

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1988 SEP -2 AM 8:40
OFFICE OF THE SECRETARY OF STATE

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

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code §20-5E-6

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 35

TITLE OF RULE BEING AMENDED: _____

Hazardous Waste Management Regulations

IF NO, SERIES NUMBER OF NEW 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.



Ronald R. Potesta
Director

PROPOSED AMENDMENTS TO LEGISLATIVE RULES
CONCERNING HAZARDOUS WASTE MANAGEMENT

FILED

1988 SEP -2 AM 8 40

STATE AGENCY: Department of Natural Resources

REGULATIONS: Title 47, Series 35, "Hazardous Waste Management Regulations"
UNIT OF GOVERNMENT
DEPARTMENT OF NATURAL RESOURCES

AUTHORITY: W. Va. Code §20-5E-6

ACTION: Agency-Approved Rule

SUMMARY: Effective May 29, 1986, West Virginia received authorization from the United States Environmental Protection Agency (EPA) to administer federal RCRA Subtitle C hazardous waste management regulations. An authorized state is required to modify its program to comply with federal regulatory changes, within one year after promulgation, in order to retain authorization. Today's filing concerns the proposed amendment of legislative rules in order to incorporate federal regulatory changes promulgated between July 1, 1987 and June 30, 1988.

CONTACT: For further information regarding this filing, please contact Mr. Dennis H. Treacy, WV Department of Natural Resources, Building 3, State Capitol Complex, Charleston, West Virginia 25305, telephone (304) 348-2754.

SUPPLEMENTAL INFORMATION: Today's filing proposes the amendment of current State regulations to incorporate federal revisions of hazardous waste management regulations made between July 1, 1987 and June 30, 1988, revisions referred to by the EPA as non-HSWA Cluster 4 revisions.

Today's filing includes the following agency-approved amendments to Series 35:

Series 35 Section	Description of Text Revision
2.74	Broadens the definition of "Landfill."
2.84	Defines "Miscellaneous Unit."
3.4.4.c	Text clarification that residues in an inner liner are hazardous wastes when discarded, not the liner itself.
8.2.6.b.4	Adds reference to new Section 8.14.3.
8.5.4.b.6	Adds reference to new Section 8.14.3.

8.6.2.c	Adds reference to new Sections 8.14.2, 8.14.3, and 8.14.4.
8.6.3.a.2	Adds reference to new Section 8.14.2.
8.6.5	Adds reference to new Sections 8.14.2 and 8.14.4.
8.13.1.a	Adds reference to miscellaneous units.
8.13.8.d.2	Changes reference from Appendix VIII to Appendix XIV for monitored constituents.
8.13.9.d.1	Changes reference from Appendix VIII to Appendix XIV for monitored constituents.
8.14	Provides new regulations applicable to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units.
11.5.1.e	Adds references to new Sections 8.14.2 and 8.14.4.
11.5.1.h	Provides new Part B requirements for miscellaneous units.
Tables V and VI	Technical corrections in nomenclature and correction of typographical errors.
Appendix XII	Reserves new appendix for future use.
Appendix XIII	Reserves new appendix for future use.
Appendix XIV	Adds new appendix of chemical listings for groundwater monitoring analyses.

A comparison of amended State regulatory provisions and the Cluster 4 revisions follows:

Series 35 Section	40 C.F.R. Section	Date of Federal Revision
2.74	260.10	12/10/87
2.84	260.10	12/10/87
3.4.4.f	261.33(c)	7/10/87
8.2.6.b.4	264.15(b)(4)	12/10/87

8.5.4.b.6	264.73(b)(6)	12/10/87
8.6.2.c	264.111(c)	12/10/87
8.6.3.a.2	264.112(a)(2)	12/10/87
8.6.5	264.114	12/10/87
8.13.1.a	264.90(d)	12/10/87
8.13.8.d.2.B	264.98(h)(2)	7/9/87
8.13.8.d.2.C	264.98(h)(3)	7/9/87
8.13.8.d.2.D.iii	264.98(h)(4)(i)	7/9/87
8.13.9.d.1	264.99(f)	7/9/87
8.14.1	264.600	12/10/87
8.14.2	264.601	12/10/87
8.14.3	264.602	12/10/87
8.14.4	264.603	12/10/87
11.5.1.e	270.14(b)(5)	12/10/87
11.5.1.h	270.23	12/10/87
Table V	261.33(e)	4/22/88
Table VI	261.33(f)	4/22/88
Appendix XII	Appendix VII to Part 264	7/9/87
Appendix XIII	Appendix VIII to Part 264	7/9/87
Appendix XIV	Appendix IX to Part 264	7/9/87

