

NOTICE OF PUBLIC HEARING
WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
1201 GREENBRIER STREET
CHARLESTON, WV 25311

TELEPHONE: (304) 348-7861 or 348-2107

PUBLIC NOTICE DATE:

August 23, 1984

The Department of Natural Resources' Division of Water Resources will hold a public hearing on Friday, September 21, 1984 to receive comments on proposed changes to regulations under the Hazardous Waste Management Act (Chapter 20, Article 5E of the Code of West Virginia). The hearing will begin at 9 a.m. in the Division of Water Resources conference room, 1201 Greenbrier St., Charleston, WV.

The proposed changes in the West Virginia Administrative Regulations, Series XV, are being made in order to receive Final Authorization for the federal Hazardous Waste Management Program.

Proposed regulations have been put into context for the public's convenience. However, comments will be accepted only on new or revised language.

In addition to those comments received at the hearing, written comments may be submitted during this public notice period. The public comment period will end at the close of the hearing on September 21. Comments should be addressed to:

David W. Robinson Chief
Division of Water Resources
1201 Greenbrier St.
Charleston, WV 25311

Copies of the proposed regulations are available for public review at the following locations:

Division of Water Resources, Public Information Office, 1201 Greenbrier St., Charleston, WV

Division of Water Resources, District 2 Office, High and Depot Sts., Romney, WV.

Division of Water Resources, District 4 Office, MacArthur, WV

Division of Water Resources, District 6 Office, 6321 Emerson Ave., Parkersburg, WV

Division of Water Resources, District 1 Office, 1304 Goose Run Rd., Fairmont, WV

Division of Water Resources, District 3 Office, French Creek Game Farm, Rte. 20, 12 miles south of Buckhannon, WV

Division of Water Resources, District 5 Office, 694 Winfield Rd., St. Albans, WV

For further information contact the Division's public information office at 348-7861.

(1466)

Public notice concerning proposed hazardous waste regulations (Administrative Regulations, Series XV pursuant to Chapter 20, Article 5E, Section 6 of the State Code); Charleston Gazette, August 23, 1984. (A typewritten copy of the public notice is attached

NOTICE OF
PUBLIC HEARING
WEST VIRGINIA
DEPARTMENT OF
NATURAL RESOURCES
DIVISION OF
WATER RESOURCES
1761 GREENBRIER STREET
CHARLESTON, WV 25311
TELEPHONE (204) 348-7861 or
348-3167

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Division of Water Resources,
District 2 Office, High and De-
pot Sts., Romney, WV
Division of Water Resources,
District 4 Office, MacArthur,
WV

Division of Water Resources,
District 5 Office, 6271 Emerson
Ave., Parkersburg, WV
Division of Water Resources,
District 1 Office, 1304 Goose
Run Rd., Fairmont, WV
Division of Water Resources,
District 3 Office, French Creek
Game Farm, Rte. 26, 12 miles
south of Buckhannon, WV
Division of Water Resources,
District 6 Office, 604 Winfield
Rd., St. Albans, WV

For further information, con-
tact the Division's public infor-
mation office at 348-7861
(1984)



**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

1313 CHARLESTON NATIONAL PLAZA
CHARLESTON, WV 25301
(304) 342-2123

STATEMENT OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION ON
PROPOSED AMENDMENTS TO HAZARDOUS WASTE MANAGEMENT REGULATIONS,
WEST VIRGINIA ADMINISTRATIVE REGULATIONS,
CHAPTER 20-5-E, 1984, SERIES VII AND XV

PRESENTED AT A PUBLIC HEARING HELD
SEPTEMBER 21, 1984

My name is Robert G. Worden and I am President of the West Virginia Manufacturers Association.

The West Virginia Manufacturers Association has long supported the Department of Natural Resources in its efforts to develop a responsible program for the management of hazardous waste in West Virginia. Our association has provided hundreds of pages of comments on previous hazardous waste regulations proposed by the DNR Director. Our organization has also filed four separate petitions for rulemaking under the State Hazardous Waste Management Act in which we have requested the DNR Director to update his regulations consistent with revisions to regulations promulgated by the U.S. Environmental Protection Agency. For the most part our organization has not received a response from the Director to these petitions for rulemaking.

With respect to the proposed amendments that are the subject of this hearing this morning, our association's environmental control committee has reviewed the proposed amendments and I am filing their written comments. The comments point out that some of the changes proposed in the amendments had been suggested by our organization and other commentators in comments on previous versions of the regulations. It was not until EPA objected



to the same provisions that the changes we had requested were proposed for adoption.

While I do not propose to read our comments into the record here this morning, I do want to particularly draw your attention to the WVMA's concerns over the proposed amendments to Section 16.00 of the regulations. A new subsection, 16.02, has been added to provide a procedure for de-listing a waste at the state level which has already been de-listed by EPA. We are concerned that the proposed language does not set out any standards for the Director to follow in his review of a petition for de-listing. The result is that the Director may deny the petition solely at his discretion without providing the petitioner with any reason for this action. Our members are extremely concerned that their companies may have made significant expenditures in preparing and submitting delisting petitions at the federal level and succeeded in receiving EPA's approval, only to have the DNR Director deny a petition at the State level. Because of the vast array of technical and scientific resources available to EPA, and the graduated level of scientific review that is undertaken by that agency with regard to de-listing petitions, and in view of the significant commitment of time and resources that petitioning companies will have made in de-listing petitions, we believe it is reasonable to create in the State program a presumption that the de-listing will also be made at the State level unless good reasons are advanced for not doing so. We have set out in our comments specific suggestions on how this subsection might be revised to address our concerns.



WEST VIRGINIA

MANUFACTURERS ASSOCIATION

We thank the Director for the opportunity to offer these comments and ask that our written comments be given due and deliberate consideration.



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

JOHN D. ROCKEFELLER IV
Governor

WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

PUBLIC HEARING SUMMARY
PROPOSED REVISIONS TO HAZARDOUS WASTE REGULATIONS
9-21-84 9:00 a.m.
Division of Water Resources
1201 Greenbrier Street

Mark Casdorff introduced himself, Tim Laraway and Steve Wright and stated that the purpose of the hearing was to receive oral and written comments concerning the proposed revisions to Chapter 20, Article 5E of the WV State Code. He further stated that the Director of the Department of Natural Resources filed the proposed revisions with the Secretary of State on August 22, 1984. On that date, the public comment period began; the meeting on September 21, 1984 ended the comment period. A summary of the comments received will be part of the package filed on these revisions with the Legislative Rulemaking Committee. Mr. Casdorff next invited those in attendance at the hearing to present comments.

Robert G. Worden of the WV Manufacturers Association commented that the Association has provided the Department with numerous petitions on hazardous waste regulations and believes that they have received little response to these petitions. Mr. Worden submitted the Association's total comments in writing, but noted that he is particularly concerned about the proposed procedure for de-listing a hazardous waste. The written comments contain specific suggestions on revisions to the subsection which deals with this subject.

There were no further comments, and the hearing ended. A list of attendees is attached.

PROPOSED HAZARDOUS WASTE REGULATIONS

21 September 1984

Public Hearing

Robert Foster
Union Carbide
Box 8361
South Charleston, WV 25303

Michael Chow
WV Manufacturers Association
c/o FMC Corporation
Box 8127
South Charleston, WV 25303

Ann Bradley
WV Manufacturers Association
P.O. Box 1791
Charleston, WV 25326

Andrew J. Kondik
Hancock County Commission
102 Court Street
New Cumberland, WV 26047

Koppers, Co., Inc.
P.O. Box M
Follansbee, WV 26037

Joe Barta
Huntington Alloys
P.O. Box 1958
Huntington, WV 25720

Robert Massey
Borg Warner Chemicals
P.O. Box 68
Washington, WV 26181

Robert Worden
WV Manufacturers Association
1313 Charleston National Plaza
Charleston, WV 25302

RECEIVED

OCT 3 1984

Division of Water Resources
Hazardous Waste
Ground Water Branch

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA



A. JAMES MANCHIN
SECRETARY OF STATE

ROBERT W. JACKSON
DEPUTY SECRETARY OF STATE

STATE REGISTER FILING

I, Willis H. Hertig, Jr., Director
Title or Position

Department of Natural Resources, hereby submit to records in the
State Register on 8 1/2 x 11" two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- (X) proposed rules and regulations superseding rules and regulations already on file;
- () final rules and regulations
- () notice of hearing;
- () after hearing, findings and determinations;
- () emergency rules and regulations, statement of facts-circumstances
- () legislative () procedural () interpretive regulations
- () other -specify _____

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8-22-84
Administrative Law Division

This filing pertains to

CHAPTER Twenty ARTICLE Five E SECTION Six
of the West Virginia Code, 1931, as amended.

SERIES XV, SECTION see attached PAGE NO. _____
of the Administrative Code, as amended.

August 22, 1984
Date Submitted

Willis H. Hertig, Jr.
Signature of Person Authorizing this
Filing



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

November 30, 1984

WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

Notice of Agency Approval

Legislative Rule: (Title) West Virginia Administrative Regulations
Chapter 20-5E, 1984, Series XV,
Hazardous Waste Management Regulations

The above titled legislative rule constitutes the official rule approved by the West Virginia Department of Natural Resources on the 30th day of November, 1984 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia and the Legislative Rule-Making Review Committee.

A handwritten signature in cursive script, reading "W. H. Hertig, Jr.", written over a horizontal line.

Willis H. Hertig, Jr.
Director

November 30, 1984

Entered



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

November 30, 1984

WILLIS H. HERTIG, JR.
Director

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A handwritten signature in dark ink, appearing to read "W. H. Hertig, Jr.", written over a horizontal line.

Willis H. Hertig, Jr.
Director

November 30, 1984

Entered



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
5TH AND WALNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19106

SEP 11 1984

Mr. Ronald A. Shipley, Hazardous Waste Coordinator
West Virginia Department of Natural Resources
1800 Washington Street, East
Charleston, West Virginia 25305

Dear Mr. Shipley:

We have reviewed the Department of Natural Resources' proposed regulatory amendments made in response to EPA's comments on the State's draft final authorization application. Enclosed is a copy of our comments.

It is our understanding that changes can still be made to these regulations in response to comments received prior to submission of the package to the legislative rulemaking committee. I urge you to carefully address all of our comments to ensure that DNR's program is equivalent to the Federal program so that we can delegate the program shortly after the Legislature acts on the regulations and the needed statutory amendment.

If you have any questions on the enclosed comments please feel free to contact me or Renee Gruber of my staff.

Sincerely,

Anthony J. Donatoni, Chief
State Programs Section

Enclosure

cc: Timothy Laraway

RECEIVED
SEP 12 1984

Division of Water Resources
Hazardous Waste
Ground Water Branch



In response to EPA's
6-22-84 comments
(Regulations Section)

WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
1558 Washington Street, East
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE: 348-2275 OR 348-3286

August 3, 1984

Mr. Ronald A. Shipley
STATE/EPA Hazardous Waste Coordinator
West Virginia Department of Natural Resources
Capitol Complex
Charleston, West Virginia 25305

Dear Ron:

This letter confirms our discussion with Ms. Renee Gruber, USEPA, on July 25th at your office concerning EPA's comments on WVAPCC Regulation XXV.

1. EPA Comment: APCC regulation references to Federal regulations are not fixed at a certain date.

APCC Response: Federal regulations are referenced once by Regulation 25, Section 25.03. Section 25.03 specifically cites "Section 3005 of the Federal Solid Waste Disposal Act, as amended, as of the 4th day of January, 1984...." If other references have inadvertently been over-looked please identify.

2. EPA Comment: APCC does not provide public notice of termination of permits.

APCC Response: Public notice of termination of permits is a procedural requirement and will be incorporated into the EPA/STATE Memorandum of Agreement (MOA).

3. EPA Comment: Section 19.17 of the APCC regulations does not meet the requirements of 40 CFR 124.12(a)(3).

APCC Response: Section 19.17 of Regulation XXV specifies the persons which will be notified of a public hearing. If the intent of EPA's comment is to provide a forty-five day comment period following a public hearing, this procedural requirement can be incorporated into the EPA/STATE MOA. A more detailed explanation of EPA's comment is requested.

Mr. Ronald Shipley

Page Two

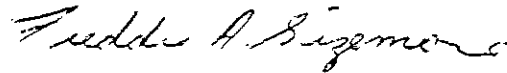
August 3, 1984

4. EPA Comment: In Section 15.03(c)(1)(iv) of WAPCC Regulation XXV, the second word "appropriate" should be changed to "approximate".

APCC Response: This wording is a typographical error and may be corrected without formal rule-making.

If you have any questions concerning this letter please call.

Sincerely yours,



Freddie A. Sizemore
Chief, Hazardous Waste Division

FAS/tlm

cc: Ms. Renee Gruber
State Program Manager - USEPA

COMMENTS ON THE DEPARTMENT OF NATURAL
RESOURCES' PROPOSED REGULATIONS

1. In Section 3.01.06(b) (1) (iii) (B) after the words "capacity of the container", the following phrase should be inserted, "remains in the container".
2. Section 3.01.05(b) (5) should include the Subpart F requirements of 40 CFR 265. See Section 261.6(b) (5).
3. In Section 3.04.02, Waste Number F024, the last phrase should read as follows, "...and wastes listed in Section 3.04.03.]"
4. The State should be aware that EPA has only proposed to add waste number F025 to the list of wastes in Section 261.31. Final action has not been taken on this proposed amendment.
5. In Section 3.04.03, Hazardous Waste No. K028 "hydrochnorinator" should be "hydrochlorinator".
6. In the third line of Section 5.0, the words "regulation" and "relate" are misspelled.
7. Section 6.04.03 (Exception Reporting) indicates that a generator need not file an exception report if he receives a copy of the manifest signed by the person responsible for part of a facility. The analogous Federal provision in Section 262.42(a), does not appear to be consistent with this aspect of the West Virginia regulation.
8. The following should be added as a new subsection in Section 6.05.01(b):

"(5) Obtain the Manifest from the generator's State if that State supplies the Manifest form and requires its use. If the generator's State does not supply the Manifest form, then the generator may obtain the Manifest form from any source."
9. The following should be added as a new subsection in Section 6.05.01:

"(e) A person who imports hazardous waste must obtain the Manifest form from the consignment State if that State supplies the Manifest and requires its use. If the consignment State does not supply the Manifest form, then the Manifest form may be obtained from any source."
10. In Appendix I of Section 6.00, the third line should read "Federal Register" instead of "Code of Federal Regulations".

11. The last line of Section 8.05.04(b) (1) should read as follows, "...as required by Appendix I;".
12. There are no provisions in West Virginia's regulations analogous to 40 CFR 264.119 and 264,117(b) (1).
13. In Section 8.05.05(c), "records to" should be "records of".
14. Section 8.13.01(a) (Ground-Water Protection-Applicability), defines a "regulated unit" as per EPA regulations at 40 CFR 264.90(a). Since the effective date of the two sets of regulations (Federal and West Virginia) differ and the State has chosen not to amend their regulations to address this issue, the complete Final Authorization application must demonstrate that the same facilities are being regulated by both the EPA and the West Virginia regulatory program.
15. In Section 8.01.06, line 3, \$270.23 should be changed to \$270 Subpart G.
16. There are no provisions analogous to 40 CFR 124.10(C) (2) (ii) and 124.10 (C) (3). These methods of public notice are required for final authorization. West Virginia may choose to agree in the MOA to provide these methods of public notice rather than promulgate an equivalent rule.
17. Unlike 40 CFR 270.10(b), Section 11.02.07 does not provide that the Chief (or Director) will not grant permission for applications to be submitted later than the expiration date of the existing permit.
18. Section 11.04 (K) ("Contents of Part A"), requires submission of "[a] topographic map....extending at least one-quarter (1/4) mile beyond the property boundaries...." The analogous Federal regulation, 40 CFR 270.13(1) requires a map extending one mile beyond the property boundaries. This provision can be included in the MOA as was done for Interim Authorization.
19. It does not appear that technical data in the Part B application must be certified by a registered professional engineer. See 40 CFR 270.14.
20. It appears that the State failed to included provisions analogous to 40 CFR 270.41(a) (5), except for (iii). See Section 11.18.01(e).

21. In Section 11.19, the words "revocation" and "suspension" are used but not defined. It is unclear whether the meaning is the same as "terminated" i.e., ended for good unless a new permit is applied for and granted. If the West Virginia program allows for a "suspension" for a limited period of time when under the Federal program the permit would be "terminated", this could be considered a less stringent requirement. In addition, Section 11.19(a) should read as follows: "The following are causes for termination, revocation...."
22. Section 11.19(b) refers to procedures in the State Act. It is unclear what these procedures are and whether they are consistent with Sections 11.17(e) and 11.21.
23. In Section 11.20, line 4, the word "major" should be deleted and the following phrase added to the end of the sentence, "found in Section 11.18".
24. In Section 11.24.03(a)(8), the Advisory Council on Historic Preservation should also be included to be consistent with the Federal requirements in Section 124.10(C)(1)(iii).
25. A number of printing errors appear in the final copy of the regulations. Pages 119 and 120, and 134 and 135 are printed on the same pages and page 177 is missing.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES

In Re: Proposed West Virginia
Administrative Regulations,
Chapter 20-5E, 1984 (Series
VII and XV) Hazardous Waste
Management Regulations

COMMENTS OF

WEST VIRGINIA MANUFACTURERS ASSOCIATION

David M. Flannery
M. Ann Bradley

ROBINSON & McELWEE
600 KB&T Center
Charleston, West Virginia 25326

Counsel for

West Virginia Manufacturers
Association

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COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED AMENDMENTS TO HAZARDOUS WASTE MANAGEMENT
REGULATIONS, WEST VIRGINIA ADMINISTRATIVE REGULATIONS,
CHAPTER 20-5E, 1984, SERIES VII AND XV

SEPTEMBER 21, 1984

Pursuant to the public notice filed in the State Register on August 22, 1984, the West Virginia Manufacturers Association (WVMA) files these comments on the proposed amendments to the State Hazardous Waste Management Regulations. These comments represent a continuation of the active and supportive role that the WVMA has played in the development of the hazardous waste management program for West Virginia.

The letter from DNR Director Willis Hertig to the Secretary of State which accompanied the filing of these proposed amendments to the hazardous waste management regulations indicated that the amendments were being made in response to comments submitted by the U.S. Environmental Protection Agency on the draft Application for Final Authorization under RCRA. We find it particularly significant that several of the comments and recommendations submitted by EPA are identical to recommendations that have been made by our association in comments filed on earlier versions of the State regulations. Indeed, at least one of the changes proposed for the regulations is identical to a change requested by the WVMA in a petition for rulemaking filed with the Director in December, 1982. That petition and other petitions filed by our organization have to date received no response from the Director. With these comments we again request

that the Director give some consideration to the previous petitions for rule-making filed by our organization.

A. Jurisdiction of DNR Director Under State Hazardous Waste Management Act

The West Virginia Manufacturers has commented previously on the delineation of authority between the DNR Director and the Water Resources Board under the State Hazardous Waste Management Act. (See, "Comments of West Virginia Manufacturers Association on Proposed West Virginia Administrative Regulations Chapter 20-5E, 1983," filed June 29, 1983, page 2). At this time we reiterate our position that the Water Resources Board alone has jurisdiction over all matters dealt with under Section 8.13 of the Hazardous Waste Management Regulations, which addresses the groundwater monitoring program for treatment, storage and disposal facilities. Because the Water Resources Board is the only agency under the State Hazardous Waste Management Act and under the State Water Pollution Control Act with legal authority to regulate groundwater quality, all matters contained in Section 8.13 are properly and exclusively within the Board's authority. For these reasons it is our position that the provisions set out in Section 8.13 of the regulations are invalid.

B. State Regulations Which Are Different From and More Stringent Than Federal Regulations

Under our State Hazardous Waste Management Act, the rules and regulations promulgated by the Director must be consistent with the rules and regulations promulgated by EPA pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended,

(42 U.S.C. §§6901 et seq.). W. Va. Code §20-5E-6(a). Elsewhere in this section, the Legislature has provided that rules and regulations promulgated under the State Act must be revised as necessary within six months of the effective date of corresponding federal regulations. Finally, in a further effort to assure a carefully drafted set of regulations, the Legislature provided that the program for the management of hazardous waste pursuant to this Act shall be equivalent to and consistent with the federal program established pursuant to Subtitle C of RCRA. W. Va. Code §20-5E-22.

While these provisions stop short of saying that each and every rule and regulation individually must be equivalent to and consistent with its federal counterpart, these provisions do express a clear mandate that the totality of regulations comprising the state program must meet that test.

Where the proposed amendments have the effect of being more stringent than currently applicable U.S. EPA regulations we have so noted and urge the Director to pay some deference to the express language of the State Act and appropriately limit his regulations.

C. Comments on Specific Sections

1. 2.00(121) - We do not object to the proposed definition for "draft permit" contained in this section as it follows the language used in EPA's regulations at 40 C.F.R. §270.3. However, the proposed definition does not include two sentences from the EPA definition which specify that certain notices of intent to deny or terminate permits would be deemed

types of draft permits, and subjected to the same procedural safeguards. We believe these additional provisions would be helpful in clarifying which actions by the Chief with respect to permit issuance or denial would be subject to the procedural safeguards that must be followed for other draft permits.

2. 3.01.05(b) - The amendments proposed appear to conform subsection (b)(3) to revised 40 C.F.R. §261.6(b)(4) (1983) and, to that extent, our organization has no objection to these suggested changes. However, we are concerned that the cross-reference in the introductory portion of Section 3.01.05(b) to Section 3.04 was not intended by the Director and makes this subsection inconsistent with the Federal program and in violation of the State Hazardous Waste Management Act.

Section 3.01.05(b) provides that certain wastes which are transported or stored prior to being reclaimed will be subject to the listed provisions of the regulations even though they are being recycled or reclaimed. Federal regulations make these additional requirements applicable only to a hazardous waste which is (1) a sludge or (2) a waste from a specific or non-specific source under 40 C.F.R. §261.31 or §261.32. The Director's regulations, however, apply these additional requirements to a hazardous waste which is (1) a sludge or (2) listed in Section 3.04. In addition to wastes from non-specific (3.04.02) and specific (3.04.03) sources, Section 3.04 lists hazardous wastes which are discarded commercial chemical products, off-specification commercial chemical products and spill and container residues of such products (3.04.04). This listing

includes several hundred chemicals. By including the commercial chemical product wastes among the recycled wastes which must meet the additional requirements of Section 3.01.05(b)(1)-(7), the Director has created an additional set of regulatory requirements which must be satisfied for these recycled wastes. One of the goals of the federal Solid Waste Disposal Act is to promote resource recovery by encouraging the recycling of wastes. See, 42 U.S.C. §3253. We believe that imposing additional requirements on recycled wastes without some significant justification undermines this objective and makes the State program as it relates to recycled wastes inconsistent with the federal program. We urge that the cross-references to "3.04" in Section 3.01.05(b) be replaced with "Section 3.04.02 and 3.04.03," in each instance.

3. 3.01.06(b)(1)(iii) - We support the addition of the language in this provision which will make the State's regulation of residues contained in empty containers consistent with EPA's as set out in 40 C.F.R. §261.7(b)(1)(iii). We note that our organization had requested this change in a rule-making petition filed with the Director on December 3, 1982. However, there are typographical errors in this provision as proposed. The word "weights" appearing in the first line of this provision should read "weight" and the phrase "remains in the container" should be inserted in subsection (iii)(B) after the phrase "total capacity of the container".

4. 3.03.02(a)(1) - This amendment would delete the clause modifying "equivalent method" consistent with the change that has been made in the definition of equivalent method

(2.00(32)) and insert a reference to 40 C.F.R. §260.11. In comments on the State's draft application EPA noted

[T]hroughout the State's regulations reference to the U.S. Department of Transportation regulation, (e.g., 40 C.F.R. 173.300) and EPA's regulations (e.g., 40 C.F.R. 265) are not fixed at a certain date. To avoid automatically incorporating federal amendments by reference (without state rule-making), West Virginia should provide a fixed date for these references (for example, 49 C.F.R. 173.300 as published on July 1, 1983). Comments are on West Virginia's draft final authorization application, page 12, paragraph 8.

In the cross-reference found in this and other provisions, of the regulations no fixed date for the reference has been included. The concerns raised by EPA were also expressed by other commentators on earlier proposed regulations. See "Joint Comments of Appalachian Power Company, Monongahela Power Company, Ohio Power Company and The Potomac Edison Company" on proposed Hazardous Waste Management Regulations, filed November 16, 1981.

In addition, where a cross-reference is made to a federal regulation as that regulation existed on a specific date, we believe it makes good sense to include as an appendix to the State regulations a copy of the federal regulation as it appeared on the pertinent date. Because the Code of Federal Regulations is replaced each year it is extremely difficult for some of our members to obtain copies of older versions of revised federal regulations. The inability of the regulated community to have reasonable access to the controlling regulation could be raised in an enforcement action. To avoid these problems, we urge the

inclusion of a cross-referenced regulation as an appendix to the State regulations.

5. 3.03.03(a)(2) - For the same reason that the clause modifying the term "equivalent method" was deleted in Section 3.03.02(a)(1) of the proposed regulations, the same clause should be deleted from this section.

6. 3.03.04(a)(8) - Consistent with the comment in paragraph 4 above, the cross-references to Department of Transportation Regulations in this provision should specify a fixed date.

7. 3.04.02 - The amendments propose to add to hazardous wastes from non-specific sources, FO24 and FO25. We support the addition of hazardous waste FO24 inasmuch as that waste was added by the EPA Administrator to the RCRA list of hazardous waste on February 10, 1984. (40 Fed. Reg. 5312). However, we object to the inclusion of hazardous waste FO25 because it is not currently listed by the EPA Administrator. This hazardous waste was only proposed for listing in the Federal Register of February 10, 1984. (49 Fed. Reg. 5313). Until such time as the EPA Administrator's listing of that waste is finalized, we object to its inclusion in the State regulations for the reason that the addition of this waste makes the State regulations inconsistent with and not equivalent to the federal regulations.

8. 3.04.03 - EPA has suggested that in waste K028 the word "hydrochlorinator" be replaced with the word "hydrochlorinator". The proposed amendments do not make this change.

9. 3.04, Appendix III - Typographical errors appear in the first line of paragraph 2 on page 80, "ro" should be replaced with "or". In the third line of paragraph 3 on page 80 "whic" should be replaced with "which".

10. 3.04, Appendix VII - For the reasons set out in paragraph 7 above, we object to the reference to FO25 on page 85 of the proposed regulations. There also appears to be several typographical errors in the basis for listing wastes FO24 and FO25.

11. 3.04, Appendix VIII - We urge that the two constituents added on page 90 of the proposed regulations be inserted in their correct position alphabetically or that some notation be made so that someone examining the list of hazardous wastes constituents to determine whether these constituents are included will not inadvertently overlook them.

