WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3 ◘

Do Not Mark In This Box

SEP 1 1 12 PM '00

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Division Environmental Protection-Office of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: WV Code §22-5-1 et seq.

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"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Carrie J. Chambers

Authorized Signature

$11.60

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 31, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Agency Approval of a Proposed Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

LEGISLATIVE RULE TITLE: 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse"

1. Authorizing statute (s) citation: W.Va. Code §§ 22-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 12, 2000

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

I. Class I legal advertisement, *Charleston Daily Mail & Charleston Gazette*
II. Sent a copy of the Public Notice to our agency mailing list.
III. Public Notice placed on agency's Web site:
http://www.dep.state.wv.us/oaq/
IV. Press Release

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

Public Hearing -- August 14, 2000
Public Comment Period ended -- August 14, 2000

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

Attached X No comments received

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

September 1, 2000

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

Edward L. Kropp, Chief	Carrie Chambers, Executive Assistant
7012 MacCorkle Ave., SE	10 McJunkin Road
Charleston, WV 25304	Nitro, WV 25143-2506
Phone: (304) 926-3647	(304) 759-0515
Fax: (304) 926-3637	(304) 759-0526
E-Mail: skropp@mail.dep.state.wv.us	Cchambers@mail.dep.state.wv.us

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

See "f" above

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

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

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

RULE TITLE: 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"

A. AUTHORITY: W.Va. Code §§22-5-1 et seq .

B. SUMMARY OF RULE:

45CSR6 "To Prevent and Control Air Pollution from Combustion of Refuse" seeks to control emissions from the combustion of refuse by the prohibition of open burning. The rule also establishes particulate matter weight and visible emission standards for incinerators and incineration.

This rule does not prohibit bonfires, campfires or other forms of open burning for the purposes of personal enjoyment and comfort but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The purpose of 45CSR6 is to prevent and control particulate matter air pollution from the combustion of refuse in West Virginia. The rule also establishes weight and visible emission standards for incinerators and incineration and 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 proposed revisions to exempt certain flares from the permitting requirement under 45CSR13 are appropriate since these sources are essentially "de minimis" sources of air emissions. The Director believes that the conditions specified in the proposed rule will provide adequate protection of the environment in these situations.

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 Director 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 July 6, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes. The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- **45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"**
- **45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"**
- **45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"**
- **45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"**
- **45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"**
- **45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"**
- **45CSR30 - "Requirements for Operating Permits"**
- **45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"**

In discussion of **45CSR1**, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

- **60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."**

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to **60CSR4**. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

- **199CSR1 - "Surface Mining Blasting Rule"**

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- **35CSR4 - "Oil and Gas Wells and Other Wells"**

- **35CSR7 - "Certification of Gas Wells"**

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in **35CSR4** will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Interval Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- **33CSR3 - "Yard Waste Management Rule"**
- **33CSR5 - "Waste Tire Management Rule"**
- **33CSR20 - "Hazardous Waste Management Rule"**
- **33CSR32 - "Underground Storage Tank Insurance Fund"**

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on **33CSR3**. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under **33CSR5**. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed **33CSR20**. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, **33CSR30**, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- **38CSR2 - "WV Surface Mining Reclamation Rule"**
- **38CSR3 - "Rules for Quarrying and Reclamation"**

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to **38CSR2**, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

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 revisions proposed to 45CSR6, contained herein, will have a minimal effect on the costs to the Office of Air Quality for continued implementation of this rule. Costs are covered under previous budget estimates.

3. Objectives of these rules: The objective of this rule is to prevent and control particulate matter emissions from the open burning of refuse. This rule also sets particulate matter weight and visible emission standards for incinerators and incineration. This rule is part of the West Virginia State Implementation Plan approved by U.S. Environmental Protection Agency for the attainment and maintenance of attainment of the National Ambient Air Quality Standards for particulate matter. The revisions to the rule will exempt certain flares from the requirement to obtain a permit under 45CSR13, as long as certain conditions are met.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The revisions proposed to rule 45CSR6 will have a minimal effect on industries and specific citizens groups.

C. Economic Impact on Citizens/Public at Large.

The revisions proposed to 45CSR6 will have a minimal effect on citizens and the public at large.

