



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

FILED
1987 JAN -7 11 057

ARCH A. MOORE, JR.
Governor

RONALD R. POTESTA
Director

ROBERT K. PARSONS
Deputy Director

January 7, 1987

NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
COMMENT PERIOD

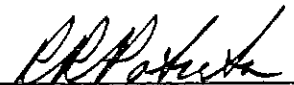
AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Legislative
RULE TITLE: Hazardous Waste Management Regulations

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED
AND WILL END ON February 9, 1987 at 5:00 p.m.

WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Natural Resources, Room 842
1800 Washington Street East, Charleston, WV 25305
Attention: Mr. Ronald A. Shipley

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta
Director



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January 7, 1987


NOTICE OF PUBLIC HEARING
OR COMMENT PERIOD ON A PROPOSED RULE
PUBLIC HEARING

AGENCY: West Virginia Department of Natural Resources
RULE TYPE: Legislative
RULE TITLE: Hazardous Waste Management Regulations

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT
3:00 p.m. on February 9, 1987 at Room 674,
1800 Washington Street, East, Charleston, WV 25305

COMMENTS ARE LIMITED TO: ORAL _____ WRITTEN _____ BOTH XX
COMMENTS MAY ALSO BE MAILED TO: Mr. Ronald A. Shipley,
West Virginia Department of Natural Resources, Room 842,
1800 Washington Street East, Charleston, WV 25305.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS
AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN
ORDER TO FACILITATE A REVIEW OF THESE COMMENTS. THE ISSUES TO
BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



Ronald R. Potesta
Director



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DEPARTMENT OF NATURAL RESOURCES
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Director

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Deputy Director

January 7, 1987

The Honorable Ken Hechler
Secretary of State
Capitol Complex, Suite 157-K
Charleston, West Virginia 25305

RECEIVED
JAN 10 1987
F-10

Re: Filing of Proposed Rules (Hazardous
Waste Management Regulations, Series
35), Notice of Public Hearing, and
Notice of Comment Period by the
Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of proposed
amendments to the legislative rules of the Department of
Natural Resources, a Notice of Public Hearing, and a Notice
of Comment Period for the proposed rule.

If you have any questions, please contact Mr. Ronald A.
Shipley, Special Assistant to the Director and State
Hazardous Waste Coordinator, at 348-2761.

Sincerely,

Ronald R. Potesta
Director

RRP/jh

Enclosures

cc: All State Hazardous Waste Agencies

FILED

REC JAN -7 11 3 57

PREAMBLE TO HAZARDOUS WASTE
MANAGEMENT REGULATIONS

SECRETARY OF STATE

Program: Hazardous Waste Management

Regulations: Hazardous Waste Management Regulations, West Virginia Department of Natural Resources, Series 35.

Authority: West Virginia Code, Section 20-5E-6

Action: Proposal of rule and request for comments.

Summary: West Virginia received authorization for RCRA Subtitle C (Hazardous Waste Management) program effective May 29, 1986. An authorized state is required to modify its program to comply with any federal program changes in order to retain primacy of the program. Today's proposed rulemaking is primarily to address the non-HSWA federal regulatory "Cluster 2" changes that occurred between July 1, 1985 and June 30, 1986. Regulations are also being proposed to conform to the March 24, 1986 HSWA regulations promulgated by EPA for small quantity generators.

Dates: A public hearing will be held on Monday, February 9, 1987 at 3:00 p.m. in the Director's Conference Room 674, 1800 Washington Street, East, Charleston, West Virginia. Comments will be received until the close of business on February 9, 1987.

Contact: For further information contact Mr. Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, 1800 Washington Street, East, Room 842, Charleston, West Virginia 25305, phone (304) 348-2761.

Supplemental Information:

1. Background: Now that the State has received primacy from the United States Environmental Protection Agency for the federal RCRA Subtitle 'C' program (Hazardous Waste Management) the State must modify its program to remain consistent with and equivalent to federal program changes. This is necessary for the State to retain the authorization of the program. These changes must be accomplished within one year of promulgation of any federal regulations. 40 C.F.R. 271.21(e)(iii). However, under the recently promulgated EPA "cluster rule" (September 26, 1986, 51 F.R. 33712) the State is allowed to treat the federal program changes between July 1 and June 30 as though they were promulgated on June 30 of the year. Thus the State must have their conforming regulations in effect by June 30 of the following year.

The Cluster 1 changes (July 1, 1984 to June 30, 1985) to the State hazardous waste management regulations (HWMR) have already been approved. Modification to the State program to incorporate the Cluster 2 changes (July 1, 1985 to June 30, 1986) must be accomplished by June 30, 1987. Today's proposal is primarily to address the Cluster 2 federal regulations.

In addition to Cluster 2 changes, regulations are also being proposed consistent with the March 24, 1986 rules promulgated by EPA for small quantity generators (SQG) under the Hazardous and Solid Waste Amendments of 1984 (HSWA). West Virginia is not required to modify the Hazardous Waste Management Program to incorporate HSWA related federal program changes until July 1988. The Department of Natural Resources, however, decided to adopt this part of the HSWA related rules for a number of reasons:

- i) The State has already adopted the first set of HSWA rules for small quantity generators promulgated by EPA on July 15, 1985. Today's proposal is only a continuation of the effort to obtain complete primacy of SQG program.
- ii) The Department of Highways is adopting SQG regulations for their portion of the hazardous waste management program and has requested that DNR adopt these rules to be consistent with their rule making.
- iii) Although federal regulations will apply to West Virginia SQGs, EPA will not play an important role in implementing these regulations in the State. EPA has no plans to conduct any training seminars to explain the new requirements or conduct any inspections to ensure compliance. Consequently the State needs to adopt these regulations to heighten their visibility to West Virginia's generators and to allow the State to enforce the provisions if necessary.

2. Details of the Regulations Proposed:

There are three (3) sets of rules which EPA promulgated during the period July 1985 to June 1986 which fall into the Cluster 2 category:

- i) August 20, 1985 corrections to the 'redefinition of solid wastes' promulgated on January 14, 1985.
- ii) May 2, 1986 rules modifying the closure/post-closure standards for TSD facilities.
- iii) May 28, 1986 rule clarifying the definition of listed waste No. K062.

Of these DNR has already adopted the August 20 correction rules along with the non-HWA Cluster 1 rules adopted September 26, 1986. Today's proposals cover the remainder of the Cluster 2 rules.

Of the HSWA rules promulgated by EPA so far, DNR is adopting only the SQG rules in today's proposals.

The various regulations being proposed today along with the corresponding federal rules are outlined briefly in the following paragraphs.

I. Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Closure, Post-Closure and Financial Responsibility Requirements, May 2, 1986 Rules of EPA

EPA's May 2, 1986 rulemaking revised standards concerning closure and post closure standards for treatment, storage and disposal facilities. These rules made the following changes:

1. 40 C.F.R., Section 260.10, Definitions: EPA defines new terms "final closure" and "Hazardous Waste Management Unit" and redefines "active life" and "partial closure". These new definitions have been incorporated in Section 2 of the HWMR.
2. 40 C.F.R. Section 264.110, Applicability: EPA repromulgated this section. Section 8.6.1 of the HWMR has been revised to conform with the federal language.
3. 40 C.F.R. Section 264.111: Performance standards have been revised. Instead of the standards for closure being preventing threats to human health, the standard is now protecting human health. Also, closure must control the escape of hazardous constituents instead of hazardous waste as the previous regulation stated. Section 8.6.2 of the HWMR has been revised to reflect these changes.
4. 40 C.F.R. Section 264.112, Closure Plan, Amendment of Plan: EPA made the following changes: (1) Deleted the requirement that closure and post-closure plans be kept at the facility; instead approved plans are required to be furnished upon request by the Chief. Facilities without approved plans must provide the plan during site inspection; (2) clarified that contingent closure plans for surface impoundments are also subject to this section; (3) more explicitly established the level of detail required in closure plans; (4) decontamination plans now must also cover facility structures, containment systems, and soils; (5) the closure plan needs to include an

estimate of the year of closure only in respect to permitted facilities using trust funds to establish financial assurance and which expect to close prior to expiration of initial permit. Interim status facilities, without approved closure plans or using trust funds for financial assurance with a remaining operating life of less than 20 years must estimate the year of closure; (6) to be consistent with the new definition of active life, the regulations were amended to allow modification of closure plans prior to the notification of partial or final closure, or during closure if unexpected events occur during the closure period that affect the closure plan. Also, the new rule laid out procedures for modifications and deadlines for requesting modifications; (7) TSDFs were previously required to notify the Chief 180 days prior to the expected date of closure. The new rule clarifies that this deadline applies to partial closure of disposal facilities and final closure of all TSDFs. Also, the notification deadlines have been modified. The expected date of closure has been defined; (8) new rules allow TSDF owners and operators to remove hazardous wastes or to decontaminate or dismantle equipment in accordance with approved closure plan, any time before or after closure notification.

All these changes have been incorporated in Section 8.6.3 of the HWMR.

5. 40 C.F.R. Section 264.113, Time Allowed for Closure: The earlier EPA rule required the removal, treatment or disposal of hazardous waste within 90 days of receipt of final volume disposed with possible extension of the deadline by permitting authority. This did not allow suspension of operations as a result of market fluctuations. The new rules allow more flexibility. The extension can now be granted if the facility can receive further wastes and the facility is likely to continue operation as long as closure would be incompatible with the continued operation.

Also under the new rules closure must be completed within 180 days of the receipt of final volume of hazardous wastes instead of wastes as stated in the previous rules. Corresponding changes are proposed to Section 8.6.4 of the HWMR.

6. 40 C.F.R., Section 264.114, Disposal or Decontamination of Equipment, Structures and Soils: Previous rules required that all facility equipment and structures be decontaminated or disposed of. The new rule requires contaminated soils also to be decontaminated or disposed.

Section 8.6.5 of the HWMR has been proposed to be changed accordingly.

7. 40 C.F.R. Section 264.115, Certification of Closure: The new certification rule requires partial closures to be certified. The rule also sets up deadlines for submitting closure certifications. This change is reflected in Section 8.6.6 of State regulations.
8. 40 C.F.R. 264.116, Survey Plat: A separate section has been created by EPA regarding submission of a 'survey plat'. The prior rule required the submission of a plat within 90 days of closure. The new rule requires submission of the plat with submission of the certificate of closure. Corresponding changes have been proposed to Section 15.3 of the HWMR.
9. 40 C.F.R. Section 264.117, Post-Closure Care and Use of Property: The new rule requires a post-closure care period of 30 years for each unit. Section 8.6.7 of the HWMR is changed to reflect this.
10. 40 C.F.R. Section 264.118, Post-Closure Plan; Amendment Plan: The new rule requires that surface impoundments and waste piles not normally required to have a contingent post closure plan must submit one if it is decided that they have to close as a landfill; the closure plan also would need revision. The modification procedures for such revisions are established. Section 8.6.8 of the HWMR is modified to incorporate these changes.
11. 40 C.F.R. Section 264.119, Post Closure Notices: In respect of partial closures, the new rule requires submission of a record of waste disposed on land to the local zoning authority and permitting authority and the filing of a notation on the deed that the land was used as a disposal site. The rule requires permit modification if removal of hazardous waste is planned during post closure care; the rule sets up deadlines for these submittals.

Section 15.4 of the HWMR has been partially modified. The State rule does not require the post-closure notation on the deed that (i) the land has been used to manage hazardous waste and (ii) its use is restricted under Section 8.6.7. These requirements must have already been met during the operating period of the facility as required under Section 15.1.

12. 40 C.F.R. Section 264.120, Certification of Completion of Post-Closure Care: This is a new requirement. The owner or operator must certify that the post-closure care activities have been conducted in accordance with the approved post-closure care plan.

Section 8.6.9 has been added to the State regulations incorporating this requirement.

13. 40 C.F.R. Sections 264.141, 264.142, 264.143, 264.144, 264.145, 264.147, 264.151, Subpart H, Financial Requirements: EPA made changes to these sections of Subpart H which deals with financial requirement for closure and post-closure of TSDFs.

Since Subpart H is adopted by reference under Section 13 of the HWMR, these changes will be adopted by reference upon promulgation of the regulations.

14. 40 C.F.R. Sections 265.110, 265.111, 265.112, 265.113, 265.114, 265.115, 265.116, 265.117, 265.118, 265.119, 265.120: Changes similar to those described above for Part 264, closure/ post-closure standards were made by EPA to interim status facilities under Part 265, Subpart G.

40 C.F.R. 265.140, 265.141, 265.142, 265.143, 265.144, 265.145, 265.147, Subpart H Financial Requirements: EPA made changes to these sections of Subpart H which deals with financial requirements for closure and post closure of TSDF's under interim status.

Under the current State regulations interim status facilities are required to comply with Part 265 requirements. This requirement is being modified in today's proposal by incorporating by reference 40 C.F.R. Part 265 under Section 8.1.6.a of the State regulations. Thus upon promulgation of these regulations, the changes to Subpart G and Subpart H cited above will be adopted by reference.

15. 40 C.F.R. Section 270.14, Contents of Part B Application General Requirements: EPA amended 270.14(b)14 so only closed units need to submit the notice required under the new Section 264.119 with their Part B application. Since part of the information required for the notice will be available only when the unit is closed, EPA adopted this amendment.

In the proposed rule DNR is still requiring the notice in Section 11.5.1.o; however, Section 15.1 which addresses the notice requirements has been modified to suit existing

facilities. Closed units must provide notice requirements contained in Section 15.1 and 15.4 which is equivalent to EPA requirement.

EPA modified Sections 270.14(b)15 and 16 to be consistent with the modified Sections 264.142 and 264.144 which deal with financial assurance requirements. The new rule allows submission of cost estimate documents after submission of Part 'B' in certain cases.

The state regulations have been modified to allow for these changes. This is reflected in Sections 11.5.1.p and 11.5.1.q.

16. 40 C.F.R. Section 270.42(d), Minor Modifications of Permits: Section 270.42(d) considered change in ownership or operational control a minor modification. To ensure that facilities are transferred to financially viable firms, the new rule requires that the new owner must demonstrate compliance with Subpart H within six months of transfer.

Section 11.20.g of the HWMR has been modified accordingly.

17. 40 C.F.R. Section 270.72(d), Changes During Interim Status: Consistent with 270.42(d) EPA required similar demonstration on financial assurance from new owners of interim status facility also.

Section 11.3.3.d of the HWMR is also proposed to be modified accordingly.