12. 6.01.01(c)(1) - For the reasons stated in paragraph 4 above, we believe the clause modifying "equivalent method" should be deleted.

13. 6.02.02 - The title "Required Information" appearing on page 98 of the proposed regulations should be deleted.

14. 6.03 - Throughout this section, cross-references to the Department of Transportation regulations are made without referencing a specific date. For the reasons stated in paragraph 4 above, we believe this omission affects the validity of these provisions.

15. 6.03.05(a) - EPA has recommended that subsection (a)(4) of this section be amended consistent with the federal

regulations at 40 C.F.R. §262.34(a)(2) by inserting the phrase "while being accumulated on-site" at the beginning of this subsection. The added language in subsection (a)(6) creates an unnecessary redundancy when compared to the language at subsection (a)(4). We recommend that the new subsection (a)(6) be deleted. We also note that that subsection has been inserted incorrectly following paragraph (b) of section 6.03.05.

Finally, we note that the cross-references to federal regulations in subsections (a) and (b) do not reference a fixed date as recommended by EPA.

16. 6.05.01(b)(1) - The word "and" should be inserted for the word "an" as the third word in the third sentence of this subsection.

17. 6.00, Appendix I - The phrase "Code of Federal Regulations" as used in this appendix should be replaced with "Federal Register".

18. 8.02.04(b)(6) - We believe the general cross-reference to Regulation XXV of the Air Pollution Control Commission is too vague in this provision. We urge that the specific provisions of Regulation XXV which the Director intends be considered be expressly set out in this provision.

19. 8.02.08 - We note that an identical provision appears in Regulation XXV of the Air Pollution Control Commission (Section 7.03). We believe this is an example of the kind of unnecessary duplication and overlapping that can occur when DNR and the APCC do not coordinate their rulemaking efforts. Either this section or Section 7.03 of Regulation XXV should be deleted.

20. 8.04.03(b) - In cross-referencing the federal regulations in this provision, the Director has failed to include a specific date. For the reasons set out in paragraph 4 above, we believe this omission makes this provision invalid.

21. 8.05.04(b)(1) - As recommended by EPA, this provision has been amended to cross-reference an appendix addressing "Recordkeeping Instructions". However, the cross-reference in this provision is to "Appendix IV". However, the appendix appearing at the end of Section 8.00 reads "Appendix I". We recommend that the reference to Appendix IV in this subsection be changed to Appendix I.

22. 8.06.03 - This section contains two incorrect cross-references to "Section 26 of the Air Pollution Control regulations." We believe a general reference to "air pollution control regulations" is too vague when it is intended to mean Regulation XXV of the Air Pollution Control Commission. Furthermore, Section 24 of Regulation XXV should be cross-referenced rather than Section 26.

23. 8.06.07(c) - EPA has requested that this provision be changed consistent with 40 C.F.R. 264.117(c). However, no change has been proposed for this provision.

24. 8.10.05(a)(1) - We support the change to this provision recommended by EPA. Our organization had previously recommended this change.

25. 8.10.09(c) - This new provision requires the owner or operator of a waste pile to submit an application for permit modification demonstrating compliance with the requirements for

managing a landfill where it has been determined that hazardous waste and hazardous waste residues cannot be removed from the pile due to "technical infeasibility." The corresponding federal regulation at 40 C.F.R. 264.258(b) requires the waste pile to be closed as a landfill where hazardous wastes and hazardous waste residues "cannot be practicably removed or decontaminated." We believe the language contained in the proposed amendment suggests that no consideration may be given to the economics of removing hazardous wastes residues and, as such, it is objectionable. At some point consideration should be given to whether the environmental benefit to be gained by removing minute residues of the wastes are outweighed by the expenditures that would be necessary to remove these materials. This provision would prevent such a consideration. This provision is clearly not equivalent to the corresponding federal regulation. For these reasons, we urge that the proposed language be deleted and replaced with language more consistent with 40 C.F.R. 264.258(b).

26. 8.11.02(i) - The change in the first line on page 175 is incorrect. It should read "paragraph (i)(1)".

27. 8.13.08(d)(2)(iv)(D) - This provision has been added to require a permit modification whenever a change is made under 8.13.08(d)(2)(iv)(A) or (B). However, it is possible that very minor changes under either of these sections could be made which would not trigger a permit modification. Therefore, we urge that the language of this new subsection be revised to read as follows:

If changes are proposed under (A) and (B) of this subsection which would otherwise require

permit modification under Section 11.17, then an application for permit modification must be submitted, with report, in accordance with Section 11.17; and,

28. 11.02.08(b) - The schedule for permit fees has been amended to add a fee for incinerators. It must be noted that Section 28.01 of Regulation XXV of the Air Pollution Control Commission already imposes a permitting fee on new incinerators of \$2,500 (for less than 1,000 tons per year capacity) and \$5,000 (for greater than 1,000 tons per year capacity). The permitting fee for existing incinerators is \$1,000. While our organization has consistently maintained that the APCC has no authority to set permit fees, we also believe it is unfair to impose duplicative fees on owners and operators of incinerators and that this may have the effect of discouraging the use of this treatment method which is frequently the most environmentally desirable of all available methods.

29. 11.03.05 - The subsection headings in this section should be lower case letters rather than numbers and the cross-reference added in current subsection (3) is incorrect.

30. 11.05.02(u) - This subsection has been added as recommended by EPA. However, we question whether this requirement is appropriate where regulations simply incorporate by reference the federal regulations and do not independently set up any State financial mechanisms.

31. 13.00 - New language in this section purports to amend 40 C.F.R. §264.147(b)(4)(iii) and §265.147(b)(4)(iii) and to make the most recent versions of various sections of 40 C.F.R. Part 265 applicable under the State program. However, under the

State Hazardous Waste Management Act in order to maintain interim status the owner or operator need only comply with 40 C.F.R. Part 265 as it existed on the effective date of the State act. The Director has no authority to incorporate subsequent changes in federal interim status regulations and make them enforceable against facility owners or operators under State law. Therefore, we urge that the references to sections of 40 C.F.R. Part 265 and in particular to 40 C.F.R. 265.147(b)(4)(iii) be deleted.

32. 16.02 - This section has been added to provide a procedure for delisting a waste at the State level which has already been delisted by EPA. However, this section does not recognize any independent authority in the Director to delist a waste on his own initiative. Nevertheless, we believe the Director has such authority under the State Act and that it is not necessary to specifically recognize that authority in these regulations.

Subsection 16.02(b) provides that "[u]pon review of the petition, the Director shall notify the petitioner in writing of his decision to either deny the request or grant the exclusion." The proposed language does not set out any standard for the Director to follow in his review of a petition. Hence, the Director may deny the petition solely at his discretion and without providing the petitioner with any reason for his action.

Our members are extremely concerned that their companies may have made significant expenditures in preparing and submitting delisting petitions to the EPA Administrator and then have received that agency's approval, only to have the Director

deny the petitions at the State level. Because of the vast array of technical and scientific resources available to EPA and the high level of scientific review that is undertaken by that agency in connection with delisting petitions, and in view of the significant commitment of time and resources that petitioning companies will have made in delisting petitions, we believe it is reasonable to create in the State program a presumption that the delisting will be made at the State level unless good reasons are presented for not doing so. We are also concerned that any delisting action undertaken by the Director will be subject to the provisions of the State Administrative Procedures Act. For these reasons, we urge that subsection 16.02 be rewritten to read as follows:

(b) Within 30 days of the filing of the petition the Director shall decide whether to tentatively approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the Director shall notify the petitioner of such denial in writing, setting forth the reasons therefor.

(c) Where the Director decides to tentatively approve the petition he shall prepare and file in the State Register proposed amendments to these regulations addressing the delisting of hazardous waste. All applicable procedures set forth in the State Administrative Procedures Act for the adoption of legislative rules (including emergency rules) shall be followed.

(d) No petition which has been approved by the EPA Administrator may be denied by the Director unless scientifically supportable reasons which had not been presented to the EPA Administrator are advanced.

D. Conclusion

The WVMA appreciates the opportunity to comment on these regulations and, trusts that they will be given due and deliberate consideration.

WEST VIRGINIA MANUFACTURERS ASSOCIATION,

David M. Flanagan

M. Ann Bradley

ROBINSON & McELWEE

Counsel for
West Virginia Manufacturers Association



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

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WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

DEPARTMENT OF NATURAL RESOURCES
IN-HOUSE REVISIONS, CORRECTIONS, AND DELETIONS
TO
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Chapter 20-5E
Series XV
HAZARDOUS WASTE MANAGEMENT REGULATIONS

In addition to the comments made by EPA and the WMA on the regulations, the following typing errors have been discovered and corrected by the Department.

<u>Page Number</u>	<u>Item</u>
9	(52) "(^a) and (^b)" to "(a) and (b)"
32	(iii) "SEction" to "Section"
32	(iv) "inudustrial" to "industrial"
32	(h) "seciton" to "section" "reuirements" to "requirements"
44	F002 "haloengated" to "halogenated"
67	U-182 "Peraldehyde" to "Paraldehyde"
110	Section 8.01.05(g) "ot" to "or"
143	Section 8.07.06 "deter-ioration" to "deteri-oration"
146	Section 8.08.02 the (a) in this section has been deleted
146	Section 8.08.02 "TAnks" to "Tanks"
150	(e) "construction" to "constructed"
150	f(2) "to not" to "do not"
156	Section 8.09.04(e) is the same as 8.09.04(d) Section 8.09.04(e) has been deleted
210	Section 8.13.08(b)(iii), repetitive wording: "the owner or operator shall use the background concentrations," has been deleted
230	Treatment Surface Impoundment fee is \$3,000.
ii	8.13 "portection" to "protection"



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SUMMARY RESPONSE TO COMMENTS CONCERNING
PROPOSED REVISIONS TO WEST VIRGINIA
ADMINISTRATIVE REGULATIONS TO THE
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 20-5E

SERIES XV

RELATING TO
HAZARDOUS WASTE MANAGEMENT

October 1984

INTRODUCTION

The West Virginia Department of Natural Resources (WVDNR) proposed revisions to the Hazardous Waste Management Regulations (West Virginia Administrative Regulations, Chapter 20-5E, Series XV) on August 23, 1984. The proposed revisions were properly advertised in the State Register on that date. A thirty-day public comment period ensued and ended with a public hearing held on September 21, 1984.

The proposed revisions are a result of the Department's desire to attain delegation of the regulation of hazardous waste management systems from the United States Environmental Protection Agency (USEPA). Attainment of program delegation from USEPA requires that the Department's regulations be at least consistent with and equivalent to the USEPA program regulations at 40 C.F.R. Parts 261, 262, 263, 264, 265, and 270. USEPA proffered comments relating to the Department's regulations to guide that effort. The proposed revisions resulted from these USEPA comments.

During the public comment period, from August 22 to September 21, 1984, two parties submitted written comments to the Department relating to the proposed hazardous waste management regulations. These comments were received from the USEPA and the West Virginia Manufacturers Association. No other written or oral comments were received during the public comment period. Copies of the USEPA and West Virginia Manufacturers Association comments are attached hereto. In addition, a list of the persons attending the public hearing, held on September 21, 1984, is also attached.

The body of this summary is intended to provide the response of the Department to those comments made and submitted by the above mentioned parties. The remainder of this summary response to comments is divided into two sections. The first section responds to comments made by USEPA. The second addresses comments made by the West Virginia Manufacturers Association.

SUMMARY RESPONSE TO USEPA COMMENTS

The Department received comments from USEPA, relating to the proposed revisions to the hazardous waste management regulations, on September 12, 1984. Comments numbered 1, 2, 3, 5, 6, 10, 11, 13, 15, 23, 24, and 25 concern editorial changes. These comments have been reviewed by the Department and alterations made to address these comments.

EPA Comment No. 4: USEPA has not taken final action to include waste number F025 in the list of wastes contained in these regulations.

Response: The Department has withdrawn waste number F025 in Section 3.04.02 and corresponding appendices in the revised regulations as a result of this comment.

EPA Comment No. 7: Section 6.04.03 (Exception Reporting) does not appear to be consistent with the analogous provision of the Federal regulations [40 C.F.R. §262.42(a)] since an exception report filing is not required of a generator if he receives a manifest copy signed by a person responsible for part of a facility.

Response: The Department agrees that Section 6.04.03 is somewhat inconsistent with 40 C.F.R. §262.42(a) and has amended paragraphs (a) and (b) of that section to remove the notation regarding the definition of "authorized representative" and in paragraph (a) and replacing that term with "owner or operator" in paragraph (b) on line 3.

EPA Comment No. 12: West Virginia regulations do not include provisions analagous to 40 C.F.R. §264.119 and §264.117(b)(1).

Response: (a) The Department has added a new section 15.03 to these revised regulations which is analogous to 40 C.F.R. §264.119.

(b) The Federal regulations at 40 C.F.R. §264.117(b)(1) permit the administrator to require continuation of site security after facility closure is completed when wastes may remain exposed. The

closure provisions of the Department's regulations require minimization or elimination of post-closure escape of hazardous waste, hazardous waste constituents, leachate, or waste decomposition products [see Section 8.06.02(b)]. This provision and the closure certification and closure plan approval requirements under Section 8.06.06 and 8.06.03(d), respectively, are intended to assure that wastes are not left exposed after a completed closure. These combined provisions appear to eliminate the need for a provision analogous to 40 C.F.R. §264.117(b)(1) in the Department's regulations.

EPA Comment No. 14: Section 8.13.01(a) (Ground Water Protection

Applicability) contains a definition of "regulated unit" similar to the Federal regulation at 40 C.F.R. §264.90(a). Since the effective dates of the Federal and State regulations are different, the number and type of regulated units governed by EPA may not be the same as those under the State's program.

Response: The Department feels that the State and EPA have the same universe of regulated units subject to ground water monitoring requirements and therefore no modification of our regulations is necessary at this time to address the comment. We intend to demonstrate our position in the final authorization application.

EPA Comment No. 16: Public notice requirements of 40 C.F.R. §124.10(c)(2)(ii) and §124.10(c)(3) are not addressed with analogous State provisions.

Response: Section 11.24.03(b) has been altered to include provisions analogous to 40 C.F.R. §124.10(c)(2)(ii) and (c)(3).

EPA Comment No. 17: Section 11.02.07 has no provision for denial of permission by the Department for applications submitted after the expiration date of an existing permit, as Federal regulations at 40 C.F.R. §270.10(h) does.

Response: Language has been added providing for disallowance of an application received after the expiration date of an existing permit.

EPA Comment No. 18: Section 11.04(k), requiring a topographic map extending at least one-quarter ($\frac{1}{4}$) mile beyond the property boundaries, is not equivalent to 40 C.F.R. §270.13(1) which requires the topographic map to extend one mile beyond the property boundaries.

Response: Section 11.04(k) has been altered to reflect the requirement of 40 C.F.R. §270.13(1).

EPA Comment No. 19: Section 11.05 (Contents of Part B) does not require certification by a registered professional engineer, as does 40 C.F.R. §270.14.

Response: An analogous provision requiring certification of technical data contained in a Part B application has been included in Section 11.05.01.

EPA Comment No. 20: Section 11.18.01(e) does not include provisions analogous to 40 C.F.R. §270.41(a)(5), except item (iii).

Response: The Department concurs with this comment and has added language analogous to most of the federal requirements at 40 C.F.R. §270.41(a)(5) in section 11.18.01(e). Paragraph (vi) of the federal regulation has not been included in this revision due to the State's ground water monitoring requirements not being identical with comparable Federal standards. Specifically, whereas EPA requires an additional monitoring program upon detecting a leak of hazardous constituents into the ground water, Section 8.13.09(j) requires a leaking unit to begin corrections upon permit issuance.

EPA Comment No. 21: Use of the terms "revocation" and "suspension" may be inconsistent with the Federal program which uses the term "termination".

Response: The Department's use of the terms "revoke" and "revocation" are intended to mean a permanent discontinuation of a permit, requiring a new permit for activities beyond the date of revocation. The Department feels that the term "revocation" used in Section 11.19 is equivalent to the Federal "termination".

Coordination of "suspensions" or "revocation/termination" between EPA and the State is of utmost importance to assure that a temporary suspension will not be imposed by the State when the EPA would have terminated the permit or activity. However, this coordination is a program operation matter and need not be addressed by regulation.

EPA Comment No. 22: This comment concerns whether the procedures required in Section 11.19(b) are consistent with Section 11.17(e) and 11.21.

Response: Section 11.19(b) requires use of procedures prescribed in the State Act (Article 20-5E of the West Virginia Code) regarding draft permits. The draft permit requirements prescribed by Section 11.21 and Section 11.17(e) makes a notice of revocation, suspension or termination a type of draft permit. The Department believes these provisions are consistent.

EPA Comments No. 8 and No. 9 have been withdrawn.

SUMMARY RESPONST TO WEST VIRGINIA MANUFACTURERS ASSOCIATION COMMENTS

The Department received comments from the West Virginia Manufacturers Association (WVMA) at the public hearing held on September 21, 1984. A summary response to each of the WVMA comments follows:

WVMA Comment No. A: Jurisdiction of WVDNR Director under the State Hazardous Waste Management Act.

WVMA commented that Section 8.13, relating to ground water protection is invalid because the Water Resources Board, not the Department, has sole authority over regulation of ground water quality.

Response: The Department disagrees and believes that in addition to having the overall responsibility for the promulgation of regulations under the Article, the Director has been empowered by Section 6(a) of Article 5E, particularly paragraphs 6(a)(4), 6(a)(6), and 6(a)(12), to promulgate rules governing ground water monitoring and corrective actions at treatment, storage, and disposal facilities. These regulations are intended to be used by the Department to assess and obtain compliance with waste containment requirements and with the Board's Ground Water Quality Standard (Series VII of the Board's Regulations).

WVMA Comment No. B: State regulations are different from and more stringent than Federal regulations.

The WVMA commented that Sections 20-5E-6(a) and 20-5E-22 require that the regulations of the Department be consistent with the Federal hazardous waste program regulations and that the State hazardous waste program be equivalent to and consistent with the Federal hazardous waste program pursuant to Subtitle C of RCRA amendments to the Federal Solid Waste Disposal Act.

Response: The Department agrees that the language of Sections 20-5E-6(a) requires regulations to be consistent with Federal regulations pursuant to Subtitle C of RCRA. In addition the requirement of Section 20-5E-22 of the West Virginia Code is that the program, operated by the State, be equivalent to and consistent with the Federal hazardous waste program. The Department believes that its regulations are consistent with Federal regulations; and that its program will be, when finalized, equivalent to and consistent with the Federal program.

The Department's position concerning the regulations is that the proposed revisions to regulations will render the regulations consistent with Federal regulations. The proposed revisions are proposed in part, due to a Federal review of the Department's regulations regarding consistency and coverage to assure that the State regulations are not less stringent than the Federal counterparts.

The Department also believes that its hazardous waste program will be equivalent to and consistent with the Federal hazardous waste program. The scope, coverage and force of the State program is equivalent to the Federal program even though the State regulations are not identical to their Federal counterpart. The State program regulates the same universe of activities in a manner which is similar to and consistent with the Federal program.

WVMA Comment No. C-1: Section 2.00(121) (Definition of "draft permit") omits language in the federal definition which limits and clarifies the term "draft permit".

Response: The language included in the definition of "draft permit" identifies six tentative decisions to which the term applies (i.e., issuance, denial, modification, revocation and reissuance, revocation, and reissuance of a permit). The definition appears to be clear regarding actions for which draft permits may be developed. The definition does not include those actions exempted in the Federal definition at 40 C.F.R. §270.2, and does include those specifically

identified in the Federal definition. The Department, therefore, believes the definition to be adequate.

The Department has, however, replaced the word "terminate" with the word "revoke" in the definition to address a comment made by USEPA.

WVMA Comment No. C-2: Section 3.01.05(b) - The reference to Section 3.04 in Section 3.01.05(b) imposes additional regulatory requirements which are inconsistent with the RCRA goal of promoting and encouraging recycling and resource recovery.

Response: The Department believes that Section 3.01.05(b) in the revised regulations does not pose any more stringent requirements than the regulations imposed prior to these proposed revisions. The Department's opinion is that all listed hazardous wastes from Section 3.04 require adequate handling and transport prior to recycling, resource recovery or reuse. While the Department does agree that reuse, recycling and resource recovery is an appropriate and important goal of both the Federal and State hazardous waste programs, we also believe that proper, regulated handling of hazardous wastes is a more immediate goal of these programs. Therefore, the Department desires to maintain the same scope of coverage of Section 3.01.05(b) as is in the previous regulations.

WVMA Comment No. C-3: Section 3.01.06(b)(1)(iii) requires editorial corrections to be consistent with the Federal Regulations at 40 C.F.R. §261.7(b)(1)(iii).

Response: The Department concurs with this comment and has made the recommended editorial changes in the proposed final regulations Section 3.01.06(b)(1)(iii)(A) and (B).

WVMA Comment No. C-4: Section 3.03.02(a)(1) contains an undated reference to federal regulations specifically 40 C.F.R. §260.11, which causes confusion concerning what version of the federal regulations apply.

This comment applies generally to any provision of the proposed State regulations. In addition a copy of each federal regulation to which reference is made in the State regulations should be appended thereto.

Response: WVMA comment is persuasive. The significant number of cross-references made to federal regulation in the State regulations does present the potential for confusion. However, the Department is under very short, near-term, deadlines to promulgate and submit regulations for its hazardous waste program for the purpose of receiving final program delegation. The amount of time and resources necessary to provide cross-reference dates and copies of federal regulations would require a long delay in applying for final program delegation.

The Department believes that this issue should be considered in the next revision of its regulations and commits itself to performing cross-reference dating and assembling copies of cross-referenced federal regulations at that time. In addition, the Department will assemble a listing of the dates and copies of each section of federal regulations referenced in these proposed regulations, by February 1, 1985. Copies of this information will be made available to any person who request it after completion.

WVMA Comment No. C-5: Section 3.03.03(a)(2) - The clause modifying "equivalent method" should be removed in this section for the same reason it was removed from Section 3.03.02(a)(1) of the proposed regulations.

Response: The Department concurs with this comment and has made the change recommended in the proposed final regulations.

WVMA Comment No. C-6: Reference made in Section 3.03.04(a)(8) to the U.S. Department of Transportation Regulations should specify a fixed date.

Response: The Department has not included this change for the same reason described under response to WVMA Comment No. C-4.

WVMA Comment No. C-7 and C-10: Section 3.04.02 - Objection is raised to inclusion of hazardous waste F025 since it has only been proposed by USEPA, making the State regulations inconsistent and dissimilar to Federal regulation.

Response: The Department concurs with this comment and has removed all references to hazardous waste F025 in the proposed final regulations.

WVMA Comment No. C-8: Typographical error in Section 3.04.03 related to hazardous waste K028. The term "hydrochlorinator" should be "hydrochlorinator".

Response: This change has been made in the proposed final regulations.

WVMA Comment No. C-9: Typographical errors in Section 3.04, Appendix III.

Response: Typographic errors have been corrected.

WVMA Comments Nos. C-12, C-13, C-16, C-17, C-21, C-26 and C-29: Various editorial or typographic comments recommending changes.

Response: These comments have been followed and recommended changes made in the proposed final regulations.

WVMA Comment No. C-10: Hazardous waste F025 should be removed from Section 3.04, Appendix VII.

Response: The Department concurs. See Response to Comment No. C-7 and C-10.

WVMA Comment No. C-11: The hazardous constituents listed at the end of Section 3.04, Appendix VIII should be placed in their appropriate alphabetical location in the Appendix.

Response: A note has been added to advise readers that hazardous constituents added to the list after the original printing are located at the end of Appendix VIII.

WMA Comment No. C-14: Dates of federal regulations referenced in Section 6.03 should have a specific date included in the reference.

Response: See WMA Comment No. C-4 above.

WMA Comment No. C-15: Section 6.03.05(a)(6) is redundant upon paragraph (a)(4) and should be removed and is improperly placed under Section 6.03.05(b).

Response: The placement of Section 6.03.05(a)(6) has been changed to 6.03.05(a)(5) and the subsequent paragraph renumbered to 6.03.05(a)(6).

The Department has included 6.03.05(a)(6) to clarify to the regulated community that hazardous wastes must be labeled as such while being accumulated, in addition to required markings of other sections of the regulations. Therefore, only the above-stated changes have been made for correct placement of the language.

WMA Comment No. C-18: Reference to APCC Regulation XXV in Section 8.02.04 (b)(6) is too vague and should be clarified.

Response: The Department believes that, since Section 8.02.04(b) and 8.02.04 generally apply to waste analysis, the language of 8.02.04 (b)(6) also only applies to that subject and no others. It therefore requires no further clarification nor specific references.

WMA Comment No. C-19: Section 8.02.08 duplicates Section 7.03 of APCC Regulation XXV and one of the two agencies should delete their corresponding section.

Response: Section 8.02, generally, and 8.02.08 specifically apply to all hazardous waste facilities which includes incinerators among other types of hazardous waste facilities. Removal of Section 8.02.08 would have the effect of removing standards for ignitable, reactive or incompatible wastes from all facility requirements. The Department believes that the removal of this requirement would render its regulations ineffective with regard to these types of hazardous wastes and would not be in the best interests of the State. The

Department does, however, view a coordinated effort to require the same performance at incinerators as does the APCC as very important. The Department will coordinate this aspect of its requirements with APCC as it relates to incinerators during program operation.

WVMA Comment No. C-20: Lack of specification of the date of federal regulations referenced in Section 8.04.03(b) makes this provision invalid.

Response: See WVMA Comment No. C-4. The Department believes that Section 8.04.03(b) is valid.

WVMA Comment No. C-22: Section 8.06.03 contains incorrect and vague references to Section 26 of the APCC Regulation XXV.

Response: The Department agrees and has made recommended changes in the proposed final regulations.

WVMA Comment No. C-23: Section 8.06.07(c) has not been changed in response to USEPA request.

Response: The provision of Section 8.06.07(c) is equivalent to the federal provision at 40 C.F.R. §264.117(c). The USEPA comment was in error. Therefore no change is necessary.

WVMA Comment No. C-25: Section 8.10.09(c) is more stringent than the federal counterpart at 40 C.F.R. §264.258(b) and give no consideration to the economics of waste residue removal. This section should be made equivalent to federal regulation.

Response: The Department believes Section 8.10.09(c) to be substantially the same as 40 C.F.R. §264.258(b) since "technical infeasibility" encompasses practicability considerations. It is also believed that permit modification is the appropriate regulatory process for considering all aspects (including economics) of unforeseen factors and events. Therefore, the Department is maintaining the proposed language.

WVMA Comment No. C-27: Section 8.13.08(d)(2)(iv)(D) would require a permit modification even for "very minor changes" under subparagraphs (iv)(A) or (B). Language is proposed to change (iv)(D) to allow for minor changes that would not require permit modification.

