



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
Governor

March 5, 1987

RONALD R. POTESTA
Director

ROBERT K. PARSONS
Deputy Director

NOTICE OF RULE MODIFICATION

LEGISLATIVE RULE: Hazardous Waste Management Regulations

The attached modification has been incorporated into the above titled rule and filed in the Office of the Secretary of State on March 5, 1987.

for Robert K. Parsons Deputy Director
Ronald R. Potesta
Director

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SECRETARY OF STATE



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RONALD R. POTESTA
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Deputy Director

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

Re: Filing of Rule Modification
(Hazardous Waste Management
Regulations, Series 35) by the
Department of Natural Resources

Dear Mr. Hechler:

Enclosed please find for your filing a copy of modifications to the agency approved amendments to the legislative rules of the Department of Natural Resources filed in your office on March 3, 1987.

If you have any questions, please contact Mr. Ron Shipley, Special Assistant to the Director, at 348-2761.

Sincerely,

for Robert K. Parsons, Deputy Director
Ronald R. Potesta
Director

RRP/jhb

Enclosures

cc: Legislative Rule-Making Review Committee
State Hazardous Waste Management Agencies

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PREAMBLE TO MODIFICATIONS TO APPROVED LEGISLATIVE RULES
HAZARDOUS WASTE MANAGEMENT REGULATIONS

Program: Hazardous Waste Management

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

Authority: West Virginia Code, Chapter 20, Article 5E, Section 6

Action: Modification of approved rules

Summary: The Department of Natural Resources (DNR) is modifying its approved regulations designed to be consistent and equivalent with the regulations of the United States Environmental Protection Agency (EPA). The Department proposed these regulations on January 7, 1987. The proposed changes primarily contained regulations comparable to the non-HSWA "Cluster 2" regulations. Cluster 2 regulations contain all RCRA regulations promulgated between July 1, 1985 and June 30, 1986. These regulations must be adopted by the State for the West Virginia hazardous waste program by June 30, 1987. In addition to the Cluster 2 regulations, the Department also proposed to adopt regulations governing the requirements of small quantity generators, as well as other miscellaneous changes. Approved rules were filed on March 3, 1986.

Contact: Ron Shipley, Special Assistant to the Director, Director's Office of Regulatory Affairs, Room 842, 1800 Washington Street, East, Charleston, WV 25305, telephone (304) 348-2761.

Supplemental Information: The modified rule makes one change to the approved regulations pertaining to the "time of closure" (Section 8.6.4.c). For convenience, we are reproducing the entire preamble and approved regulations as originally filed with only the preamble discussion and regulation pertaining to the time of closure modified. We have modified Section 8.6.4.c to eliminate conditions which are unnecessary to protect human health and the environment and thus did not add significant protections.

The proposed regulations elicited comments from five commenters. Most comments centered around (1) typographical changes, (2) issues of identity or equivalency with the federal rules, or (3) the impact of the proposed rules upon a particular facility. The Department appreciates receiving all of the comments and responds to the substantive comments as follows:

Section 3.4.2 Listing of Hazardous Waste from Nonspecific Sources

The Department received two comments concerning this section. One dealt with our inadvertently not specifying industrial sources which were previously specified as (3) and (4). We have reinserted those two industrial sources. The second comment dealt with specifying the

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effective date of the proposed changes. The commenter noted that we were specifying the effective date for waste K061 rather than K062. We have corrected this effective date provision by not only specifying the waste as K062 but also by moving the effective date provision for this listed waste to Section 3.4.3.

Section 3.4.3 Hazardous Waste from Specific Sources

Two comments were also received concerning this section. Both dealt with the proper wording of the industry designated in this listing. The first comment suggested that the Department use the disjunctive word "or" rather than the word "and" in describing the "iron and steel" industry. The second comment informed the Department that the EPA corrected this listing in a September 22, 1986 rulemaking designed to restrict the listing to wastes generated only by manufacturing facilities in SIC groups 331 and 332. This commenter suggested that we adopt the later EPA rule. We have adopted this latter suggestion and therefore did not need to adopt the former suggestion.

Section 3.4.4.f (Listing of Discarded Toxic Chemical Products, etc.)

One commenter pointed out that the reference to section 10.1.a should be to 10.2.1. We made this change.

Section 6.1.a.1 Purpose, Scope and Applicability of Generator Standards

One commenter suggested that the reference to Section 10.1 in this subsection was inappropriate because it was not broad enough to cover exemptions in other subsections of Section 10.

Section 6.1.a.1 deals with generators who produce more than 100 kilograms of hazardous waste per month. The only subsection of Section 10 which needs to be referenced is Section 10.1. Section 10.2 deals with generators who produce less than 100 kilograms of hazardous waste per month.

Section 8.1.5 Purpose and Scope of TSD Facility Standards

One commenter pointed out that not all of the requirements of newly added Section 10 or existing Section 3.1.5 would be applicable to generators accumulating hazardous waste and therefore urged that we include the word "applicable" in this subsection. Although we did not check this claim, we do not intend that inapplicable provisions be applicable to such generators; thus we adopted this suggestion.