II. Identification and Listing of Hazardous Waste - May 28, 1986 EPA Rule Clarifying Listing of Waste No. K062

1. 40 C.F.R. Section 261.32, Hazardous Waste from Specific Sources: EPA amended this section to clarify that the listing description for waste No. K062 "spent pickle liquor from steel finishing operations" apply only to waste from the iron and steel industry.

Accordingly, Section 3.4.3 of the State regulations is proposed to be modified to reflect this change.

III. Standards for Small Quantity Generators - March 24, 1986 Rules Promulgated by EPA

EPA had all the requirements applicable to small quantity generators (SQG) listed under 40 C.F.R. Section 261.5. The March 24 rule retained part of these requirements under 40 C.F.R. Section 261.5 and moved some to Section 262.

In today's proposal DNR is creating a separate section namely Section 10, for listing the requirements for small quantity generators. Earlier Section 3.1.4 for SQG is now reserved. Creating a separate section for SQG will assist small quantity generators in understanding the special requirements applicable to them.

1. 40 C.F.R. 261.5, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators:

- (A) While retaining the old definition for small quantity generators, EPA created a new category called "conditionally exempt small quantity generators." These are generators generating no more than 100 kilograms of hazardous waste per month. Thus under the new rule generators of this category only are exempt from regulation subject to certain requirements. Owners and operators generating between 100 kilograms and 1000 kilograms are now subject to full regulation with a few exceptions in terms of accumulation time, reclaimed waste, and other issues. (See Item 2 below.)
- (B) A new definition has been added to Section 2 of State regulations defining the term "small quantity generator" which appeared previously in Section 3.1.5. This is corresponding to 40 C.F.R. Section 260.10 definition of "small quantity generator."
- (C) EPA modified rules regarding quantity determinations for hazardous waste generators. Wastes specifically exempted from regulation need not be counted. Recyclable materials, however, are now included in a generator's quantity determination. Also multiple counting of wastes that are reclaimed is also eliminated from counting. These conditions are included in Section 10.2.3 and 10.2.4.
- (D) Generators of acute hazardous wastes in excess of 1 kilogram per month or in excess of 100 kilograms of cleanup or spill debris containing acute hazardous wastes continue to be fully regulated.
- (E) The conditions for exemption for conditionally exempt SQG's and generators of acutely hazardous wastes in quantities less than the exclusion limits are set out in Section 10.2.5. These conditions are similar to the federal requirements.

2. 40 C.F.R. 262, Special Requirement for Generators who Generate Between 100 kgs and 1000 kgs: Generators in the 100 kg-1000 kgs per month category are now subject to full regulation with some special provisions to lessen the regulatory burden on them.

(A) If the waste is reclaimed pursuant to a contractual agreement generators are not subject to manifest requirements if they comply with certain requirements.

(B) The generator can accumulate wastes on site without a permit for 120 days, or for 270 days if the waste needs to be shipped over 200 miles to a TSD facility. The maximum waste that can be accumulated is 6000 kg. The generator must, however, comply with emergency procedures.

(C) The generator is also exempt from some of the record keeping requirements.

These requirements are contained in Section 10.1 and are identical to the federal requirements.

IV. Miscellaneous Changes

In addition to the above changes in the HWMR to adopt the federal program changes, the following minor corrections are being made to the State regulations:

1. Hazardous Waste from Non-Specific Sources:

Section 3.4.2, Hazardous Waste from Non-Specific Sources, contains an error in the description of Waste No. F006. This is being corrected in today's proposal.

2. Accumulation Time

Section 6.3.5, accumulation time, is being modified whereby the Chief will have the authority to grant extension beyond the ninety (90) day storage period provided under Section 6.3.5.b. Presently this authority is limited to the Director of the DNR.

3. Financial Assurance and Air and Water Transporters

Sections 5 and 13 of the HWMR have been proposed for repromulgation to incorporate any changes in the federal regulations.

Section 2. Definitions (Definitions of "active life", "final closure", "hazardous waste management unit", "partial closures", and "small quantity generator" were added or amended effective May 1, 1987.)

For the purposes of these regulations, the following words and phrases shall have the meanings ascribed to them in this section unless the context of the regulations indicate otherwise:

"Active Life" of a facility means the period from the initial receipt of a hazardous waste at the facility until the Chief receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage or disposal operations are being conducted. It includes the treated area of a landfarm and the active face of a landfill, but does not include those portions of a facility which have been closed in accordance with all applicable closure requirements;

* * * * *

"Federal, state and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances;

"Final Closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Section 8 of these regulations and 40 C.F.R. part 265 are no longer conducted at the facility unless subject to the provisions in Sections 6.3.5 of these regulations.

"Final cover" means cover material that is applied upon closure of a landfill and is permanently exposed at the surface;

* * * * *

"Hazardous waste management facility (facility)" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units;

"Hazardous Waste Management Unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a

container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Flash point" means the minimum temperature at which a liquid or solid gives off sufficient vapor to form an ignitable vapor-air mixture near the surface of the liquid or solid. An ignitable mixture is one that, when ignited, is capable of the initiation and propagation of flame away from the source of ignition. Propagation of flame means the spread of the flame from layer to layer independent of the source of ignition;

* * * * *

"Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of these regulations; a hazardous waste management unit in accordance with the applicable closure requirements of Section 8 of these regulations and 40 C.F.R. Part 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile or other hazardous waste management unit, while other units of the same facility continue to operate.

* * * * *

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant;

"Small quantity generator" means a generator who generates less than 1000 kilograms of hazardous wastes in a calendar month.

"State act" means the Hazardous Waste Management Act, W. Va. Code §20-5E-1, et seq.

* * * * *

Section 3. Identification and Listing of Hazardous Wastes

* * * * *

3.1.4 Special Requirements for Hazardous Waste Generated by Small Quantity Generators. (Reserved effective May 1, 1987)

3.1.4a-A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste

in that month.

3.4.4b-Except for those wastes identified in paragraphs (e) and (f) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Sections 6, 8, and 11 of these regulations and 40 C.F.R. Part 265, provided the generator complies with the requirements of paragraph (g) or (j) of this section.

3.4.4c-Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by Section 3.4.5(a) is not included in the quantity determinations of this section, and is not subject to any requirements of this section if the notification requirements of Section 4 are complied with. Hazardous waste that is subject to the special requirements of Section 3.4.5(b) is included in the quantity determinations of this section and is subject to the requirements of this section.

3.4.4d-In determining the quantity of hazardous waste he generates, a generator need not include:

3.4.4.d.1-His hazardous waste when it is removed from on-site storage; or

3.4.4.d.2-Hazardous waste produced by on-site treatment of his hazardous waste.

3.4.4e-If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are fully subject to these regulations:

3.4.4.e.1-A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in 3.4.4(e), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.4.4(e);

3.4.4.e.2-A total of 400 kilograms of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in 3.4.4(e), or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.4.4(e).

3.4.4f-A small quantity generator may accumulate hazardous waste

on-site.---If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than those set forth in paragraphs (e)(1) or (e)(2) of this section all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to these regulations.---The time period of Section 6.3.5 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

3.4.4g-In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this section, the generator must:

3.4.4.g.1-Comply with Sections 4.0 and 6.1.1 of these regulations;

3.4.4.g.2-If he stores his hazardous waste on-site, store it in compliance with the requirements of paragraph (f) of this section;

3.4.4.g.3--Establish and maintain on-site a written record specifying the quantity and types of hazardous wastes disposed of, the dates the wastes were transported off-site, and the final disposition of the wastes; and (Comment:---This recordkeeping requirement is only applicable to manufacturing facilities. Non-manufacturing facilities such as schools, service stations, etc. are not required to comply with this subsection.)