Date: July 12, 2000

Signature of Agency Head or Authorized Representative

Carri J. Chamber

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

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

§45-6-1. General.

1.1. Scope.

1.1.a. 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. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction.

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

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

1.3. Filing Date. -- ~~June 2, 2000~~

1.4. Effective Date. -- ~~August 31, 2000~~

1.5. Former Rules -- This legislative rule amends 45CSR6 "To Prevent and Control Air Pollution From Combustion of Refuse" which was filed on ~~April 1, 1995~~ June 2, 2000, and which became effective ~~May 1, 1995~~ August 31, 2000.

§45-6-2. Definitions.

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

2.2. "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.

2.3. "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. "Flare", '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.

2.5. "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, thermal oxidizer or thermal catalytic oxidizer stack shall be considered incineration.

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

2.7. "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 in accordance with good engineering practices. In case of conflict the determination by the Director 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".

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

2.9. "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.

2.10. "Opacity" means the degree to which smoke and/or particulate matter emissions reduce the transmission of light and obscure the view of an object in the background.

2.11. "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," ~~and air curtain incinerators.~~

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

2.13. "Pathological Waste Incinerator" means an incinerator used to dispose of animal and/or human tissue, bandages, medical wastes and medical laboratory wastes.

2.14. "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.

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

2.16. "Sewage Sludge Incinerator" means an incinerator which is used to incinerate the sludge produced by municipal or industrial sewage treatment plants.

2.17. "Smoke" means small gasborne and airborne particles emitted as the result of the combustion of refuse in sufficient numbers to be visible.

2.18. 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:

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. Burning of structures for fire training is subject to specific requirements of 45CSR15, in particular, 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;

3.1.c.3. Such burning shall not be conducted for salvage purposes; and

3.1.c.4. Approval to conduct such burning is received from the Director or the Director's duly authorized representative.

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, no person shall cause, suffer, 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 may deem necessary and feasible.

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

4.1. No person shall cause, suffer, 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:

Emissions (lb/hr) = F x 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 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, 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 incinerators.

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

4.4. The provisions of subsection 4.3 shall not apply to smoke which is less than forty (40%) percent 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, 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--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 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, working in conjunction with other appropriate governmental agencies.

§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 shall have registered with the Director on forms made available by the Director, 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 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 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. and 45CSR13~~,~~, provided that, and notwithstanding the provisions of 45CSR13, flares and flare stacks meeting the following requirements shall not be required to obtain a 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; 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 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;

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;

6.1.b.6. The source notifies the Director 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 request.

§45-6-7. Reports and Testing.

7.1. At such reasonable times as the Director 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 EPA approved method approved by the Director, in exhaust gases. Such tests shall be conducted in such manner as the Director may specify and be filed on forms and in a manner acceptable to the Director. The Director, or the Director's authorized representative, may at the Director's option witness or conduct such stack tests. Should the Director exercise his 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 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, may conduct such other tests as the Director 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 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 within sixty (60) days a program leading to the construction of a suitable incinerator. If such program is accepted by the Director, the person shall not be in violation as long as the program is observed.

8.2. Due to unavoidable malfunction of equipment, emissions exceeding those provided for in this rule may be permitted by the Director for periods not to exceed five (5) days upon specific application to the Director. 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 provided a corrective program has been submitted by the owner or operator and approved by the Director.

§45-4-9. Inconsistency Between Rules.

9.1. In the event of any inconsistency between this rule and any other existing rule of 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 or rule.

Division of Environmental Protection

Public Hearing: Rules 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, 45CSR25, 45CSR30 and 45CSR34 **Time/Date:** 8/14/2000 6:00p

	NAME	ADDRESS	COMMENT YES	COMMENT NO
1.	Tina Adams	Flexsys		X
2.	Kim Brown Poland	Robinson + McElwee LLP	X	
3.	Liz Appel	Robinson & McElwee LLP		X
4.	Dave Yaussy	Robinson & McElwee LLP		X
5.	Kathy G. Beckett	Jackson + Kelly / WV Chamber		
6.	[illegible]	Charleston Gazette		X
7.	David M Flannery	Jackson & Kelly		X
8.	Tim Mallon	AEP-WV		X
9.	Lisa McClung	OAQ		X
10.	Karen Watson	"		X
11.				
12.				
13.				
14.				
15.				