Section 8.6.3.a.2 Closure Plan; Approval by the Chief

Two comments were received by the Department on this provision. The first comment suggested that the language used was redundant since both the initial language of the provision and the last clause of that provision stated that it applied "until closure is completed and certified." We concurred and deleted the clause at the end of the sentence.

The second comment pointed out that the Department did not include the first sentence of the federal regulation requiring the Regional Administrator (Chief) to "insure that the approved closure plan is consistent" with specified sections of the regulations.

The Department intentionally left out that language when we proposed the rule reasoning that the statutory provision of §20-5E-8(a) of the West Virginia Code confers the same responsibility on the Chief. That section of the Hazardous Waste Management Act (HWMA) states:

No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the chief for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the chief may direct if the application, together with all supporting information and data and other evidence establishes that the construction, modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules and regulations promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the chief shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of section seven of this article, and which need not be regulated in order for the chief to perform his duties under this article. (emphasis supplied)

Based on the comment we reviewed our decision and have decided to add similar language designed to be identical with the federal language. Several issues are involved in this decision. They center around why the language is needed and how the Chief's responsibility coincides with other agency responsibilities alluded to in the proviso to §20-5E-8(a) of the West Virginia Code.

In order for the State to operate the hazardous waste management program in lieu of the federal program, we must adopt statutory or regulatory provisions which are consistent and equivalent to the federal program. The federal hazardous waste management statute, RCRA, vests the permitting and enforcement authority in the Administrator of the United States Environmental Protection Agency. The Administrator has, in turn, delegated responsibility for specific activities to the various EPA Regional Administrators (RA) across the country. Thus it is sometimes necessary for the Administrator to direct the RAs on the manner in which they should exercise the powers which have been delegated to them.

The West Virginia statute is different. Authority to operate the

hazardous waste management program was not concentrated in a single individual or agency. The Department of Natural Resources was designated as the lead agency for the program and its Director was given the responsibility to promulgate regulations. Other agencies and individuals, however, were granted rulemaking authority for their agencies as well as permitting authority. For example, the Chief of the Division of Water Resources was granted authority to issue permits to hazardous waste treatment, storage, and disposal facilities as quoted above.

The Director's rulemaking authority includes, among other things, establishing standards for the operation of treatment, storage, and disposal facilities; compliance with the permitting provisions of Section 8 of Article 5E; and procedures and requirements for the submission and approval of a closure plan applicable to owners and operators of treatment, storage, and disposal facilities. The Director also has authority to promulgate rules and regulations "specifying the terms and conditions under which the Chief shall issue, modify, suspend, revoke or deny permits required by this article." Consequently, although the Chief has authority to issue permits, the Director has the authority to specify conditions which will be in those permits provided he establishes those conditions through the rulemaking process which allows for public comment.

Thus the HWMA delegates authority differently than the federal statute and fixes the Chief's responsibility to issue permits only if they are in compliance with the HWMA and the Director's regulations. Consequently, a state regulation which corresponds to the federal language may not be necessary since the Legislature has already accomplished the delegation contained in the federal regulation.

The federal rule, however, requires that an RA's approval of the closure plan ensure compliance with performance standards in regulations which, under the West Virginia regulatory scheme, are promulgated by agencies other than the DNR. For example, 40 C.F.R. §264.351 relates to closure of incinerators -- an area regulated by the West Virginia Air Pollution Control Commission (WVAPCC). In addition, ensuring compliance with the provisions of 40 C.F.R. §264.90 et seq. brings into play the groundwater protection standards of the Water Resources Board. It is therefore necessary for the Director to be specific as to the regulations which the Chief must consider when granting closure approval.

Including such a provision raises other questions concerning the overlap of authority between the several different agencies. While enacting a regulatory scheme involving five State agencies, the Legislature included admonitions to the various agencies that they should "avoid duplication" to the maximum extent practicable and, in this specific section, a direct prohibition against the Chief issuing permits regulating those aspects of hazardous waste treatment, storage and disposal facilities "which are the subject of the permitting or licensing requirements" of other agencies.

The groundwater protection standards of the Water Resources Board are not subject to permitting and licensing by the Board, since the Board does not have permitting authority. Rather these standards are made applicable to TSD facilities through permitting by the Chief. The closure provisions contained in 40 C.F.R. §264.351, however, are different since they pertain to incinerators which are permitted by the WVAPCC (See West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01). However, the WVAPCC does not review closure plans for the incinerators; the DNR carries out this program function.

Thus, we have adopted the suggestion and, for clarity and completeness, have included a reference to all state provisions paralleling this federal provision.

Section 8.6.3.c.3 Permit Modifications for Closure Plans

One commenter pointed out that the Department misplaced the phrase "waste piles" in the middle of the section and also sought clarifying language concerning submission of an amended closure plan. We have adopted the suggested clarification. The phrase waste pile, however, is correct in this section and we offer the following explanation of its retention.