3.4.4.g.4-Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is

3.4.4.g.4.i-Permitted under 40 C.F.R. Part 270 of the Federal code;

3.4.4.g.4.ii-In interim status under 40 C.F.R. Parts 270 and 265 and 20-5E-40 of the West Virginia Code;

3.4.4.g.4.iii-Permitted by this State under Section 44.00 of these regulations;

3.4.4.g.4.iv-Permitted by this State to manage industrial wastes under the Water Pollution Control Act; (Comment:---After March 31, 1986 a small quantity generator will not be allowed to send its hazardous waste to this type of facility.)

3.4.4.g.4.v-Authorized to manage hazardous waste by a state with a hazardous waste program approved under 40 C.F.R. Part 271;

3.4.4.g.4.vi-A facility which:

3.4.4.g.4.vi.A--Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

3.1.4.g.4.vi.b-Treats-his-waste-prior-to-beneficial-use-or-re-use,
or-legitimate-recycling-or-reclamation.

3.1.4.h-Hazardous-waste-subject-to-the-reduced-requirements-ofthis
section-may-be-mixed-with-non-hazardous-waste-and-remainsubject-to
these--reduced--requirements--even--though--the--resultantmixture
exceeds-the-quantity-limitations-identified-in-thissection, unless
the-mixture-meets-any-of-the--characteristics--ofhazardous--wastes
identified-in-Section-3.3.

3.1.4.i-If-a--small--quantity--generator--mixes--a--waste--with--a
hazardous--waste--that--exceeds-a-quantity-exclusion-level-of-this
section, the-mixture-is-subject-to-full-regulation.

3.1.4.j-A-small-quantity-generator-that-generates-more--than--100,
but--less--than-1000-kilograms-of-hazardous-waste-or-who-generates
acutely-hazardous-waste-in-an-amount--greater--than--specified--in
Section-3.1.4e--in--any--calendar--month--shall-be-subject-to-the
following-requirements,--in--addition--to--these--requirements
enumerated-in-paragraphs-(a)-through-(i)-of-this-section:

3.1.4.j.1-The-manifest-requirements-of-Section--6.2,--except--that
such--small--quantity-generators-are-only-required-to-complete-the
following-items-on-the-generator-segment-of-the-Uniform--Hazardous
Waste--Manifest--prior--to--shipping--hazardous-waste-off-site-for
treatment, storage, disposal-or-recycling:

3.1.4.j.1.i-Generator-name, address, and signature-(items-3-and-16
of-the-Uniform-Hazardous-Waste-Manifest-form).

3.1.4.j.1.ii-The-name-and-address-of-the--facility--designated--to
receive-the-hazardous-waste-(item-9-on-the-Uniform-Hazardous-Waste
Manifest-form).

3.1.4.j.1.iii-The-DOT-description--of--the--waste,--including--the
proper--shipping-name, hazard-classification, and-the-"UN"-or-"NA"
identification-number-(item-11--on--the--Uniform--Hazardous--Waste
Manifest-form).

3.1.4.j.1.iv-The-number-and-type-of-containers-of-hazardous-wastes
(item-12-on-the-Uniform-Hazardous-Waste-Manifest-form)--(COMMENT:
Each--container-must-be-properly-marked, labeled, and-meet-all-DOT
specifications), and

3.1.4.j.1.v-The-total-quantity-of-hazardous-waste-to-be-transported
off-site-(items-13-and-14-on-the-Uniform--HazardousWaste--Manifest
form);

3.1.4.j.2-The-pre-transport-DOT-packaging, labeling, marking--and
placarding--requirements--described--in--Section--6.3---of---these
regulations;

~~3-4-4-j-3-The-recordkeeping-requirements-of-Section-6-4-4(a),-(e), and-(d)-and-6-4-4;-and~~

~~3-4-4-j-4-The-special-conditions-of-Section-6-5-~~

* * * * *

3.2.2 Criteria For Listing Hazardous Waste

3.2.2.c The director will use the criteria for listing, specified in this section, to establish the exclusion limits referred to in ~~3-4-4-e~~ 10.2.3

* * * * *

3.4 Lists of Hazardous Wastes

* * * * *

3.4.1.d The following hazardous wastes listed in Section 3.4.2 or 3.4.3 are subject to the exclusion limits for acutely hazardous wastes established in Section ~~3-4-4~~ 10.2.5: (Reserved).

* * * * *

3.4.2 Hazardous Waste from Non-Specific Sources: (F006 and K061 amended effective May 1, 1987)

Hazardous Waste No.	Hazardous Waste	Hazard Code
F006	Wastewater treatment sludges from electroplating operations except from <u>the following processes</u> (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)

* * * * *

3.4.3 Hazardous Waste From Specific Sources

Hazardous Waste No.	Hazardous Waste	Hazard Code
---------------------	-----------------	-------------

* * * * *

Iron and Steel

K061 Emission. . . .Furnaces (T)

K062 Spent Pickle Liquor ~~from~~ generated (C,T)
by steel finishing operations of
plants that produce iron and steel

* * * * *

3.4.4.e The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to be the small quantity exclusion defined in ~~3-4-4(a)~~ Section 10.2.5.

* * * * *

3.4.4.f The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ~~Section 3-4-4~~ 10.1.a of these regulations.

* * * * *

Section 4. Notification of Hazardous Waste Activity Regulations

4.2 Notification

4.2.c Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in Section 10 3-4-4 and 3.1.5 of these regulations shall notify the Chief in writing of their hazardous waste activities within ninety (90) days of the effective date of these regulations or the date of initiation of such activities, whichever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

* * * * *

Section 5. Standards Applicable to Transporters of Hazardous Waste by Air and/or Water (Repromulgated effective May 1, 1987)

The Director hereby adopts and incorporates by reference 40 C.F.R. Part 263, as published in the Code of Federal Regulations on the effective date of these regulations insofar as such regulations

relate to the transportation of hazardous waste by air and water.

Whenever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

* * * * *

Section 6. Standards Applicable to Generators of Hazardous Waste

6.1 Purpose, Scope and Applicability (§6.1.a.1 amended effective May 1, 1987.)

6.1.a This section establishes standards and regulations for generators of hazardous wastes.

6.1.a.1 Generators that generate more than 4000 100 kilograms of hazardous waste, identified or listed in Section 3 of these regulations, in any calendar month or who generate acutely hazardous waste in quantities greater than the amounts listed in 3.4.4.e 10.1.e are subject to all sections of these regulations, except as otherwise provided in Section 6 and Section 10.1 of these regulations.

~~6.1.a.2 Small quantity generators that generate between 400 and 4000 kilograms of hazardous waste, identified or listed in Section 3 of these regulations, in any calendar month are subject to the requirements of Section 6 listed in Sections 3.4.4(j) of these regulations.~~

* * * * *

6.3.5 Accumulation Time (§6.3.5.b amended effective May 1, 1987)

* * * * *

6.3.5.b A generator who accumulates hazardous waste for more than ninety (90) days is an operator of a storage facility and is subject to the applicable requirements of Sections 4, 8, and 12 of these regulations, the permit requirements of Section 11 and 40 C.F.R. Part 265 unless he has been granted an extension to the ninety (90) day period. Such an extension may be granted by the Director Chief if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director Chief on a case-by-case basis. Before the end of ninety (90) days, or any extension period granted by the Director Chief (not to exceed thirty days), the generator must either transport all such hazardous waste off-site to a designated facility, or, if held on-site for more than ninety (90) days, place such hazardous waste in an on-site facility that

is either permitted under section 11.00 of these regulations or under 40 C.F.R. Part 270 or which has interim status or which is authorized to manage hazardous waste by a state with a hazardous waste program approved by EPA.