Response: The Department believes the reference to Section 11.17 (Modification, Revocation and Reissuance, Suspension, Termination and Revocation of Permits) adequately addresses the separation of major and minor modifications of permits. The concept of a change in ground water monitoring not requiring a permit modification should be reviewed on a case-by-case basis. This case-by-case evaluation is the purpose of the permit modification process. Therefore, the language of Section 8.13.08(d)(2)(iv)(D) has been maintained.

WVMA Comment No. C-28: A duplicative fee has been established for incinerators in Section 11.02.08(b) and would have the effect of discouraging the use of incinerators which may be the most acceptable environmental alternative.

Response: The Department believes it has full authority to establish permit fees. The Department performs review of applications for incinerator permits, considering issues and aspects related to them which are supplemental to those of the APCC. The permit fee established for incinerators is therefore maintained.

WVMA Comment No. 30: Section 11.05.02(u) may not be appropriate since no independent financial mechanism is established by the Department.

Response: The Department believes that WVMA Comment No. C-30 applies to Section 11.05.01(u) rather than 11.05.02(u). Section 11.05.01 applies to information required in Part B of the permit application for a hazardous waste facility permit. The Department believes that the information on financial requirements must be included in the Part B application whether or not the State establishes a financial mechanism independent of federal regulation. Therefore, the language in Section 11.05.01(u) is maintained.

WMA Comment No. C-31: Recommend removal of references to Sections of 40 C.F.R. Part 265, and particularly to 40 C.F.R. §265.147(b)(4)(iii) in Section 13.00 of the proposed regulations.

Response: Referenced to 40 C.F.R. §264.147(b)(4)(iii) and §265.147(b)(4)(iii) are included to render the Department's regulations equivalent to and consistent with federal regulation. Additionally, the Department believes Section 20-5E-10 of the Code requires the owner/operator to be in compliance on the effective date of the Act; not that the State's interim status regulations be those as of July 9, 1981 (effective date of Article 20-5E of the Code).

The Department has, therefore, maintained the proposed language in Section 13.00.

WMA Comment No. C-32: Section 16.02(b) provides the Director with waste exclusion petition denial at his sole discretion without requiring him to provide reasons for such action. Substitute language is recommended by WMA.

Response: The Department agrees that the Director should provide reasons for any waste exclusion petition denial. Therefore, paragraph (b) of the WMA recommended language has been substituted for the proposed regulation Section 16.02(b). However, the Department amended that language by increasing the time required for action by the Director from 30 to 90 days from the date of filing of the petition to permit time for evaluation and response.

Closing Statement

The Department sincerely appreciates all comments received on its proposed regulations. We believe that the comments and amendments made to the proposed regulations in response thereto have strengthened the proposed final regulations.



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25306

JOHN D. ROCKEFELLER IV
Governor

November 30, 1984

WILLIS H. HERTIG, JR.
Director
RONALD R. POTESTA
Deputy Director

The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

On August 22, 1984, the Department filed with your office proposed regulations revising the Department's hazardous waste management regulations, West Virginia Administrative Regulations, Series XV. Those changes were proposed to reflect the federal regulatory requirements for final program delegation. Upon said filing, a thirty-day public comment period was duly observed as required by Chapter 29-A and Chapter 20, Article 5E, of the Code of West Virginia, and ended on September 21, 1984 with a public hearing. Changes made in response to the comments received have been included in the proposed final rules.

Today we are filing with your office two sets of proposed final legislative rules with the prescribed submittal forms pursuant to Chapter 29-A and Chapter 20, Article 5E. All of the proposed rules and changes are underlined and have been provided within the context of existing regulations for the reader's convenience. The Department also advises you that these regulations are being concurrently filed with the Legislative Rule-Making Review Committee.

Respectfully submitted,

W. H. Hertig, Jr.
Willis H. Hertig, Jr.
Director

WHH/swl

FILED
1984 DEC -3 PM 1:57
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
Governor

August 22, 1984

WILLIS H. HERTIG, JR.
Director

RONALD R. POTESTA
Deputy Director

The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

On April 6, 1984 we filed with your office certain regulations pertaining to the Department's hazardous waste management program. These regulations were final, having been authorized by Senate Bill 425 and promulgated pursuant to Chapter 20, Article 5E, Section 6 of the Code of West Virginia. Promulgation of the new regulations enabled the Department to receive interim delegation of the federal Resource Conservation and Recovery Act (RCRA), which we have been operating under since that time.

In commenting on our application for final program authorization, the United States Environmental Protection Agency is requiring that further changes to our regulations be made prior to granting such authorization. Further, we believe these changes will also serve to upgrade and clarify the State's existing standards for managing hazardous wastes.

Further, we are proposing a regulation requiring submission of a fee for processing an application for treating hazardous wastes through an incinerator.

Therefore, in accordance with the provisions of Chapter 29A and Chapter 20, Article 5E of the Code of West Virginia, we are filing with your office today two copies of regulations which reflect the proposed changes. A listing of the changes is also provided to further delineate today's filing. By submitting the complete text of our regulations we intend only to aid the reader by showing the changes in context. Also enclosed are two copies of the State register filing form and the required fiscal note.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Aug 22, 1984
Administrative Law Division

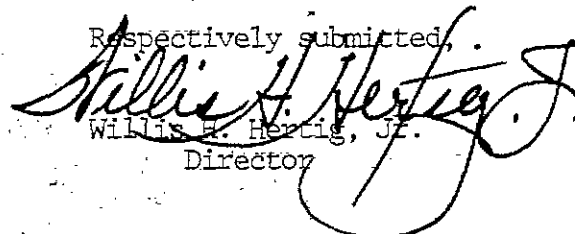
The Honorable A. James Manchin

August 22, 1984

Page 2

Please be advised that the thirty day period for receiving comments from the public on our proposed regulations begins tomorrow, and a public hearing is scheduled for September 21, 1984 to invite further public participation. Notice of the public comment period and hearing have been published in the major newspapers of general circulation within the State.

Respectively submitted,

A large, stylized handwritten signature in black ink, which appears to read "Willis H. Hertig, Jr." The signature is written over the typed name and title.

Willis H. Hertig, Jr.

Director

WHH/mcd
Enclosures (6)

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Administrative Regulations, Series XV

Type of Rule: Legislative Interpretive Procedural

Agency Department of Natural Resources Address 1800 Washington Street, East
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	NO ECONOMIC EFFECT ANTICIPATED				
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates. Federal guidelines comparable to these now proposed are already in effect nationally, therefore, the Department does not anticipate creating a demonstrable economic impact on the regulated community by their final promulgation. Further, the proposed rules will not appreciably increase the Department's program administration costs.

3. Objectives of these rules: The proposed rules will serve to upgrade and clarify the State's existing regulatory standards for managing hazardous wastes. Further, promulgation of these rules will satisfy the regulatory component of the U.S. Environmental Protection Agency's requirements for final program delegation.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No impact expected.

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

No impact expected.

C. Economic Impact on Citizens/Public at Large.

No impact expected.

Date November 30, 1984

Signature of Agency Head or Authorized Representative

A. H. Hertig, Jr.

FISCAL NOTE

Purpose of Regulations

The purpose of these regulations is to implement (in part) the provisions of Chapter 20-5E of the Code of West Virginia (Hazardous Waste Management Act), and to revise and amend the State's existing regulatory program.

Benefits of Regulations

1) The passage of these regulations will in part, allow the State of West Virginia to receive final authorization for the implementation of the federal Hazardous Waste Management Program. This will allow the consolidation of state and federal regulatory programs, including the issuance of a single permit (as opposed to both a federal and state permit for the same facility and activity), uniform compliance assessment and appropriate enforcement. The qualification of the state for final authorization will also permit the continued utilization of federal grant funds for such purposes.

2) These regulations will serve to update and clarify our existing regulatory program and as such, will enhance the regulated community's understanding of and compliance with the State's requirements.

Cost of Regulations to the Regulated Community

Today's proposed regulations include the addition of a specific waste to the lists previously promulgated. Passage of this regulation will make the State's universe of hazardous wastes the same as that of the federal program. Though exact costs to the State's industry cannot be readily determined, due to the effected companies having already been in the hazardous waste management system, approximate costs have been outlined in the Federal Register, February 10, 1984 (attached). The EPA estimates that two-thirds of the wastes contained in the new listing are already being managed, on a national basis, as hazardous wastes, thus minimizing additional costs incurred.

Further, we are proposing that a fee be required as part of a Part B permit application for treatment of hazardous wastes by incineration. The fee would range from one thousand to three thousand dollars (\$1,000 to \$3,000) per incinerator and is based on the annual tonnage processed. Since this

requirement will not be final prior to receiving permit application from all of the State's existing hazardous waste incinerators, no economic impact from this fee is anticipated regarding those facilities.

Because the remaining proposed regulations are relatively minor revisions to existing requirements and do not impose new standards, the cost of compliance will not be significantly increased. These changes reflect those already in effect under the federal program.

Cost of Regulations to the State

Due to the limited scope of the proposed regulations, no administrative cost increases are expected and should be manageable with existing funds.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

CHAPTER 20 - 5E

1984

SERIES VII AND XV

HAZARDOUS WASTE MANAGEMENT REGULATIONS

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8-22-84
Administrative Law Division

THIS DATE 8-22-84

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Section 1.00 General

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8-22-84
Administrative Law Division

1.01 Scope and Purpose.

The purpose of these regulations is to provide for the regulation of the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.02 Authority.

These regulations are promulgated under the authority of the West Virginia Code Chapter 20, Article 5E, Sections 4, 5, 6, and 7.

1.03 Effective Date.

These regulations will become effective upon filing.

1.04 Filing Date.

These regulations were filed in the Office of the Secretary of State on April 6, 1984.

1.05 Certification.

These regulations are certified authentic by the Director of the Department of Natural Resources.

Section 2.00 Definitions.

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.

(1) "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;

(2) "Administrator" means the administrator of the United States Environmental Protection Agency or his designee;

(3) "Approved form" means any Environmental Protection Agency standard national form for administering the hazardous waste provisions of RCRA, or a form approved by the Chief of the Division of Water Resources or the Director of the Department of Natural Resources;

(4) "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of groundwater to wells or springs;

(5) "Application, Part A" means that part of the application which a permit applicant must complete to qualify for interim status under Section 3005(e) of RCRA or these regulations and for consideration for a permit;

(6) "Application, Part B" means that part of the application which a permit applicant must complete to be considered for a permit

(7) "Calendar year" means January 1 through December 31;

(8) "Cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes;

(9) "Certification" means a statement of professional opinion based upon knowledge and belief;

(10) "Chief" means the Chief of the Division of Water Resources of the Department of Natural Resources;

(11) "Closed facility" means a facility which has been properly closed in accordance with the facility closure plan and all applicable regulations and requirements;

(12) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the facility closure plan and all applicable closure requirements;

(13) "Closure" means the act of securing a hazardous waste management facility pursuant to the requirements of these regulations;

(14) "Container" means any portable device in which a material is stored, transported, treated, disposed of or otherwise handled;

(15) "Contingency plan" means a document setting out an organized, planned and coordinated course of actions to be followed in the event of a fire, explosion or release of

hazardous waste or hazardous constituents which could threaten human health or environment;

(16) "Common code" means the unique code assigned by the Chemical abstract Services (also known as the CAS Registry Number) to each EPA hazardous waste and to each Department of Transportation hazardous waste material;

(17) "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act, Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S.C. 1251 et seq.);

(18) "Designated facility (Designated hazardous waste management facility)" means a hazardous waste treatment, storage or disposal facility which has received a permit from the Environmental Protection Agency, this State, or another authorized state hazardous waste program or which has been granted interim status and has been designated on the manifest to receive a specific hazardous waste shipment;

(19) "Dike" means an embankment or ridge of either natural or man-made materials used to contain liquids, sludges, solids, or other materials;

(20) "Director" means the Director of the Department of Natural Resources;

(21) "Discharge or hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous waste into or on any land or State waters;

(22) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any State waters;

(23) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which the waste will remain after closure;

(24) "Division" means the Division of Water Resources of the Department of Natural Resources;

(25) "Domestic sewage" means untreated sanitary wastes that pass through a sewer system;

(26) "DOT" means the United States Department of Transportation;

(27) "Elementary neutralization unit" means a device which:
(i) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in Section 3.03.03 of these regulations, or are listed in Section 3.04 only for this reason; and, (ii) meets the definition of a tank, container, or transport vehicle in this section;

(28) "Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the Director, or the Chief;

(29) "EPA" means the United States Environmental Protection Agency;

(30) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Section 3.04 of these regulations and to each characteristic identified in Section 3.03 of these regulations;

(31) "EPA identification number" means the number assigned by EPA to each hazardous waste generator, hazardous waste transporter or hazardous waste facility;

(32) "Equivalent method" means any testing or analytical method approved by the EPA Administrator under 40 C.F.R. Section ~~260.21~~ 260.20, and 260.21;

(33) "Existing hazardous waste management facility or existing facility" means a facility which was in operation or for which construction commenced on or before July 10, 1981. Under this authority a facility has commenced construction if:

(a)
1. The owner or operator has obtained all necessary Federal, State and local approvals or permits to begin physical construction; and either

(i)
a. A continuous physical, on-site construction program has begun, or

(ii)
b. The owner or operator has entered into contractual obligations (which cannot be cancelled or modified without substantial loss) for construction of the facility to be completed within a reasonable time;

(34) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit;

(35) "Facility" - see "hazardous waste management facility";

(36) "Federal agency" means any department, agency, or other instrumentality of the Federal government, any independent agency or establishment of the Federal government including any government corporation and the Government Printing Office;

(37) "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;

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

(39) "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;

(40) "Food chain crops" means tobacco, crops grown for human consumption, or crops grown for pasture, forage or feed

for animals whose products are consumed by humans;

(41) "Foreign source" means a source outside the geographical boundaries of the continental United States;

(42) "Freeboard" means the vertical distance between the top of a surface impoundment, open tank, or other containment device and the surface of the waste contained therein;

(43) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure;

(44) "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in Section 3.00 of these regulations or whose act first causes a hazardous waste to become subject to these regulations;

(45) "Groundwater" means water below the land surface in a zone of saturation;

(46) "Hazardous constituent" or "constituent" are constituents identified in Appendix VIII of Section 3.00 of these regulations or constituents that caused the Director to list the hazardous waste in Section 3.04 of these regulations or constituents listed in Table 1 of Section 3.03.05 of these regulations, that are reasonably expected to be in or derived from waste contained in a regulated unit or that have been detected in groundwater in the uppermost aquifer underlying a regulated unit.

(47) "Hazardous waste" means a hazardous waste as defined in Section 3.01.02 except as 3.01(b) provides otherwise;

(48) "Hazardous waste activity" means the handling of hazardous waste as in the generation, transportation, treatment, storage, or disposal of any hazardous waste;

(49) "Hazardous waste generation" means the act or process of producing hazardous waste materials;

(50) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

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

(52) "Incompatible waste" means a hazardous waste which is unsuitable for:

a
() Placement in a particular device or facility because it may cause corrosion or decay of containment materials; or

b
() Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases;

(53) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant may have one or more sources of hazardous waste, but is

considered a single or individual generation site if the site or property is contiguous;

(54) "In operation" means facilities that are treating, storing or disposing of hazardous waste;

(55) "Injection well" means a well or bore hole into which fluids are injected;

(56) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste;

(57) "Interim status" means the status obtained by any person who owns or operates a facility in existence, or existing, on July 10, 1981, and required to have a permit under these regulations. Such facilities will be treated as having been issued a permit until such time as final administrative disposition is made with respect to an application for such permit provided that such facility is operating and continues to operate in compliance with interim status requirements of Section 3005 of the Federal Solid Waste Disposal Act, and in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment;

(58) "International shipment" means the transportation of hazardous waste, into or out of the jurisdiction of the United States;

(59) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well;

(60) "Landfill cell" - see "cell";

(61) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure;

(62) "Leachate" means liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste;

(63) "Liner" means a continuous layer of natural or man-made materials beneath or on the sides of a surface impoundment, landfill, or landfill cell which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents or leachate;

(64) "Major facility" means a disposal or treatment facility which disposes or treats an amount of hazardous waste exceeding or equal to 1,000 tons during a calendar year, and any storage facility having a storage capacity for 1,000 tons of hazardous waste or more;

~~(63)~~ (65) "Manifest" means the shipping document originated and signed by the generator, which contains the information required by Section 6.02.
~~quantity, composition and the origin, routing and destination of hazardous waste during its transportation off-site from the~~

~~point-of-generation-to-the-point-of-disposal-treatment-or~~
storage;

(66) "Manifest document number" means the serial number assigned to the manifest by the generator for record keeping and reporting purposes;

(67) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine;

(68) "Monitoring" means all procedures used to inspect and quantify the chemical or physical characteristics of the air, State waters or soils;

(69) "Movement" means transportation of hazardous waste to a facility in an individual transportation vehicle;

(70) "New hazardous waste management facility or "new facility" means a facility which began operation, or for which construction commenced after July 10, 1981. (See also, "existing hazardous waste management facility");

(71) "Not in service" means a regulated unit that has ceased receiving hazardous waste and has been emptied to the point that portions of the liner(s) are exposed below the normal operating level.

(72) "NPDES (National Pollutant Discharge Elimination System)" means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing

permits and imposing and enforcing pre-treatment requirements pursuant to Sections 307, 402, 318 and 405 of CWA. The term includes any approved State program;

(73) "On-site" means on the same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the rights-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property;

(74) "Operator" means the person responsible for the overall operation of a hazardous waste management facility;

(75) "Owner" means the person who owns a hazardous waste management facility or part of a hazardous waste management facility;

(76) "Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with the minimum packaging requirements under 49 C.F.R. 173, 178, and 179 and includes containers (other than freight containers or overpacks), portable tanks, cargo tanks, tank cars and multi-unit tank car units;

(77) "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of these regulations;

(78) "Permit by rule" means the provision of these

regulations stating that a "facility or activity" is deemed to have a permit if it meets the requirements of such provision;

(79) "Permit" means a control document issued by this State pursuant to the Act and these regulations, or by other states having an authorized program pursuant to Section 3006 of RCRA or by the EPA Administrator pursuant to applicable Federal regulations, or a facility having "interim status";

(80) "Permitted hazardous waste management facility (or permitted facility)" means a hazardous waste treatment, storage, or disposal facility that has received an EPA RCRA permit, a RCRA permit from an authorized state pursuant to Section 3006 of RCRA, or a State permit in accordance with the requirements of these regulations, or a facility having "interim status";

(81) "Person" means an individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, State or Federal agency, the United States government, this State or any other State, municipality, county commission or any other political subdivision of a State or any interstate body;

(82) "Personnel or facility personnel" means all persons who work at, or oversee the operations of a hazardous waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of these regulations;

(83) "Physical construction" or "construct" means excavation, movement of earth, erection of forms or structures, or similar activity involving the actual preparation of a

hazardous waste management facility;

(84) "Pile" means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage;

(85) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture;

(86) "Publicly owned treatment works (POTW)" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment;

(87) "Representative sample" means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole;

(88) "Retrofitting" means the act of installing or upgrading a regulated unit with liners, leachate collection, detection, and removal systems not installed at the time of original construction;

(89) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility;

(90) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility;

(91) "Saturated zone (zone of saturation)" means that part of the earth's crust in which all voids are filled with water;

(92) "SDWA" means the Safe Drinking Water Act (Public Law 95-523, as amended by Public Law 95-1900);

(93) "SIC" means Standard Industrial Classification;

(94) "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;

(95) "Spill" means the accidental spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water;

(96) "State Act" means the Hazardous Waste Management Act, § 20-5E-1, et seq.;

(97) "State waters" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this State, or bordering this State and within its jurisdiction,

and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, water-courses and wetlands;

(98) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere;

(99) "Storm" means the 5-year, 24-hour rainfall event for a particular location as it relates to the inspection requirements specified in Sections 8.09.05, 8.10.05 and 8.11.03; "storm" for the purposes specified in the design requirements of Sections 8.09.02, 8.10.02, and 8.11.02 shall mean a 25-year, 24-hour rainfall event for a particular location. Both definitions are as defined by the National Weather Service in Technical Paper #40, "Rainfall Frequently Atlas of the United States", May 1961, and subsequent amendments thereto or equivalent region or State rainfall probability information developed therefrom;

(100) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons;

(101) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support;

(102) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents release of any hazardous waste or any constituent thereof into the environment during treatment;

(103) "Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation;

(104) "Transportation" means the movement of hazardous waste by air, rail, highway or water;

(105) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water;

(106) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle;

(107) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste non-hazardous, safer to transport, store or dispose of, or amenable to recovery, amenable for storage or reduced

in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste as to render it non-hazardous;

(108) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized;

(109) "Triple rinsed" means containers which have been flushed three (3) times, each time using a volume of dilutant at least equal to ten percent (10%) of the container's capacity;

(110) "Unsaturated zone" or "zone of aeration" means the zone between topographic surface and the water table;

(111) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary;

(112) "Waste means waste as defined in Section 3.01.01.

(113) "Wastewater treatment unit" means a device which:

- (i) Is part of a wastewater treatment facility which is subject to regulation under the CWA;
- (ii) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in this section, or generates and accumulates, or treats or stores a wastewater treatment sludge that is defined as a hazardous waste; and
- (iii) meets the definition of a tank as defined in this section;

(114) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels;

(115) "Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to atmospheric pressure;

(116) "Well" means any shaft or pit dug, drilled, jetted, driven or bored into the earth, generally of a cylindrical form, and often cased with bricks or tubing to prevent the earth from caving-in, whose depth is greater than the largest surface dimension.

(117) "Confined aquifer" means an aquifer, overlain by a confining layer of significantly lower hydraulic conductivity, containing ground water that is under sufficient pressure to rise above the level at which it is encountered by a well.

(118) "Inactive portion" means that portion of a facility which has not been in operation since the effective date of Section 3.00 of these regulations.

(119) "Vessel" means every description of water craft used or capable of being used as a means of transportation on the water.

(120) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e.- part of a facility), e.g. - the plant manager, superintendent or person of equivalent responsibility;

(121) "Draft permit" means a document prepared under Section 11.21 indicating the Chief's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.

(122) "Underground injection" means the sub-surface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension (see also "injection well");

IDENTIFICATION AND LISTING
OF HAZARDOUS WASTE

Section 3.00 General.

Section 3.01 Purpose and Scope.

(a) This section identifies those wastes which are subject to regulation as hazardous wastes.

(b) This section identifies only some of the materials which are hazardous wastes for purposes of Sections 5, 12, 13, and 17 of the West Virginia Code, Chapter 20, Article 5E. A material which is not a hazardous waste identified or listed in this section may still be a hazardous waste for purposes of those sections if the Director has reason to believe that the material may be a hazardous waste within the meaning of 20-5E-3(6) of the State Act.

3.01.01 Definitions of Waste.

(a) A waste is any garbage, refuse, sludge or any other waste material which is not excluded under 3.01.03(a).

(b) An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(1) Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or

(2) Has served its original intended use and sometimes is discarded; or

(3) Is a manufacturing or mining by-product and sometimes is discarded.

(c) A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:

- (1) Disposed of; or
- (2) Burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or
- (3) Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of.

(d) A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(e) A "manufacturing or mining by-product" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

[Note: This definition of waste currently excludes from regulations materials which are burned as fuel for the purpose of recovering usable energy. The Director believes that elimination of this exclusion may, at some future time, be necessary in order to protect the public health and safety and the environment, as required by statute.]

3.01.02 Definition of Hazardous Waste.

(a) A waste as defined in 3.01.01 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under 3.01.03(b); and

(2) It meets any of the following criteria:

(i) It is listed in 3.04 and has not been excluded from the list in 3.04 pursuant to ~~40-C.F.R.-§§-260-20-and-260-22~~ Section 16.00.

(ii) It is a mixture of waste and one or more hazardous wastes listed in 3.04 and has not been excluded under ~~40-C.F.R.-§§-260-20 and-260-22~~ Section 16.00

(iii) It exhibits any of the characteristics of hazardous waste identified in 3.03.

(b) A waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in 3.04 when the waste first meets the listing description set forth in 3.04.

(2) In the case of a mixture of a waste and one or more listed hazardous wastes, when a hazardous waste listed in 3.04 is first added to the waste;

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in 3.03.

(c) Unless and until it meets the criteria of (d):

(1) A hazardous waste will remain a hazardous waste.

(2) Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.

(d) Any waste described in paragraph (c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any waste, it does not exhibit any of the characteristics identified in 3.03.

(2) In the case of a waste which is a listed waste under 3.04, contains a waste listed under 3.04 or is derived from a waste listed in 3.04, it also has been excluded from paragraph (c) under ~~40-C.F.R.-§§-260.20-and-260.22.~~ Section 16.00

3.01.03 Exclusions.

(a) Materials which are not wastes.

The following materials are not wastes for the purposes of this section:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended.

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

(3) Irrigation return flows.

(4) Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(b) Wastes which are not hazardous wastes.

The following wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse/derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels).

(2) Wastes generated by any of the following, and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in 3.04 due to the presence of chromium which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b) (6) (i), (A), (B), and (C), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/ chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hair

pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(8) Cement kiln dust waste.

(9) Waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste treatment manufacturing unit is not subject to regulation under Sections 4.00, 6.00, 8.00, 40 C.F.R. Part 265, or Section 11 of these regulations until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the

unit more than ninety (90) days after the unit ceases to be operated for manufacturing, or for storage or transportation of the product or raw materials.

(d) Samples.

(1) Except as provided in paragraph (d)(2) of this section, a sample of waste or a sample of water, soil or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of these regulations when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in paragraph (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

3.01.04 Special Requirements for Hazardous Waste Generated by Small Quantity Generators.

(a) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(b) 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 6.00, 8.00 and 11.00 of these regulations and 40 C.F.R. Part 265, provided the generator complies with the requirements of paragraph (g) of this section.

(c) Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by Section 3.01.05(a) is not included in the quantity determinations of this section, and is not subject to any requirements of this section if the notification requirements of Section 4.00 are complied with. Hazardous waste that is subject to the special requirements of Section 3.01.05(b) is included in the quantity determinations of this section and is subject to the requirements of this section.

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

(1) His hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment of his hazardous waste.

(e) 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:

(1) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in 3.04.04(e), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.04.04(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 3.04.04(e), or any residue or contaminated soil, water or

other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.04.04(e).

(f) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than those set forth in paragraphs (e)(1) or (e)(2) of this section all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to these regulations. The time period of Section 6.03.05 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

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

(1) Comply with Sections 4.00 and 6.01.01 of these regulations;

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

(3) Establish and maintain on-site a written record specifying the quantity and types of hazardous wastes disposed of, the dates the wastes were transported off-site, and the final disposition of the wastes; and

[Comment: This recordkeeping requirement is only applicable to manufacturing facilities. Non-manufacturing facilities such as schools, service stations, etc. are not required to comply with this subsection.]