This section is designed to parallel 40 C.F.R. §264.112(c)(3) which deals with unexpected events impacting on the closures of all TSD facilities. It also contains specific provisions relating to both surface impoundments and waste piles.

Sections 8.6.4.b And 8.6.4.c (Time of Closure)

The proposed regulations add the word "hazardous" to this section so that a facility must close within one hundred and eighty days of the final receipt of hazardous waste rather than one hundred and eighty days after the final receipt of waste. EPA considers this change to be a clarification of an existing regulation rather than a substantive change of any requirement.

Three commenters made suggestions regarding this section. One commenter informed the Department that the change to this provision would severely impact the operation of its publicly owned treatment works (POTW). Currently, this commenter sends sludge from its POTW to a surface impoundment that does not plan to receive hazardous waste after October 30, 1988. Thus, the proposed rule would make it emphatically clear that the surface impoundment could not remain open to receive its non-hazardous sludge.

Another commenter suggested that the DNR delay rulemaking on this issue since the parallel EPA regulatory provision (40 C.F.R. §264.113) is being appealed to the United States Circuit Court of Appeals and settlement negotiations are underway.

Finally, the owner of the surface impoundment impacted by this

regulation urged that the Department allow its facility to remain open to receive wastes by placing specific operating and closure requirements on the facility.

The EPA's rationale for adopting its clarifying rule was based on several points. First, they considered the change to be merely a clarification since the closure rule adopted a two-step process that called for removal or disposal of all hazardous waste from the facility within 90 days after receipt of hazardous waste and compliance with the closure performance standards within 180 days. In essence, the reference made to waste rather than hazardous waste in the 180 day provision was inadvertent and should have been construed to mean hazardous waste. Thus, such clarification was made merely for consistency.

Second, EPA claims that this nonsubstantive change is consistent with the "two-part 'prevention and care' system whose goal is to minimize formation of leachate and migration of leachate to the adjacent subsurface soil, ground water, or surface water."

Under the EPA regulatory scheme the goal of minimizing the formation and migration of leachate is achieved through performance standards for a surface impoundment which include the use of a liner, the removal or solidification of the hazardous waste and the placement of a final cover (cap) on top of the surface impoundment to minimize percolation of liquids such as rainwater into the unit. This cap, in the EPA's opinion, will also: (a) prevent the filling of the unit with leachate and overflowing; (b) protect surface water from runoff, and (c) discourage direct access to the hazardous waste.

Finally, EPA claims that placement of the cap will reduce leachate generation in the case of units which do not contain liners, and that, since even lined units will "eventually leak," the cap is "critical for the long term control of the unit." The EPA also notes that it is often not known whether the unit is leaking until it is detected by groundwater monitoring and, therefore, the cap should be applied as soon as possible.

It is axiomatic that in order for a state to retain authorization, its hazardous waste management program must be consistent, equivalent, and no less stringent than the federal program. Consistency of programs is judged by the provisions of 40 C.F.R. §270.4. Equivalency of the state and federal programs is judged by the state's Attorney General and EPA by comparing specific provisions of the programs. However, no principles have been established concerning how to determine whether a state's program, which adopts provisions similar to the federal requirements, is equivalent to the federal provision.

Deciding whether a state regulatory provision is no less stringent than its federal counterpart is also a judgment made by EPA which does not have any guiding principles except to recognize that state exemptions to federal requirements cannot be mandatory; rather, they must be discretionarily given by the state authority.

Thus, in deciding upon approved regulations, the Department must consider not only the comments received but also this scheme of federal-state relationships.

The Department recognizes the dilemma faced by the owner and users of this necessary facility. We have adopted a new Section 8.6.4.c which places stringent provisions on any surface impoundment which continues to remain open to receive wastes after its final receipt of hazardous wastes.

In our opinion, the Department's approved regulation is consistent, equivalent and no less stringent than the federal provision even though it allows the surface impoundment to remain open after receipt of the final volume of hazardous waste. The Department is hopeful that the state Office of the Attorney General and the EPA will judge equivalency and stringency in a manner which considers the environmental and health protections achieved by both programs rather than an analysis which merely considers that the State program allows the facility to remain in operation.

The rule that is being approved today will allow a hazardous waste surface impoundment which ceases to receive hazardous waste prior to November 8, 1988 to remain in operation after final receipt of hazardous waste if certain conditions are met. The Department is placing the time limitation for cessation of receiving hazardous waste for several reasons. The variance is a mechanism to address a change in the regulations. Owners and operators, however, must not be given an unlimited amount of time to make adjustments to their waste disposal practices. Secondly, by selecting a date of November 8, 1988 we are limiting this variance to facilities which are or could be in "interim status" (i.e. facilities which, by virtue of their existence prior to enactment of the law, are not required to be in compliance with the full requirements of the law). In this way facilities which are caught in the transition period are not unduly disrupted, provided the Department is assured that the facility will not harm health and environmental concerns. This philosophy is consistent with the federal program. Thirdly, by limiting this variance process to facilities that are or could be in interim status, the Department's variance process applies to facilities which do not fit into the same "prevention and care" regulatory scheme EPA describes in its preamble. Thus the State can adequately demonstrate that its program is equivalent and no less stringent than the federal program.