ORIGINAL

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 6 "To Prevent and Control air Pollution from combustion of Refuse".

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:03 p.m., on the 14th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER:

The purpose of this public hearing is to accept comments on 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse". This rule seeks to control emissions from the combustion of refuse by the prohibition of open burning. The rule also establishes particulate matter weight and visible and visible emission standards for incinerators and incineration.

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

The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13. The purpose of 45CSR6 is to prevent and control particulate matter air pollution from the combustion of refuse in West Virginia. The rule also establishes weight and visible emission standards for incinerators and incineration and is part of the West Virginia State Implementation Plan (SIP) approved by the United States Environmental Protection Agency to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The

proposed revisions to exempt certain flares from the permitting requirement under 45CSR13 are appropriate since these sources are essentially "de minimis" sources of air emissions. The Director believes that the conditions specified in the proposed rule will provide adequate protection of the environment in these situations.

Upon authorization and promulgation of the revisions to 45CSR6, the rule will be submitted to the U.S. Environmental Protection Agency for its approval as part of the State implementation Plan pursuant to the federal Clean Air Act.

The floor is now open for public comment. Please identify yourself and affiliation, if any, prior to making your comment.

There being nothing further, this public hearing for 45CSR6 is concluded and this is the end of the comment period for that.

(WHEREUPON, the public hearing was concluded.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 22nd day of August, 2000.

Missy L. Young

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

Comments of the
WEST VIRGINIA MANUFACTURERS ASSOCIATION

regarding the

REVISIONS TO AIR QUALITY REGULATION
45 C.S.R. 6,15,25 and 30

August 14, 2000

I. Introduction

The West Virginia Manufacturers Association (WVMA) is an organization devoted to the advancement of manufacturing interests and related businesses in West Virginia. The WVMA frequently offers comments on rules and regulations that are of interest to its members. The revisions to several rules found in Title 45 of the Code of state Regulations may have an effect of WVMA members, and warrant the following comments.

II. COMMENTS

A. 45 C.S.R. 6 (To Prevent and Control Air Pollution from the Combustion of Refuse)

We support the exemption from minor source permitting that the Office of Air Quality has proposed for temporary flares. We would urge that all flares be exempt from permitting if they do not qualify as a stationary source or a modification. Flares are air pollution control and safety devices that should be encouraged, not treated more stringently than other sources of air pollutants by requiring them to be permitted in all instances.

We oppose the requirements that are imposed on temporary flares in Section 6 of the rule, other than the requirement that they not qualify as stationary sources. We also oppose the new language in Section 4.3 incorporating 40 C.F.R. 60.18(c)(1), which would prohibit visible emissions other than 5 minutes every 2 hours. This is a new, more stringent standard for those flares that are

not affected by New Source Performance Standards, and there is no reason to impose it on existing flares or flares that are not regulated by NSPS.

B. 45 C.S.R. 15 (Emission Standards for Hazardous Air Pollutants Pursuant to 40 C.F.R. Part 61)

We support changes to the rule that leave greater discretion in the hands of the Director. The authority granted to the Director, rather than the Administrator, under Section 5.1.a is significantly changed. The old version allows the Administrator to retain authority over waivers of compliance and monitoring requirements. The new version gives the Director full authority over waivers of compliance, except where they involve alternative means of emission limitations, alternative control technology or alternate test methods and certain other elements. The new version also gives the Director full authority over monitoring requirements except alternative monitoring methods, waivers/ adjustments to record keeping and recording, emissions averaging and applicability determinations. We urge the Director to obtain this type of authority wherever possible.

C. 45 C.S.R. 25 (To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities)

Because the Office of Air Quality shares oversight of hazardous waste facilities with the Office of Waste Management, it is somewhat difficult to evaluate where the lines of authority are drawn. This is, to a great degree, inherent in the nature of dual authority, and is not a criticism of the two agencies. However, it might be possible to make the respective responsibilities of the two agencies a little clearer. For example, Section 1.5 of 45 C.S.R. 25 appears to incorporate by reference all of 33 C.S.R. 20, the Hazardous Waste Management Regulations. Does the OAQ thereby gain the same authority to regulate and interpret the provisions of that rule as has the Office of Waste Management? This sort of cross-reference leaves the regulated community with some

confusion as to which agency is responsible, and has authority for, which aspects of hazardous waste management. Table 25-A is helpful in this regard, but there are potentially conflicting requirements with regard to penalties, notifications and procedures. The DEP might consider revamping the two rules to clarify these points, or perhaps publishing a guidance explaining how it will coordinate the two rules.