In addition to the Cluster 4 revisions outlined above, the Department has striven to correct all typographical errors not previously corrected when hazardous waste regulatory revisions have been filed. Of particular note, the word "waste" has been struck from Section 8.6.2.b of these regulations, a deletion actually made in the Department's Cluster 2 revisions of March 1987 but inadvertently missed when that year's final filing package was promulgated.

RESPONSE TO COMMENTS: A public hearing on the proposed amendments was held on August 22, 1988 in Charleston and written comments were received by the Department until 4:30 p.m. on that day. Sixteen individuals attended the public hearing, oral comments were received from one individual, and written comments were received from the West Virginia Manufacturers Association. The comments received and the Department's responses appear below:

Section 2.100

Comment: One commenter asked why the term "municipality" had been omitted from the revised definition.

Response: The revised definition includes the phrase "or any political subdivision thereof" which encompasses not only municipalities but also all other forms of local government.

Section 3.1.7.c.1

Comment: The word "puring" should read "pouring."

Response: This typographical error has been corrected.

Section 8.2.6.a

Comment: The phrase "formal functions" should read "for malfunctions."

Response: This typographical error has been corrected.

Comment: Under this subsection, a facility owner or operator must conduct inspections "often enough to identify problems in time to correct them before they harm human health or the environment." One commenter posed the question of who determines what constitutes "often enough" -- the owner/operator or the Department? The commenter asked the Department to clarify the meaning of the phrase "often enough" by setting a specific number of required inspections.

Response: Each facility owner or operator must develop and follow a written schedule of inspection (see Section 8.2.6.b of the regulations). That schedule must be submitted to the Chief of the Department's Division of Water Resources with Part B of the facility permit application (see Section 8.2.6.b.5 of the regulations). Thus, the Department determines what constitutes an appropriate schedule of inspections (i.e., determines how often is "often enough") for each facility in the state. Furthermore, during his review of the permit application, the Chief is

empowered to modify or amend the schedule as may be necessary in order to protect human health and the environment.

Section 8.5.4.b.6

Comment: One commenter noted that this subsection includes cross-references to Sections 8.8.2 and 8.8.4 and wrote: "These cross-references should be deleted...The federal counterpart (40 C.F.R. §260.73(b)(6)) contains no comparable cross-reference."

Response: The commenter is mistaken -- federal regulations include identical cross-references. Therefore, the Department cannot accept the request for a deletion of these references.

Section 9.4.3.a

Comment: One commenter suggested that the Department revise the wording of this subsection to clarify that the term "hazardous waste fuel" means hazardous waste that is used as a fuel or used to produce a fuel.

Response: The Department accepts the commenter's request and has revised the definition of "hazardous waste fuel" provided in Section 9.4.1.a of the regulations.

Sections 9.4.4 and 9.6.4

Comment: One commenter objected to the Department's use of cross-references to the hazardous waste regulations promulgated by other State agencies by stating: "It is not the role of the DNR to determine the applicability of other agency's regulations."

Response: Unlike the federal program administered by the U.S. Environmental Protection Agency, West Virginia's hazardous waste management program is administered by seven separate agencies. Under the State's Hazardous Waste Management Act, the Department of Natural Resources is designated as the lead agency in implementing and administering the State's RCRA Subtitle C hazardous waste management program. The Director has overall responsibility for the promulgation of rules and regulations under the Act. The Department's Series 35 regulations form the heart of the State's hazardous waste management program and, as such, parallel the contents of the regulations promulgated by the EPA. The references to the regulations of other agencies that are found throughout Series 35 serve to mirror citations found in the EPA regulations upon which Series 35 is based.