The first condition is that the facility will close, in accordance with an approved closure plan, within 180 days after final receipt of its last volume of waste. Other than applying this provision to the receipt of waste, this language is identical to the EPA provision which relates to final receipt of hazardous waste.

Second, the owner or operator of the surface impoundment must have a hazardous waste permit for the unit which requires compliance with all applicable State regulatory provisions as though it were an operating hazardous waste surface impoundment. This requirement makes the

provisions of the State's current program applicable to such unit even though it is no longer receiving hazardous waste. The State's current operating standards are more stringent than the EPA program in many ways, especially as the program protects against off-site migration of groundwater.

The State program establishes a groundwater protection standard which triggers corrective action to prevent migration of groundwater whenever a "statistically significant increase" of a hazardous constituent is discovered in the groundwater. The EPA program, on the other hand, allows the EPA to specify "alternate concentration limits" which could allow contamination of the groundwater and still not require corrective action. Thus the State program requires that corrective action designed to prevent migration of contaminated groundwater must always be taken whenever a "statistically significant increase" is detected. Considered together, the first two requirements mean that the State program will require more stringent groundwater protection standards for a longer period of time at the unit than the EPA program requires.

The third condition which the facility must meet is that the owner or operator must institute procedures to minimize the amount of head created by any liquid in the surface impoundment. When considered together with permit requirements concerning maintenance of adequate freeboard to prevent overtopping, these provisions will also prevent overflow and minimize the pressure which may force liquid out of the unit and into the groundwater.

Ensuring that the facility is actually in compliance with all applicable groundwater monitoring requirements generally applicable to this facility means that the unit will have in place an adequate system for detecting whether the impoundment is leaking. This creates an additional incentive for the owner or operator to operate the facility in compliance with critical provisions of the program.

The fourth condition is that the owner or operator must make a demonstration to the Chief sufficient to show that no adverse impact to human health or to the environment will result from the continued operation, closure, and post closure periods for the unit provided that the owner or operator continues to comply with the approved corrective action program. Such a demonstration requires the same elements as the EPA would require for a facility to be exempt from corrective action (i.e. to receive an alternate concentration limit). In this manner the Department places into effect an extra layer of protection. Under the Department's policy, corrective action must be taken to keep the leak from migrating off-site. This fourth condition, however requires that the Chief agree that the unit is in a location where even if off-site migration did occur, such migration would not be harmful.

As an alternative to this demonstration, the owner or operator could demonstrate that the unit has a synthetic liner which does not show evidence of leaking or a liner of compacted material with a low permeability, or the owner or operator can make a demonstration that the unit has design and operating procedures which, together with its

location characteristics, will prevent the migration of hazardous constituents into the groundwater or surface water beyond the point of compliance. This is the same demonstration that the HSWA would allow a facility to make to be exempted from the double liner requirements. The Department is allowing this condition as an alternative for the fourth condition because it is directed at the same goal as that condition -- preventing adverse impacts to waters from a surface impoundment.

We believe that these conditions implement provisions that are equivalent to and no less stringent than the EPA's requirements for the closure of a hazardous waste surface impoundment.

Allowing the unit to remain open as a waste management unit regulated by the Hazardous Waste Management Act means that the unit will be governed by the State's program for a period of time which is longer than the coverage that unit would receive under the less stringent federal program. For example, if the facility ceases to receive hazardous waste under the federal program, it would be covered by the federal program for thirty years under the post-closure care period. Under the State's scheme, a facility which remained open to receive waste would be covered for the entire time it received waste and then for the thirty year post-closure care period. Due to the relatively slow rates of lateral migration in groundwater, this extra time may be significant for detecting leakage from the unit.

Not only is the regulatory time lengthened for the facility but the facility will also be regulated as an operating unit rather than treated as a closed unit. This means that the facility will be subjected to more stringent regulations than a closed unit as well as more frequent inspections and attention.

Comparing the State's regulatory scenario with the federal "prevention and care" regulatory scenario discussed by the EPA in its preamble is difficult since the federal regulatory scenario does not apply to "interim status" units. Indeed the federal program allows interim status hazardous waste management units to close without either the liners or the leachate collection system which the EPA discussed as a part of their regulatory scenario. The State program plugs this hole in the federal regulatory scheme more effectively than just requiring a cap to "minimize" leachate formation by requiring corrective action and a demonstration of no adverse impact. In addition, the cap which the State will require for this facility upon closure is the same as that required from any permitted facility and is more stringent than the federal cap required for interim status units.

The State variance process is not mandatorily applied. The Chief can reject the request for the variance if the owner's or operator's demonstration does not convince the Chief that the continued operation of the unit will not have an "adverse impact to human health and the environment." This is the same demonstration that EPA requires to allow a leaking facility to continue operation without corrective action. The State program, of course, would not allow a leaking

facility to continue without corrective action. Rather, the demonstration is used by the State as a test to ensure that the unit is located in an area where harm could not occur to human health or the environment if a leak did occur, rather than a test occurring after a leak has occurred. Furthermore, it is only one basis for allowing continued operation of the unit as a waste disposal unit.