The reference to 40 C.F.R. 270.42(j) should be amended, perhaps to (i), because no subsection (j) exists.

D. 45 C.S.R. 30 (Requirements for Operating Permits)

The OAQ has proposed changes to the Title V permitting rule, 45 C.S.R. 30, in order to address the deficiencies identified in EPA's November 15, 1995 Notice of Final Interim Approval for the West Virginia Operating Permits Program (60 *Fed. Reg.* 57352). One aspect of the OAQ's rule that did not receive final approval was Section 3.2.d, because 3.2.d.M (now Section 3.2.d.13) allowed the Director to identify insignificant sources or activities other than those specifically listed in Section 3.2.d. EPA objected to this because "EPA has no way to evaluate such activities against the criteria [for determining insignificance]. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of [40 C.F.R. §70.5(c)]." 60 Fed. Reg. 57353 (November 15, 1995).

EPA's objection to Section 3.2.d.13 is mystifying given EPA's statement that it "has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant."

Id. Furthermore, EPA concedes that 40 C.F.R. §70.5 "allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in anyway implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial." *Id.* These sorts of case-by-case determinations of insignificance or triviality were clearly what was intended by Section 3.2.d.13.

WVMA understands the OAQ's desire to eliminate EPA's objection to 45 C.S.R. 30-3.2.d.13, however irrational it may seem. However, we believe that the OAQ has gone further than necessary. Section 3.2.e now provides that "units or activities deemed insignificant shall be identified in the permit applications with sufficient information for the Director verify that such units or activities are insignificant." In other words, rather than being able to rely upon the list of insignificant activities in the rule, an applicant must now describe them in the permit application in order to qualify for relief from permitting requirements. This is burdensome and is not what the federal rule requires. Only those emissions units that are exempted because of size or production rate need be listed in the permit application. *See* 40 C.F.R. 70.5(c). Those emissions units that fall into the insignificant source categories that have been approved in Section 3.2.d of the state rule need not be listed on permit applications because their exemption is not conditioned on size or production rate. We suggest that the last sentence of Section 3.2.e be deleted or, in the alternative, be amended to read: "Units or activities designated as insignificant by the Director pursuant to Section 3.2.d.13 of this rule because of their size or production rate shall be identified in the permit application."

Section 3.2.d should be revised as follows: "The following units or activities within a stationary source to this rule shall be deemed to be insignificant:"

III. CONCLUSION

The WVMA appreciates this opportunity to offer comments on the foregoing rules, and hopes that its suggestions for changes will be adopted by the Office of Air Quality

Submitted August 14, 2000.

Karen S. Price, President
West Virginia Manufacturers Association

Comments of the
WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION
and
INDEPENDENT OIL & GAS ASSOCIATION OF WEST VIRGINIA
regarding
45 C.S.R. 6

I. INTRODUCTION

The West Virginia Oil and Natural Gas Association (WVONGA) is one of the oldest trade associations in West Virginia, serving the entire oil and natural gas industry. WVONGA members are engaged in exploration, production, transmission, storage, sales and distribution, while its allied members and associate members are involved in numerous supporting businesses. WVONGA members operate in virtually every county in West Virginia, employing thousands of people across the state. WVONGA is involved in a broad range of state legislative issues, regulatory affairs and environmental matters.

Formed in 1959, the Independent Oil & Gas Association of West Virginia is a statewide nonprofit trade association that represents oil and natural gas producers and the companies and individuals who support production activities. IOGA, the state's largest oil and gas association, has more than 380 company members who are active not only in West Virginia, but also in 20 other states. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia.

WVONGA and IOGA have a history of engaging in a constructive dialogue with the Office of Air Quality (OAQ) on issues of importance to the oil and gas industry. We offer these comments in support of the our attempt to develop an exemption from minor source air permitting rules for safety flares.