* * * * *

Section 8. Standards for owners and operators of Hazardous Waste Treatment, Storage and Disposal Facilities

8.1 General, Purpose, Scope and Applicability

* * * * *

8.1.5.b Generator accumulating waste on site in compliance with Section 6.3.5 provided the requirements of Sections ~~3.4.4~~ 10 and 3.1.5 of these regulations are complied with.

* * * * *

8.5.7 Unmanifested Waste Report

If a facility accepts for treatment, storage or disposal any hazardous waste from an off-site source without an accompanying manifest or shipping paper and if the waste is not excluded from the manifest requirement by Section ~~3.4.4~~ 10 of these regulations, then the owner or operator shall prepare and submit a single copy of a report to the Chief within fifteen (15) days after receiving the waste, on a form prescribed by the Chief. The report must be designated "Unmanifested Waste Report" and shall include the following information:

* * * * *

8.6 Closure and Post-Closure (Amended effective May 1, 1987)

8.6.1 Applicability

Except as Section 8.1 provides otherwise:

8.6.1.a Sections ~~8.6.2 - 8.6.8~~ 8.6.6 and--45.4 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

8.6.1.b Sections ~~8.6.2---8.6.8,-45.4-and-45.3~~ 8.6.7 - 8.6.9, 15.3 and 15.4 (which concern post closure care) apply to the owners and operators of: (1) all hazardous waste disposal facilities; and (2) waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Sections 8.9.7 and 8.10.9.

8.6.2 Closure Performance Standard

The owner or operator must close the facility in a manner that:

8.6.2.a Minimizes the need for further maintenance, and

8.6.2.b Controls, minimizes or eliminates, to the extent necessary to ~~prevent threats to~~ protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminate ~~rainfall runoff~~, or hazardous waste decomposition products to the state waters or to the atmosphere; and

8.6.2.c Complies with the closure requirements of this section including, but not limited to, the requirements of Sections 8.7.10, 8.8.5, 8.9.7, 8.10.9, 8.11.11, 8.12.11 and Air Pollution Control Regulation XXV, Section 24.

8.6.3 Closure Plan; Amendment of Plan

~~8.6.3.a The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with part B of the permit application in accordance with Section 44.5.4 of these regulations, and become a condition of the permit. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified. The plan must identify steps necessary to completely or partially close the facility at any points during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:~~

~~8.6.3.a.1 A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the applicable requirements of this section will be met;~~

~~8.6.3.a.2 An estimate of the maximum inventory of wastes in storage and treatment at any time during the life of the facility;~~

~~8.6.3.a.3 A Description of the steps needed to decontaminate facility equipment during closure;~~

~~8.6.3.a.4 An estimate of the expected year of closure and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure. (Comment: For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to~~

place a final cover must be included);

8.6.3.a.5 And must satisfy the applicable requirements of Sections 8.6.2, 8.6.4, 8.6.6, 8.7.40, 8.8.5, 8.9.7, 8.9.10, 8.10.9, 8.11.11, 8.12.11 and Air Pollution Control Regulation XXV, Section 24.

8.6.3.b The owner or operator may amend the closure plan at any time during the active life of the facility. (The active life of the facility is that period during which waste are periodically received.) The owner or operator must amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, a modification of the closure plan must be made at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within sixty (60) days after the change in operating plans or facility design occurs.

8.6.3.c The owner or operator must notify the chief at least 180 days prior to the expected closure date.

8.6.3.d All closure plans must be approved by the chief based on the determination of compliance with the applicable requirements of Sections 8.6.2, 8.6.4, 8.6.6, 8.7.40, 8.8.5, 8.9.7, 8.9.10, 8.10.9, 8.11.11, 8.12.11 and Air Pollution Control Regulation XXV, Section 24. Upon approval, the closure plan shall become a condition of the Hazardous Waste Management Permit.

8.6.3.a Written Plan.

8.6.3.a.1 The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by Section 8.9.7.c to have a contingent closure plan. The plan must be submitted with Part B of the permit application in accordance with Section 11.5.1 of these regulations, and approved by the Chief as part of the permit issuance procedures under Section 11 of these regulations and will become a condition of the permit.

8.6.3.a.2 Until final closure is completed and certified a copy of the approved plan and all revisions of the plan must be furnished to the chief upon request, including request by mail until closure is completed and certified:

8.6.3.b Content of Plan: The plan must identify steps necessary to

perform partial and/or final closure of the facility at any point during its active life. The closure plan must include at least:

8.6.3.b.1 A description of how each hazardous waste management unit at the facility will be closed in accordance with Section 8.6.2;

8.6.3.b.2 A description of how final closure of the facility will be conducted in accordance with Section 8.6.2. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

8.6.3.b.3 An estimate of the maximum inventory of hazardous wastes ever onsite over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing or disposing of all hazardous wastes and identification of the type(s) of the off site hazardous waste management units to be used, if applicable; and

8.6.3.b.4 A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards; and

8.6.3.b.5 A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and

8.6.3.b.6 A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example in case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and the time required to place a final cover must be included.)

8.6.3.b.7 For facilities that use trust funds to establish financial assurance under and Section 13 of these regulations, and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

8.6.3.c Amendment of plan. The owner or operator must submit a

written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Section 11 of these regulations. The written request must include a copy of the amended closure plan for approval by the Chief.

8.6.3.c.1 The owner or operator may submit a written request to the Chief for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

8.6.3.c.2 The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

8.6.3.c.2.i Changes in operating plans or facility design affect the closure plan, or

8.6.3.c.2.ii There is a change in the expected year of closure, if applicable, or

8.6.3.c.2.iii In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

8.6.3.c.3 The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Section 8.9.7.c must submit an amended closure plan to the Chief and the owner or operator of a waste pile that intends to remove all hazardous waste at closure no later than 60 days from the date that the owner or operator or Chief determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 8.11.11 or no later than 30 days from that date if the determination is made during partial or final closure. The Chief will approve, disapprove, or modify this amended plan in accordance with the procedures in Section 11 of these regulations. In accordance with Section 11.5.1 the approved closure plan will become a condition of any permit issued.

8.6.3.c.4 The Chief may request modifications to the plan under the conditions described in Section 8.6.3.c. The owner or operator must submit the modified plan within 60 days of the

Chief's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Chief will be approved in accordance with the procedures in Section 11 of these regulations.

8.6.3.d Notification of Partial Closure and Final Closure:

8.6.3.d.1 The owner or operator must notify the chief in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Chief in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

8.6.3.d.2 The date when he "expects to begin closure" must be either no later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Chief that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the chief may approve an extension to this one-year limit.

8.6.3.d.3 If the facility's permit is terminated, or if the facility is otherwise ordered by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in Section 8.6.4 of these regulations.