If the owner or operator chooses to seek a variance from the time of closure rule based on the liner requirement, the Chief must also review the documentation and approve it before the variance is granted. We should note that an owner or operator seeking the variance on these grounds must meet the same requirements as a facility seeking a variance from the "minimum technology requirements" under the HSWA and thus could remain open to receive hazardous waste under the federal program without installing a double liner.

Section 9.4.1.b.2 Hazardous Wastes Burned for Energy Recovery

One commenter pointed out that the exemption contained in this section is intended to apply only to "conditionally exempt" small quantity generators and therefore suggested that we add that phrase into this provision. We have done so.

Section 10.2.7 Small Quantity Generator Exclusion From Regulation

One commenter questioned the scope of the phrase "manufacturing facilities" in the parenthetical comment contained in this section. We have included a reference to the SIC Manual for clarity.

Section 15.1.b Notification of Transfer of Property Containing Hazardous Waste

One commenter urged that we retain this provision since it was the only place where the State required such notice. After analysis we decided to keep this provision rather than delete it as originally proposed.

Section 15.4.c.1 Ability to Remove Notation on Deed

A commenter urged us to not allow removal of the notation in the deed that hazardous waste was disposed of at the site, even if the hazardous waste was properly removed. We have deleted that ability so that the only option is for the owner or operator to add the notation that hazardous wastes have been removed from this site. In that way all future owners can be notified that hazardous waste was disposed of at that site at some point in time.

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 Section 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" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

"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 (including its associated piping and underlying containment system), and a container storage area. A container alone does not constitute a unit; a 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 system), a landfill cell, a surface impoundment, a 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 one thousand (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 Waste

* * * * *

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.

3.1.4b-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) and, if applicable (j) of this section.

3.1.4c-Hazardous waste that is recycled and that is excluded from regulation under Sections 3.1.5(a)(2)(iii) and (v), (a)(3), or 9.4 is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is

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subject to the requirements of Sections 3.4.5(b) and (e) and 9.3, 9.4, and 9.6 is included in the quantity determination 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 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up 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 clean-up 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 these 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 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;

3.1.4.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,---Nonmanufacturing--facilities such-as-schools,-service-stations,-etc,-are-not-required-to-comply-with this-subsection.)

3.1.4.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:

3.1.4.g.4.i-Permitted-under-40-C.F.R., Part-270-of-the-federal-code;

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

3.1.4.g.4.iii-Permitted-by-this-State--under--Section--14,00--of--these regulations;

3.1.4.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.)

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

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

3.1.4.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--of--this section--may--be--mixed--with--nonhazardous-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-3.1.3.

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 on 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 Hazardous Waste 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:

3.1.4.j.3-The recordkeeping requirements of Section 6.4.1(a), (e) and (d) and 6.4.4 and

3.1.4.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 3.1.4e Section 10.2.3 of these regulations.

* * * * *

3.4 Lists of Hazardous Wastes

* * * * *

3.4.1.d The following hazardous wastes listed in Section 3.4.2 or 3.4.3 of these regulations are subject to the exclusion limits for acutely hazardous wastes established in Section 3.1.4 Section 10.2.5 of these regulations: (Reserved)

* * * * *

3.4.2 Hazardous Waste from Nonspecific Sources (F006 amended effective May 1, 1987)

<u>Hazardous Waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum 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 (K062 amended effective May 1, 1987)

<u>Hazardous Waste No.</u>	<u>Hazardous Waste</u>	<u>Hazard Code</u>
K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K062	Spent pickle liquor from generated by steel finishing operations of facilities within the iron and steel industry (SIC Groups 331 and 332)	(C,T)
	* * * * *	

3.4.4.e The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Sections 3.4.4.a through 3.4.4.d of these regulations, are identified as acute hazardous wastes (H) and are subject to be the small quantity exclusion defined in 3-04-04(a) Section 10.2.5 of these regulations.

* * * * *

3.4.4.f The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Sections 3.4.4.a through 3.4.4.d of these regulations,

are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ~~Section--3.1.4~~ Section 10.2.1 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 ~~3.1.4 and 3.1.5~~ Sections 3.1.5 and 10 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 or Water or Both (Repromulgated effective May 1, 1987)

5.1 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.

5.2 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 (Section 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 one hundred (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 ~~3.1.4.e~~ Section 10.1.5 of these regulations are subject to all sections of these regulations, except as otherwise provided in Sections 6 and 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 Section 3.1.4(j) of these~~

regulations.

* * * * *

6.3.5 Accumulation Time (Section 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 of these regulations 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 thirty (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 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 A generator accumulating waste on site in compliance with Section 6.3.5 of these regulations provided the applicable requirements of Sections 3.1.4 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 3.1.4~~ Section 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 of these regulations provides otherwise:

8.6.1.a Sections 8.6.2, 8.6.8, 15.4 and 15.3 Sections 8.6.2 through 8.6.6, 15.3, and 15.4 of these regulations (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, 15.4 and 15.3 Sections 8.6.7 through 8.6.9, 15.3, and 15.4 of these regulations (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 of these regulations.

