste shall give the utmost care and consideration to the potential harmful effects of the emissions resulting from such activities. Evaluation of these facilities as to adequacy, efficiency and emission potential will be made on an individual basis by the ~~Director~~ Secretary, working in conjunction with other appropriate governmental agencies.

4.8. ~~Air Curtain Incinerators~~ -- Notwithstanding any other provisions in this rule, the construction, modification, siting, and operation of air curtain incinerators shall be subject only to sections 9, 10, 11 and the following requirements:

~~4.8.a. Incinerators as defined and regulated in 40 CFR Part 60, Subparts Eb, CCCC (65 FR75338, December 1, 2000) and AAAA (65FR76350, December 6, 2000) shall comply with applicable requirements set forth in those regulations. The requirements of 40 CFR Part 60 Subparts CCCC and AAAA as related to air curtain incinerators are hereby incorporated by reference. All notices, reports and other information required to be submitted to the Administrator of the United States Environmental Protection Agency pursuant to 40 CFR Part 60, Subparts Eb, CCCC and AAAA shall also be submitted to the Director.~~

4.8.b. Only land clearing debris, wood waste, clean lumber or yard waste as defined in this rule or 40 CFR Part 60, Subparts Eb, CCCC and AAAA may be burned by an air curtain incinerator.

4.8.c. Except as provided in subdivision

~~4.8.e, construction or modification of an air curtain incinerator shall be subject to the permitting requirements of 45CSR13, 45CSR14, or 45CSR19, as applicable.~~

~~4.8.d. Except for incinerators subject to subdivision 4.8.e, air curtain incinerators not subject to subdivision 4.8.a shall comply with emission control, reporting, and recordkeeping requirements identical to those set forth under 40 CFR §60.2250, 40 CFR §60.2255, and 40 CFR §60.2260. Reports, notices, and other information required to be submitted to the Administrator of the United States Environmental Protection Agency under those cited sections must only be submitted to the Director.~~

~~4.8.e. Temporary Air Curtain Incinerators. -- Air curtain incinerators not subject to subdivision 4.8.a that are temporarily sited and operated only for the disposal of on-site land clearing debris are not shall not be subject to the emission standards of this rule or to the preconstruction permitting requirements of 45CSR13, provided that the following conditions are met:~~

~~4.8.e.1. 4.8.a. There is no practical alternative method for the disposal of the material to be burned incinerated;~~

~~4.8.e.2. 4.8.b. The health, safety, comfort and property of persons are protected from the effects of such burning incineration;~~

~~4.8.e.3. 4.8.c. Approval to conduct such burning incineration is received from the director or the director's duly authorized representative Secretary; and~~

~~4.8.e.4. 4.8.d. The temporary air curtain incinerator is not subject to the requirements of section 9 of this rule, 45CSR14, 45CSR18, or 45CSR19, or 45CSR30.~~

~~4.8.f. Air curtain incinerators subject to the requirements of 45CSR30 shall apply for and obtain an operating permit in accordance with the~~

provisions of 45CSR30:

4.9. Except for temporary air curtain incinerators under subsection 4.8, the owner or operator of an incinerator shall post operating instructions for the incinerator clearly visible by the operator from the incinerator charging area. Such posting shall provide instruction for proper operation in order to prevent a violation of this rule.

4.10. The owner and operator of an incinerator shall design, construct and operate the facility in accordance with all applicable rules promulgated by the Secretary including, but not limited to, this rule, 45CSR13, 45CSR14, 45CSR18, 45CSR19, 45CSR25, 45CSR30 and 45CSR34, as applicable.

#### **§45-6-5. Registration.**

5.1. Within thirty (30) days after the effective date of this rule, all persons owning and/or operating incinerators within the state an incinerator in West Virginia shall have registered with the Director Secretary on forms made available by the Director Secretary, the name of the person, company or corporation operating the plant, the address, location, county, ownership (lessee, lessor), the principal officer of the company and any such other reasonable information as the Director Secretary may require including, but not limited to, make, model, capacity, operating temperature, fuel used, stack parameters and description of air pollution control equipment.