8.6.3.e Removal of wastes and decontamination or dismantling of equipment. Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

8.6.4 Closure; time allowed for closure:

8.6.4.a Within ninety (90) days after receiving the final volume of hazardous wastes, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit

or facility site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Chief may approve a longer period if the owner or operator demonstrated--that: complies with all applicable requirements for requesting a modification of the permit and demonstrates that:

8.6.4.a.1.i The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

8.6.4.a.1.ii.A The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

8.6.4.a.1.ii.B There is a reasonable likelihood that a--~~person other--than--the--owner--or--operator~~ he or another person will recommence operation of the site hazardous waste management unit or the facility within one year; and

8.6.4.a.1.ii.c Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

8.6.4.a.2 He has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

~~8.6.a.2.b~~ 8.6.4.b The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The chief may approve a--~~longer-closure--period--if--the owner--or--operator~~ an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

~~8.6.4.a.2.b.ii~~ 8.6.4.b.1.i The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

~~8.6.4.a.2.b.1.ii.A~~ 8.6.4.b.1.ii.A The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

~~8.6.4.a.2.b.1.ii.B~~ 8.6.4.b.1.ii.B There is reasonable likelihood that a--~~person other--than--the--owner--operator~~ he or another person will recommence operation of the site hazardous waste management unit or facility within one year; and

~~8.6.4.a.2.b.1.ii.e~~ 8.6.4.b.1.ii.c Closure of the hazardous waste management unit or facility would be incompatible with the continued operation of the site; and

~~8.6.4.a.2.b.2~~ 8.6.4.b.2 He has taken and will continue to take all

steps to prevent threats to human health and the environment from the unclosed but inactive not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

8.6.4.c The demonstrations referred to in Sections 8.6.4.a and 8.6.4.b must be made as follows:

8.6.4.c.1 The demonstrations in paragraph Section 8.6.4.a must be made at least 30 days prior to the expiration of the 90-day period in Section 8.6.4.a; and

8.6.4.c.2 The demonstration in Section 8.6.4.b must be made at least 30 days prior to the expiration of the 180-day period in Section 8.6.4.b.

8.6.5 Disposal or Decontamination of Equipment, Structure and Soils

When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues. During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in Sections 8.9.7, 8.10.9, 8.11.11 or 8.12.11. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Section 6 of these regulations.

8.6.6 Certification of Closure

When closure is completed, the owner or operator must submit to the Chief certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Chief by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Chief upon request until he releases the owner or operator from the financial assurance requirements for closure

under Section 13 of these regulations.

8.6.7 Post-Closure Care and Use of Property

8.6.7.a.1 Post-closure care must continue for thirty (30) years after the date of completing closure and must consist of at least the following: Post closure care for each hazardous waste management unit subject to the requirements of Section 8.6.7-8.6.9 and Section 15.4 of these regulations must begin after the completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:

8.6.7.a.1.i Groundwater monitoring and reporting as applicable.

8.6.7.a.1.ii Maintenance of monitoring and waste containment systems as applicable.

8.6.7.a.1.iii All applicable post closure regulations of Sections 8.9; 8.10; 8.11; 8.12; and 8.13.

~~8.6.7.a.2.i During the 180-day period preceding closure or at any time thereafter, the Chief may reduce the post-closure care period to less than thirty (30) years if it is found that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure).~~

~~8.6.7.a.2.ii Prior to the time that the post-closure period is due to expire, the Chief may extend the post-closure care period if it is found that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment.)~~

~~8.6.7.b The chief may require, at closure, continuation of any of the security requirements of Section 8.2.5 during part or all of the post-closure period after the date of completing closure when access by the public or domestic livestock may pose a hazard to human health.~~

8.6.7.a.2 Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Chief may, in accordance with the permit modification procedures in Section 11 of these regulations:

8.6.7.a.2.A Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal

units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

8.6.7.a.2.B Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

8.6.7.b The Chief may require, at partial and final closure, continuation of any of the security requirements of Section 8.2.5 of these regulations during part or all of the post-closure period when:

8.6.7.b.1 Hazardous wastes may remain exposed after completion of partial or final closure; or

8.6.7.b.2 Access by the public or domestic livestock may pose a hazard to human health.

8.6.7.c Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the Chief finds that the disturbance:

8.6.7.c.1 Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

8.6.7.c.2 Is necessary to reduce a threat to human health or the environment.

8.6.7.d All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 8.6.8.

8.6.8 Post-Closure Plan; Amendment of Plan

~~8.6.8a The owner or operator of a disposal facility must have a written post-closure plan. The plan must be submitted with Part B of the permit application and approved by the Chief as a part of the permit issuance proceeding. The approved post-closure plan will become a condition of any permit issued. A copy of the~~

approved plan and all revisions must be kept at the facility until the post-closure care period begins. This plan must identify the activities which will be carried on after closure and the frequency of these activities, and include at least:

8.6.8.a.4 A description of the planned groundwater monitoring activities and frequencies at which they will be performed.

8.6.8.a.2 A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

8.6.8.a.2.i The integrity of the cap and final cover or other containment structures where applicable; and

8.6.8.a.2.ii The function of the facility monitoring equipment.

8.6.8.a.3 The name, address, and phone number of the person or office to contact about the disposal facility during the post-closure period. This person or office must keep an updated post-closure plan during the post-closure period.

8.6.8b The owner or operator may amend the post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. The owner or operator must amend the plan whenever changes in operating plans or facility design, or events which occur during the active life of the facility or during the post-closure period, affect the post-closure plan. This plan must be amended whenever there is a change in the expected year of closure.

8.6.8e When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time. In all other cases, the request for modification of the post-closure plan must be made within sixty (60) days after the change in operating plans or facility design or the events which affect the post-closure plans occur.

8.6.8.a Written Plan:

The owner or operator of a hazardous waste disposal unit must have written post-closure plan. In addition, certain surface impoundments from which the owner or operator intends to remove or decontaminate hazardous wastes at partial or final closure are required by Section 8.9.7.c to have contingent post-closure plans. Owners or operators of surface impoundments not otherwise required to prepare contingent post-closure plans and owner and operators of waste piles must submit a post-closure plan to the Chief within 90 days from the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill subject to the requirements of Sections 8.6.7 -

8.6.8. and 15.4. The plan must be submitted with the Part B of the permit application in accordance with Section 11.5.1 of these regulations, and become a condition of the permit.

8.6.8.b For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and frequency of these activities, and include at least:

8.6.8.b.1 A description of the planned groundwater monitoring activities and frequencies at which they will be performed.

8.6.8.b.2 A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

8.6.8.b.2.i The integrity of the cap and final cover or other containment systems, and

8.6.8.b.2.ii The function of the monitoring equipment.

8.6.8.b.3 The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

8.6.8.c Until the final closure of a facility, a copy of the approved post-closure plan must be furnished to the Chief upon request, including request by mail. After final closure has been certified, the person or office specified in Section 8.6.8.b.3 must keep the approved post-closure plan during the remainder of the post-closure period.

8.6.8.d Amendment of Plan.

The owner or operator must request a permit modification to authorize a change in the approved post-closure plan in accordance with Section 11 of these regulations. The written request must include a copy of the amended post-closure plan for approval by the Chief.

8.6.8.d.1 The owner or operator may submit a written request to the Chief for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

8.6.8.d.2 The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan whenever:

8.6.8.d.2.A Changes in operating plans or facility design affect the approved post-closure plan or

8.6.8.d.2.B There is a change in the expected year of final closure, if applicable or

8.6.8.d.2.C Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

8.6.8.d.3 The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. The owner or operator of a surface impoundment that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under Section 8.9.7.c and owners and operators of waste piles must submit a post-closure plan to the Chief no later than 90 days after the date that the owner or operator or the Chief determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 8.11.11 of these regulations. The Chief will approve, disapprove or modify this plan in accordance with the procedures in Section 11 of these regulations and the approved post-closure plan will become a permit condition.

