

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

**FILED**

2001 JUN 21 P 2: 34

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

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

AMENDMENT TO AN EXISTING RULE: YES  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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2663

SECTION 64-3-1(j), PASSED ON April 14, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 2001

  
Authorized Signature

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY 2001 JUN 21 P 2: 35

FILED

SERIES 6  
TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§45-6-1. General.**

seq.

1.1. Scope.

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

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.

1.4. 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, and which became effective August 31, 2000.

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.

**§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.)

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.

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

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

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.

2.6. "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.

2.7. "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, 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 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".

2.10. "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.

2.12. "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.

2.13. "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."

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.

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 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.

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:

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; and

3.1.c.3. 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:

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

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 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.

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. Air curtain incinerators not subject

## 45CSR6

to subdivision 4.8.a that are temporarily sited and operated for the disposal of on-site land clearing debris are not subject to the emission standards of this rule or to preconstruction permitting requirements, provided that the following conditions are met:

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

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

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

4.8.e.4. The air curtain incinerator is not subject to the requirements of 45CSR14 or 45CSR19.

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.

### §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., 45CSR13, 45CSR14,

and 45CSR19, 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 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.

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

9.1. In situations involving flood, tornado or other natural disaster the Director may, based on demonstrated need, allow open burning or incineration of vegetation, 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.

**§45-6-10. Effect of the Rule.**

10.1. 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. Inconsistency Between Rules.**

11.1. 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.