(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:

- (i) Permitted under 40 CFR Part ~~222~~ 270 of the federal code;
- (ii) In interim status under 40 CFR Parts ~~222~~ ²⁷⁰ and 265 and 20-5E-10 of the West Virginia Code;
- (iii) Permitted by this State under SECTION 11.00 of these regulations;
- (iv) Permitted by this State to manage industrial wastes under the Water Pollution Control Act;
- (v) Authorized to manage hazardous waste by a state with a hazardous waste program approved under 40 CFR Part ~~222~~ 271;
- (vi) A facility which:
 - (A) Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or
 - (B) Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.
- (h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Sections 3.03.
- (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.

- 3.01.05 Special Requirements for Hazardous Waste Which is Used, Reused, Recycled or Reclaimed.

- (a) Except as otherwise provided in paragraph (b) of this section, a hazardous waste which meets any of the following criteria is not subject to the full requirements of these regulations

until such time as the Director promulgates regulations to the contrary:

(1) It is beneficially used or reused or legitimately recycled or reclaimed;

(2) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation;

(3) It is one of the following materials being used, reused, recycled or reclaimed in the specified manner;

(i) Spent pickle liquor which is reused in wastewater treatment at a facility holding a National Pollutant Discharge Elimination System (NPDES) permit; or which is being accumulated, stored, or physically, chemically, or biologically treated before such reuse.

(b) Except for those wastes listed in paragraph (a)(3), a hazardous waste which is a sludge, or which is listed in 3.04, or which contains one or more hazardous wastes listed in 3.04 and which is transported or stored prior to being used, reused, recycled, or reclaimed is subject to the following requirements with respect to such transportation or storage:

(1) Notification requirements under Section 4.00;

(2) Requirements for generators under Section 6.00;

(3) Sections 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 8.08, 8.09, 8.10, 8.13 and 13.00;

(4) Storage facility requirements Section 11.00;

(5) 40 CFR 265 Subpart A, B, C, D, E, G, H, I, J, K, and L;

(6) Location standards in Section 12.00 where applicable; and

(7) Transportation regulations promulgated by the Public Service Commission and the Department of Highways and the Director.

3.01.06 Residue of Hazardous Waste in Empty Containers.

(a) (1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to these regulations.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to these regulations.

(b) (1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in 3.04.04(c) of this section, is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or

(iii) (A) No more than three percent (3%) by weights of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container or inner liner if the container is greater than 110 gallons in size;

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held a hazardous waste identified in 3.04.04(c) of

this section is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

Section 3.02 Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste.

3.02.01 Criteria for Identifying the Characteristics of Hazardous Waste.

(a) The Director shall identify and define a characteristic of hazardous waste upon determining that:

(1) A waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(b) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are available to serve generators of waste; or

(ii) Reasonably detected by generators of waste through their knowledge of their waste.

3.02.02 Criteria for Listing Hazardous Waste.

(a) The Director may list a waste as being hazardous upon determining that the waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in 3.03.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in Appendix VIII, unless, after considering any of the following factors, the Director concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (a) (3) (vii) of this section.

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

Substances will be listed on Appendix VIII, only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. (Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Director may list classes or types of wastes as hazardous waste if he has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in 20-5E-3(6) of the State Act.

(c) The Director will use the criteria for listing, specified in this section, to establish the exclusion limits referred to in 3.01.04(c).

Section 3.03 Characteristics of Hazardous Waste.

3.03.01 General.

(a) A waste as defined in 3.01.01 which is not excluded from regulation as a hazardous waste under 3.01.03(b) is a hazardous waste if it exhibits any of the characteristics identified in this section.

(b) A hazardous waste which is identified by a characteristic in this section, but is not listed as a hazardous waste in 3.04 is assigned the EPA Hazardous Waste Number set forth in the respective characteristic in this section. This number shall be used in complying with the notification requirements of 4.00 of these regulations and certain recordkeeping and reporting requirements under these regulations.

(c) For purposes of Section 3.03, the Director will consider a sample obtained using any of the applicable sampling methods specified in Appendix I to be a representative sample within the meaning of Section 2.00 of these regulations.

3.03.02 Characteristic of Ignitability.

(a) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flashpoint less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM standard D-3278-78, or as determined by an

~~equivalent method approved by the Administrator under the procedures set forth in 40 CFR §§ 260.20 and 260.21.~~ (See 40 CFR § 260.11 for test method information).

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 C.F.R. Section 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator under 40 C.F.R. §§ 260.20 and 260.21.

(4) It is an oxidizer as defined in 40 C.F.R. § 173.51.

(b) A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste by the Administrator, or the Director has the Hazardous Waste Number of D001.

3.03.03 Characteristic of Corrositivity:

(a) A waste exhibits the characteristic of corrositivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method approved by the Administrator under the procedures set forth in 40 C.F.R. §§ 260.20 and 260.21.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste,

Physical/Chemical Methods," or an equivalent test method approved by the Administrator under the procedures set forth in 40 C.F.R. §§ 260.20 and 260.21.

(b) A waste that exhibits the characteristics of corrosivity, but is not listed as a hazardous waste by the Administrator, or Director has the Hazardous Waste Number of D002.

3.03.04 Characteristic of Reactivity.

(a) A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent changes without detonating;

(2) It reacts violently with water;

(3) It forms potentially explosive mixtures with water;

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement;

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure;

(8) It is a forbidden explosive as defined in 49 C.F.R. § 173.51, or a Class A explosive as defined in 49 C.F.R. § 173.53 or a Class B explosive as defined in 49 C.F.R. § 173.88.

(b) A waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste by the Administrator or Director has the Hazardous Waste Number of D003.

3.03.05 Characteristic of EP Toxicity.

(a) A waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in 40 C.F.R. §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

(b) A waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste by the Administrator or Director has the Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

TABLE I. - MAXIMUM CONCENTRATION OF
CONTAMINANTS FOR CHARACTERISTIC OF EP
TOXICITY

EPA Hazardous Waste Number	Contaminant	Maximum Concentration (Milligrams per liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0

EPA Hazardous Waste Number	Contaminant	Maximum Concentration (Milligrams per liter)
D007	Chromium (total)	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10,10-hexachloro-1 7-epoxy-1,4,4a,5,6,7,8,8a-octa- hydro-1,4-endo, endo-5, 8-dimethano naphthalene.	0.02
D013	Lindane (1,2,3,4,5,6-hexachloro- cyclohexane, gamma isomer.	0.4
D014	Methoxychlor (1,1,1-Trichloro-2-2, -bis [p-methoxyphenyl] ethane).	10.0
D015	Toxaphene (C ₁₀ H ₁₀ Cl ₈ , Technical chlorinated champhene, 67-69 percent chlorine).	0.5
D016	2,4-D, (2,4-Dichlorophenoxyacetic acid).	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichloro- phenoxypropionic acid).	1.0

Section 3.04 Lists of Hazardous Wastes.

3.04.01 General.

(a) A waste is a hazardous waste if it is listed in this Section unless it has been excluded from this list under ~~40-C-F-R-260-20~~ and ~~260-22~~ Section 16.00.

(b) The Director will indicate his basis for listing the classes or types of wastes listed in this Section by employing one or more of the following Hazard Codes:

- Ignitable Waste..... (I)
- Corrosive Waste..... (C)
- Reactive Waste..... (R)
- EP Toxic Waste..... (E)
- Acute Hazardous Waste..... (H)
- Toxic Waste..... (T)

Appendix VII identifies the constituent which caused the Director to list the waste as an EP Toxic Waste (E) or Toxic Waste (T) in §§ 3.04.02 and 3.04.03.

(c) Each hazardous waste listed in this Section is assigned an Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of § 4.00 of these regulations and certain recordkeeping and reporting requirements under § 6.00, 8.00 and § 11.00 of these regulations.

(d) The following hazardous wastes listed in § 3.04.02 or 3.04.03 are subject to the exclusion limits for acutely hazardous wastes established in § 3.01.04: [Reserved]

3.04.02 Hazardous Waste from Non-specific sources.

Hazardous Waste No.	Hazardous Waste	Hazard Code
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Generic:

F001.....The following spent halogenated solvents used in degreasing: tetra-chloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; and sludges from

the recovery of these solvents in degreasing operations. (T)

- F002.....The following spent haloengated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, orthodichlorobenzene, and trichlorofluoromethane; and the still bottoms from the recovery of these solvents. (T)
- F003.....The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents. (I)
- F004.....The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; and the still bottoms from the recovery of these solvents. (T)
- F005.....The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; and the still bottoms from the recovery of these solvents. (I, T)
- 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)

- F019.....Wastewater treatment sludges from the chemical conversion coating of aluminum..... (T)
- F007.....Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions). (R, T)
- F008.....Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges). (R, T)
- F009.....Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions). (R, T)
- F010.....Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges). (R, T)
- F011.....Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning). (R, T)
- F012.....Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges). (T)
- F024..... Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. [This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in § 261.32.]

F025.....Light ends, spent filters and filter aids, and spent dessicant wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (T)

3.04.03 Hazardous Waste from Specific Sources.

Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001.....	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.....	(T)
Inorganic Pigments:		
K002.....	Wastewater treatment sludge from the production of chrome yellow and orange pigments.....	(T)
K003.....	Wastewater treatment sludge from the production of molybdate orange pigments.....	(T)
K004.....	Wastewater treatment sludge from the production of zinc yellow pigments....	(T)
K005.....	Wastewater treatment sludge from the production of chrome green pigments...	(T)
K006.....	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).....	(T)
K007.....	Wastewater treatment sludge from the production of iron blue pigments.....	(T)
K008.....	Oven residue from the production of chrome oxide green pigments.....	(T)
Organic Chemicals:		
K009.....	Distillation bottoms from the production of acetaldehyde from ethylene.....	(T)

- K010.....Distillation side cuts from the pro-
duction of acetaldehyde from ethylene. (T)
- K011.....Bottom stream from the wastewater
stripper in the production of
acrylonitrile..... (R, T)
- K013.....Bottom stream from the acetonitrile
column in the production of
acrylonitrile..... (R, T)
- K014.....Bottoms from the acetonitrile
purification column in the production
of acrylonitrile..... (T)
- K015.....Still bottoms from the distillation
of benzyl chloride..... (T)
- K016.....Heavy ends or distillation residues
from the production of carbon
tetrachloride..... (T)
- K017.....Heavy ends (still bottoms) from the
purification column in the pro-
duction of epichlorohydrin..... (T)
- K018.....Heavy ends from the fractionation
column in ethyl chloride production... (T)
- K019.....Heavy ends from the distillation of
ethylene dichloride in ethylene
dichloride production..... (T)
- K020.....Heavy ends from the distillation of
vinyl chloride in vinyl chloride
monomer production..... (T)
- K021.....Aqueous spent antimony catalyst
waste from fluoromethanes production.. (T)
- K022.....Distillation bottom tars from the
production of phenol/acetone from
cumene..... (T)

- K023.....Distillation light ends from the pro-
duction of phthalic anhydride from
naphthalene..... (T)
- K024.....Distillation bottoms from the pro-
duction of phthalic anhydride from
naphthalene..... (T)
- K093.....Distillation light ends from the pro-
duction of phthalic anhydride from
ortho-xylene..... (T)
- K094.....Distillation bottoms from the pro-
duction of phthalic anhydride from
ortho-xylene..... (T)
- K025.....Distillation bottoms from production
of nitrobenzene by the nitration of
benzene..... (T)
- K026.....Stripping still tails from the pro-
duction of methyl ethyl pyridines..... (T)
- K027.....Centrifuge and distillation residues
from toluene diisocyanate production.. (R, T)
- K028.....Spent catalyst from the hydrochlorinator
reactor in the production of 1,1,1-
trichloroethane..... (T)
- K029.....Waste from the product stream stripper
in the production 1,1,1-trichloro-
ethane..... (T)
- K095.....Distillation bottoms from the pro-
duction of 1,1,1-trichloroethane..... (T)
- K096.....Heavy ends from the heavy ends column
from the production 1,1,1-trichloro-
ethane..... (T)
- K030.....Column bottoms or heavy ends from the
combined production of trichloroethylene
and perchloroethylene..... (T)

- K083.....Distillation bottoms from aniline production..... (T)
- K103.....Process residues from aniline extraction from the production of aniline..... (T)
- K104.....Combined wastewater streams generated from nitrobenzene/aniline production.. (T)
- K085.....Distillation or fractionation column bottoms from the production of chlorobenzenes..... (T)
- K105.....Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes..... (T)

Inorganic Chemicals:

- K071.....Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used..... (T)
- K073.....Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production..... (T)
- K106.....Wastewater treatment sludge from the mercury cell process in chlorine production..... (T)

Pesticides:

- K031.....By-product salts generated in the production of MSMA and cacodylic acid. (T)
- K032.....Wastewater treatment sludge from the production of chlordane..... (T)
- K033.....Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane..... (T)

K034.....	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.....	(T)
K097.....	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.....	(T)
K035.....	Wastewater treatment sludges generated in the production of creosote...	(T)
K036.....	Still bottoms from toluene reclamation distillation in the production of disulfoton.....	(T)
K037.....	Wastewater treatment sludges from the production of disulfoton.....	(T)
K038.....	Wastewater from the washing and stripping of phorate production.....	(T)
K039.....	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.....	(T)
K040.....	Wastewater treatment sludge from the production of phorate.....	(T)
K041.....	Wastewater treatment sludge from the production of toxaphene.....	(T)
K098.....	Untreated process wastewater from the production of toxaphene.....	(T)
K042.....	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T..	(T)
K043.....	2,6-Dichlorophenol waste from the production of 2,4-D.....	(T)
K099.....	Untreated wastewater from the production of 2,4-D.....	(T)

Explosives:

- K044.....Wastewater treatment sludges from the manufacturing and processing of explosives..... (R)
- K045.....Spent carbon from the treatment of wastewater containing explosives..... (R)
- K046.....Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds..... (T)
- K047.....Pink/red water from TNT operations.... (R)

Petroleum Refining:

- K048.....Dissolved air flotation (DAF) float from the petroleum refining industry.. (T)
- K049.....Slop oil emulsion solids from the petroleum refining industry..... (T)
- K050.....Heat exchanger bundle cleaning sludge from the petroleum refining industry.. (T)
- K051.....API separator sludge from the petroleum refining industry..... (T)
- K052.....Tank bottoms (leaded) from the petroleum refining industry..... (T)

Iron and Steel:

- K061.....Emission control dust/sludge from the primary production of steel in electric furnaces..... (T)
- K062.....Spent pickle liquor from steel finishing operations..... (C, T)

Secondary Lead:

- K069.....Emission control dust/sludge from secondary lead smelting..... (T)

K100.....Waste leaching solution from acid
leaching of emission control dust/sludge
from secondary lead smelting..... (T)

Veterinary Pharmaceuticals:

K084.....Wastewater treatment sludges generated
during the production of veterinary
pharmaceuticals from arsenic or
organo-arsenic compounds..... (T)

K101.....Distillation tar residues from the
distillation of aniline-based compounds
in the production of veterinary
pharmaceuticals from arsenic or
organo-arsenic compounds..... (T)

K102.....Residue from the use of activated
carbon for decolorization in the
production of veterinary pharma-
ceuticals from arsenic or organo-
arsenic compounds..... (T)

Ink Formulation:

K086.....Solvent washes and sludges, caustic
washes and sludges, or water washes
and sludges from cleaning tubs and
equipment used in the formulation of
ink from pigments, driers, soaps, and
stabilizers containing chromium and
lead..... (T)

Coking:

K060.....Ammonia still lime sludge from coking
operations..... (T)

K087.....Decanter tank tar sludge from coking
operations..... (T)

3.04.04 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section.

(c) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless the container is empty as defined in § 3.01.06(b)(3) of this chapter.

[Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section.

[Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substance listed in paragraphs (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraphs (e) or (f), such waste will be listed in either §§ 3.04.02 or 3.04.03 or will be identified as a hazardous waste by the characteristics set forth in § 3.03 of these regulations.]

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to be the small quantity exclusion defined in § 3.01.04(a).

[Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity.]

These wastes and their corresponding Hazardous Waste Numbers are:

Hazardous Waste No.	Substance
P023.....	Acetaldehyde, chloro-
P002.....	Acetamide, N-(aminothioxomethyl)-
P057.....	Acetamide, 2-fluoro-
P058.....	Acetic acid, fluoro-, sodium salt
P066.....	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester
P001.....	3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts
P002.....	1-Acetyl-2-thiourea
P003.....	Acrolein
P070.....	Aldicarb

P004.....	Aldrin
P005.....	Allyl alcohol
P006.....	Aluminum phosphide
P007.....	5-(Aminomethyl)-3-isoxazolol
P008.....	4-aAminopyridine
P009.....	Ammonium picrate (R)
P119.....	Ammonium vanadate
P010.....	Arsenic acid
P012.....	Arsenic (iii) oxide
P011.....	Arsenic (V) oxide
P011.....	Arsenic pentoxide
P012.....	Arsenic trioxide
P038.....	Arsine, diethyl-
P054.....	Aziridine
P013.....	Barium cyanide
P024.....	Benzenamine, 4-chloro-
P077.....	Benzenamine, 4-nitro-
P028.....	Benzene, (chloromethyl)-
P042.....	1,2-Benzenediol, 4-[1-hydroxy-2-(methyl- amino)ethyl]-
P014.....	Benzenethiol
P028.....	Benzyl chloride
P015.....	Beryllium dust
P016.....	Bis(chloromethyl) ether
P017.....	Bromoacetone
P018.....	Brucine
P021.....	Calcium cyanide
P123.....	Camphene, octachloro-
P103.....	Carbamimidoseleonic acid
P022.....	Carbon bisulfide
P022.....	Carbon disulfide
P095.....	Carbonyl chloride
P033.....	Chlorine cyanide
P023.....	Chloroacetaldehyde
P024.....	p-Chloroaniline
P026.....	1-(o-Chlorophenyl)thiourea
P027.....	3-Chloropropionitrile
P029.....	Copper cyanides
P030.....	Cyanides (soluble cyanide salts), not elsewhere specified
P031.....	Cyanogen
P033.....	Cyanogen chloride
P036.....	Dischlorophenylarsine
P037.....	Dieldrin
P038.....	Diethylarsine
P039.....	O,O-Diethyl S-[2-(ethylthio)ethyl] phos- phorodithioate
P041.....	Diethyl-p-nitrophenyl phosphate
P040.....	O,O-Diethyl O-pyrazinyl phosphorothioate

P043.....	Diisopropyl fluorophosphate
P044.....	Dimethoate
P045.....	3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime
P071.....	O,O-Dimethyl O-p-nitrophenyl phosphoro- thioate
P082.....	Dimethylnitrosamine
P046.....	alpha, alpha-Dimethylphenethylamine
P047.....	4,6-Dinitro-o-cresol and salts
P034.....	4,6-Dinitro-o-cyclohexylphenol
P048.....	2,4-Dinitrophenol
P020.....	Dinoseb
P085.....	Diphosphoramidate, octamethyl-
P039.....	Disulfoton
P049.....	2,4-Dithiobiuret
P109.....	Dithiopyrophosphoric acid, tetraethyl ester
P050.....	Endosulfan
P088.....	Endothall
P051.....	Endrin
P042.....	Epinephrine
P046.....	Ethanamine, 1,1-dimethyl-2-phenyl
P084.....	Ethenamine, N-methyl-N-nitroso-
P101.....	Ethyl cyanide
P054.....	Ethylenimine
P097.....	Famphur
P056.....	Fluorine
P057.....	Fluoroacetamide
P058.....	Fluoroacetic acid, sodium salt
P065.....	Fulminic acid, mercury (ii) salt (R,T)
P059.....	Heptachlor
P051.....	1,2,3,4,10,10-Hexachloro-6,7-epoxy- 1,4,4a,5,6,7,8,8a-octahydro-endo, endo- 1,4:5,8-dimethanonaphthalene
P037.....	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4, 4a,5,6,7,8,8a-octahydro-endo-exo-1,4:5,8- dimethanonaphthalene
P060.....	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a- hexahydro-1,4:5,8-endo, endo-dimethanon- aphthalene
P004.....	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a- hexahydro-1,4:5,8-endo, exo-dimethanon- aphthalene
P060.....	Hexachlorohexahydro-exo,exo-dimethanon- aphthalene
P062.....	Hexaethyl tetraphosphate
P116.....	Hydrazinecarbothioamide
P068.....	Hydrazine, methyl-
P063.....	Hydrocyanic acid

P063.....	Hydrogen cyanide
P096.....	Hydrogen phosphide
P064.....	Isocyanic acid, methyl ester
P007.....	3(2H)-Isoxazolone, 5-(aminomethyl)-
P092.....	Mercury, (acetato-O)phenyl
P065.....	Mercury fulminate (R,T)
P016.....	Methane, oxybis(chloro-
P112.....	Methane, tetranitro- (R)
P118.....	Methanethiol, trichloro-
P059.....	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-hep- tachloro-3a,4,7,7a-tetrahydro-
P066.....	Methomyl
P067.....	2-Methylaziridine
P068.....	Methyl hydrazine
P064.....	Methyl isocyanate
P069.....	2-Methylactonitrile
P071.....	Methyl parathion
P072.....	alpha-Naphthylthiourea
P073.....	Nickel carbonyl
P074.....	Nickel(ii) cyanide
P073.....	Nickel tetracarbonyl
P075.....	Nicotine and salts
P076.....	Nitric oxide
P077.....	p-Nitroaniline
P078.....	Nitrogen dioxide
P076.....	Nitrogen(ii) oxide
P078.....	Nitrogen(IV) oxide
P081.....	Nitroglycerine (R)
P082.....	N-Nitrosodimethylamine
P084.....	N-Nitrosomethylvinylamine
P050.....	5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7- hexachloro, cyclic sulfite
P085.....	Octamethylpyrophosphoramidate
P087.....	Osmium oxide
P087.....	Osmium tetroxide
P088.....	7-Oxabicyclo[2.2.1]heptane-2,3- dicarboxylic acid
P089.....	Parathion
P034.....	Phenol, 2-cyclohexyl-4,6-dinitro-
P048.....	Phenol, 2,4-dinitro-
P047.....	Phenol, 2,4-dinitro-6-methyl-
P020.....	Phenol, 2,4-dinitro-6-(1-methylpropyl)-
P009.....	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P036.....	Phenyl dichloroarsine
P092.....	Phenylmercuric acetate
P093.....	N-Phenylthiourea
P094.....	Phorate
P095.....	Phosgene
P096.....	Phosphine

P041.....	Phosphoric acid, diethyl p-nitrophenyl ester
P044.....	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl]ester
P043.....	Phosphorofluoric acid, bis(1-methylethyl)-ester
P094.....	Phosphorothioic acid, O,O-diethyl S-(ethylthio)methyl ester
P089.....	Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester
P040.....	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097.....	Phosphorothioic acid, O,O-dimethyl O-[p-((dimethylamino)-sulfonyl)phenyl]ester
P110.....	Plumbane, tetraethyl-
P098.....	Potassium cyanide
P099.....	Potassium silver cyanide
P070.....	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P101.....	Propanenitrile
P027.....	Propanenitrile, 3-chloro-
P069.....	Propanenitrile, 2-hydroxy-2-methyl-
P081.....	1,2,3-Propanetriol, trinitrate- (R)
P017.....	1-Propanone, 1-bromo-
P102.....	Propargyl alcohol
P003.....	2-Propenal
P005.....	2-Propen-1-ol
P067.....	1,2-Propylenimine
P102.....	2-Propyn-1-ol
P008.....	4-Pyridinamine
P075.....	Pyridine, (S)-3-(1-methyl-2-pyrroli- danyl)-, and salts
P111.....	Pyrophosphoric acid, tetraethyl ester
P103.....	Selenourea
P104.....	Silver cyanide
P105.....	Sodium azide
P106.....	Sodium cyanide
P107.....	Strontium sulfide
P108.....	Strychnidin-10-one, and salts
P018.....	Strychnidin-10-one, 2,3-dimethoxy-
P108.....	Strychnine and salts
P115.....	Sulfuric acid, thallium(i) salt
P109.....	Tetraethyldithiopyrophosphate
P110.....	Tetraethyl lead
P111.....	Tetraethylpyrophosphate
P112.....	Tetranitromethane (R)
P062.....	Tetraphosphoric acid, hexaethyl ester
P113.....	Thallic oxide
P113.....	Thallium (iii) oxide

P114.....	Thallium (i) selenite
P115.....	Thallium (i) sulfate
P045.....	Thiofanox
P049.....	Thioimidodicarbonic diamide
P014.....	Thiophenol
P116.....	Thiosemicarbazide
P026.....	Thiourea, (2-chlorophenyl)-
P072.....	Thiourea, 1-naphthalenyl-
P093.....	Thiourea, phenyl-
P123.....	Toxaphene
P118.....	Trichloromethanethiol
P119.....	Vanadic acid, ammonium salt
P120.....	Vanadium pentoxide
P120.....	Vanadium(V) oxide
P001.....	Warfarin
P121.....	Zinc cyanide
P122.....	Zinc phosphide (R,T)

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in § 3.01.04 of these regulations.

[Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.]