8.6.8.d.4 The Chief may request modifications to the plan under the conditions described in Section 8.6.8.d.2. The owner or operator must submit the modified plan no later than 60 days after the Chief's request, or no later than 90 days if the unit is a waste pile or a surface impoundment not required to prepare contingent post-closure plan. Any modifications requested by the Chief will be approved, disapproved or modified in accordance with the procedures in Section 11 of these regulations.

8.6.9 Certification of Completion of Post Closure Care

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Chief by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Chief upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under Section 13 of these regulations.

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Section 9. Standards for Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

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9.4 Hazardous Waste Burned for Energy Recovery

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9.4.1.b.2 Wastes that are exempt from regulation under the provisions of Section 3.1.3.b of these regulations and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of Section 3-4-4 10 of these regulations.

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Section 10. Special Requirements for Hazardous Waste Generated by Small Quantity Generators (Effective May 1, 1987)

10.1 Special requirements for hazardous wastes generated by small quantity generators who generate greater than 100 kilograms but less than 1000 kilograms.

Except as provided in Sections 10.1.1 through 10.1.5 hazardous wastes generated by small quantity generators who generate greater than 100 kilograms but less than 1000 kilograms of hazardous wastes are subject to all provisions of these regulations.

10.1.1 Reclaimed Waste. The requirements of Section 6.2 of these regulations do not apply to hazardous waste produced by generators of greater than 100 kilograms but less than 1000 kilograms in a calendar month where:

10.1.1.a The waste is reclaimed under a contractual agreement pursuant to which:

10.1.1.a.1 The type of waste and frequency of shipments are specified in the agreement;

10.1.1.a.2 The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

10.1.1.b The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

10.1.2 Recordkeeping. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of Section 6.4

except for the record keeping requirements in Sections 6.4.1.a, 6.4.1.c, 6.4.1.d and 6.4.4.

10.1.3 Accumulation Time; Contingency Plan and Emergency Procedures. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

10.1.3.a The quantity of waste accumulated on site never exceeds 6000 kilograms.

10.1.3.b The generator complies with the requirements of Section 6.3.5.a.1 except the generator need not comply with 40 C.F.R. 265.176.

10.1.3.c The generator complies with the requirements of Sections 6.3.5.a.2 and 6.3.5.a.3 and the requirements of 40 C.F.R. 265 Subpart C; and

10.1.3.d The generator complies with the following requirements.

10.1.3.d.1 At all times there must be at least one employee either on the premises or on call (i.e. available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph 10.1.3.d.4 of this section. This employee is the emergency coordinator.

10.1.3.d.2 The generator must post the following information next to the telephone:

10.1.3.d.2.A The name and telephone number of the emergency coordinator;

10.1.3.d.2.B Location of fire extinguishers and spill control material, and, if present, fire alarm; and

10.1.3.d.2.C The telephone number of the fire department, unless the facility has a direct alarm.

10.1.3.d.3 The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

10.1.3.d.4 The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

10.1.3.d.4.A In the event of a fire, call the fire department or

attempt to extinguish it using a fire extinguisher;

10.1.3.d.4.B In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

10.1.3.d.4.C In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

10.1.2.d.4.C.i The name, address, and U.S. EPA identification number of the generator;

10.1.3.d.4.C.ii Date, time and type of incident (e.g., spill or fire);

10.1.3.d.4.C.iii Quantity and type of hazardous waste involved in the incident;

10.1.3.d.4.C.iv Extent of injuries, if any; and

10.1.3.d.4.C.v Estimated quantity and disposition of recovered materials, if any.

10.1.4 Extended Accumulation Time. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of Section 10.1.3.

10.1.4 Small Quantity Generator Storage Facilities. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Section 8 of these regulations and 40 C.F.R. Part 265 and the permit requirements of Section 11 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the chief if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An

extension of up to 30 days may be granted at the discretion of the Chief on a case-by-case basis. Section 11. Hazardous Waste Permitting Program.

10.2 Special requirements for hazardous wastes generated by conditionally exempt small quantity generators.

10.2.1 A generator is conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

10.2.2 Except for those wastes identified in Paragraphs 10.2.5, 10.2.7 and 10.2.10, of these regulations, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Sections 6, 8, 9 and 11 of these regulations and 40 C.F.R. Part 265, provided the generator complies with the requirements of paragraphs 10.2.6, 10.2.7 and 10.2.10.

10.2.3 Hazardous waste that is not subject to regulation or that is subject only to Sections 6.1.1, 6.1.2, 6.4.1.c and 6.4.2 of these regulations is not included in the quantity determinations of this section and Sections 6, 8, 9, and 11 of these regulations and 40 C.F.R. part 265 and is not subject to any of the requirements of those sections or part. Hazardous waste that is subject to the requirements of Sections 3.1.5(b) and (c) and 9.3, 9.4 and 9.6 is included in the quantity determination of all provisions of these regulations.

10.2.4 In determining quantity of hazardous wastes generated a generator need not include:

10.2.4.a Hazardous waste when it is removed from on-site storage; or

10.2.4.b Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste so long as the hazardous that is treated was counted once; or

10.2.4.c Spent materials that are generated, reclaimed and subsequently reused onsite so long as such spent materials have been counted once.

10.2.5 Acutely Hazardous Wastes. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of acute hazardous wastes are fully subject to these regulations.

10.2.5.a A total of one kilogram of acute hazardous waste listed in 3.4.4(e).

10.2.5.b A total of 100 kilograms of any residue or contaminated

soil, waste, or other debris resulting from the cleanup of a spill into or on any land or water of any acute hazardous wastes listed in 3.4.4(e).

10.2.6 Accumulation of Hazardous Waste in Quantities Greater Than Small Quantity Amounts. A conditionally exempt small quantity generator may accumulate hazardous waste on site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste or his acutely hazardous wastes in quantities greater than those set forth in paragraphs 10.2.5.a. and b. of this section all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to these regulations. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes which are not acutely hazardous, all of those accumulated wastes are subject to regulation under the special provisions of Section 10.1 applicable to generators between 100 kg and 1000 kg of hazardous waste in a calendar month. The time period of Section 10.1.3 for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes exceed the applicable exclusion level for acutely hazardous wastes or when the accumulated wastes exceeds 1000 kilograms for hazardous wastes not acutely hazardous.

10.2.7 Exclusion from Regulation. In order for hazardous waste generated by a conditionally exempt small quantity generator generating less than 100 kilograms of hazardous wastes per month or less than or equal to the quantities of acutely hazardous wastes set forth in Section 10.2.5 to be excluded from full regulation under this section, the generator must comply with the following requirements.

10.2.7.a Sections 4 and 6.1.1 of these regulations.

10.2.7.b If he stores his hazardous waste on-site, store it in compliance with the requirements of paragraph 10.2.6 of this section;

10.2.7.c Establish and maintain on-site a written record specifying the quantity and types of hazardous wastes disposed of, the dates the wastes were transported off-site, and the final disposition of the wastes; and (Comment: This recordkeeping requirement is only applicable to manufacturing facilities. Non-manufacturing facilities such as schools, servicestations, etc. are not required to comply with this subsection.)