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;

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, contaminated 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 8.6.2 of these regulations including, but not limited to, the requirements of Sections 8.7.10, 8.8.5, 8.9.7, 8.10.9, 8.11.11, and 8.12.11 of these regulations and West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01.

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 11.5.4 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 point 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, 8.7.10, 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, 8.7.10, 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 of these regulations 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 The Chief's approval of the plan must ensure that the approved closure plan is consistent with Sections 8.6.2 through 8.6.6 of these regulations, the applicable requirements of Sections 8.7.10, 8.8.5, 8.9.7, 8.9.10, 8.10.9, 8.11.11, 8.12.11, 8.13, and 13 of these regulations, and the requirements of West Virginia Administrative Regulations, Air Pollution Control Commission, Series 25, Section 24.01. 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).

8.6.3.b Content of Plan. The plan must identify steps necessary to perform partial or final closure, or both, 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 of these regulations; and

8.6.3.b.2 A description of how final closure of the facility will be conducted in accordance with Section 8.6.2 of these regulations. 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 on-site 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 runoff 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 the 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 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.A Changes in operating plans or facility design affect the closure plan, or

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

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

8.6.3.c.3.A 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 sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (60) days after an unexpected event has occurred which has affected the closure plan.

8.6.3.c.3.B If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification no later than thirty (30) days after the unexpected event.

8.6.3.c.3.C An owner or operator of a surface impoundment who intends to remove all hazardous waste at closure and who is not otherwise required to prepare a contingent closure plan under Section 8.9.7.c of these regulations must submit an amended closure plan to the Chief no

later than sixty (60) 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 Section 8.11.11 of these regulations, or no later than thirty (30) days from that date if the determination is made during partial or final closure.

8.6.3.c.3.D The owner or operator of a waste pile who intends to remove all hazardous waste at closure must submit an amended closure plan to the Chief no later than sixty (60) 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 Section 8.11.11 of these regulations, or no later than thirty (30) days from that date if the determination is made during partial or final closure.

8.6.3.c.3.E The Chief will approve, disapprove, or modify the amended plan in accordance with the procedures in Section 11 of these regulations. In accordance with Section 11.5.1 of these regulations, 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.2 of these regulations. The owner or operator must submit the modified plan within sixty (60) days of the Chief's request, or within thirty (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 sixty (60) days prior to the date on which he expects to begin closure of a surface impoundment, a waste pile, or a land treatment or landfill unit or the final closure of a facility with such a unit. The owner or operator must notify the Chief in writing at least forty-five (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 thirty (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 (1) 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 that 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 Section 8.6.3.d of these regulations 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 Section 8.6.3 of these regulations 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 site unit or facility, 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 The activities required to comply with this subsection will, of necessity, take longer than ninety (90) days to complete or

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

8.6.4.a.2.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.2.C Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

8.6.4.a.3 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.

~~8.6.4.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 one hundred and eighty (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.1,i~~ 8.6.4.b.1 The partial or final closure activities will,

of necessity, take longer than one hundred and eighty (180) days to complete or

~~8.6.4.a.2.b.4.iii.A~~ 8.6.4.b.2.A The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and

~~8.6.4.a.2.b.4.iii.B~~ 8.6.4.b.2.B There is 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 facility within one year and

~~8.6.4.a.2.b.4.iii.C~~ 8.6.4.b.2.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.b.2~~ 8.6.4.b.3 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 Notwithstanding the provisions of Section 8.6.4.b of these regulations, the owner or operator of a surface impoundment used for disposal of hazardous waste ceasing the receipt of hazardous waste prior to November 8, 1988 need not close such surface impoundment within one hundred and eighty (180) days after receiving the final volume of hazardous waste but may continue to receive waste provided that the owner or operator can satisfy the Chief that the following requirements are or will be met:

8.6.4.c.1 The owner or operator of such surface impoundment will complete closure activities in accordance with the approved closure plan and within one hundred and eighty (180) days after receiving the final volume of waste at the surface impoundment. The Chief may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification of the permit and demonstrates that the closure activities will, of necessity, take longer than one hundred and eighty (180) days to complete; and

8.6.4.c.2 The owner or operator has a hazardous waste management permit with an approved closure plan for such facility requiring compliance with all applicable provisions of these regulations as though it were an operating hazardous waste surface impoundment; and

8.6.4.c.3 The owner or operator institutes approved operating procedures designed to minimize the head created by any liquid in the surface impoundment; and either

8.6.4.c.4 The owner or operator makes a demonstration which is approved by the Chief under Section 8.9.2.f.4.iv of these regulations; or

8.6.4.c.5 The surface impoundment contains a liner which is either:

8.6.4.c.5.A A synthetic liner for which there is no evidence of

leakage; or

8.6.4.c.5.B A liner of compacted material at least three (3) feet thick with a permeability of no more than 1×10^{-7} centimeters per second; or

8.6.4.c.5.C If the owner or operator demonstrates to the Chief and the Chief finds for the surface impoundment that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water beyond the point of compliance at least as effectively as such liners.