These wastes and their corresponding EPA Hazardous Waste Numbers are:

U001.....	Acetaldehyde (i)
U034.....	Acetaldehyde, trichloro-
U187.....	Acetamide, N-(4-ethoxyphenyl)-
U005.....	Acetamide, N-9-H-fluoren-2-yl-
U112.....	Acetic acid, ethyl ester (i)
U144.....	Acetic acid, lead salt
U214.....	Acetic acid, thallium(i) salt
U002.....	Acetone(i)
U003.....	Acetonitrile (I,T)
U004.....	Acetophenone
U005.....	2-Acetylaminofluorene
U006.....	Acetyl chloride (C,R,T)
U007.....	Acrylamide
U008.....	Acrylic acid (i)
U009.....	Acrylonitrile

U150.....	Alanine, 3-[p-bis(2-chloroethyl) amino] phenyl-, L-
U011.....	Amitrole
U012.....	Aniline (I,T)
U014.....	Auramine
U015.....	Azaserine
U010.....	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-[(aminocarbonyl)oxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,
U157.....	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U016.....	Benz[c]acridine
U016.....	3,4-Benzacridine
U017.....	Benzal chloride
U018.....	Benz[a]anthracene
U018.....	1,2-Benzanthracene
U094.....	1,2-Benzanthracene, 7,12-dimethyl-
U012.....	Benzenamine (I,T)
U014.....	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-
U049.....	Benzenamine, 4-chloro-2-methyl
U093.....	Benzenamine, N,N'-dimethyl-4-phenylazo-
U158.....	Benzenamine, 4,4'-methylenebis(2-chloro-
U222.....	Benzenamine, 2-methyl-, hydrochloride
U181.....	Benzenamine, 2-methyl-5-nitro
U019.....	Benzene (I,T)
U038.....	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy, ethyl ester
U030.....	Benzene, 1-bromo-4-phenoxy-
U037.....	Benzene, chloro-
U190.....	1,2-Benzenedicarboxylic acid anhydride
U028.....	1,2-Benzenedicarboxylic acid, [bis(2-ethyl-hexyl)] ester
U069.....	1,2-Benzenedicarboxylic acid, dibutyl ester
U088.....	1,2-Benzenedicarboxylic acid, diethyl ester
U102.....	1,2-Benzenedicarboxylic acid, dimethyl ester
U107.....	1,2-Benzenedicarboxylic acid, di-n-octyl ester
U070.....	Benzene, 1,2-dichloro-
U071.....	Benzene, 1,3-dichloro-
U072.....	Benzene, 1,4-dichloro-
U017.....	Benzene, (dichloromethyl)-
U223.....	Benzene, 1,3-disocyanatomethyl- (R,T)
U239.....	Benzene, dimethyl-(I,T)
U201.....	1,3-Benesenediol

U127.....	Benzene, hexachloro-
U056.....	Benzene, hexahydro- (I)
U188.....	Benzene, hydroxy-
U220.....	Benzene, methyl-
U105.....	Benzene, 1-methyl-1-2-4, dinitro-
U106.....	Benzene, 1-methyl-2,6-dinitro-
U203.....	Benzene, 1,2-methylenedioxy-4-allyl-
U141.....	Benzene, 1,2-methylenedioxy-4-propenyl-
U090.....	Benzene, 1,2-methylenedioxy-4-propyl-
U055.....	Benzene, (1-methylethyl)- (I)
U169.....	Benzene, nitro- (I,T)
U183.....	Benzene, pentachloro-
U185.....	Benzene, pentachloro-nitro-
U020.....	Benzenesulfonic acid chloride (C,R)
U020.....	Benzenesulfonyl chloride (C,R)
U207.....	Benzene, 1,2,4,5-tetrachloro-
U023.....	Benzene, (trichloromethyl)- (C,R,T)
U234.....	Benzene, 1,3,5-trinitro- (R,T)
U021.....	Benzidine
U202.....	1,2-Benzisothiazolin-3-one, 1,1-dioxide
U120.....	Benzo[j,k]fluorene
U022.....	Benzo[a]pyrene
U022.....	3,4-Benzopyrene
U197.....	p-Benzoquinone
U023.....	Benzotrichloride (C,R,T)
U050.....	1,2-Benzphenanthrene
U085.....	2,2'-Bioxirane (I,T)
U021.....	(1,1'-Biphenyl)-4,4'-diamine
U073.....	(1,1'-Biphenyl)-4,4'-diamine, 3,3'- dichloro-
U091.....	(1,1'-Biphenyl)-4,4'-diamine, 3,3'- dimethoxy-
U095.....	(1,1'-Biphenyl)-4,4'-diamine, 3,3'- dimethyl-
U024.....	Bis(2-chloroethoxy) methane
U027.....	Bis(2-chloroisopropyl) ether
U244.....	Bis(dimethylthiocarbamoyl) disulfide
U028.....	Bis(2-ethylethyl) phthalate
U246.....	Bromine cyanide
U225.....	Bromoform
U030.....	4-Bromophenyl phenyl ether
U128.....	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172.....	1-Butanamine, N-butyl-N-nitroso-
U035.....	Butanoic acid, 4-[Bis(2-chloroethyl)amino] benzene-
U031.....	1-Butanol (I)
U159.....	2-Butanone (I,T)
U160.....	2-Butanone peroxide (R,T)
U053.....	2-Butenal

U074.....	2-Butene, 1,4-dichloro- (I,T)
U031.....	n-Butyl alcohol (I)
U136.....	Cacodylic acid
U032.....	Calcium chromate
U238.....	Carbamic acid, ethyl ester
U178.....	Carbamic acid, methylnitroso-, ethyl ester
U176.....	Carbamide, N-ethyl-N-nitroso-
U177.....	Carbamide, N-methyl-N-nitroso-
U219.....	Carbamide, thio-
U097.....	Carbamoyl chloride, dimethyl-
U215.....	Carbonic acid, dithallium (I) salt
U156.....	Carbonochloride acid, methyl ester (I,T)
U033.....	Carbon oxyfluoride (R,T)
U211.....	Carbon tetrachloride
U033.....	Carbonyl fluoride (R,T)
U034.....	Chloral
U035.....	Chlorambucil
U036.....	Chlordane, technical
U026.....	Chlornaphazine
U037.....	Chlorobenzene
U039.....	4-Chloro-m-cresol
U041.....	1-Chloro-2,3-epoxypropane
U042.....	2-Chloroethyl vinyl ether
U044.....	Chloroform
U046.....	Chloromethyl methyl ether
U047.....	beta-Chloronaphthalene
U048.....	o-Chlorophenol
U049.....	4-Chloro-o-toluidine, hydrochloride
U032.....	Chromic acid, calcium salt
U050.....	Chrysene
U051.....	Creosote
U052.....	Cresols
U052.....	Cresylic acid
U053.....	Crotonaldehyde
U055.....	Cumene (I)
U246.....	Cyanogen bromide
U197.....	1,4-Cyclohexadienedione
U056.....	Cyclohexane (I)
U057.....	Cyclohexanone (I)
U130.....	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexa- chloro-
U058.....	Cyclophosphamide
U240.....	2,44-D, salts and esters
U059.....	Daunomycin
U060.....	DDD
U061.....	DDT
U142.....	Decachlorooctahydro-1,3,4-metheno-2H- cyclobutal[c,d]-pentalen-2-one
U062.....	Diallate

U133.....	Diamine (R,T)
U221.....	Diaminotoluene
U063.....	Dibenz[a,h]anthracene
U063.....	1,2:5,6-Dibenzanthracene
U064.....	1,2,7,8-Dibenzopyrene
U064.....	Dibenz[a,i]pyrene
U066.....	1,2-Dibromo-3-chloropropane
U069.....	Dibutyl phthalate
U062.....	S-(2,3-Dichloroallyl) diisopropylthiocarbamate
U070.....	o-Dichlorobenzene
U071.....	m-Dichlorobenzene
U072.....	p-Dichlorobenzene
U073.....	3,3'-Dichlorobenzidine
U074.....	1,4-Dichloro-2-butene (I,T)
U075.....	Dichlorodifluoromethane
U192.....	3,5-Dichloro-N-(1,1-dimethyl-1-propynyl) benzamide
U060.....	Dichloro diphenyl dichloroethane
U061.....	Dichloro diphenyl trichloroethane
U078.....	1,1-Dichloroethylene
U079.....	1,2-Dichloroethylene
U025.....	Dichloroethyl ether
U081.....	2,4-Dichlorophenol
U082.....	2,6-Dichlorophenol
U240.....	2,4-Dichlorophenoxyacetic acid, salts and esters
U083.....	1,2-Dichloropropane
U084.....	1,3-Dichloropropane
U085.....	1,2:3,4-Diepoxybutane (I,T)
U108.....	1,4-Diethylene dioxide
U086.....	N,N-Diethylhydrazine
U087.....	O,O-Diethyl-S-methyl-dithiophosphate
U088.....	Diethyl phthalate
U089.....	Diethylstilbestrol
U148.....	1,2-Dihydro-3,6-pyridazinedione
U090.....	Dihydrosafrole
U091.....	3,3'-Dimethoxybenzidine
U092.....	Dimethylamine (I)
U093.....	Dimethylaminoazobenzene
U094.....	7,12-Dimethylbenz[a]anthracene
U095.....	3,3'-Dimethylbenzidine
U096.....	alpha, alpha-Dimethylbenzyhydroperoxide (R)
U097.....	Dimethylcarbamoyl chloride
U098.....	1,1-Dimethylhydrazine
U099.....	1,2-Dimethylhydrazine
U101.....	2,4-Dimethylphenol
U102.....	Dimethyl phthalate

U103.....	Dimethyl sulfate
U105.....	2,4-Dinitrotoluene
U106.....	2,6-Dinitrotoluene
U107.....	Di-n-octyl phthalate
U108.....	1,4-Dioxane
U109.....	1,2-Diphenylhydrazine
U110.....	Dipropylamine (I)
U111.....	Di-N-propylnitrosamine
U001.....	Ethanal (I)
U174.....	Ethanamine, N-ethyl-N-nitroso-
U067.....	Ethane, 1,2-dibromo-
U076.....	Ethane, 1,1-dichloro-
U077.....	Ethane, 1,2-dichloro-
U114.....	1,2-Ethanediylobiscarbamodithioic acid
U131.....	Ethane, 1,1,1,2,2,2-hexachloro-
U024.....	Ethane, 1,1'-[methylenebis(oxy)] bis[2-chloro-
U003.....	Ethanenitrile (I,T)
U117.....	Ethane,1,1'-oxybis- (I)
U025.....	ETHane, 1,1'-oxybis[2-chloro-
U184.....	Ethane, pentachloro-
U208.....	Ethane, 1,1,1,2-tetrachloro-
U209.....	Ethane, 1,1,2,2-tetrachloro-
U218.....	Ethanethioamide
U227.....	Ethane, 1,1,2-trichloro-
U247.....	Ethane,1,1,1,-trichloro-2,2-bis(p- methoxyphenyl)
U043.....	Ethene, chloro-
U042.....	Ethene, 1-chloroethoxy-
U078.....	Ethene, 1,1-dichloro-
U079.....	Ethene, trans-1,2-dichloro-
U210.....	Ethene, 1,1,2,2-tetrachloro-
U173.....	Ethanol, 2,2'-(nitrosoimino)bis-
U004.....	Ethanone, 1-phenyl-
U006.....	Ethanoyl chloride (C,R,T)
U112.....	Ethyl acetate (I)
U113.....	Ethyl acrylate (I)
U238.....	Ethyl carbamate (urethan)
U038.....	Ethyl 4,4'-dichlorobenzilate
U114.....	Ethylenebis(dithiocarbamic acid)
U067.....	Etylene dibromide
U077.....	Ethylene dichloride
U115.....	Ethlene oxide (I,T)
U116.....	Ethylene thiourea
U117.....	Ethyl ether (I)
U076.....	Ethylidene dichloride
U118.....	Ethylmethacrylate
U119.....	Ethyl methanesulfonate
U139.....	Ferric dextran

U120.....	Fluoranthene
U122.....	Formaldehyde
U123.....	Formic acid (C,T)
U124.....	Furan (I)
U125.....	2-Furancarboxaldehyde (I)
U147.....	2,5-Furandione
U213.....	Furn, tetrahydro- (I)
U125.....	Furfural (I)
U124.....	Furfuran (I)
U206.....	D-Glucopyranose, 2-deoxy-2(3-methyl-3-ni- trosoureido)-
U126.....	Glycidylaldehyde
U163.....	Guanidine, N-nitroso-N-methyl-N'nitro-
U127.....	Hexachlorobenzene
U128.....	Hexachlorobutadiene
U129.....	Hexachlorocyclohexane (gamma isomer)
U130.....	Hexachlorocyclopentadiene
U131.....	Hexachloroethane
U132.....	Hexachlorophene
U243.....	Hexachloropropene
U133.....	Hydrazine (R,T)
U086.....	Hydrazine, 1,2-diethyl-
U098.....	Hydrazine, 1,1-dimethyl-
U099.....	Hydrazine, 1,2-dimethyl-
U109.....	Hydrazine, 1,2-diphenyl-
U134.....	Hydrofluoric acid (C,T)
U134.....	Hydrogen flouride (C,T)
U135.....	Hydrogen sulfide
U096.....	Hydroperoxide, 1-methyl-1-phenylethyl-(R)
U136.....	Hydroxydimethylarsine oxide
U116.....	2-Imidazolidinethione
U137.....	Indeno[1,2,3-cd]pyrene
U139.....	Iron dextran
U140.....	Isobutyl alcohol (I,T)
U141.....	Isosafrole
U142.....	Kepone
U143.....	Lasiocarpine
U144.....	Lead acetate
U145.....	Lead phosphate
U146.....	Lead subacetate
U129.....	Lindane
U147.....	Maleic anhydride
U148.....	Maleic hydrazide
U149.....	Malononitrile
U150.....	Melphalan
U151.....	Mercury
U152.....	Methacrylonitrile (I,T)
U092.....	Methanamine, N-methyl- (I)
U029.....	Methane, bromo-

U045.....	Methane, chloro- (I,T)
U046.....	Methane, chloromethoxy-
U068.....	Methane, dibromo-
U080.....	Methane, dichloro-
U075.....	Methane, dichlorodifluoro-
U138.....	Methane, iodo-
U119.....	Methane, sulfonic acid, ethyl ester
U211.....	Methane, tetrachloro-
U121.....	Methane, trichlorofluoro-
U153.....	Methanethiol (I,T)
U225.....	Methane, tribromo-
U044.....	Methane, trichloro-
U121.....	Methane, trichlorofluoro-
U123.....	Methanoic acid (C,T)
U036.....	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octa- chloro-3a,4,7,7a-tetrahydro-
U154.....	Methanol (I)
U155.....	Methapyril ne
U247.....	Methoxychlor
U154.....	Methyl alcohol (I)
U029.....	Methyl bromide
U186.....	1-Methylbutadiene (I)
U045.....	Methyl chloride (I,T)
U156.....	Methyl chlorocarbonate (I,T)
U226.....	Methylchloroform
U157.....	3-Methylcholanthrene
U158.....	4,4'-Methylenebis(2-chloroaniline)
U132.....	2,2'-Methylenebis(3,4,6-trichlorophenol)
U068.....	Methylene bromide
U080.....	Methylene chloride
U122.....	Methylene oxide
U159.....	Methyl ethyl ketone (I,T)
U160.....	Methyl ethyl ketone peroxide (R,T)
U138.....	Methyl iodide
U161.....	Methyl isobutyl ketone (I)
U162.....	Methyl methacrylate (I,T)
U163.....	N-Methyl-N'-nitro-N-nitrosoguanidine
U161.....	4-Methyl-2-pentanone (I)
U164.....	Methylthiouracil
U010.....	Mitomycin C
U059.....	5,12-Naphthacenedione, (8S-cis)-8-acetyl- 10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo- hexopyranosyl)oxyl]-7,8,9,10-tetrahydro- 6,8,11-trihydroxy-1-methoxy-
U165.....	Naphthalene
U047.....	Naphthalene, 2-chloro-
U166.....	1,4-Naphthalenedione
U236.....	2,7-Naphthalenedisulfonic acid, 3,3'-[3,3'-dimethyl-(1,1'-biphenyl)-

	4,4'diyl]-bis-(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U166.....	1,4,Naphthaquinone
U167.....	1-Naphthylamine
U168.....	2-Naphthylamine
U167.....	alpha-Naphthylamine
U168.....	beta-Naphthylamine
U026.....	2-Naphthylamine, N,N'-bis(2-chloromethyl)-
U169.....	Nitrobenzene (I,T)
U170.....	p-Nitrophenol
U171.....	2-Nitropropane (I)
U172.....	N-Nitrosodi-n-butylamine
U173.....	N-Nitrosodiethanolamine
U174.....	N-Nitrosodiethylamine
U111.....	N-Nitroso-N-propylamine
U176.....	N-Nitroso-N-ethylurea
U177.....	N-Nitroso-N-methylurethane
U179.....	N-Nitrosopiperidine
U180.....	N-Nitrosopyrrolidine
U181.....	5-Nitro-o-toluidine
U193.....	1,2-Oxathiolane, 2,2-dioxide
U058.....	2H-1,3-2-Oxazaphosphorine, 2-[bis(2-chloro-ethyl)amino]tetrahydro-, oxide 2-
U115.....	Oxirane (I,T)
U041.....	Oxirane, 2-(chloromethyl)-
U182.....	Peraldehyde
U183.....	Pentachlorobenzene
U184.....	Pentachloroethane
U185.....	Pentachloronitrobenzene
U242.....	Pentachlorophenol
U186.....	1,3-Pentadiene (I)
U187.....	Phenacetin
U188.....	Phenol
U048.....	Phenol, 2-chloro-
U039.....	Phenol, 4-chloro-3-methyl-
U081.....	Phenol, 2,4-dichloro-
U082.....	Phenol, 2,6-dichloro-
U101.....	Phenol, 2,4-dimethyl-
U170.....	Phenol, 4-nitro-
U242.....	Phenol, pentachloro-
U212.....	Phenol, 2,3,4,6-tetrachloro-
U230.....	Phenol, 2,4,5-trichloro-
U231.....	Phenol, 2,4,6-trichloro-
U137.....	1,10-(1,2-phenylene)pyrene
U145.....	Phosphoric acid, Lead salt
U087.....	Phosphorodithioic acid, O-O-diethyl-, S-methylester
U189.....	Phosphorous sulfide (R)

U190.....	Phthalic anhydride
U191.....	2-Picoline
U192.....	Pronamide
U194.....	1-Propanamine (I,T)
U110.....	1-Propanamine, N-propyl-(I)
U066.....	Propane, 1,2-dibromo-3-chloro-
U149.....	Propanedinitrile
U171.....	Propane, 2-nitro- (I)
U027.....	Propane, 2,2'oxybis [2-chloro-
U193.....	1,3-Propane sultone
U235.....	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U126.....	1-Propanol, 2,3-epoxy-
U140.....	1-Propanol, 2-methyl- (I,T)
U002.....	2-Propanone (I)
U007.....	2-Propenamide
U084.....	Propene, 1,3-dichloro-
U243.....	1-Propene, 1,1,2,3,3,3-hexachloro-
U009.....	2-Propenenitrile
U152.....	2-Propenenitrile, 2-methyl- (I,T)
U008.....	2-Propenoic acid (I)
U113.....	2-Propenoic acid, ethyl ester (I)
U118.....	2-Propenoic acid, 2-methyl-, ethyl ester
U162.....	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U233.....	Propionic acid, 2-(2,4,5-trichloro phenoxy)-
U194.....	n-Propylamine (I,T)
U083.....	Propylene dichloride
U196.....	Pyridine
U155.....	Pyridine, 2-[(2-dimethylamino)-2-thenyla- minol]-
U179.....	Pyridine, hexahydro-N-nitroso-
U191.....	Pyridine, 2-methyl-
U164.....	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl- 2-thioxo-
U180.....	Pyrrole, tetrahydro-N-nitroso-
U200.....	Reserpine
U201.....	Resorcinol
U202.....	Saccharin and salts
U203.....	Safröle
U204.....	Selenious acid
U204.....	Selenium dioxide
U205.....	Selenium disulfide (R,T)
U015.....	L-Serine, diazoacetate (ester)
U233.....	Silvex
U089.....	4,4'-Stilbenediol, alpha,alpha'-diethyl-
U206.....	Streptozotocin
U135.....	Sulfur hydride
U103.....	Sulfuric acid, dimethyl ester

U189.....	Sulfur phosphide (R)
U205.....	Sulfur selenide (R,T)
U232.....	2,4,5-T
U207.....	1,2,4,5-Tetrachlorobenzene
U208.....	1,1,1,2-Tetrachloroethane
U209.....	1,1,2,2-Tetrachloroethane
U210.....	Tetrachloroethylene
U212.....	2,3,4,6-Tetrachlorophenol
U213.....	Tetrahydrofuran (I)
U214.....	Thallium (I) acetate
U215.....	Thallium (I) carbonate
U216.....	Thallium (I) chloride
U217.....	Thallium (I) nitrate
U218.....	Thioacetamide
U153.....	Thiomethanol (I,T)
U219.....	Thiourea
U244.....	Thiram
U220.....	Toluene
U221.....	Toluenediamine
U223.....	Toluene diisocyanate (R,T)
U222.....	O-Toluidine hydrochloride
U011.....	1H-1,2,4-Triazol-3-amine
U226.....	1,1-Trichloroethane
U227.....	1,1,2-Trichloroethane
U228.....	Trichloroethene
U228.....	Trichloroethylene
U121.....	Trichloromonofluoromethane
U230.....	2,4,5-Trichlorophenol
U231.....	2,4,6-Trichlorophenol
U232.....	2,4,5-Trichlorophenoxyacetic acid
U234.....	sym-Trinitrobenzene (R,T)
U182.....	1,3,5-Trioxane, 2,4,5-trimethyl-
U235.....	Tris(2,3-dibromopropyl) phosphate
U236.....	Trypan blue
U237.....	Uracil, 5[bis(2-chloromethyl)amino]-
U237.....	Uracil mustard
U043.....	Vinyl chloride
U239.....	Xylene (I)
U200.....	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester,

APPENDIX I - REPRESENTATIVE SAMPLING METHODS

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid - ASTM Standard D140-70 Crushed or powdered material--ASTM Standard D346-75 Soil or rock-like material--ASTM Standard D420-69 Soil-like material--ASTM Standard D1452-65.

Fly Ash-like material--ASTM Standard D2234-76 [ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103].

Containerized liquid wastes--"COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846 (second edition) U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. [Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 [202] 783-3238.]

Liquid waste in pits, ponds, lagoons, and similar reservoirs.-- "Pond Sampler" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."¹

This manual also contains additional information on application of these protocols.

APPENDIX II - EP TOXICITY TEST PROCEDURE

A. Extraction Procedure (EP)

1. A representative sample of the waste to be tested (minimum size 100 grams) should be obtained using the methods specified in Appendix I or any other methods capable of yielding a representative sample within the meaning of Part 260. [For

¹These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2-80-018, January 1980.

detailed guidance on conducting the various aspects of the EP see, "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW-846, Second Edition, U.S. Environmental Protection Agency Office of Solid Waste, Washington, D.C. 20460.^{2]}

2. The sample should be separated into its component liquid and solid phases using the method described in "Separation Procedure" below. If the solid residue³ obtained using this method totals less than 0.5% of the original weight of the waste, the residue can be discarded and the operator should treat the liquid phase as the extract and proceed immediately to Step 8.

3. The solid material obtained from the Separation Procedure should be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1 cm² or passes through a 9.5 mm (0.375 inch) standard sieve, the operator should proceed to Step 4. If the surface area is smaller or the particle size larger than specified above, the solid material should be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described below.

4. The solid material obtained in Step 3 should be weighed and placed in an extractor with 16 times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one which will impart sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continuously brought into contact with well mixed extraction fluid.

5. After the solid material and deionized water are placed in the extractor, the operator should begin agitation and measure the pH of the solution in the extractor. If the pH is greater than

²Copies may be obtained from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238.

³The percent solids is determined by drying the filter pad at 80°C until it reaches the constant weight and then calculating the percent solids using the following equation:

$$\frac{(\text{Weight of pad + solid}) - (\text{tare weight of pad})}{\text{Initial weight of sample}} \times 100 = \% \text{ solids}$$

$$\frac{(\text{Weight of pad + solid}) - (\text{tare weight of pad})}{\text{Initial weight of sample}} \times 100 = \% \text{ solids}$$

5.0, the pH of the solution should be decreased to 5.0 ± 0.2 by adding 0.5 N acetic acid. If the pH is equal to or less than 5.0, no acetic acid should be added. The pH of the solution should be monitored, as described below, during the course of the extraction and if the pH rises above 5.2, 0.5N acetic acid should be added to bring the pH down to 5.0 ± 0.2 . However, in no event shall the aggregate amount of acid added to the solution exceed 4 ml of acid per gram of solid. The mixture should be agitated for 24 hours and maintained at 20° - 40° C (68° - 104° F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed:

(a) A pH meter should be calibrated in accordance with the manufacturer's specifications.

(b) The pH of the solution should be checked and, if necessary, 0.5N acetic acid should be manually added to the extractor until the pH reaches 5.0 ± 0.2 . The pH of the solution should be adjusted at 15, 30 and 60 minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5N pH units.

(c) The adjustment procedure should be continued for at least 6 hours.

(d) If at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 ml per gram of solids) has not been added, the pH should be adjusted 5.0 ± 0.2 and the extraction continued for an additional four hours, during which the pH should be adjusted at one hour intervals.

6. At the end of the 24 hour extraction period, deionized water should be added to the extractor in an amount determined by the following equation:

$$V = (20)(W) - 16(W) - A$$

V = ml deionized water to be added

W = weight in grams of solid charged to extractor

A = ml of 0.5N acetic acid added during extraction

7. The material in the extractor should be separated into its component liquid and solid phases as described under "Separation Procedure."

8. The liquids resulting from Steps 2 and 7 should be combined. This combined liquid (or the waste itself if it has less than 1/2 percent solids, as noted in Step 2) is the extract and should be analyzed for the presence of any of the contaminants

specified in Table I of § 3.04.02 using the Analytical Procedures designated below.

Separation Procedure

Equipment: A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm² (75 psi) hydrostatic pressure to the solution being filtered shall be used. For mixtures containing nonabsorptive solids, where separation can be affected without imposing a 5.3 kg/cm² pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.")

Procedure⁴

(i) Following manufacturer's directions, the filter unit should be assembled with a filter bed consisting of a 0.45 micrometer filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.

(ii) The waste should be poured into the filtration unit.

(iii) The reservoir should be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter should be immediately lowered to 10-15 psig. Filtration should be continued until liquid flow ceases.

⁴This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size greater than or equal to 0.45µm. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation the liquid portion (centrifugate) is filtered through the 0.45µm filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.

(iv) The pressure should be increased stepwise in 10 psi increments to 75 psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filtrate outlet.

(v) The filter unit should be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.

(vi) The liquid phase should be stored at 4°C for subsequent use in Step 8.

B. Structural Integrity Procedure

Equipment: A Structural Integrity Tester having 3.18 cm (1.25 in.) diameter hammer weighing 0.33 kg (0.73 lbs.) and having a free fall of 15.24 cm (6 in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA., 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.

Procedure

1. The sample holder should be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion should be cut from the block having the dimensions of a 3.3 cm (1.3 in.) diameter x 7.1 cm (2.8 in.) cylinder. For a fixated waste, samples may be case in the form of a 3.3 cm (1.3 in.) diameter x 7.1 cm (2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for 30 days prior to further testing.

2. The sample holder should be placed into the Structural Integrity Tester, then the hammer should be raised to its maximum height and dropped. This should be repeated fifteen times.