Section 9.4.4.b

Comment: One commenter noted that the federal counterpart of this subsection was amended in 1985, deleting the exception provided by the State's regulations, and recommended that the Department adopt the federal language.

Response: The Department accepts the commenter's request and has deleted this subsection from the regulations.

Section 9.4.6.a

Comment: One commenter noted that the federal counterpart of this subsection includes an additional provision referencing permitting requirements and suggested that the State's regulations be revised by adding a reference to Section 11.

Response: The Department accepts the commenter's request and has revised this subsection accordingly.

Sections 9.6.7 and 9.7.1

Comment: Both of these subsections include a cross-reference to Section 7 of the regulations, a section currently reserved for future use. One commenter asked that these cross-references be deleted in order to avoid any confusion.

Response: The Department accepts the commenter's request and has revised the subsections accordingly.

Section 9.7.2.b

Comment: The reference to Section 8.2.3 should instead be a citation to Section 8.2.4.

Response: This typographical error has been corrected.

Section 9.7.2.c

Comment: One commenter noted that the federal counterpart of this subsection does not include reference to interim status and recommended that the Department delete this subsection.

Response: The Department accepts the commenter's request and has deleted this subsection from the regulations.

Table VI

Comment: Entry U016 should have a CAS Number of 225-51-4 rather than 225-51-3 and should read "Benz(c)acridine" rather than "3,4-Benz(c)acridine."

Response: These typographical errors have been corrected.

Appendix II

Comment: One commenter requested that the Department retain the use of the metric equivalent for the English measure of pressure (i.e., 5.3 kg/cm or 75 pounds per square inch).

Response: The Department accepts the commenter's request and has retained the metric notations.

Appendix XI

Comment: One commenter requested an explanation of why the Department was deleting Cochran's Approximation to the Behrens-Fisher Student's T-Test from the regulations.

Response: The Department cannot reproduce the mathematical notations used in the federal counterpart of this appendix on the word processing system in which the State's regulations are stored. Therefore, the Department has chosen to incorporate the federal material by reference in Section 8.13.8.c.1.A of the regulations in order to assure an accurate presentation of this information.

* * * * *

General Comments

In addition to the comments on specific sections that appear above, the Department received comments from the West Virginia Manufacturers Association (WVMA) urging the State to adopt regulatory language identical to the language promulgated by the EPA. Examples of these comments include:

"The WVMA understands that, in certain situations, particular circumstances may necessitate that the language of the State program differ somewhat from counterpart federal regulations. However, in our experience, DNR regulations, including these most recent proposed amendments, contain minor word changes from the counterpart federal regulations for no apparent reason."

"In the proposed amendments, there are several instances where language different from the federal regulations has been proposed for no justifiable reason. We submit that mere stylistic changes are wholly inappropriate and unnecessarily complicate an already complex program."

"The DNR regulation should be corrected to mirror the federal regulation."

"(W)e urge the Director to amend the State regulations by incorporating by reference the relevant provisions of a federal program."

The Department recognizes the regulated community's concern regarding differences between State and federal regulations and is currently evaluating the incorporation by reference approach. However, the Department does not agree that "mere stylistic changes" increase the burden placed upon the regulated community.

In its comments, the WVMA objects to nonsubstantive differences between State and federal regulations, such as the different manner in which the Department and the EPA use conjunctions.* The WVMA fails to note that the EPA regulations have not been written in a consistent grammatical style nor has the EPA followed a consistent system for subdividing its text.** The Department has made an effort to produce a set of hazardous waste management regulations that is internally consistent in grammatical style and subsection numbering. Such consistency, we believe, increases the ease with which the general public, as well as the regulated community, can interpret our regulatory provisions.

* The conjunctions "and" and "or" will always be placed after the next-to-last item in a series in the Department's regulations. Conversely, the federal hazardous waste management regulations do not follow a consistent pattern of placement -- conjunctions may appear after the next-to-last item in a series or after each item in the series.

** In the federal regulations, some subsections are numbered while others are not. The Department, on the other hand, must comply with rules of the Secretary of State (153 C.S.R. 6) regarding the numbering of subsections.