II. COMMENTS

Work around natural gas pipelines sometimes requires use of a safety flare to protect workers from residual natural gas that is in the pipelines. These are small flares that operate for a limited period of time and do not pose any harm to human health or the environment. Currently the Office of Air Quality interprets 45 C.S.R. 6 (Reg. 6) as requiring a permit under 45 C.S.R. 13 (Reg. 13) for all flares of whatever size. *See* 45 C.S.R. 6-6.1.

The changes that the OAQ has proposed to Section 6 of Reg. 6 are intended to relieve oil and gas operators (and others) of permitting small safety flares, which we believe is a favorable step. However, the relief from the permitting requirements is obtained at the cost of significant other requirements, such as notification (Section 6.1.f); maintenance of "records of emissions or monitoring results sufficient to determine compliance" (Section 6.1.g); and operation of the flare or flare stack in accordance with 40 C.F.R. 60.18 (Section 6.1.d).[1] These are excessive requirements for small flares that pose absolutely no harm to human health or the environment.

We agree that the exempt safety flares should be limited to those that do not have emissions in excess of the threshold amounts established by the definition of stationary source, found in 45 C.S.R. 13-2.24, and we are willing to accept the limitation of the flare or flare stack on site for a cumulative period of 30 days in any twelve month period. However, additional restrictions beyond those are not needed, and therefore we would urge the deletion of Sections 6.1.c through 6.1.g of Reg. 6.

---

[1]By its terms, the 40 C.F.R. 60.18(b) requirements for flares "only apply to facilities covered by subparts referring to this section." The temporary, insignificant flares that we are concerned with would not be subject to 40 C.F.R. Part 60, and there is no reason to subject them to the same sort of requirements that would otherwise apply only to New Source Performance Standards sources.

In addition, Section 4.3 of Reg. 6 has been changed to mandate compliance with 40 C.F.R. 60.18(c)(1), which imposes new opacity requirements on flares. Rather than a 20% opacity requirement, flares would have to operate with no visible emissions except for 5 minutes in every 2 hour period. We do not see the reason for adding this additional requirement to sources that are not otherwise subject to NSPS, and would urge its deletion from Section 4.3.

III. CONCLUSION

IOGA and WVONGA appreciate the opportunity to offer these comments and thank the Office of Air Quality for the work it has done in discussing flare issues with us. We look forward to the development of a rule that issues permits for incinerators and large flares that could pose dangers to the environment, but leaves small safety flares unregulated, thereby allowing oil and gas operators greater flexibility.

Respectfully submitted this August 14, 2000.

Michael Herron
Independent Oil & Gas Association
of West Virginia

Raymond Joseph
West Virginia Oil and Natural Gas
Association

UNION CARBIDE CORPORATION
P.O. BOX 8361, SOUTH CHARLESTON, WV 25303

August 11, 2000

Certified Mail

Mr. Edward L. Kropp, Chief
WV Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

Dear Mr. Kropp,

Re: Comments Regarding WVOAQ Proposed Changes to 45CSR6

Union Carbide Corporation appreciates this opportunity to provide comments regarding proposed changes to the 45CSR6, "To Prevent and Control Air Pollution from Combustion of Refuse." Union Carbide operates flares at its South Charleston Technical Center Research and Development Facility and Institute Manufacturing Facility that will be impacted by the proposed changes.

Section 4.3 of Regulation 6 currently in effect reads as follow:

"No person shall cause, suffer, allow or permit emission of smoke into the atmosphere from any incinerator which is twenty (20%) percent opacity or greater." *(Note: Section 2.4 provides that burning in flares is considered incineration.)*

The Agency proposes to change this requirement by adding the following phrase at the end of the current language.

"provided that a flare or flare stack shall meet the requirements of 40 CFR §60.18(c)(1)."

This proposed revision is unnecessary because Sections 4.3 and 4.4 of Regulation 6 currently in effect provide adequate standards for limiting stack opacity. Deletion of this proposed revision is appropriate.

The intent and scope of proposed changes to Section 4.3 of Regulation 6 are not clear. In the event that the Agency does not agree that elimination of the proposed change to Section 4.3 is appropriate, the following comments are provided.

