



45CSR6

TO PREVENT AND CONTROL AIR POLLUTION  
FROM COMBUSTION OF REFUSE

STATEMENT OF CIRCUMSTANCE

Hercules Aerospace Corporation petitioned the West Virginia Division of Environmental Protection, Office of Air Quality, on June 2, 1994, to modify 45CSR6 and 45CSR25. The modification request resolves certain inconsistencies between the two rules and, in addition, sets forth a standard to allow the open burning of spent propellants.

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:  1558 Washington Street, East   
 Charleston, WV 25311-2599

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

2. Explanation of above estimates: The Office of Air Quality will not incur additional expenses as a result of the proposed regulations.
3. Objectives of these rules: To correct an inconsistency between 45CSR6 and 45CSR25 which will allow Hercules Aerospace Corporation to openly burn spent propellant according to 40 CFR §265.382.
4. Explanation of overall economic impact of proposed rule.
  - A. Economic impact on state government.  
None
  - B. Economic impact on political subdivisions; specific industries; specific

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groups of citizens.


None

C. Economic impact on citizens/public at large.

None

Date: July 6, 1994

Signature of agency head or authorized representative:

  
G. Dale Farley  
Chief, Office of Air Quality

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### TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE

#### SUMMARY

The purpose of 45CSR6 is to prevent and control air pollution from the combustion of refuse. The rule, with certain limited exceptions, prohibits open burning. The last effective amendment to the rule was on April 8, 1980.

The proposed rule modification is to allow Hercules Aerospace Corporation to openly burn spent propellant. Currently, such propellant can be burned under the provisions of 45CSR25, but inconsistencies exist between 45CSR25 and 45CSR6 which prohibit the open burning of the spent propellant. Resolving the inconsistencies requires the application of the most stringent provision, here, 45CSR6, which prohibits the open burning of the spent propellant. The proposed changes, in conjunction with changes to 45CSR25, will allow the burning of the spent propellant in accordance with the provisions of 40 CFR §265.382, a rule which applies, in part, to the open burning of military explosives.

In addition, definitions have been alphabetized, and the code sections updated in accordance with the provisions of the recently enacted Division of Environmental Protection legislation. Changes are indicated by strikeout and underlines.

FILED

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TITLE 45  
LEGISLATIVE RULES  
~~AIR POLLUTION CONTROL COMMISSION~~  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENT  
OFFICE OF AIR QUALITY

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

§45-6-1. General.

1.1. Scope.

(a) The purpose of Series 6 is to prevent and control air pollution from combustion of refuse. Neither compliance with the provisions of this ~~regulation~~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.

(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 ~~regulation~~rule.

(c) It is the intent of the ~~Commission~~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 ~~Commission~~Director may designate, then such action may be taken by the ~~Commission~~Director to insure compliance with air quality standards.

1.2. Authority. -- W. Va. Code ~~§16-20-5~~§22-5-1 et seq.

1.3. Filing Date. -- ~~March 30, 1979~~

1.4. Effective Date. -- ~~April 8, 1980~~

1.5. Incorporation by Reference - Federal Counterpart Regulation. - Not Applicable.

1.6 Determination of Stringency - Federal Counterpart Regulation - Not Applicable.

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

**§45-6-2. Definitions.**

2.1. "Air Pollution", 'statutory air pollution' shall have the meaning ascribed to it in section two, article twenty, chapter sixteen of the Code of West Virginia, as amended.

2.2. "Commission" shall mean the West Virginia Air Pollution Control Commission.

2.3. "Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

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

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

2.6. "Ringelmann Smoke Chart" shall mean the Ringelmann's Scale for Grading the Density of Smoke, published by the United States Bureau of Mines, or any chart, recorder, indicator, device or method which is a standardized method for the measurement of smoke density and is approved by the Commission as the equivalent of said Ringelmann Chart.

2.7. "Air Pollution Control Equipment" shall mean 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.

2.8. "Incineration" shall mean the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of this regulation, the destruction of any combustible liquid or gaseous material by burning in a flare/flare stack shall be considered incineration.

2.9. "Incinerator" shall mean any device used to accomplish incineration.

2.10. "Flare", 'flare stack' shall mean and include 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.

2.11. "Open Burning" shall mean 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.

2-12--"Refuse" shall mean the useless and/or unwanted or discarded solid, liquid and/or gaseous waste materials resulting from community, commercial, industrial or citizen activities.

2-13--"Construction and Demolition Wastes" shall mean combustible waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures.

2-14--"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 regulation the total of the capacities of all furnaces within one system shall be considered as the "Incinerator Capacity".

2-15--"Director" shall mean the director of the West Virginia Air Pollution Control Commission.

2-16--"Pathological Waste Incinerator" shall mean an incinerator used to dispose of animal and/or human tissue, bandages, medical wastes, and medical laboratory wastes.

2-17--"Industrial Waste Incinerator" shall mean an incinerator which is used to incinerate gaseous, liquid, semi-liquid and/or solid by-product waste from industrial sources.

2-18--"Opacity" shall mean 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.