#### **§45-6-6. Permits.**

6.1. No Except for temporary air curtain incinerators under subsection 4.8, no person shall construct, modify or relocate any incinerator without first obtaining a permit in accordance with the provisions of W.Va. Code §§22-5-1 et seq., 45CSR13, 45CSR14, and 45CSR19, and 45CSR30, as applicable, provided that, and notwithstanding the provisions of 45CSR13, flares and flare stacks meeting the following

requirements shall not be required to obtain a preconstruction permit under 45CSR13:

6.1.a. Temporary flares used in conjunction with maintenance and repair of natural gas pipelines, combusting only the gas contained therein, which meet the following conditions:

6.1.a.1. The flare or flare stack exists on-site for a cumulative period of less than thirty (30) days in any twelve (12) consecutive month period;

6.1.a.2. The maximum emissions from the flare or flare stack, based on the potential to emit for the period of time that the flare or flare stack is in use, do not exceed the threshold amounts specified in the definitions of "stationary source" and "modification" in 45CSR13;

6.1.a.3. The flare or flare stack is not subject to the requirements of ~~40 CFR Parts 60, 61, or 63, or 45CSR14 or 45CSR19~~ 45CSR14, 45CSR16, 45CSR19, 45CSR25, 45CSR30 or 45CSR34; and

6.1.a.4. The source maintains records of emissions, monitoring results or other records sufficient to determine compliance with the requirements of paragraphs 6.1.a.1 through 6.1.a.3 for a minimum period of three (3) years and makes such records available upon the Director's Secretary's request.

6.1.b. Temporary flares, other than those identified in subdivision 6.1.a, which meet the following conditions:

6.1.b.1. The flare or flare stack exists on-site for a cumulative period of less than ten (10) days in any twelve (12) consecutive month period;

6.1.b.2. The maximum emissions from the flare or flare stack, based on the potential to emit for the period of time that the flare or flare stack is in use, do not exceed the threshold amounts specified in the definitions of "stationary

source" and modification" in 45CSR13;

6.1.b.3. The flare or flare stack is not subject to the requirements of ~~40 CFR Parts 60, 61, or 63, or 45CSR14 or 45CSR19~~ 45CSR14, 45CSR16, 45CSR19, 45CSR25, 45CSR30 or 45CSR34;

6.1.b.4. The flare or flare stack meets all of the general control device requirements of 40 CFR §60.18, including, but not limited to, the requirement to monitor the flare to ensure it is operated and maintained in conformance with its design and the opacity standard in 40 CFR §60.18(c)(1);

6.1.b.5. The flare or flare stack is designed and operated in a manner to prevent violations of any national ambient air quality standards standard;

6.1.b.6. The source notifies the Director Secretary within ten (10) working days of locating any flare or flare stack on-site, which notification shall include the location and anticipated duration that such flare will remain on-site; and

6.1.b.7. The source maintains records of emissions, monitoring results or other records sufficient to determine compliance with the requirements of paragraphs 6.1.b.1 through 6.1.b.6 for a minimum period of three (3) years and makes such records available upon the Director's Secretary's request.

6.2. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable, including but not limited to the permitting requirements under 45CSR13, 45CSR14, 45CSR19, 45CSR25 and 45CSR30.

#### **§45-6-7. Reports and Testing.**

7.1. At such reasonable times as the Director Secretary may designate, the operator of any

incinerator shall be required to conduct or have conducted stack tests to determine the particulate matter loading, by using 40 CFR Part 60, Appendix A, Method 5 or other equivalent U.S. EPA approved method approved by the Director Secretary, in exhaust gases. Such tests shall be conducted in such manner as the Director Secretary may specify and be filed on forms and in a manner acceptable to the Director Secretary. The Director, or the Director's authorized representative, Secretary may, at the Director's Secretary's option, witness or conduct such stack tests. Should the Director Secretary exercise his or her option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such manner as the Director Secretary may require, power for test equipment and the required safety equipment such as scaffolding, railings and ladders to comply with generally accepted good safety practices.

7.2. The Director, or the Director's duly authorized representative, Secretary may conduct such other tests as the Director Secretary may deem necessary to evaluate air pollution emissions other than those noted above.