The Agency's proposed change to Section 4.3 fails to recognize other important sections of 40 CFR Part 60 (NSPS) which relate to flares. Section 60.18(a) provides that the general provisions for control devices (e.g. flares) only apply to facilities otherwise regulated by a specific NSPS.

Furthermore, the proposed revision to Section 4.3 does not address startup, shutdown, and malfunction. Pursuant to Sections 60.11(c) and (d), opacity standards do not apply during periods of startup, shutdown and malfunction. One must operate during such times (and all other times) in a manner consistent with good air pollution control practices for minimizing air emissions.

40 CFR §60.18(c)(1) provides - "Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (f), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours." The application of this new requirement with the existing opacity standards is not clear. Compliance assurance obligations for affected facilities needs to be addressed.

Clarification of intended application of paragraph (f) referenced above is needed. Paragraph (f) is made up of six (6) subparagraphs. Only subparagraph (f)(1) relates to determination of compliance of flares with visible emission standards (opacity). Therefore to clearly identify the compliance obligation of affected sources, the words "visible emission" needs to be inserted in the Agency proposed revision. Section 4.3 should be written as follows:

> "No person shall cause, suffer, allow or permit emission of smoke into the atmosphere from any incinerator which is twenty (20%) percent opacity or greater, provided that a flare or flare stack shall meet the visible emission requirements of 40 CFR §60.18(c)(1). For demonstration of compliance with 40 CFR§60.18(c)(1) opacity requirements, US EPA Reference Method 22 shall be used."

Subparagraphs (f)(2) through (f)(6) specify design, construction, and operating standards for flares. It is our understanding that these provisions are not requirements to be incorporated by the proposed rule change. If our understanding is not correct, we request that further processing of this rule be suspended to better understand the potential impact to our Kanawha Valley operations.
(Note: 40 CFR§60.18(c)(1) applies to specific manufacturing facilities that are otherwise covered by specific regulations, e.g., New Source Performance Standards and Emission Standards for Hazardous Air Pollutants. Compliance with subparagraphs (f)(2) through (f)(6) may not be practical for research and development activities which need operational flexibility. Issues regarding continuous compliance demonstration, as required by the Regulation 30 permit program, may also be problematical.

If there are any questions concerning these comments, please contact Freddie Sizemore of my staff at 747-3713 or me 747-2335.

Sincerely,

J. J. Dlugos
Site Manager

JJD/FAS/ld
FAS-1308

Gatewood PRODUCTS, LLC

MANUFACTURING • DESIGN • ENGINEERING
INDUSTRIAL PACKAGING • WOOD

Post Office Box 207
Parkersburg Industrial Park
100 Twenty-ninth Street
Parkersburg, West Virginia 26101
Phone (304) 485-4406
Fax (304) 485-2714

August 14, 2000

Edward L. Kropp, Esq.
Chief, Office of Air Quality
Division of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: 45 CSR 6 "To Prevent and Control Air Pollution from Combustion of Refuse"

Dear Chief Kropp:

Gatewood Products, LLC appreciates this opportunity to submit comments regarding certain provision of Regulation 6. Specifically, we request that the Office of Air Quality revise the definition of "Open Burning" in section 2.11 to remove the phrase "and air curtain incinerators." This change is necessary to conform the rule with Section 129(g)(1) of the Clean Air Act Amendments of 1990 which specifically addresses air curtain incinerators and makes them subject to EPA opacity requirements.

In addition to other EPA rules which regulate the use of air curtain incinerators, EPA is in the process of adopting final New Source Performance Standards for them in 40 CFR Part 60 Subparts CCCC and DDDD which will apply to new sources and establish guidelines for existing sources of commercial and industrial solid waste incineration units. Final rules are expected to be published in November. *See* 64 Fed. Reg. 67092 (Nov. 30, 1999).

We assume that once those rules are final, the OAQ will incorporate them in 45 CSR 16 along with other NSPS and make any other needed changes in 45 CSR 6. However, in the meantime, the provisions of Sec. 129 of the CAAA clearly authorize the use of air curtain incinerators subject to opacity standards (rather than mass emissions) only, as should Reg. 6.

Accordingly, in addition to the change in section 2.11, we urge the following amendments to create a viable state program in the interim for such units:

1. Add a definition for "air curtain incinerator" to section 2:

"Air Curtain Incinerators" 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. Add definition for "clean lumber," "clean wood," and "yard waste" to section 2 also:

"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.