8.6.4.d The demonstration referred to in Sections 8.6.4.a, 8.6.4.b, and 8.6.4.c.1 of these regulations must be made as follows:

8.6.4.d.1 The demonstrations in Section 8.6.4.a of these regulations must be made at least thirty (30) days prior to the expiration of the ninety-day period in Section 8.6.4.a of these regulations; and

8.6.4.d.2 The demonstration in Sections 8.6.4.b and 8.6.4.c.1 of these regulations must be made at least thirty (30) days prior to the expiration of the one hundred eighty-day period in Section 8.6.4.b of these regulations.

8.6.5 Disposal or Decontamination of Equipment

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 Section 8.9.7, 8.10.9, 8.11.11, or 8.12.11 of these regulations. By removing any hazardous wastes or hazardous constituents during partial or 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 sixty (60) days of completion of closure of each hazardous waste surface impoundment, waste pile, and land treatment or landfill unit, and within sixty (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 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 Sections 8.6.7 through 8.6.9 and 15.4 of these regulations must begin after the completion of closure of the unit and continue for thirty (30) years after that date and must consist of at least the following:

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

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

8.6.7.a.1.C All applicable post-closure regulations of Sections 8.9, 8.10, 8.11, 8.12, and 8.13 of these regulations.

~~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, 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. For example, 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. For example, 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 the 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 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 of these regulations.

8.6.8 Post-Closure Plan; Amendment of Plan

~~8.6.8.a 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.

8.6.8.b-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.

8.6.8.c-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 a written post-closure plan. In addition, certain surface impoundments from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Section 8.9.7.c of these regulations to have contingent post-closure plan. 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 ninety (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 through 8.6.8 and 15.4 of these regulations. The plan must be submitted with the Part B of the permit application in accordance with Section 11.5.1 of these regulations and will become a condition of the permit.

8.6.8.b For each hazardous waste management unit subject to the requirements of Section 8.6.8 of these regulations, 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.A The integrity of the cap and final cover or other containment systems and

8.6.8.b.2.B The functioning of the monitoring equipment.

8.6.8.b.3 The name, address, and telephone 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 of these regulations 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 sixty (60) days prior to the proposed change in facility design or operation, or no later than sixty (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 of these regulations and owners and operators of waste piles must submit a post-closure plan to the Chief no later than ninety (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 part of the permit.

8.6.8.d.4 The Chief may request modifications to the plan under the conditions described in Section 8.6.8.d.2 of these regulations. The owner or operator must submit the modified plan no later than sixty (60) days after the Chief's request, or no later than ninety (90) days if the unit is a waste pile or a surface impoundment not previously required to prepare a 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 sixty (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 conditionally exempt small quantity generators under the provisions of Section 3.1.4 Section 10 of these regulations.

* * * * *

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

10.1 Except as provided in Sections 10.1.1 through 10.1.5 of these

regulations, hazardous wastes generated by small quantity generators who generate greater than one hundred (100) kilograms but less than one thousand (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 one hundred (100) kilograms but less than one thousand (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 (3) years after termination or expiration of the agreement.

10.1.2 Recordkeeping. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month is exempt from the requirements of Section 6.4 of these regulations except for the recordkeeping requirements in Sections 6.4.1.a, 6.4.1.c, 6.4.1.d and 6.4.4 of these regulations.

10.1.3 Accumulation Time; Contingency Plan and Emergency Procedures. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for one hundred and eighty (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 six thousand (6000) kilograms;

10.1.3.b The generator complies with the requirements of Section 6.3.5.a.1 of these regulations, 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 of these regulations 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 Section 10.1.3.d.4 of these regulations. 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 at (800) 424-8802. The report must include the following information:

10.1.3.d.4.C.i The name, address, and 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 one hundred (100) kilograms but less than one thousand (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 two hundred (200) miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for two hundred and seventy (270) days or less without a permit or without having interim status provided that he complies with the requirements of Section 10.1.3 of these regulations.

10.1.5 Small Quantity Generator Storage Facilities. A generator who generates greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding six thousand (6000) kilograms or accumulates hazardous waste for more than one hundred and eighty (180) days (or for more than two hundred and seventy (270) days if he must transport his waste, or offer his waste for transportation over a distance of two hundred (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 extension to the one hundred eighty-day (or two hundred seventy-day if applicable) period. Such extension may be granted by the Chief if hazardous wastes must remain on-site for longer than one hundred and eighty (180) days (or two hundred and seventy (270) days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty (30) days may be granted at the discretion of the Chief on a case-by-case basis.

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 one hundred (100) kilograms of hazardous waste in that month.

10.2.2 Except for those wastes identified in Sections 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 Sections 10.2.6, 10.2.7, and 10.2.10 of these regulations.