#### **§45-6-8. Variances.**

8.1. If it can be demonstrated to the Director Secretary that the disposal of certain materials by any method other than burning leads to ground water contamination, then the person responsible for the disposal of such materials shall submit to the Director Secretary within sixty (60) days of such demonstration a program and preconstruction permit application under 45CSR13 leading to the construction of a suitable incinerator. If such program and permit is accepted approved by the Director Secretary, the person shall not be in violation as long as such incineration is in accordance with the approved program is observed and permit issued by the Secretary.

8.2. Due to an unavoidable malfunction of equipment, emissions exceeding those provided for any limitation in this rule may be permitted by the Director Secretary for periods not to exceed

five (5) days upon specific application to the ~~Director~~ Secretary. Such application shall be made within twenty-four (24) hours of the malfunction. In cases of major equipment failure, additional time periods may be granted by the ~~Director~~ Secretary provided a corrective program has been submitted by the owner or operator and approved by the ~~Director~~ Secretary.

#### **§45-6-9. Emergencies and Natural Disasters.**

9.1. In situations involving flood, tornado, ice storm, high winds or other natural disaster the ~~Director~~ Secretary may, based on demonstrated need, ~~allow~~ approve temporary open burning or ~~incineration~~ of vegetation, non-hazardous building debris and other non-hazardous debris from such natural disaster which would otherwise be subject to the requirements of sections 3, 4 or 6 of this rule, provided that:

9.1.a. There is no practical alternative method for disposal of the material to be burned; and

9.1.b. The health, safety, comfort and property of persons are protected from such burning; and

9.1.c. Approval to conduct such burning is received from the Secretary.

9.2. During a declared state of emergency under Annex W of the West Virginia Emergency Operations Plan involving a highly contagious animal or poultry disease, the Secretary may approve temporary incineration or open burning of animal or poultry remains and related pathological waste which would otherwise be subject to the requirements of sections 3, 4 or 6 or 45CSR18, provided that:

9.2.a. There is no practical alternative method for carcass and pathological waste disposal;

9.2.b. The health, safety, comfort and property of persons are protected from such

incineration or burning; and

9.2.c. Approval to conduct such incineration or burning is received from the Secretary.

#### **§45-6-10. Exemptions.**

10.1. The following combustion units are subject to the requirements of 45CSR18 and shall be exempt from the requirements of this rule:

10.1.a. Large municipal waste combustors, small municipal waste combustion units, hospital/ medical/ infectious waste incinerators, commercial and industrial solid waste incineration units, and other solid waste incineration units;

10.1.b. Air curtain incinerators which are a distinct operating unit of any commercial or industrial facility;

10.1.c. Any air curtain incinerator that burns less than 35 tons per day of municipal solid waste, or is located at an institutional facility burning any amount of institutional waste generated at that facility; and

10.1.d. Incinerators or air curtain incinerators used on a temporary basis to combust vegetation or debris from disaster recovery or a state of emergency.

10.2. Any pathological waste incinerator subject to 45CSR18 or 45CSR25 shall be exempt from the requirements of this rule.

10.3. Any hazardous waste combustor subject to 40 CFR Part 63, Subpart EEE and 45CSR34 shall be exempt from the requirements of this rule.

10.4. Any hazardous waste incinerator subject to 40 CFR Parts 264 or 265 and 45CSR25 shall be exempt from the requirements of this rule.

~~§45-6-10.~~ **§45-6-11. Effect of the Rule.**

~~10.1.~~ 11.1. Nothing in this rule shall be construed to allow or permit the installation, establishment or construction of a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration in violation of W.Va. Code §22-15-19.

~~§45-6-11.~~ §45-6-12. **Inconsistency Between Rules.**

~~11.1.~~ 12.1. In the event of any inconsistency between this rule and any other ~~existing~~ rule of the West Virginia ~~Division~~ Department of Environmental Protection, ~~such the~~ inconsistency shall be resolved by the determination of the ~~Director~~ Secretary and ~~such the~~ determination shall be based upon the application of the more stringent provision, term, condition, method or rule.