"Clean Wood" means untreated wood or untreated wood products including clean lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped), clean wood does not include two items:

(1) Yard waste, or
(2) Construction, renovation, or demolition wastes associated with structures.

"Yard Waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. It comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(1) Construction, renovation, and demolition wastes associated with structures, or
(2) Clean wood.

3. Add a new section 4.8:

4.8 Incineration in Air Curtain Incinerators - air curtain incinerators that burn only untreated wood wastes, yard wastes, clean wood and clean lumber are required to meet the provisions of only subsections 4.2, 4.3, 4.4, 4.5 and 4.6 of this section. Opacity shall be determined in accordance with Method 9 of Appendix A, 40 CFR 60. Such air curtain incinerators shall be located at least 125 feet from any occupied building. Such air curtain incinerators that will be used in

> one location for more than 60 days must also obtain a permit pursuant to Section 6. Portable air curtain incinerators that will be used in one location for less than 60 days are exempt from obtaining a permit but are subject to the opacity and siting requirements of this subsection and must be registered by the owner or operator with the Director prior to being put in operation at any location on forms as provided in Section 5.

We believe that the addition of these provisions will provide for reasonable regulation of these limited use units and at the same time provide an effective and efficient means of waste reduction for wood wastes and yard wastes to avoid using up valuable landfill airspace. These units are of significant importance not only to the wood products industry, but also to governmental entities and developers. Such units also need to be readily useable in the event of natural disasters for which clean up of debris becomes a huge but essential burden, such as after floods, tornadoes, or other major storm or accident. We believe it was this imperative which moved Congress to include specific provisions in section 129 of the CAAA in 1990 to address and reasonably limit control obligations for this type of unit burning very limited waste types, and is consistent with state law authorizing the burning of wood wastes. At a minimum, the reference to air curtain incinerators should be removed from the definition of "Open Burning" and leave the permitting of such units on a case-by-case basis, but not subject to the mass emission limits of subsection 4.1.

We hope that these comments will be favorably received and incorporated in any final revisions to this rule.

Sincerely,

Larry G. Gross, President
GATEWOOD PRODUCTS, LLC

45CSR6

TO PREVENT AND CONTROL POLLUTION FROM COMBUSTION OF REFUSE

RESPONSE TO COMMENTS

On August 14, 2000 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR6 - "To Prevent and Control Pollution From Combustion of Refuse." The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from the West Virginia Oil and Natural Gas Association and the Independent Oil & Gas Association of West Virginia, Union Carbide Corporation, West Virginia Manufacturers Association, and Gatewood Products, LLC.

I. Commenter: West Virginia Oil and Natural Gas Association and Independent Oil & Gas Association of West Virginia.

COMMENT The commenters in general support the exempting of small "safety" flares for natural gas pipeline maintenance from the permitting requirements of 45CSR13. The commenters object to the additional requirements proposed for such flares, in particular, requirements to notify the Director within ten days of locating onsite, maintenance of "records of emissions or monitoring results" and operation of the flare in compliance with 40 C.F.R. §60.18 (NSPS operation and maintenance standards). The commenters also object to the proposal in section 4.3 to make all flares subject to the NSPS standard of no visible emissions.

RESPONSE OAQ has removed the requirement to notify the Director upon locating temporary flares used in pipeline maintenance but has retained this requirement for other temporary flares.

OAQ has also removed the requirement for temporary natural gas pipeline maintenance flares to meet the requirements of 40 C.F.R. §60.18. Emissions from combustion of natural gas are well known and OAQ believes operation of such flares in compliance with the limits of section 4 of the rule is adequate. On the other hand, OAQ believes it is appropriate to retain the operating standards and additional criteria for temporary flares which may combust pollutants other than natural gas, including various hazardous air pollutants.

The requirement to maintain records showing that the flare is indeed not a "stationary source" or "modification" and therefore subject to permitting requirements under 45CSR13 is necessary to ensure that only truly insignificant sources are exempted from permitting. In addition, sufficient records must be kept to show that the flare does not exist on-site for greater than thirty days in a twelve-month period. The acceptable records have been expanded to include "records of emissions, monitoring results or other records sufficient to determine compliance." Regarding the issue of the revised opacity standard in section 4.3 of the rule, OAQ agrees with the commenters and is deleting the proposed language.