3. The material should be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.

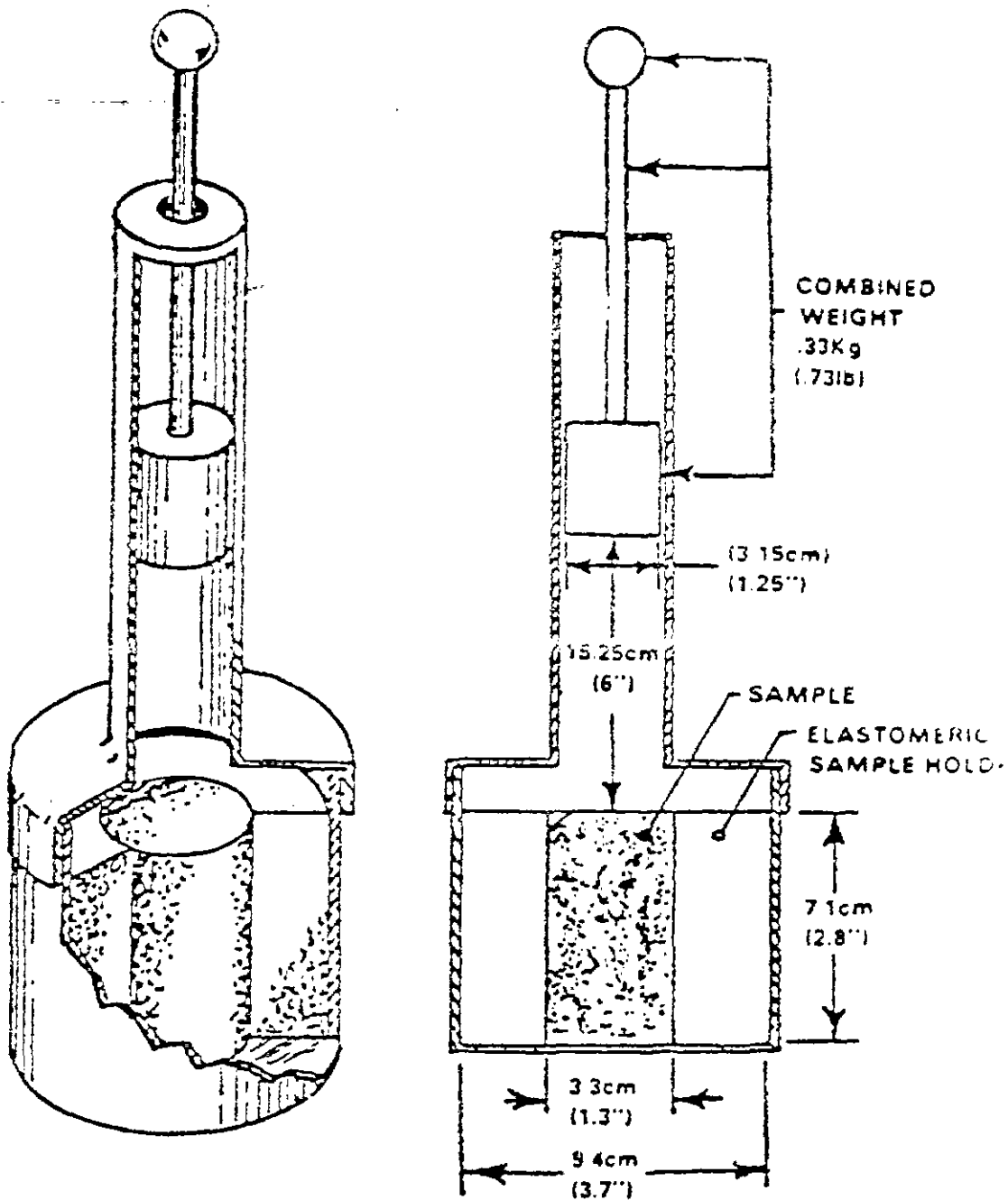
Analytical Procedures for Analyzing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2,4-D[2,4-dichlorophenoxyacetic acid] or 2,4,5-TP [2,4,5-trichlorophenoxypropionic acid]: "Test Methods for the Evaluation of Solid Waste; Physical/Chemical Methods," [SW-846], U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460.

(2) [Reserved].

For all analyses, the methods of standard addition shall be used for quantification of species concentration.



*ELASTOMERIC SAMPLE HOLDER FABRICATED OF MATERIAL FIRM ENOUGH TO SUPPORT THE SAMPLE

Figure 1
COMPACTION TESTER

App. III

~~APPENDIX III - CHEMICAL ANALYSIS -
TEST METHODS~~

Tables 1, 2 and 3 specify the appropriate analytical procedures, described in "Test Methods for Evaluating Solid Waste" (SW-846), which should be used in determining whether the waste in question contains a given toxic constituent. Table 1 identifies the analytical class and the approved measurement techniques for each organic

chemical listed in Appendix VII. Table 2 identifies the corresponding methods for the inorganic species. Table 3 identifies the specific sample preparation and measurement instrument introduction techniques which may be suitable for both the organic and inorganic species as well as the matrices of concern.

Prior to final selection of the analytical method the operator should consult the specific method descriptions in SW-846 for additional guidance on which of the approved methods should be employed for a specific waste analysis situation.

~~Table 1. Analytical Characteristics of Organic Chemicals~~

Compound	Sample handling class/fraction	Non-GC methods	Measurement techniques		
			GC/MS	GC	Conventional Detector
Acetonitrile	Volatile		8 24	8 03	NSD
Acroten	Volatile		8 24	8 03	NSD
Acrylamide	Volatile		8 24	8 01	FID
Acrylonitrile	Volatile		8 24	8 03	NSD
Benzene	Volatile		8 24	8 02	PID
Benz(a)anthracene	Extractable/BN	8 10 (HPLC)	8 25	8 10	FID
Benz(a)pyrene	Extractable/BN	8 10 (HPLC)	8 25	8 10	FID
Benzotrifluoride	Extractable/BN		8 25	8 12	ECD
Benzyl chloride	Volatile or Extractable/BN		8 24	8 01	HSD
			8 25	8 12	ECD
Benz(b)fluoranthene	Extractable/BN	8 10 (HPLC)	8 25	8 10	FID
Bis(2-chloroethoxy)methane	Volatile		8 24	8 01	HSD
Bis(2-chloroethyl)ether	Volatile		8 24	8 01	HSD
Bis(2-chloroisopropyl)ether	Volatile		8 24	8 01	HSD
Carbon disulfide	Volatile		8 24	8 01	HSD
Carbon tetrachloride	Volatile		8 24	8 01	HSD
Chlordane	Extractable/BN		8 25	8 08	HSD
Chlorinated dibenzodioxins	Extractable/BN		8 25	8 08	ECD
Chlorinated biphenyls	Extractable/BN		8 25	8 08	HSD
Chloroacetaldehyde	Volatile		8 24	8 01	HSD
Chlorobenzene	Volatile		8 24	8 01	HSD
				8 02	PID
Chloroform	Volatile		8 24	8 01	HSD
Chloromethane	Volatile		8 24	8 01	HSD
2-Chlorophenol	Extractable/BN		8 25	8 04	FID, ECD
Cisylene	Extractable/BN	8 10 (HPLC)	8 25	8 10	FID
Creosote	Extractable/BN		8 25	8 10	ECD
Cresol(s)	Extractable/A		8 25	8 04	FID, ECD
Cresylic acid(s)	Extractable/A		8 25	8 04	FID, ECD
Dichlorobenzene(s)	Extractable/BN		8 25	8 01	HSD
				8 02	PID
				8 12	ECD
Dichloroethane(s)	Volatile		8 24	8 01	HSD
Dichloromethane	Volatile		8 24	8 01	HSD
Dichlorophenoxyacetic acid	Extractable/A		8 25	8 04	HSD
Dichloropropanol	Extractable/BN		8 25	8 12	ECD
2,4-Dimethylphenol	Extractable/A		8 25	8 04	FID, ECD
Dinitrobenzene	Extractable/BN		8 25	8 04	FID, ECD
4,6-Dinitro-o-cresol	Extractable/A		8 25	8 04	FID, ECD
2,4-Dinitrotoluene	Extractable/BN		8 25	8 04	FID, ECD
Endrin	Extractable/P		8 25	8 04	HSD
Ethyl ether	Volatile		8 24	8 01	FID
				8 02	FID
Formaldehyde	Volatile		8 24	8 01	FID
Formic acid	Extractable/BN		8 25	8 05	FID
Heptachlor	Extractable/P		8 25	8 05	HSD
Hexachlorobenzene	Extractable/BN		8 25	8 12	ECD
Hexachlorobutadiene	Extractable/BN		8 25	8 12	ECD
Hexachloroethane	Extractable/BN		8 25	8 12	ECD
Hexachlorocyclopentadiene	Extractable/BN		8 25	8 12	ECD

Table 1—Analytical Characteristics of Organic Chemicals—Continued

Compound	Sample handling class/fraction	Non GC methods	Measurement techniques		
			GC/MS	GC	Conventional Detector
Maleic anhydride	Extractable/BN		8.25	8.06	ECD, FID
Methanol	Volatile		8.24	8.01	FID
Methomyl	Extractable/BN	8.32 (HPLC)			
Methyl ethyl ketone	Volatile		8.25	8.01	FID
Methyl isobutyl ketone	Volatile		8.25	8.02	FID
Naphthalene	Extractable/BN		8.25	8.10	FID
Naphthoquinone	Extractable/BN		8.25	8.06	ECD, FID
Nitrobenzene	Extractable/BN		8.25	8.09	FID
4-Nitrophenol	Extractable/A		8.24	8.04	ECD, FID
Paraldehyde (trimer of acetaldehyde)	Volatile		8.24	8.01	FID
Pentachlorophenol	Extractable/A		8.25	8.04	ECD
Phenol	Extractable/A		8.25	8.04	ECD, FID
Phorate	Extractable/BN			8.22	FPD
Phosphorodithioic acid esters	Extractable/BN			8.06	ECD, FID
				8.09	ECD, FID
				8.22	FPD
Phthalic anhydride	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
2-Picoline	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
Pyridine	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
Tetrachlorobenzene(s)	Extractable/BN		8.25	8.12	ECD
Tetrachloroethane(s)	Volatile		8.24	8.01	HSD
Tetrachloroethene	Volatile		8.24	8.01	HSD
Tetrachlorophenol	Extractable/A		8.24	8.04	ECD
Toluene	Volatile		8.24	8.02	PID
Toluenediamine	Extractable/BN		8.25		
Toluene diisocyanate(s)	Extractable/nonaqueous		8.25	8.06	FPD
Toxaphene	Extractable/P		8.25	8.08	HSD
Trichloroethane	Volatile		8.24	8.01	HSD
Trichloroethene(s)	Volatile		8.24	8.01	HSD
Trichlorofluoromethane	Volatile		8.24	8.01	HSD
Trichlorophenol(s)	Extractable/A		8.25	8.01	HSD
2,4,5-TP (Savex)	Extractable/A		8.25	8.01	HSD
Trichloropropane	Volatile		8.24	8.01	HSD
Vinyl chloride	Volatile		8.24	8.01	HSD
Vinylidene chloride	Volatile		8.24	8.01	HSD
Xylene	Volatile		8.24	8.02	PID

¹Analyze for phenanthrene and carbazole, if these are present in a ratio between 1:4:1 and 5:1, creosote should be considered present.

ECD = Electron capture detector, FID = Flame ionization detector, FPD = Flame photometric detector, HSD = Halide specific detector, HPLC = High pressure liquid chromatography, NSD = Nitrogen-specific detector, PID = Photoionization detector.

Table 2—Analytical Characteristics of Inorganic Species

Species	Sample handling class	Measurement technique	Method number
Antimony	Digestion	Atomic absorption-furnace/flame	8.50
Arsenic	Hydride	Atomic absorption-flame	8.51
Barium	Digestion	Atomic absorption-furnace/flame	8.52
Cadmium	Digestion	Atomic absorption-furnace/flame	8.53
Chromium	Digestion	Atomic absorption-furnace/flame	8.54
Cyanides	Hydrolysis	Atomic absorption-spectroscopy	8.55
Lead	Digestion	Atomic absorption-furnace/flame	8.56
Mercury	Cold Vapor	Atomic absorption	8.57
Nickel	Digestion	Atomic absorption-furnace/flame	8.58
Selenium	Hydroxide digestion	Atomic absorption-furnace/flame	8.59
Silver	Digestion	Atomic absorption-furnace/flame	8.60

TABLE 8—Sample Preparation and Sample Introduction Techniques

Sample handling class	Physical characteristics of waste ¹		
	Fluid	Paste	Solid
Volatile	Purge and trap Direct injection	Purge and trap Headspace	Headspace
Semivolatile and nonvolatile	Direct injection Shake out	Shake out	Shake out Soxhlet Sonication
Inorganic	Direct injection Digestion Hydride	Digestion Hydride	Digestion Hydride

¹For purposes of this Table, fluid refers to readily pourable liquids, which may or may not contain suspended particles. Paste-like materials, while fluid in the sense of flowability, can be thought of as being thixotropic or plastic in nature, e.g. paints. Solid materials are those wastes which can be handled without a container (i.e. can be picked up without appreciable sagging).

Procedure and Method Numbers

Digestion—See appropriate procedure for element of interest.

Direct injection—8.80

Headspace—8.82

Hydride—See appropriate procedure for element of interest.

Purge & Trap—8.83

Shake out—8.84

Sonication—8.85

Soxhlet—8.86

Chemical Analysis Test Methods

Tables 1, 2 and 3 specify the appropriate analytical procedures, described in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (First and Second editions) which shall be used to determine whether a sample contains a given appendix VII or VIII toxic constituent.

Table 1 identifies each Appendix VII to VIII organic constituent along with the approved measurement method. Table 2 identifies the corresponding methods for inorganic species. Table 3 summarizes the contents of SW-846 and supplies specific section and method numbers for sampling and analysis methods.

Prior to final sampling and analysis method selection the analyst should consult the specific section or method described in SW-846 for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.

TABLE 1 - Analysis Methods for Organic Chemicals Contained in SW-846

Compound	First edition method(s)	Second edition method(s)	Compound	First edition method(s)	Second edition method(s)
Acetonitrile	8.03, 8.24	8030, 8240	Dichloroethane(s)	8.01, 8.24	8010, 8240
Acrolein	8.03, 8.24	8030, 8240	Dichloromethane	8.01, 8.24	8010, 8240
Acrylamide	8.01, 8.24	8015, 8240	Dichlorophenoxyacetic acid	8.40, 8.25	8180, 8250
Acrylonitrile	8.03, 8.24	8030, 8240	Dichloropropanol	8.12, 8.25	8120, 8250
Benzene	8.02, 8.24	8020, 8024	2,4-Dimethylphenol	8.04, 8.25	8040, 8250
Benz(a)anthracene	8.10, 8.25	8100, 8250, 8310	Dinitrobenzene	8.09, 8.25	8090, 8250
Benz(a)pyrene	8.10, 8.25	8100, 8250, 8310	4,8-Dinitro-o-cresol	8.04, 8.25	8040, 8250
Benzotrichloride	8.12, 8.25	8120, 8250	2,4-Dinitrotoluene	8.09, 8.25	8090, 8250
Benzyl chloride	8.01, 8.12, 8.24, 8.25	8100, 8250, 8310	Endrin	8.06, 8.25	8060, 8250
Benzo(b)fluoranthene	8.10, 8.25	8100, 8250, 8310	Ethyl ether	8.01, 8.02, 8.24	8015, 8240
Bis(2-chloroethylmethane)	8.01, 8.24	8010, 8240	Formaldehyde	8.01, 8.24	8015, 8240
Bis(2-chloroethyl)ether	8.01, 8.24	8010, 8240	Formic acid	8.06, 8.25	8060, 8250
Bis(2-chloroisopropyl)ether	8.01, 8.24	8010, 8240	Heptachlor	8.06, 8.25	8060, 8250
Carbon disulfide	8.01, 8.24	8015, 8240	Hexachlorobenzene	8.12, 8.25	8120, 8250
Carbon tetrachloride	8.01, 8.24	8010, 8240	Hexachlorobutadiene	8.12, 8.25	8120, 8250
Chlordane	8.06, 8.25	8060, 8250	Hexachloroethane	8.12, 8.25	8010, 8240
Chlorinated dibenzodioxins	8.06, 8.25	8060, 8250	Hexachlorocyclopentadiene	8.12, 8.25	8120, 8250
Chlorinated biphenyls	8.06, 8.25	8060, 8250	Lindane	8.06, 8.25	8060, 8250
Chloroacetaldehyde	8.01, 8.24	8010, 8240	Maleic anhydride	8.06, 8.25	8060, 8250
Chlorobenzene	8.01, 8.02, 8.24	8020, 8240	Methanol	8.01, 8.24	8010, 8240
Chloroform	8.01, 8.24	8010, 8240	Methyl acetate	8.32	8250
Chloromethane	8.01, 8.24	8010, 8240	Methyl ethyl ketone	8.01, 8.02, 8.24	8015, 8240
2-Chlorophenol	8.04, 8.25	8040, 8250	Methyl isobutyl ketone	8.01, 8.02, 8.24	8015, 8240
Chrysene	8.10, 8.25	8100, 8250, 8310	Naphthalene	8.10, 8.25	8100, 8250
Cresol	8.10, 8.25	8100, 8250	Naphthoquinone	8.06, 8.09, 8.25	8090, 8250
Cresol(s)	8.04, 8.25	8040, 8250	Nitrobenzene	8.09, 8.25	8090, 8250
Cresylic Acid(s)	8.04, 8.25	8040, 8250	4-Nitrophenol	8.04, 8.25	8040, 8240
Dichlorobenzene(s)	8.01, 8.02, 8.12, 8.25	8010, 8120, 8250	Paraldehyde (trimer of acetaldehyde)	8.01, 8.24	8015, 8240
			Pentachlorophenol	8.04, 8.25	8040, 8250
			Phenol	8.04, 8.25	8040, 8250
			Phos	8.22	8140
			Phosphorodithioic acid esters	8.06, 8.09, 8.22	8140

APPENDIX III

TABLE 1 Continued,

Compound	First edition method(s)	Second edition method(s)
Phthalic anhydride	8.08, 8.09, 8.25	8080, 8250
2-Picoline	8.08, 8.09, 8.25	8090, 8250
Pyridine	8.08, 8.09, 8.25	8090, 8250
Tetrachlorobenzene(s)	8.12, 8.25	8120, 8250
Tetrachloroethane(s)	8.01, 8.24	8010, 8240
Tetrachloroethene	8.01, 8.24	8010, 8240
Tetrachlorophenol	8.04, 8.24	8040, 8250
Toluene	8.02, 8.24	8020, 8024
Toluediamine	8.25	8250
Toluene diisocyanate(s)	8.06, 8.25	8250
Toxaphene	8.06, 8.25	8080, 8250
Trichloroethane	8.01, 8.24	8010, 8240
Trichloroethene(s)	8.01, 8.24	8010, 8240
Trichlorofluoromethane	8.01, 8.24	8010, 8240
Trichlorophenol(s)	8.04, 8.25	8040, 8250
2,4,5-Trichlorophenoxy pro- pionic acid	8.40, 8.25	8150, 8250
Trichloropropane	8.01, 8.24	8010, 8240
Vinyl chloride	8.01, 8.24	8010, 8240
Vinylidene chloride	8.01, 8.24	8010, 8240
Xylene	8.02, 8.24	8020, 8240

¹ Analyze for phenanthrene and carbazole; if these are present in a ratio between 1:4:1 and 5:1 creosote should be considered present.

TABLE 2 - Analysis Methods for Inorganic Chemicals Contained in SW-846

Compound	First edition method(s)	Second edition method(s)
Antimony	8.50	7040, 7041
Arsenic	8.51	7060, 7061
Barium	8.52	7080, 7081
Cadmium	8.53	7090, 7091
Chromium	8.54	7180, 7191
Chromium: Hexavalent	8.545, 8.546, 8.547	7195, 7196, 7197
Lead	8.56	7420, 7421
Mercury	8.57	7470, 7471
Nickel	8.58	7520, 7521
Selenium	8.59	7740, 7741
Silver	8.60	7760, 7761
Cyanides	8.65	9010
Total Organic Halogen	8.66	9020
Sulfides	8.67	9030

TABLE 3 - Sampling and Analysis Methods Contained in SW-846

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Sampling of Solid Wastes.....	1.0		1.0	
Development of Appropriate Sampling Plans.....	1.0		1.1	
Regulatory and Scientific Objectives.....	1.0-2		1.1.1	
Fundamental Statistical Concepts.....	1.0-3		1.1.2	
Basic Statistical Strategies.....	1.0-7		1.1.3	
Simple Random Sampling.....			1.1.3.1	
Stratified Random Sampling.....			1.1.3.2	
Systematic Random Sampling.....			1.1.3.3	
Special Considerations.....	1.0-7			
Composite Sampling.....			1.1.4.1	
Subsampling.....			1.1.4.2	
Coet and Loss Functions.....			1.1.4.3	
Implementation of Sampling Plan.....	1.0-7		1.2	
Selection of Sampling Equipment.....			1.2.1	
Composite Liquid Waste Sampler.....	3.2.1		1.2.1.1	
Weighted Bottle.....	3.2.2		1.2.1.2	
Dipper.....	3.2.3		1.2.1.3	
Dipper.....	3.2.4		1.2.1.4	
Trier.....	3.2.5		1.2.1.5	
Auger.....	3.2.6		1.2.1.6	
Scoop and Shovel.....	3.2.7		1.2.1.7	
Selection of Sample Containers.....	3.3		1.2.2	
Processing and Storage of Samples.....	3.3		1.2.3	
Documentation of Chain of Custody.....	2.0		1.3	
Sample Labels.....	2.0-1		1.3.1	
Sample Seals.....	2.0-3		1.3.2	
Field Log Book.....	2.0-5		1.3.3	
Chain-of-Custody Record.....	2.0-6		1.3.4	
Sample Analysis Request Sheet.....	2.0-9		1.3.5	
Sample Delivery to Laboratory.....	2.0-10		1.3.6	
Shipping of Samples.....	2.0-10		1.3.7	
Receipt and Logging of Sample.....	2.0-12		1.3.8	
Assignment of Sample for Analysis.....	2.0-13		1.3.9	
Sampling Methodology.....	3.0		1.4	
Containers.....	3.2-2		1.4.1	
Tanks.....	3.2-2		1.4.2	
Waste Piles.....	3.2-2		1.4.3	
Landfills and Lagoons.....	3.2-2		1.4.4	
Waste Evaluation Procedures.....			2.0	
Characteristics of Hazardous Waste.....			2.1	
Ignitability.....	4.0		2.1.1	
Pensky-Martens Closed-Cup Method.....	4.1		2.1.1	3010
Setflash Closed-Cup Method.....	4.1		2.1.1	1020
Corrosivity.....	5.0		2.1.2	
Corrosivity Toward Steel.....	5.3		2.1.2	1110
Reactivity.....	6.0		2.1.3	
Extraction Procedure Toxicity.....	7.0		2.1.4	
Extraction Procedure Toxicity Test.....	7.1, 7.2, 7.5			
Method and Structural Integrity Test.....	7.4		2.1.4	1210
Sample Workup Techniques.....			4.0	
Inorganic Techniques.....	8.49		4.1	
Acid Digestion for Flame AAS.....	1		4.1	3010
Acid Digestion for Furnace AAS.....	1		4.1	3020
Acid Digestion of Oil, Grease, or Wax.....	8.49-9		4.1	3030
Dissolution Procedure for Oil, Grease or Wax.....	8.49-8			
Alkaline Digestion.....	8.0	8.458	4.1	3060
Organic Techniques.....	8.0		4.2	
Separatory Funnel Liquid-Liquid Extraction.....	9.0	9.1	4.2	3510
Continuous Liquid-Liquid Extraction.....	9.0	9.01	4.2	3520
Acid-Base Cleanup Extraction.....	8.0	8.84	4.2	3530
Soxhlet Extraction.....	8.0	8.86	4.2	3540
Sonication Extraction.....	8.0	8.85	4.2	3550
Sample Introduction Techniques.....			5.0	
Headspace.....	8.0	8.82	5.0	5020
Purge-and-Trap.....	8.0	8.83	5.0	5030
Inorganic Analytical Methods.....	8.0		7.0	
Antimony, Flame AAS.....	8.0	8.50	7.0	7470
Antimony, Furnace AAS.....	8.0	8.50	7.0	7471
Arsenic, Flame AAS.....	8.0	8.51	7.0	7090
Arsenic, Furnace AAS.....	8.0	8.51	7.0	7091
Barium, Flame AAS.....	8.0	8.52	7.0	7090
Barium, Furnace AAS.....	8.0	8.52	7.0	7091
Cadmium, Flame AAS.....	8.0	8.53	7.0	7130
Cadmium, Furnace AAS.....	8.0	8.53	7.0	7131
Chromium, Flame AAS.....	8.0	8.54	7.0	7090
Chromium, Furnace AAS.....	8.0	8.54	7.0	7191
Chromium, Hexavalent, Coprecipitation.....	8.0	8.545	7.0	7195
Chromium, Hexavalent, Colorimetric.....	8.0	8.546	7.0	7196
Chromium, Hexavalent, Chelation.....	8.0	8.547	7.0	7197

Table 3 Continued,

Title	First edition		Second edition	
	Section No.	Method No.	Section No.	Method No.
Lead, Flame AAS.....	8.0	8.56	7.0	7420
Lead, Furnace AAS.....	8.0	8.58	7.0	7421
Mercury, Cold Vapor, Liquid.....	8.0	8.57	7.0	7470
Mercury, Cold Vapor, Solid.....	8.0	8.57	7.0	7471
Nickel, Flame AAS.....	8.0	8.58	7.0	7520
Nickel, Furnace AAS.....	8.0	8.58	7.0	7521
Selenium, Flame AAS.....	8.0	8.59	7.0	7740
Selenium, Gaseous Hydride AAS.....	8.0	8.59	7.0	7741
Silver, Flame AAS.....	8.0	8.60	7.0	7760
Silver, Furnace AAS.....	8.0	8.60	7.0	7761
Organic Analytical Methods.....	8.0		8.0	
Gas Chromatographic Methods.....	8.0		8.1	
Halogenated Volatile Organics.....	8.0	8.01	8.1	8010
Nonhalogenated Volatile Organics.....	8.0	8.01	8.1	8015
Aromatic Volatile Organics.....	8.0	8.02	8.1	8020
Acrolein, Acrylonitrile, Acetonitrile.....	8.0	8.03	8.1	8030
Phenols.....	8.0	8.04	8.1	8040
Phthalate Esters.....	8.0	8.06	8.1	8060
Organochlorine Pesticides and PCBs.....	8.0	8.06	8.1	8080
Nitroaromatics and Cyclic Ketones.....	8.0	8.09	8.1	8090
Polynuclear Aromatic Hydrocarbons.....	8.0	8.10	8.1	8100
Chlorinated Hydrocarbons.....	8.0	8.12	8.1	8120
Organophosphorus Pesticides.....	8.0	8.22	8.1	8140
Chlorinated Herbicides.....	8.0	8.40	8.1	8150
Gas Chromatographic/Mass Spectroscopy Methods (GC/MS).....	8.0		8.2	
GC/MS Volatiles.....	8.0	8.24	8.2	8240
GC/MS Semi-Volatiles, Packed Column.....	8.0	8.25	8.2	8250
GC/MS Semi-Volatiles, Capillary.....	8.0	8.27	8.2	8270
High Performance Liquid Chromatographic Methods (HPLC).....	8.0		8.3	
Polynuclear Aromatic Hydrocarbons.....	8.0	8.10	8.3	8310
Miscellaneous Analytical Methods.....	8.0		9.0	
Cyanide: Total and Amenable to Chlorination.....	8.0	8.55	9.0	9010
Total Organic Halogen (TOX).....	8.0	8.66	9.0	9020
Sulfides.....	8.0	8.67	9.0	9030
pH Measurement.....	5.0	5.2	9.0	9040
Quality Control/Quality Assurance.....	10.0		10.1	
Introduction.....	10.0		10.1	
Program Design.....	10.0		10.2	
Sampling.....	10.0		10.3	
Analyzes.....	10.0		10.4	
Data Handling.....	10.0		10.5	

¹See specific metal.