2-19--"Sewage Sludge Incinerator" shall mean an incinerator which is used to incinerate the sludge produced by municipal or industrial sewage treatment plants.

2.2. "Air Pollution Control Equipment" shall mean 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. "Construction and Demolition Wastes" shall mean combustible waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures.

2.4. "Director" shall mean the director of the West Virginia Division of Environmental Protection.

2.5. "Flare", 'flare stack' shall mean and include 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.

2.6. "Incineration" shall mean the destruction of combustible refuse by burning in a furnace designed for that purpose. For the purposes of this regulation, the destruction of any combustible liquid or gaseous material by burning in a flare/flare stack shall be considered incineration.

2.6. "Incinerator" shall mean any device used to accomplish incineration.

2.8. "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".

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

2.10. "Opacity" shall mean 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" shall mean 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.

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

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

2.14. "Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

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

2.16. "Ringelmann Smoke Chart" shall mean the Ringelmann's Scale for Grading the Density of Smoke, published by the United States Bureau of Mines, or any chart, recorder, indicator, device or method which is a standardized method for the measurement of smoke density and is approved by the as the equivalent of said Ringelmann Chart.

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

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

Other words and phrases used in this ~~regulation~~rule, unless otherwise indicated, shall have the meaning ascribed to them in ~~section two, article twenty, chapter sixteen of the Code of West Virginia, 1931, as amended~~W. Va. code §22-5-2.

**§45-6-3. Open Burning Prohibited.**

**3.1. General Provisions.**

The open burning of refuse for the purpose of volume reduction, elimination or product recovery by any person, firm, corporation, association or public agency is prohibited except for the following exemptions:

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

(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 ~~his~~the Director's duly authorized representative.

(c) Open burning of construction and demolition wastes, provided that all the following conditions are met:

(1) There is no practical alternate method for the disposal of the material to be burned;

(2) The health, safety, comfort and property of persons are protected from the effects of such burning;

(3) Such burning shall not be conducted for salvage purposes;  
and,

(4) In non-rural areas approval to conduct such burning is received from the Director or ~~his~~the Director's duly authorized representative.

(d) Backyard open burning for the reduction of refuse produced on the premises as long as the amount does not exceed that weight normally produced by the everyday living habits of one (1) family, until such families are serviced by a municipal or private refuse collection service.

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(e) Open burning of propellant and explosives containing wastes, provided that the open burning is conducted in accordance with 45 CSR 25.

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

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

4.2. After the effective date of this regulation, 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 as dark or darker in shade or appearance than that designated as No. 1 on the Ringelmann Smoke Chart or the equivalent opacity of this Ringelmann number.

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4.4. The provisions of subsection 4.3. shall not apply to smoke, the shade or appearance of which is less than No. 2 on the Ringelmann Smoke Chart or the equivalent opacity of this Ringelmann number, 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 Commission Director, working in conjunction with other appropriate governmental agencies.

**§45-6-5. Registration.**

Within thirty (30) days after the effective date of this regulation, all persons owning and/or operating incinerators within the state shall have registered with the Commission 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.**

No person shall construct, modify or relocate any incinerator without first obtaining a permit in accordance with the provisions of ~~section eleven b, article twenty, chapter sixteen of the Code of West Virginia, as amended, and Series thirteen of this agency~~ W. Va. Code §22-5-1 et seq. and 45CSR13.

**§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 in exhaust gases when the Director has reason to believe, based on observed violations, that the stack emission limitation

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is being violated or for compliance testing. 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 ~~his duty~~ the Director's authorized representative, may at ~~his~~ 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 ~~his~~ the Director's duly authorized representative, may conduct such other tests as ~~he~~ 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 ~~Commission~~ 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 ~~Commission~~ Director within sixty (60) days a program leading to the construction of a suitable incinerator. If such program is accepted by the ~~Commission~~ 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 ~~regulation~~ 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 ~~Commission~~ Director provided a corrective program has been submitted by the owner or operator and approved by the ~~Commission~~ Director.

### §45-6-9. Delayed Compliance Order.

9.1. The owner or operator of any incinerator in existence prior to the effective date of this ~~regulation~~ rule which does not meet the emission limitations as specified in section 4.1 of this ~~regulation~~ rule shall develop and submit to the ~~Commission~~ Director, within such time as shall be allowed by the ~~Commission~~ Director, an acceptable compliance program for the attaining and maintaining of the emission limitations of this ~~regulation~~ rule as per section 4.1. The compliance program shall be embodied in a consent order as provided in ~~subsection seventeen; section five; article twenty; chapter sixteen of the Code of West Virginia; as amended~~ W. Va. Code §22-1-6. Any owner or operator who is currently subject to a consent order that provides for compliance after the effective date of this ~~regulation~~ rule shall be exempt from the requirements of this section.

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9.2. In the event an owner or operator of an incinerator subject to this section fails to submit an acceptable control program within the time allowed, the ~~Commission~~Director shall, by final order, determine a reasonable control program for the attaining and maintaining of the emission limitations of this ~~regulation~~rule.