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, 3.1.5.c, 9.3, 9.4, and 9.6 of these regulations 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) or his hazardous waste so long as the hazardous waste that is treated was counted once; or

10.2.4.c Spent materials that are generated, reclaimed and subsequently reused on-site 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 Section 3.4.4.e of these regulations.

10.2.5.b A total of one hundred (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 Section 3.4.4.e of these regulations.

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 one thousand (1000) kilograms of his hazardous wastes or his acutely hazardous wastes in quantities greater than those set forth in Sections 10.2.5.a and 10.2.5.b of these regulations, 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 one thousand (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 of these regulations applicable to generators of between one hundred (100) kilograms and one thousand (1000) kilograms of hazardous waste in a calendar month. The time period of Section 10.1.3 of these regulations for accumulation of wastes on-site 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 one thousand (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 one hundred (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 of these regulations 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 Store on-site hazardous waste in compliance with the

requirements of Section 10.2.6 of these regulations.

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. This recordkeeping requirement is only applicable to manufacturing facilities listed in Standard Industrial Classification Major Groups 20 through 39.

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:

10.2.7.d.1 Is permitted under 40 C.F.R. Part 270

10.2.7.d.2 Is 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 Is permitted under Section 11 of these regulations;

10.2.7.d.4 Is 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 Is permitted, licensed, or registered by a state other than West Virginia to manage municipal or industrial solid waste;

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

10.2.7.d.7 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 Section 10.2 of these regulations may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in Section 10.2 of these regulations, unless the mixture meets any of the characteristics of hazardous wastes identified in Section 3.3 of these regulations.

10.2.9 If any person mixes a waste with a hazardous waste that exceeds a quantity exclusion level of Section 10.2 of these regulations, 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, 10.1.3, and 10.1.4 of these regulations.

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

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 Section 3.1.3 or ~~3.4.4~~ 10 of these regulations.

* * * * *

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

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

11.2.4.b For generators generating greater than one hundred (100) kilograms but less than one thousand (1000) kilograms of hazardous waste in a calendar month and treats, stores or disposes of these wastes, Part A or a copy of Part A if it was already submitted to EPA shall be submitted not later than thirty (30) days from the effective date of these regulations or by March 24, 1987, whichever is later.

~~11.2.4.b~~ 11.2.4.c At any time, but not later than five (5) years, after the effective date of these regulations, the owner and operator of an existing hazardous waste management facility may be requested to submit Part B (see Section 11.5 of these regulations) of their permit application by the Chief. Any owner or operator shall have six (6) months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.

~~11.2.4.c~~ 11.2.4.d Failure to furnish a requested part B application on time, or to furnish in full the information required by the Part B application, are grounds for termination of interim status under Section 11.3.5 of these regulations.

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11.3 Interim Status

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11.3.3 Changes During Interim Status (Section 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 (6) 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 (Sections 11.5.1.o, 11.5.1.p, and 11.5.1.g 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 of these regulations. 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 Sections 15.1 and 15.4 of these regulations.

11.5.1.p The most recent closure cost estimate for the facility prepared in accordance with Section 13 of these regulations plus a copy of the financial assurance mechanism adopted in compliance with Section 13 of these regulations. For a new facility, a copy of the required documentation may be submitted sixty (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 cost estimates for the facility prepared in accordance with Section 13 of these regulations plus a copy of the financial assurance mechanism adopted in compliance with Section 13 of these regulations. For a new facility a copy of the required documentation may be submitted sixty (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 (Section 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 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 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 (6) 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)

13.1 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:

13.1.1 The adopted provisions contained in Sections 264.143(f), 265.143(e), 264.145(f), 265.145(e), and 264.147(f), 265.147(f) of the Code of Federal Regulations 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."

13.1.2 The provisions contained in Sections 264.149, 265.149, 264.150 and 265.150 of the Code of Federal Regulations shall be deleted.

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

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

13.1.5 The adopted provisions contained in Sections 264.147(b)(4)(iii) and 265.147(b)(4)(iii) of the Code of Federal Regulations shall be amended to read: "All other owners or operators, thirty (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

15.1.a 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 lease 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, and

15.1.a.2 Its use is restricted under Section 8.6.7.c of these regulations.

~~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 15.1(e)~~

~~15.1.e 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 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 lease 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.)~~

15.3 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.~~

15.4 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.~~

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

15.4.1 No later than sixty (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, locations, 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.

15.4.2 Within sixty (60) days of certification of closure of the first hazardous waste disposal unit and within sixty (60) days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

15.4.2.a 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:

15.4.2.a.1 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 Sections 15.3 and 15.4.1 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

15.4.2.b Submit a certification, signed by the owner or operator, that he has recorded the notation specified in Section 15.4.2.a of these regulations, including a copy of the document in which the notation has been placed to the Chief.

15.4.3 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 that waste 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 the addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

15.5 Other Requirements. Nothing contained in Section 15 of these regulations shall relieve any person from complying with the requirements on deed and lease disclosures set forth in §20-5E-20 of the West Virginia Code.