APPENDIX IV—[RESERVED FOR
RADIOACTIVE WASTE TEST METHODS]

APPENDIX V—[RESERVED

APPENDIX VI—[RESERVED FOR
ETIOLOGIC AGENTS]

STANDARDS APPLICABLE TO GENERATORS
OF HAZARDOUS WASTE

Section 6.00 General.

Section 6.01 Purpose, Scope and Applicability.

(a) This Section establishes standards and regulations for generators of hazardous wastes.

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following subsections of this Section with respect to that waste: 6.01.01 for determining whether his waste is hazardous; 6.01.02 for obtaining an EPA identification number; 6.04.01(c) and (d) for recordkeeping; 6.04.04 for additional reporting; and, if applicable; 6.05.02 for Farmers, and 6.03.05 for accumulation of hazardous waste.

(c) Any person who imports hazardous waste into West Virginia shall comply with the standards applicable to generators established in this section.

(d) A farmer who generates waste pesticides which are hazardous wastes and who complies with all the requirements of Section 6.05.02 is not required to comply with the remainder of these regulations with respect to such pesticides.

(e) A person who generates a hazardous waste, as defined in Section 3.00 is subject to the compliance requirements and penalties prescribed in Sections 14, 15 and 16 of the Hazardous Waste Management Act if he does not comply with the requirements of this section.

(e) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility

must comply with the generator standards established in this Section.

6.01.01 Hazardous Waste Determination.

A person who generates a waste, as defined in Section 3.01.01, shall determine if that waste is a hazardous waste using the following method:

(a) He shall first determine if the waste is excluded from regulation under Section 3.01.03.

(b) He shall then determine if the waste is listed as hazardous waste in Section 3.04.

[Note: Even if the waste is listed, the generator still has an opportunity under 40 C.F.R. 260.22 of the federal regulations to demonstrate that the waste from his particular facility or operation is not a hazardous waste.]

(c) If the waste is not listed as a hazardous waste in Section 3.04, the generator shall determine whether the waste is identified in Section 3.03 by either:

(1) Testing the waste according to the methods set forth in Section 3.03, or according to an equivalent method approved by the Administrator under the procedure outlined in 40 C.F.R. § 260.21; or

(2) Applying knowledge of the hazard characteristics of the waste in light of the materials or the processes used.

(d) Generator may elect to voluntarily declare his wastes as hazardous and subject to these regulations.

6.01.02 EPA Identification Numbers.

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without

having received an EPA identification number from the Administrator.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA Form 8700-12. Upon receiving the request, the Administrator will assign an EPA identification number to the generator.

(c) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

Section 6.02 The Manifest.

6.02.01 General Requirements.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest-before-transporting-the-waste-off-site manifest OMB control number 2000-0404 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the requirements adopted by Appendix I of this section.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

6.02.02 Required Information.

(a) ~~The manifest must contain all of the following information:~~

~~(1) The generator's name, mailing address, telephone number, and EPA identification number;~~

~~(2) The name and EPA identification number of each transporter;~~

~~(3) The name, address and EPA identification number of the designated facility and an alternate facility, if any;~~

~~(4) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U.S. Department of Transportation in 49 C.F.R. § 172.101, § 172.202, and § 172.203;~~

~~(5) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle;~~

~~(b) The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the EPA."~~

6.02.02 Acquisition of Manifest.

(a) If the State to which the shipment is manifested (consignment State) supplies the Manifest and requires its use, then the generator must use that Manifest.

(b) If the consignment State does not supply the Manifest, but the State in which the generator is located (generator State) supplies the Manifest and requires its use, then the generator must use the State's Manifest.

(c) If neither the generator State nor the consignment State supplies the Manifest, then the generator may obtain the Manifest from any source.

6.02.03 Number of Copies.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy for their records and another copy to be returned to the generator.

6.02.04 Use of the Manifest.

(a) The generator must:

- (1) Sign the manifest certification by hand; and
- (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
- (3) Retain one copy, in accordance with Section 6.04.01(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this Section to:

- (i) The next non-rail transporter, if any; or

- (ii) The designated facility if transported solely by rail; or
- (iii) The last rail transporter to handle the waste in the United States if exported by rail.

Section 6.03 Pre-Transport Requirements:

6.03.01 Packaging: Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Transportation (DOT) regulations on packaging under 49 C.F.R. Parts 173, 178 and 179.

6.03.02 Labeling: Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable Department of Transportation regulations on hazardous materials, under 49 C.F.R. Part 172.

6.03.03 Marking:

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the applicable Department of Transportation regulation on hazardous materials under 49 C.F.R. Part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 C.F.R. § 172.304:

"HAZARDOUS WASTE" - Federal Law Prohibits Improper Disposal.
If found, contact the nearest police or public safety authority or
the U.S. Environmental Protection Agency.

Generator's Name and Address _____

Manifest Document Number _____

6.03.04 Placarding: Before transporting hazardous waste or
offering hazardous waste for transportation off-site, the generator
shall placard or offer the initial transporter the appropriate
placards according to Department of Transportation regulations for
hazardous materials under 49 C.F.R. Part 172, Subpart F.

6.03.05 Accumulation Time.

(a) A generator may accumulate hazardous waste on-site
without a permit or without having interim status, provided that:

(1) All such waste is, within ninety (90) days, either
shipped off-site to a designated facility or placed in an on-site
facility that is permitted under Section 11.00 of these
regulations, or permitted under 40 C.F.R. Part ~~122~~ 270 of the
federal regulations, or has interim status under Section 11.00 of
these regulations, or is authorized to manage hazardous waste by a
state with a hazardous waste program approved by EPA;

(2) The waste is placed either in containers which meet the
standards of Section 6.03.01 and are managed in accordance with 40
C.F.R. ~~§-265.174-and-§-265.176~~ § 265 Subpart I, or in tanks,
and the generator complies with Subpart J of 40 C.F.R.
Part 265 except § 265.193;

(3) The date upon which each period of accumulation begins is
clearly marked and visible for inspection on each container.

(4) Each container is properly labeled and marked according
to Sections 6.03.02 and 6.03.03; and

(5) The generator complies with the requirements for owners or operators in Subparts C and D in 40 C.F.R. Part 265 and with § 265.16; and,

(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 4.00, 8.00, 12.00, 40 C.F.R. Part 265 and the permit requirements of Section 11.00.

(6) While being accumulated, on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste."

Section 6.04 Recordkeeping and Reporting

6.04.01 Recordkeeping.

(a) A generator shall keep a copy of each manifest signed in accordance with 6.02.04(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator shall keep records of any test results, waste analyses, or other determinations made in accordance with 6.01.01 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(d) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Chief or Director.

6.04.02 Annual Reporting.

(a) A generator who ships hazardous waste off-site shall submit an Annual Report to the Chief as follows: Chief on a form prescribed by him,

~~(1) -- On EPA Form 8700-13 and 8700-13a, according to the instructions on the form or other forms approved by the Chief.~~

~~(2) -- No later than March 1 for the preceding calendar year.~~

(b) Any generator who treats, stores, or disposes of hazardous waste on-site shall submit an Annual Report covering those wastes in accordance with the provisions of Sections 8.00 and 11.00 of these regulations, and 40 C.F.R. Part 265.

6.04.03 Exception Reporting.

(a) A generator, who does not receive a copy of the manifest with the handwritten signature of the authorized representative of the facility within 35 days of the date the waste was accepted by the initial transporter, shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste. [Note: For the purposes of this Section, "authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility) e.g., the plant manager, superintendent or person of equivalent responsibility.]

(b) A generator shall submit an Exception Report to the Chief if he has not received a copy of the manifest with the handwritten signature of the authorized representative of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(3) In case of interstate shipments which originated in the State for delivery to a designated facility in another State, an additional copy of the Exception Report will be provided to the Chief for transmittal to that State or EPA as provided for in 40 C.F.R. § ~~123~~ 271.128(b)(8).

6.04.04 Additional Reporting.

The Chief, as he deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in Section 3.00.

Section 6.05 Special Conditions.

6.05.01 International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into West Virginia shall comply with ~~the special requirements regulations~~ 40 CFR Part 262 and this Section.

(b) When shipping hazardous waste outside the United States the generator shall:

(1) Notify the Chief and the EPA Administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year. The waste shall be identified by its EPA hazardous waste identification number and its Department of Transportation shipping description. The name and address of the foreign consignee shall be included in the notice.

(2) Send the original of the notice to the Office of International Activities (A-106), United States Environmental Protection Agency, Washington, D.C. 20460, and one copy to the Chief, Division of Water Resources.

(3) Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest, signed by the foreign consignee, may be used for this purpose.

(4) Meet the requirements under Section 6.02.02 for the manifest, except that:

(i) In place of the name, address and EPA identification number of the designated facility, the name and address of the foreign consignee shall be used;

(ii) The generator shall identify the point of departure from the United States through which the waste shall travel before entering a foreign country.

(c) A generator shall file an Exception Report, if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or

(2) Within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(d) When importing hazardous waste, a person shall meet all requirements of Section 6.02.02 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

6.05.02 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this Section or other standards in Section 8.00, 11.00 or 12.00, or 40 C.F.R. Part 265, for those wastes, provided he triple rinses each emptied pesticide container in accordance with Section 3.01.06(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

This Appendix Contains All New Language

The Director hereby adopts and incorporates by reference 40 CFR Part 262, Appendix - Uniform Hazardous Waste Manifest and Instructions, as published in the Code of Federal Regulations on March 20, 1984.

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

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

Section 7. [Reserved]

STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES

Section 8.00

Section 8.01 General, Purpose, Scope and Applicability

8.01.01 The purpose of these regulations is to establish minimum standards which define the acceptable management of hazardous waste.

8.01.02 The standards in this section apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as Section 8.01.05 provides otherwise.

8.01.03 The requirements of this section apply to a person disposing of hazardous waste by means of underground injection only to the extent that they are required to comply with certain portions of this section under the Underground Injection Control Program established pursuant to the Water Pollution Control Act, 20-5A, et seq., and the regulations promulgated thereunder, and the regulatory program established by the Office of Oil and Gas and the Shallow Gas Well review Board pursuant to the authority contained in West Virginia Code 20-5E, et seq.

8.01.04 The requirements of this section apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a Hazardous Waste Management Permit by Rule granted to such a person under Section 11.08.

8.01.05 The requirements of this section do not apply to:

(a) The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in Section 3.01.05(a), except to the extent that Section 3.01.05(b) provides otherwise.

(b) A generator accumulating waste on-site in compliance with Section 6.03.05 provided the requirements of Sections 3.01.04 and 3.01.05 are complied with.

(c) A farmer disposing of waste pesticides from his own use in compliance with Section 6.05.02.

(d) The owner or operator of a totally enclosed treatment facility, as defined in Section 2.00.

(e) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section 2.00.

(f) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section 6.03.01, at a transfer facility for a period of ten (10) days or less.

(g) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste, or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Section 8.03 and 8.04 are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this section.

(h) The addition of absorbent material to hazardous waste in a container or the addition of hazardous waste to absorbent material in a container, provided that these actions occur at the time hazardous waste is first placed in the container and Section 8.02.08 (b), 8.07.02 and 8.07.03 are complied with. [Comment: After the immediate response activities are completed, the applicable regulations apply fully to the management of any spill residue or debris which is a hazardous waste under Section 3.00.]

8.01.06 Relation to Interim Status Standards

A facility owner or operator shall comply with the requirements of Chapter 20-5E-10 of the Hazardous Waste Management Act and the corresponding Federal requirements of 40 CFR § ~~122~~270.23 and 40 CFR Par 265 in lieu of the regulations of this section until final administrative disposition of the permit application is made, except as otherwise noted in these regulations.

8.01.07 Imminent Hazard Section

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Chapter 20-5E-17 of the West Virginia Code.

Section 8.02 General Facility Standards

8.02.01 Applicability

The regulations in this section apply to owners and operators of all hazardous waste facilities, except as provided in Section 8.01.

8.02.02 Identification Number

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures.

8.02.03 Required Notices

(a) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Chief in writing at least four (4) weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the foreign source is not required.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that the facility has the appropriate permit(s) for and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure period, the owner or operator must notify the new owner or operator in writing of all applicable requirements.

(d) An owner's or operator's failure to notify the new owner or operator of the requirements of this section in no way relieves the new owner or operator of the obligation to comply with all applicable requirements.

8.02.04 General Waste Analysis

(a) (1) Before an owner or operator treats, stores, or disposes of any hazardous waste, a detailed chemical and physical analysis of a representative sample of the waste must be obtained. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this section or with the conditions of a permit issued under Section 11.00 of these regulations. [Comment: Section 11.05 of these regulations requires that the waste analysis plan be submitted with Part B of the permit application.]

(2) The analysis may include data developed under Section 3.00 of these regulations, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(3) The facility's records of analysis performed on the waste before the effective date of these regulations, or studies

conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with (a)(1) of this section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by (a)(1) of this section. If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this section.

(4) The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and

(ii) For off-site facilities, when the results of the inspection required in (a)(5) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(5) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which will comply with (a) of this section. This plan must be kept at the facility.

- At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of the parameters (i.e., how analysis for these parameters will provide sufficient

information on the waste's properties to comply with (a) of this section).

(2) The test methods which will be used to test for these parameters.

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in Appendix I of Section 3.00 of these regulations.

(ii) An equivalent sampling method.

(4) The frequency which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date; and

(5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Sections 8.02.08 and the Air Pollution Control Commission's Regulation XXV.

(c) For off-site facilities, the waste analysis plan required in (b) of this section must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility.

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

8.02.05 Security

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of the facility, unless it can be demonstrated to the Chief that:

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility.

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry or persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this section.

(3) The owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.

(b) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) of this section, a facility must have:

(1) A twenty-four hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility or;

(2)(i) An artificial or natural physical barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portions of the facility; and

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(3) The requirements of (b) of this section are satisfied if the facility or plan within which the active portion is located

itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of (b)(1) or (b)(2) of this section.

(c) Unless the owner or operator has made a successful demonstration under (a)(1) and (a)(2) of this section, a sign with the Legend, "DANGER - UNAUTHORIZED PERSONNEL KEEP OUT," must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility, and must be legible from a distance of at least twenty-five (25) feet. Existing signs with a legend other than "DANGER - UNAUTHORIZED PERSONNEL KEEP OUT" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

8.02.06 General Inspection Requirements

(a) The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing - or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) This schedule must be kept at the facility.

(3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction of any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in Sections 8.07.06, 8.08.04, 8.09.05, and 8.10.05, and 8.11.03 where applicable.

(5) A copy of the inspection schedule as required by Section 8.02.06(b) must be submitted to the Chief with Part B of the permit application to ensure that it adequately protects human health and the environment. As part of this review, the Chief may modify or amend the schedule as may be necessary.

(c) The owner or operator must remedy any deterioration of or malfunction of equipment or structures which the inspection reveals to ensure that the problem does not lead to an environmental or human health hazard. A schedule for remedial action may be allowed by the Chief. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(d) The owner or operator must record inspections in an inspection log or summary. These records must be kept for the life of the facility. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

8.02.07 Personnel Training

(a) (1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section. The owner or operator must ensure that this program includes all the elements described in the document required under (d) (3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that the facility personnel are able to respond effectively to emergency by familiarizing them with emergency procedures, emergency equipment and emergency systems, including where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- (ii) Key parameters for automatic waste feed cut-off systems;
- (iii) Communications or alarm systems;
- (iv) Response to fires or explosions;
- (v) Response to groundwater contamination incidents; and
- (vi) Shutdown of operations.

(4) An outline of the training program required by Section 8.02.07 and a description of how the training program is designed to meet actual job tasks, must be submitted to the Chief with Part B of the permit application.

(b) Facility personnel must successfully complete the program required in (a) of this section within six (6) months after the date

of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the requirements of (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in (a) of this section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

(2) A written job description for each position listed under (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of employees assigned to each position.

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under (d)(1) of this section

(4) Records that document that the training or job experience required under (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

8.02.08 : General Requirements for Ignitable, Reactive or Incompatible Wastes

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "NO SMOKING" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of these regulations, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Through other like means threaten human health or the environment.

(c) When required to comply with (a) or (b) of this section, the owner or operator must document that compliance. This documen-

tation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in Section 8.02.04) or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

Section 8.03 Preparedness and Prevention

8.03.01 Applicability

The regulations in this section apply to owners and operators of all hazardous waste management facilities except as Section 8.01 provides otherwise.

8.03.02 Design and Operation of Facility

Facilities shall be designed, constructed, maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or State waters which could threaten human health or the environment.

8.03.03 Required Equipment

All facilities shall be equipped with the following, unless it can be demonstrated to the Chief in accordance with Section 11.05 at the time of submission of Part B of the permit application, that none of the hazards posed by the waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of

summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment, spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply expected fire fighting demands, foam producing equipment, automatic sprinklers or water spray systems.

8.03.04 Testing and Maintenance of Equipment

All required facility communications or alarms systems, fire protection equipment, spill control equipment, and decontamination equipment, shall be tested and maintained as necessary to assure its proper operation in time of emergency. A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location.

8.03.05 Access to Communications or Alarm Systems

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such device is not required under Section 8.03.03.

(b) If there is ever just one employee on the premises while the facility is operating, there must be immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Chief has ruled that such device is not required under Section 8.03.03.

8.03.06 Required Aisle Space

The owner or operator shall maintain aisle space to allow the

unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless it can be demonstrated, to the Chief in accordance with Section 11.05 that aisle space is not needed for any of these purposes. [Comment: Any owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]

8.03.07 Arrangements With Local Authorities

(a) The owner or operator shall attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations.

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility and the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and types of injuries or illnesses which could result from fire, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

Section 8.04 . Contingency Plan and Emergency Procedures

8.04.01 Applicability

The regulations of this section apply to owners and operators of all hazardous waste facilities except as Section 8.01 provides otherwise.

8.04.02 Purpose and Implementation of Contingency Plan

(a) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or State waters.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

8.04.03 Content of Contingency Plan

(a) The contingency plan shall describe the actions that facility personnel shall take to comply with Section 8.04.02 and Section 8.04.07 of these regulations in response to fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or State waters.

(b) If the owner or operator has already prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or ~~151~~ 1510, or some other emergency or contingency plan, amendments to the plan need only to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section.

(c) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors and

State and local emergency response teams to coordinate emergency services, as required.

(d) The plan shall list names, addresses and office and home phone numbers of all persons qualified to act as emergency coordinators and this list shall be kept up-to-date. Where more than one person is listed, one shall be named a primary emergency coordinator and other shall be listed in the order in which they will assume responsibilities as alternates. For new facilities, the list is to be supplied at the time of certification.

(e) The plan shall include a list of all required emergency equipment at the facility. This list shall be kept up-to-date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by releases of hazardous waste, hazardous waste constituents, or fires.

8.04.04 Copies of Contingency Plan

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility.

(b) Submitted to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services. [Comment: The contingency plan must be submitted to the Chief with Part B of the permit application under Section 11.00 of these regulations and, after modification or approval, will become a condition of the permit.]

8.04.05 : Amendment of Contingency Plan

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

- (a) The facility permit is revised.
- (b) The plan fails in an emergency.
- (c) The facility changes -- in its design, construction, operation, maintenance, or other circumstances -- in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.
- (d) The list of emergency coordinators changes.
- (e) The list of emergency equipment changes. [Comment: A changes in the lists of facility emergency coordinators or equipment in the contingency plan constitutes a minor modification to the facility permit to which the plan is a condition.]

8.04.06 Emergency Coordinator

At all times, there shall be at least one employee either on the facility premises or on call (i.e, available to respond to an emergency by reaching the facility within a short period of time) and able to reach the area in a short time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, the person shall have the authority to commit the resources needed to carry out the contingency plan.

8.04.07 Emergency Procedures

- (a) Whenever there is an imminent or actual emergency situa-

tion, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all affected facility personnel; and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) If there is a release, fire or explosion, the emergency coordinator shall immediately identify the character, exact sources, amount, and areal extent of any released materials. This may be done by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effect of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment outside the facility the finding shall be reported as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, immediate notification shall be given to appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

(2) The emergency coordinator shall immediately notify the County Director for the Office of Emergency Services designated as the on-scene coordinator for that area, and the Division of Water

Resources' Emergency Notification Number 1-800-642-3074. The notification shall include:

- (i) Name and telephone number of notifier;
- (ii) Name and address of facility;
- (iii) Time and type of incident;
- (iv) Name and quantity of material(s) involved to the extent

known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released wastes and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or waters, or any other material that results from a release, fire, or explosion at the facility.

(h) The emergency coordinator shall ensure that in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is clean and fit for its intended use before operations are resumed.

(i) The owner or operator shall notify the Chief that the facility is in compliance with sub-sections 8.04.07(f) (g) (h) (i) and (j) of this section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen (15) days after the incident, a written report shall be submitted to the Chief. The report shall include:

(1) Name, address and telephone number of the owner or operator.

(2) Name, address and telephone number of the facility.

(3) Date, time and type of incident.

(4) Name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

(8) Measures taken to prevent recurrence of the emergency.

(9) Such other information specifically requested by the Chief which is reasonably necessary and relevant to the purpose of an operating record.

Section 8.05 Manifest System, Recordkeeping, and Reporting

8.05.01 Applicability

The regulations in this section apply to owners and operators of both on-site and off-site facilities, except as Section 8.01 provides otherwise. Sections 8.05.02, 8.05.03, and 8.05.07 do not apply to

owners and operators of on-site facilities that do not receive an hazardous waste from off-site sources.

8.05.02 Use of the Manifest System

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest, as defined in 8.05.03(a) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in 8.05.03 (a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Section 6 of these regulations.

8.05.03 Manifest Discrepancies

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight, and

(2) For batch waste, an variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Chief a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping letter at issue.

8.05.04 Operating Record

(a) The owner or operator shall keep a written operating record at the facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility, as required by Appendix IV;

(2) The location of each hazardous waste within the facility and the quantity of each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest.

(3) Records and results of waste analyses performed as specified in Sections 8.02.04 and 8.02.08.

(4) Summary reports and details of all incidents that require implementing the contingency plan, as required by Section 8.04.07(j).

(5) Records and results of inspections as required by Section 8.02.06.

(6) For off-site facilities, notices to generators as specified in Section 8.02.03(b).

(7) All closure cost estimates, and for disposal facilities all post-closure cost estimates.

(8) Monitoring, testing, or analytical data where required by Sections 8.13, 8.09.05, 8.10.04, 8.10.05, 8.12.07, 8.12.09, 8.12.11, 8.11.03(a), 8.11.03(b), 8.11.10(a), and 8.11.10(b).

8.05.05 Availability, Retention and Disposition of Records

(a) All records, including plans required under this section

shall be furnished upon request, and made available at reasonable times for inspection by the Chief or any authorized representative, employee or agent of the Division.

(b) The retention period for all records required under this Section is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Chief.

(c) A copy of records to waste disposal locations and quantities under Section 8.05.04(b)(2) shall be submitted to the Chief and to the appropriate land authority upon closure of the facility.

8.05.06 Annual Report

The owner or operator shall prepare and submit a single copy of an annual report for the preceding year (January 1 - December 31) to the Chief by March of each year. A form prescribed by the Chief shall be used for this report. The annual report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name and address of the facility.

(b) The calendar year covered by the report.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator.

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by the EPA identification number of each generator.

(e) The method of treatment, storage or disposal for each hazardous waste.

(f) Groundwater monitoring data on a form prescribed by the Chief.

(g) The most recent closure cost estimate and, for disposal facilities, the most recent post-closure cost estimate.

(h) The certification signed by the owner or operator of the facility or an authorized representative.

8.05.07 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 3.01.04, 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

(a) The EPA identification number, name and address of the facility.

(b) The date the facility received the waste.

(c) The EPA identification number, name and address of the generator and the transporter, if available.

(d) A description and the quantity of each unmanifested hazardous waste the facility received.

(e) The method of treatment, storage or disposal for each hazardous waste.

(f) The certification signed by the owner or operator of the facility or an authorized representative.

(g) A brief explanation of why the waste was unmanifested, if known. [Comment: Small quantities of hazardous waste are excluded from regulation under this section and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the owner or

operator must obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator is required to file an unmanifested waste report for the hazardous waste movement.]

8.05.08 Additional Reports

In addition to submitting the annual report and unmanifested waste reports, the owner or operator shall also report to the Chief:

- (a) Releases, fires and explosions as specified in Section 8.04.07.
- (b) Facility closure as specified in Section 8.06.
- (c) As otherwise required by Sections 8.09, 8.10, 8.11, 8.12, and 8.13.

Section 8.06 Closure and Post-Closure

8.06.01 Applicability

Except as Section 8.01 provides otherwise:

- (a) Sections 8.06.02 - 8.06.08 and 15.01 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and
- (b) Sections 8.06.02 - 8.06.08 and 15.01 (which concern post-closure care) apply to the owners and operators of all hazardous waste disposal facilities.

8.06.02 Closure Performance Standard

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

- (a) Minimized the need for further maintenance.
- (b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate,

contaminated rainfall, or waste decomposition products to the State waters or to the atmosphere.

8.06.03 Closure Plan; Amendment of Plan

(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 11.05.01 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:

(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.

(2) An estimate of the maximum inventory of wastes in storage and treatment at any time during the life of the facility.

(3) A description of the steps needed to decontaminate facility equipment during closure.

(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.]

(5) And must satisfy the applicable requirements of Sections ~~8.02.02~~, ~~8.02.04~~, ~~8.02.06~~, 8.06.02; 8.06.04; 8.06.06; 8.07.10; 8.08.05; 8.09.07; 8.09.10; 8.10.09; 8.11.11; 8.12.11 and Air Pollution Control regulations, Section 26.

(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.

(c) The owner or operator must notify the Chief at least 180 days prior to the expected closure date.

(d) All closure plans must be approved by the Chief based on the determination of compliance with the applicable requirements of Sections ~~8.02.02~~, ~~8.02.04~~, ~~8.02.06~~, 8.06.02; 8.06.04; 8.06.06; 8.07.10 8.08.05; 8.09.07; 8.09.10; 8.10.09; 8.11.11; 8.12.11 and Air Pollution Control Regulations, Section 26. Upon Approval, the closure plan shall become a condition of the Hazardous Waste Management Permit.

8.06.04 Closure; Time Allowed for Closure

(a) Within ninety (90) days after receiving the final volume of hazardous wastes, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with

the approved closure plan. The Chief may approve a longer period if the owner or operator demonstrated that:

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

(ii) A. The facility has the capacity to receive additional wastes.