II. Commenter: Union Carbide Corporation.

COMMENT A The commenter has concerns with the proposed requirement in section 4.3 requiring flares or flare stacks to meet the opacity requirements of 40 C.F.R. §60.18, in particular, that this requirement would apply to existing flares.

RESPONSE A OAQ recognizes that inclusion of this language in section 4.3 would indeed extend the opacity requirement to existing flares. This language has been deleted from section 4.3.

COMMENT B The commenter also questioned the OAQ's application of certain design, construction and operating standards to flares and stated that compliance with these standards may not be practical for research and development activities which need operational flexibility. Further, compliance demonstrations under 45CSR30 may be problematical.

RESPONSE B OAQ's intention with respect to this issue is not to apply these design and operation standards to existing flares but to require that new temporary flares, other than those associated with gas pipeline safety, meet certain minimum requirements with respect to operation and design to ensure that all gases are properly combusted. Although it is true that flares are effective control devices for some pollutants, they can nonetheless produce significant amounts of emissions of other pollutants. OAQ's objective in proposing this rule revision was to provide some relief from permitting requirements for temporary flares; however, it cannot do so in a manner that does not ensure protection of the environment.

III. Commenter: West Virginia Manufacturers Association.

COMMENT The commenter objects to the proposed revision to section 4.3 for substantially the same reasons as commenters above. The commenter also expressed support for the exemption from permitting for temporary flares, but believes that all flares which are not stationary sources should be exempt from permitting requirements. The commenter further opposes the requirements for temporary flares other than the requirement that they not qualify as stationary sources.

RESPONSE The first comment is addressed above. Regarding the second and third points, OAQ disagrees with the commenter that all flares should be exempt from permitting as long as they are below certain thresholds and that this is the only appropriate criterion to consider in the determination whether to require a permit. It was the agency's intention in proposing revisions to this rule to provide relief from permitting for temporary flares only; permanent flares have a much greater potential to adversely impact the environment and should therefore remain subject to the permitting requirement. Flares, although often serving as effective air pollution control devices for certain pollutants, can produce significant quantities of pollutants associated with

the combustion process, e.g., nitrogen oxides, carbon monoxide and particulate matter (NO_x, CO and PM, respectively). Despite this fact, OAQ believes that the benefits to be obtained by permitting temporary flares is not substantial enough to justify the delays involved in obtaining a permit, and that as long as the rule subjects such flares to certain safeguards, all interests are adequately protected. Upon further consideration of the issue, OAQ has decided that the safeguards which are necessary for temporary flares associated with oil and gas pipeline maintenance and safety are different from the safeguards necessary for temporary flares utilized in other industrial contexts. For the latter type of flares, several additional safeguards are appropriate since the nature of the pollutants being combusted by the flare can often be more harmful to the environment.

IV. Commenter: Gatewood Products, LLC

COMMENT The commenter states that air curtain incinerators are authorized under section 129 of the federal Clean Air Act (CAA) and should therefore not be considered "open burning" under 45CSR6. The rule, effective August 31, 2000, includes the phrase "and air curtain incinerators" in the definition of "open burning"; this language should be deleted. The commenter believes this language could result in a ban on air curtain incinerators and points out that this could put the State rule in direct conflict with the federal CAA and proposed federal regulations under 40 C.F.R. Part 60 Subparts CCCC and DDDD. The commenter also suggests certain standards be adopted in 45CSR6 to govern these types of incinerators until such time as the federal standards are finalized.

RESPONSE OAQ agrees that the language "air curtain incinerators" in the definition of "open burning" would appear to put the State rule in conflict with the proposed federal rules, and OAQ has revised the approved rule to remove the particular phrase from the definition. Once the federal standards for air curtain incinerators are promulgated by EPA, the OAQ will consider whether to adopt such standards and whether to make further revisions to 45CSR6. Until such time, however, detailed requirements relating to air curtain incinerators are premature for rule inclusion. In the interim period, OAQ believes it is possible to issue permits to such sources which are appropriately conditioned to ensure compliance with applicable rules, including the requirements of 45CSR6.