10.2.7.d Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

10.2.7.d.1 Permitted under 40 C.F.R. Part 270 of the federal code;

10.2.7.d.2 In interim status under 40 C.F.R. Parts 270 and 265 or 20-5E-10 of the West Virginia Code;

10.2.7.d.3.A Permitted by this State under Section 11 of these regulations;

10.2.7.d.4 Authorized to manage hazardous waste by a state with a hazardous waste program approved under 40 C.F.R. Part 271;

10.2.7.d.5 A facility which:

10.2.7.d.6 Permitted, licensed, or registered by a State other than West Virginia to manage municipal or industrial solid waste; or

10.2.7.d.6.A. Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

10.2.7.d.6.B. Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

10.2.8 Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Section 3.3.

10.2.9 If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

10.2.10 If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Section 9.5 of these regulations if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

11.1 Scope of the Hazardous Waste Management Permit Requirements.

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11.1.2 Specific Exclusions (Amended effective May 1, 1987)

The following are not required to obtain a hazardous waste management permit;

11.1.2.a Generators who accumulate hazardous waste on site for less than the time periods provided in Sections 6.3.5.a, 10.2.2 and 10.2.3.

11.1.2.b Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 6.5.2.

11.1.2.c Persons who own or operate facilities operated solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this section by Sections 3.1.3 or ~~3.4.4~~ 10.

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11.2.4 Existing Hazardous Waste Management Facilities. (Amended effective May 1, 1987)

11.2.4.a.1 Not later than thirty (30) days from the effective date of these regulations, all owners and operators of existing hazardous waste treatment, storage and disposal facilities shall submit Part A (See Section 11.4) of their permit application to the Chief or a copy of Part A if it was already submitted to EPA.

11.2.4.a.2 For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores or disposes of these wastes the Part A or a copy thereof shall be submitted not later than 30 days from the effective date of these regulations or by March 24, 1987, whichever is later.

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11.3 Interim Status.

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11.3.3 Changes During Interim Status (11.3.3.d amended effective May 1, 1987)

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11.3.3.d Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than ninety (90) days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with all applicable financial requirements, until the new owner or operator has demonstrated to the Chief that it is complying with such financial requirements. The new owner or operator must demonstrate compliance with applicable financial requirements within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Chief by the new owner or operator of compliance with the financial requirements, the Chief shall notify the old owner or operator in writing that it no longer needs to comply with those requirements as of the date of demonstration.

All other interim status duties are transferred effectively immediately upon the date of the change of ownership or operational control of the facility.

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11.5 Contents of Part B (§11.5.1.o and 11.5.1.p amended effective May 1, 1987)

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11.5.1.o For existing facilities documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 15.1. For hazardous waste disposal units that have been closed, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 15.1 and 15.4.

11.5.1.p The most recent closure cost estimate for the facility prepared in accordance with Section 13 plus a copy of the financial assurance mechanism adopted in compliance with Section 13. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of Part B.

11.5.1.q Where applicable, the most recent post-closure estimates for the facility prepared in accordance with Section 13 plus a copy of the financial assurance mechanism adopted in compliance with Section 13. For a new facility a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of Part B.

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11.20 Minor Modification of Permits (§11.20.g amended effective May 1, 1987).

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11.20.g Change of ownership: Allow for a change in ownership or operational control of a facility where the Chief determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Chief. Changes in the ownership or operational control of the facility may be made if the new owner or operator submits a revised application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of Section 13 of these

regulations, until the new owner or operator has demonstrated to the Chief that he is complying with all the requirements of that section. The new owner or operator must demonstrate compliance with Section 13 of these regulations within six months of the date of change in the ownership or operational control of the facility. Upon demonstration to the Chief by the new owner or operator of compliance with Section 13 of these regulations, the Chief shall notify the old owner or operator in writing that he no longer needs to comply with Section 13 of these regulations as of the date of demonstration.

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Section 13. Financial Requirements (Repromulgated effective May 1, 1987)

The Director hereby adopts and incorporates by reference 40 C.F.R. parts 264 and 265, Subparts H, as published in the Code of Federal Regulations on the effective date of these regulations with the following modifications: Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 264.147(f), 265.147(f) shall be amended by the addition of the following paragraph:

"Notwithstanding the above, the Director may disallow the use of this test on the basis of information that the owner or operator has violated or is in violation of any state or federal law or regulation pertaining to environmental protection. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance."

Sections 264.149, 265.149, 264.150 and 265.150 shall be deleted.

Wherever the term Administrator or Regional Administrator is used, the term shall have the meaning of the Director of the Department of Natural Resources.

Wherever the term Environmental Protection Agency or EPA is used, the term shall have the meaning of the West Virginia Department of Natural Resources.

40 C.F.R. Sections 264.147(b)(4)(iii) and 265.147(b)(4)(iii) shall be amended to read: "All other owners or operators, 30 days after the effective date of these regulations."

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Section 15. Deed and Lease Disclosures; Approval for Land Disturbance (Amended effective May 1, 1987)

15.1 Notice in Deed to Property

15.1a The owner of the property on which a hazardous waste management facility is located must record, in accordance with State law, a notation on the deed or least to the facility property -- or on some other instrument which is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

15.1.a.1 The land has been used to manage hazardous wastes,

15.1.a.2 Its use is restricted under Section 8.6.7(c),

~~15.1.a.3 The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility have been filed with the Chief.~~

~~15.1.b Upon actual transfer of property which contains hazardous wastes that have been stored, treated or disposed of, the previous owner shall notify the Chief, in writing, of such transfer, except if such wastes have been properly removed as outlined in Section 15.4(e).~~

~~15.1.c If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located obtained approval by the Chief to remove the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examined during title search, or he may add a notation to the deed or instrument indicating the removal of the waste. (Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can be demonstrated that any waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.)~~

15.2 Approval for Land Disturbance

15.2.a Before the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located, engages in filling, grading, excavating, building, drilling, or mining on the property, or engaging in any activity which will disturb the closure of the said area, the Chief of the Division of Water Resources must be notified and the owner or operator must obtain authorization prior to commencing such activity.

~~15.2.b If the owner or operator removes the waste from the property, a notation may be added to the deed or least indicating such removal. (Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can be demonstrated that any waste removed is not a hazardous waste, becomes a generator of hazardous waste~~

and must manage it in accordance with all applicable requirements.)

45.3 Notice to Local Land Authority

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Chief a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 8.6.7(e). In addition, the owner or operator must submit to the local zoning authority or the authority with jurisdiction over local land use and to the Chief a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the local zoning authority or the authority with jurisdiction over local land use and to the Chief.

45.4 Other Requirements

Nothing contained herein shall relieve any person from complying with the requirements of deed and lease disclosures set forth in 29-5E-29.

15.3 Survey Plat. No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Chief a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with Section 8.6.7.c of these regulations.

15.4 Post-Closure Notices:

15.4.a No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Chief a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

15.4.b Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

15.4.b.1 Record, in accordance with State law, a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity notify any potential purchaser of the property that:

15.4.b.1.i The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section 15.3 and 15.4.a of these regulations have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Chief, and

15.4.b.2 Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph 15.2.b.1 of this section, including a copy of the document in which the notation has been placed to the Chief.

15.4.c If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Section 11 of these regulations. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 8.6.7.c of these regulations. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of these regulations. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Chief approve either;

15.4.c.1 The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

15.4.c.2 The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

15.5 Other Requirements.

Nothing contained herein shall relieve any person from complying with the requirements on deed and lease disclosures set forth in 20-5E-20.