B. There is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and

C. Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken, and will continue to take, all steps to prevent threats to human health and the environment.

(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The Chief may approve a longer closure period if the owner or operator demonstrates that:

(1) (i) The closure activities will, of necessity, take longer than 180 days to complete; or

(ii) A. The facility has the capacity to receive additional wastes;

B. There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site; and

C. Closure of the facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility. [Comment: Any extension of the ninety (90) or 180 day period in this section shall be made as a major modification under Section 11.00. Under paragraphs (a) (1) (ii) and (b) (1) (ii) of this section, if operation of the site is recommenced, the Chief may

defer completion of closure activities until the new operation is terminated.]

8.06.05 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.

8.06.06 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.

8.06.07 Post-Closure Care and Use of Property

(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:

- (i) Groundwater monitoring and reporting as applicable.
- (ii) Maintenance of monitoring and waste containment systems as applicable.
- (iii) All applicable post-closure regulations of Sections 8.09; 8.10; 8.11; 8.12; and 8.13.

(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).

(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.)

(b) The Chief may require, at closure, continuation of any of the security requirements of Section 8.02.05 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.

(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:

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

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 8.06.08.

8.06.08 Post-Closure Plan; Amendment of Plan

(a) The owner or operator of a disposal facility must have 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:

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

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

(i) The integrity of the cap and final cover or other containment structures where applicable; and

(ii) The function of the facility monitoring equipment.

(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.

(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.

(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.

Section 8.07 Use and Management of Containers

8.07.01 Applicability

The regulations in this section apply to owners and operators of all hazardous waste management facilities that store containers of hazardous waste, except as Section 8.01 provides otherwise. [Comment: Under Sections 3.01.06 and 3.04.04(c) if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the "container" is empty as defined in Section 3.01.06. In that event, management of the container is exempt from the requirements of this section.]

8.07.02 Conditions of Containers

If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of these regulations.

8.07.03 Compatibility of Waste With Containers

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

8.07.04 Management of Containers

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

8.07.05 [Reserved]

8.07.06 Inspections

At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. [Comment: Section 8.02.06(c) and Section 8.07.02 for remedial action required if deterioration or leaks are detected.]

8.07.07 Containment

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) A containment system must be designed and operated as follows:

(1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system must be prevented unless the Chief waives this requirement in the permit after determining

that the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system; and

(5) Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

(6) If the collected material is a hazardous waste under Section 3.00 of these regulations, it must be managed as a hazardous waste in accordance with all applicable requirements. If the collected material is discharged through a point source to waters of the State, it is subject to the State Water Pollution Control Act and regulations promulgated thereunder.

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by paragraph (b) of this section, provided that:

(1) The storage area is sloped or otherwise designed and operated to drain and remove liquid resulting from precipitation; and

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

8.07.08 Special Requirements for Ignitable or Reactive Waste

(a) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

8.07.09 Special Requirements for Incompatible Wastes

(a) Incompatible wastes, or incompatible wastes and materials must not be placed in the same container, unless Section 8.02.08 is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

8.07.10 Closure

At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated. [Comment: At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with Section 3.01.02(d) of these regulations that the waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.]

Section 8.08 Tanks

8.08.01 Applicability

(a) The regulations in this section apply to owners and operators of facilities that use tanks to treat or store hazardous waste except as Section 8.01 and (b) of this section provide otherwise.

(b) The regulations in this section do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection. Existing covered underground tanks may continue to operate under interim status but existing and new

covered underground tanks will not be able to receive a finally effective Hazardous Waste Management Permit.

8.08.02 Design of Tanks

(a) Tanks must have sufficient shell strength and, for closed tanks, pressure controls (e.g., vents) to assure that they do not collapse or rupture. The Chief will review the design of the tanks, including the foundation, structural support, seams and pressure controls. The Chief shall require that a minimum shell thickness be maintained at all times to ensure sufficient shell strength. Factors to be considered in establishing minimum thickness include the width, height, and materials of construction of the tank, and the specific gravity of the waste which will be placed in the tank. In reviewing the design of the tank and establishing a minimum thickness, the Chief shall rely upon appropriate industrial design standards and other available information.

8.08.03 General Operating Requirements

(a) Wastes and other materials (e.g., treatment reagents) which are incompatible with the material of construction of the tank must not be placed in the tank unless the tank is protected from accelerated corrosion, erosion or abrasion through the use of:

- (1) An inner liner or coating which is compatible with the waste or material and which is free of leaks, cracks, holes or other deterioration; or
- (2) Alternative means of protection (e.g., cathodic protection or corrosion inhibitors).

(b) The owner or operator must use appropriate controls and practices to prevent overfilling. These must include:

- (1) Controls to prevent overfilling (e.g., waste feed cutoff system or by-pass system to a standby tank); and

(2) For uncovered tanks, maintenance of sufficient freeboard to prevent overtopping by wave or wind action or by precipitation. The freeboard shall not be less than 60 centimeters (2 feet) unless the permittee can demonstrate to the Chief that a secondary-containment system-is-adequate an alternate freeboard level will be sufficient to prevent overtopping.

8.08.04 Inspections

(a) The owner or operator must inspect:

(1) Overfilling control equipment (e.g., waste feed cut-off systems and by-pass systems) at least once each operating day to ensure that it is in good working order.

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) where present, at least once each operating day to ensure that the tank is being operated according to design.

(3) For uncovered tanks, the level of waste in the tank, at least once each operating day to ensure compliance with Section 8.08.03(b).

(4) The construction materials of above-ground portions of the tank, at least weekly to detect corrosion or erosion and leaking of fixtures and seams.

(5) The area immediately surrounding the tank, at least weekly, to detect obvious signs of leakage (e.g., wet spots, or dead vegetation).

(b) As part of the inspection schedule required in Section 8.02.06(b) and in addition to the specific requirements of (a) of this section, the owner or operator must develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under Section 8.08.02. Procedures for

emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion observed during previous inspections, and the characteristics of the waste being treated or stored.

(c) As part of the contingency plan required under Section 8.04 the owner or operator must specify the procedures to be used to respond to tank spills or leakage, including procedures and timing for expeditious removal of leaked or spilled waste and repair of the tank.

8.08.05 Closure

(a) At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge confinement structures.

(b) At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with Section 3.01.02 (d) that the waste removed from the tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable State laws and regulations promulgated thereunder.

8.08.06 Special Requirements for Ignitable or Reactive Wastes

(a) Ignitable or reactive waste must not be placed in a tank unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste and Section 8.02.08 is complied with; or

(2) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(3) The tank is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2-1 through 2-6 of the "Flammable and Combustible Liquids Code --1981."

8.08.07 Special Requirements for Incompatible Wastes

(a) Incompatible wastes or incompatible wastes and materials, must not be placed in the same tank, unless Section 8.02.08(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material unless Section 8.02.08(b) is complied with.

Section 8.09 Surface Impoundments

8.09.01 Applicability

(a) The regulations in this section apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as Section 8.01 provides otherwise.

8.09.02 General Design Requirements

(a) A surface impoundment must be designed and constructed to provide maintenance of sufficient freeboard, and to prevent overtopping resulting from wave or wind action, normal and abnormal operation, malfunctions of level controllers, alarms and other equipment,

precipitation and human error or any combination thereof. The freeboard shall not be less than 60 centimeters (2 feet); or an amount of freeboard other than 60 centimeters based on documentation acceptable to the Chief that the specified amount of freeboard will prevent overtopping.

(b) A surface impoundment must be designed and constructed so that any flow of waste into the impoundment can be immediately shut off in the event of overtopping or liner failure.

(c) A surface impoundment must be designed and constructed to prevent discharge into or on the land, and to waters of the State (except discharges authorized by an NPDES permit during the life of the impoundment) by use of a liner system and leachate detection, collection and removal system which complies with Section 8.09.04, except as provided in (f) of this section.

(d) Dikes must be designed and constructed with sufficient structural to prevent massive failure without dependence on any liner system included in the surface impoundment design.

(e) A leachate detection, collection, and removal system must be designed and construction so that liquid will flow freely from the collection system to prevent the creation of pressure head within the collection system in excess of that necessary to cause the liquid to flow freely.

(f)(1) Existing facilities are exempt from the liner requirements outlined in Sections 8.09.02(c), (e), 8.09.04(a)(1), (c), (d), 8.09.06, 8.09.10(b), (d)(2), (e)(1) and (e)(3) provided that paragraph (2) of this section is complied with.

(2) The owner or operator, in order to qualify for the exemption in (1) above, must demonstrate that statistically significant increases of hazardous constituents to not occur in the groundwater or surface water during its active life and the post closure period, except as provided in (f)(4) of this Section.

(3) If statistically significant increases of hazardous constituents are detected as outlined in Section 8.13.08(d) in the ground-water beneath the facility (including the regulated unit) the owner or operator must comply with the corrective action outlined in Section 8.13.09 (if ground water contamination has been determined).

(4) If the owner or operator determines that the corrective action program being implemented under Section 8.13.09 is insufficient for causing cessation of hazardous waste constituents migration, then the unit must be closed. However, if it is determined that the corrective action will adequately arrest and remove the contamination, the owner may choose one of the four options which will become part of the conditions of the permit:

(i) Retrofit the unit with liners; in accordance with Section ~~8.11.02(a)+(i)~~ 8.09.04(a)(1);

(ii) Stop the leak;

(iii) Continue the operation of the unit, (while concurrently developing/implementing an alternate treatment, storage or disposal method), for a period of five years at which time the unit must be closed; or

(iv) Continue the operation of the unit provided a demonstration can be made and approved by the Chief that no adverse impact to human health or to the environment will result from the continued operation of the unit during the active life and closure and post-closure period, provided that the facility continues to comply with an approved corrective action program. Such demonstration must include and discuss the following:

(A) Potential adverse effects on ground water quality, considering:

(1) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

- (2) The hydrogeological characteristics of the facility and surrounding land;
 - (3) The quantity of ground water and the direction of ground water flow;
 - (4) The proximity and withdrawal rates of ground water users;
 - (5) The current and future uses of ground water in the area;
 - (6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality;
 - (7) The potential for health risks caused by human exposure to waste constituents;
 - (8) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (9) The persistence and permanence of the potential adverse effects; and
- (B) Potential adverse effects on hydraulically connected surface water quality, considering:
- (1) The volume and physical and chemical characteristics of the waste in the regulated unit;
 - (2) The hydrogeological characteristics of the facility and surrounding land;
 - (3) The quantity and quality of ground water, and the direction of ground water flow;
 - (4) The patterns of rainfall in the region;
 - (5) The proximity of the regulated unit to surface waters;
 - (6) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

- (7) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
 - (8) The potential for health risks caused by human exposure to waste constituents;
 - (9) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - (10) The persistence and permanence of the potential adverse effects.
- (C) In making any determination under paragraph (4) of this section concerning the use of ground water in the area around the facility, the Chief will consider any identification of underground sources of drinking water and exempted aquifers made under the West Virginia Administrative Regulations of the State Water Resources Board Chapter 20, Article 5E, Series IX (1983).

8.09.03 Operating Requirements

(a) A surface impoundment must be operated and maintained to prevent any overtopping resulting from normal and abnormal operations, wind and wave action, overfilling, precipitation, malfunctions of level controllers, alarms and other equipment, and human error, or any combination thereof.

(b) A surface impoundment must be operated to maintain at least the amount of freeboard specified by the Chief in the permit.

(c) A leachate detection, collection, and removal system installed to comply with Section 8.09.04(a) must be operated to that leachate flows freely from the collection system and is removed as it accumulates or with sufficient frequency to prevent backwater within the collection system.

(d) Earthen dikes must be kept free of:

(1) Perennial woody plants with root systems which could affect the structural integrity of the dike; and

(2) Burrowing mammals which could remove earthen materials upon which the structural integrity of the dike is dependent or creates leaks through burrows in the dike.

(e) Run-on must be diverted away from a surface impoundment.

8.09.04 Specific Design Requirements

(a) A surface impoundment must be designed to prevent discharge into the land, and State waters during its life and must have:

(1) A double liner system that is designed, constructed, and installed to prevent any migration of wastes and/or leachate out of the impoundment to the adjacent subsurface, soil or groundwater or surface water at any time during the operating life, closure (and the post closure period where applicable) of the impoundment. The primary liners (i.e. -- the liner in contact with the waste) must be constructed of materials that prevent wastes and/or leachate from passing into the liners during the operating life, closure (and the post closure period where applicable) of the facility. The All liners must be:

(i) Constructed of materials that are chemically resistant to the waste and leachate expected to be generated and of sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste and leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation. The liner will be tested for compatibility with the waste and leachate expected to be generated to determine possible effects on the liner materials prior to installation.

(ii) Placed upon a foundation or base capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste and leachate; and

(iv) Constructed to be free of lenses, cracks, channels, holes, or other structural nonuniformities; and

~~(v) -- Soil-based and admixed liners must be at least 90 cm (3 feet) thick with a maximum saturated hydraulic conductivity of not more than 1×10^{-7} cm/sec throughout the total thickness and area of the liner.~~

(v) If a soil-based or admixed liner is to be used as the secondary liner (i.e. -- the liner underneath the primary liner), then such liner must be at least 90 centimeters (3 feet) thick with a maximum saturated hydraulic conductivity of no more than 1×10^{-7} cm/sec throughout the total thickness and area of the liner;

(2) The impoundment (including the base of the lower most liner components) must be located at a minimum of 3 feet above the highest known seasonal water table elevation. This 3 foot distance may be achieved by elevating the surface impoundment artificially or by the non-mechanical lowering of the water table at the location. However, no mechanical means (i.e. - pumps) may be used to lower the water table. All plans for alteration of the water level must be approved by the Chief and will become a part of the hazardous waste management permit.

(3) A leachate detection, collection and removal system beneath the liner(s) in contact with the waste (i.e. - must be situated between the liners in the double liner system) to detect, contain, collect and remove any discharge from the liner(s) in contact with the waste.

(b) Earthen dikes must have a protective cover, such as grass, or rock to minimize wind and water erosion and to preserve the structural integrity of the dike.

(c) A liner system and leachate detection, collection and removal system must have a containment life equal to or greater than the life of the surface impoundment.

(d) The owner or operator and a registered professional engineer must submit to the Chief a certification that the facility has been designed and constructed in compliance with Section 8.09.04 prior to placement of wastes into the impoundment.

(e) The owner or operator and a registered professional engineer must submit to the Chief a certification that the facility has been designed and constructed in compliance with Section 8.09.04 prior to placement of wastes into the impoundment.

8.09.05 Inspections and Testing

(a) During construction or installation, liner systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials).

(1) Soil based and admixed liner systems must be tested for compaction density, moisture content, permeability, and inspected for imperfections including lenses, cracks, channels, root holes or other structural non-conformities that may cause an increase in the permeability of the liner; and

(2) Manufactured liner materials (e.g., membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

(3) Upon discovery of such imperfections, the repair of the liner must be completed prior to placement of the wastes into the impoundment.

(4) The leachate detection, collection and removal system must

be inspected for cracks, breaks, loose seams and joints, clogging, areas of structural stress, and any other faults or conditions which may result in collapse or failure of the system.

(5) Results of such tests and repairs must be certified in writing by a registered professional engineer.

(b) The owner or operator must inspect:

(1) A surface impoundment (including the leachate detection, collection and removal system) at least once each day to ensure compliance with Section 8.09.03(a), (b) and (c) and to detect any leaks or other failures of the impoundment.

(2) Each surface impoundment, including dikes, berms, and vegetation surrounding the dike, at least once a week and after storms to detect any evidence of or potential for leaks from the impoundment, erosion of dikes, and to ensure compliance with Section 8.09.03(d).

(c) The structural integrity of any dike, including that portion of any dike which provides freeboard, must be certified against massive failure by a registered professional engineer prior to the issuance or reissuance of a permit; or if the impoundment is not in service and has not been inspected and maintained as required under Section 8.09.05(b), prior to being placed in service and after construction or prior to being returned to service.

(1) In certifying the structural integrity of the dike it must be established that the dike will withstand:

(i) The stress of the pressure head of liquids placed into the impoundment;

(ii) The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike without relying on any liner system;

(iii) The weakening effect of earth materials being scoured due to leakage from the impoundment through and under the dike assuming leaks develop in the liner system; and

(iv) The weakening effect of any piping included in the impoundment's construction.

8.09.06 Liner System Repairs, Contingency Plans

(a) Whenever there is any indication of a possible failure of the liner system, that system must be inspected in accordance with the provisions of the liner system evaluation and repair plan required by (d) of this section. Indications of possible failure of the liner system include at least an unplanned and non-sudden drop in liquid level in the impoundment, liquid detected in the leachate detection system, evidence of leakage or the potential for leakage in the dike, erosion of the dike, apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials, any mishandling of wastes places in the impoundment and foreign objects in the impoundment.

(b) Whenever there is a positive indication of an unplanned sudden drop in liquid level in the impoundment, or active leakage through the dike, the impoundment must be removed from service.

(c) If the surface impoundment must be removed from service as required by (b) of this section, the owner or operator must:

(1) Immediately shut off the flow or stop the addition of wastes into the impoundment.

(2) Immediately contain any surface leakage which has occurred or is occurring and cause such leak(s) to be stopped.

(3) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074.

(4) If all leaks specified in (b) of this section (including leaks not evident at the surface) cannot be stopped by any other means, empty the impoundment.

(5) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken.

(6) Take any other steps necessary to stop or prevent catastrophic failure.

(d) As part of the contingency plan required in Section 8.04, the owner or operator must specify:

(1) A procedure for complying with the requirements of (c) of this section; and

(2) A liner system repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the liner system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to liner system failure or deterioration which does not require the impoundment to be removed from service.

(e) No surface impoundment that has been removed from service in accordance with (b) of this section may be restored to service unless:

(1) The liner system and leachate detection, collection and removal system has been repaired; and

(2) The liner system and the leachate detection, collection and removal system has been re-certified by a registered professional engineer as meeting the design specifications approved in the permit.

(f) A surface impoundment that has been removed from service in accordance with (b) of this section and that is not being repaired must be closed in accordance with Section 8.09.07.

(g) All wastes removed from the impoundment must be managed as a hazardous waste in compliance with all applicable requirements. Any point source discharge to waters of the State is subject to the requirements of the Water Pollution Control Act and all regulations promulgated thereunder.

8.09.07 Closure

(a) At closure, all hazardous waste and hazardous waste residues must be removed from the impoundment (except as provided in Section 8.09.10). Any component of the surface impoundment or any appurtenant structures or equipment (e.g., discharge platforms and pipes, baffles, skimmers, aerators, or other equipment) containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

(b) At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with these regulations that the waste removed from the surface impoundment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.

8.09.08 Special Requirements for Ignitable or Reactive Waste

Ignitable or reactive waste must not be placed in a surface impoundment unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section 3.03.02 or 3.03.04 of these regulations; and

(2) Section 8.02.08 is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

8.09.09 Special Requirements for Incompatible Wastes

Incompatible wastes, or incompatible wastes and materials must not be placed in the same surface impoundment, unless Section 8.02.08 (b) is complied with.

8.09.10 Additional Requirements for Impoundments Used for Disposal of Hazardous Wastes

In addition to all the other requirements of this section:

(a) The owner or operator desiring to leave wastes in place in an impoundment upon closure, must comply with the following as part of the closure procedures:

(1) Eliminate the free liquids contained in the impoundment by removing the liquid wastes and by solidifying the remaining wastes and waste residues left in place;

(2) Stabilize the remaining wastes to a bearing capacity sufficient to support the final cover;

(b) Prior to beginning the post closure period, the owner or operator must cover the impoundment with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed impoundment;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the least permeable component of the liner system or 1×10^{-7} cm/sec whichever value is less.

(c) After final closure, the owner or operator must comply with

all post closure requirements contained in Section 8.06.07, 8.06.08, and 13.00 including maintenance and monitoring throughout the post closure period (specified in the permit under Section 8.06.07). The owner or operator must:

(1) Maintain the integrity and effectiveness of the cover including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system for the entire post closure period;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Section 8.13 of these regulations;

(4) Prevent run-on and run-off from eroding or otherwise damaging the cover; and

(d) During the post closure period, the owner or operator must:

(1) Inspect daily and maintain the leachate detection, collection and removal system. If leachate is detected in the detection system between the liners, the owner or operator must:

(i) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074.

(ii) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken.

(2) Unless the owner or operator can demonstrate otherwise, the leachate must be managed as a hazardous waste in accordance with all regulations governing the generation of such wastes.

(3) If it is determined that the liner(s) is leaking, the owner or operator must begin the remedial actions set forth in the contingency plan specified in the permit which shall at least include plans for repairing the breach in the liner and preventing the continued migration of the leachate.

Section 8.10 Waste Piles

8.10.01 Applicability

(a) The regulations in this section apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Section 8.01 provides otherwise.

~~(b) Waste piles closed with wastes left in place must comply with the requirements for landfills under Section 8.11.~~

[Reserved]

(c) Owners and operators of waste piles used to store or treat only hazardous wastes that do not contain free liquids are not subject to regulation under Sections 8.10.02, 8.10.03, 8.10.04, 8.10.05, and 8.10.06 with respect to these piles, provided that:

(1) Liquids or materials containing free liquids are not placed in the pile;

(2) The pile is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated;

(3) The pile is protected from surface water run-on by the structure or in some other manner;

(4) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting;

(5) The pile will not generate leachate through decomposition or other reactions; and

(6) The pile does not discharge hazardous wastes into State waters.

8.10.02 Design and Operating Requirements

(a) A waste pile must have:

(1) A liner that is designed, constructed, and installed to prevent discharge into or on the land and waters of the State during

the active life (including the closure period) of the waste pile.
The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) At least (3) feet above the seasonal high water table; and

(iv) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Chief will specify conditions for design and operation in the permit to insure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(ii) Designed and operated to function without clogging through the operating life and scheduled closure of the waste pile.

(3) If the collected leachate or run-off is a hazardous waste under Section 3.00, it must be managed as a hazardous waste in accordance with all applicable requirements. If collected leachate or run-off is discharged through a point source to waters of the State, it is subject to the requirements of the Water Pollution Control Act and all regulations promulgated thereunder.

(b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(c) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after any precipitation event to maintain design capacity of the system.

(e) The pile must be designed and operated to control dispersal of the waste by wind or water.

(f) The Chief will specify in the permit all conditions for design and operation practices that are necessary to ensure that the requirements of this sections are satisfied.

(g) A liner system must be protected from plant growth which could puncture any component of the system.

(h) A liner system must have a containment life equal to or greater than the life of the pile.

8.10.03 Specific Requirements for Double Lined Waste Piles

(a) The owner or operator of a double lined waste pile must meet the following:

(1) The pile (including its underlying liners) must be located at least three (3) feet above the seasonal high water table.

(2) The pile must be underlain by two liners which are designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications in Section 8.10.02(a)(1).

(3) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquids into the space between the liners.

(4) The pile must have a leachate collection and removal system above the top liner that is designed, constructed, maintained and operated in accordance with Section 8.10.02(a)(2).

(b) If liquid leaks into the leak detection system, the owner or operator must:

(1) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074;

(2) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken; and

(3) Comply with the provisions of Section 8.10.06.

8.10.04 Specific Requirements for Single Lined Waste Piles:
Inspection of Liners

(a) The owner or operator of a single lined pile must meet the following conditions:

(1) The wastes in the pile must be removed periodically, and the liner must be inspected for deterioration, cracks, or other conditions that may result in leaks. The frequency of inspection will be specified in the inspection plan required in Section 8.02.06 and must be based on the potential for the liner (base) to crack or otherwise deteriorate under the conditions of operation (e.g., waste type, rainfall, loading rates, and subsurface stability).

(2) The liner must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile or to clean and expose the liner surface for inspection.

(3) The requirements listed in Section 8.10.02(a) and Section 8.10.02(b).

(b) If deterioration, a crack, or other condition is identified that is causing or could cause a leak, the owner or operator must:

(1) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074.

(2) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken; and

(3) Comply with the provisions of Section 8.10.06.

8.10.05 Monitoring and Inspection

(a) During and immediately after construction or installation, liner and cover systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials).

(1) Soil based and admixed liners must be tested for compaction density, moisture content, permeability, and inspected for imperfections including lenses, cracks, channels, root holes or other structural nonconformities that may cause an increase in the permeability of the liner; and

(2) Synthetic liner materials (e.g., membranes, sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears or blisters.

(3) Upon discovery of any imperfections, the repair of the liner must be completed prior to placement of the wastes into the liner.

(4) The results of such tests and repairs must be certified in writing by the owner or operator and a registered professional engineer.

(5) The leachate detection, collection and removal system must be inspected for cracks, breaks, loose seams and joints, clogging, areas of structural stress, and any other faults or conditions which may result in collapse or failure of the system.

(b) While a waste pile is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

- (1) Deterioration, malfunctions, or improper operation of run-on- and run-off control systems;
- (2) The presence of liquids in the leachate detection systems, where installed to comply with Section 8.10.03;
- (3) Proper functioning of wind dispersal control systems, where present; and
- (4) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

8.10.06 Liner System Repairs; Contingency Plan

(a) Whenever there is any indication of a possible failure of liner system, that system must be inspected in accordance with the provisions of the liner system evaluation and repair plan required by (d) of this section. Indications of possible failure of the liner system include liquid detected in the leachate detection system (where applicable), evidence of leakage or the potential for leakage in the base, erosion of the base, or apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials.

(b) Whenever there is a positive indication of a failure of the liner system, the waste pile must be removed from service, and the leachate removed and treated by method and schedule approved by the

Chief. Indications of positive failure of the liner system include waste detected in the leachate detection system (where applicable), or a breach (e.g., a hole, tear, crack, or separation) in the base.

(c) If the waste pile must be removed from service as required by (b) of this section, the owner or operator must:

(1) Immediately stop adding waste to the pile.

(2) Immediately contain any leakage which has or is occurring and treat the leachate by a method and schedule approved by the Chief.

(3) Immediately cause the leak to be stopped.

(4) If the leak cannot be stopped by any other means, remove the waste from the base.

(d) As part of the contingency plan required in Section 8.04 the owner or operator must specify:

(1) ~~A-procedures~~ All procedures, and design and operating specifications for complying with the requirements of (c) of this section; and;

(2) A liner system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the liner system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to liner system failure or deterioration which does not require the waste pile to be removed from service.

(e) No waste pile that has been removed from service in accordance with (b) of this section may be restored to service unless:

(1) The liner system has been repaired; and

(2) The liner system has been certified by a registered professional engineer as meeting the design specifications approved in the permit and that to the best of his knowledge and opinion the leak has been stopped.

(f) A waste pile that has been removed from service in accordance with (b) of this section and that is not being repaired must be closed in accordance with Section 8.10.09.

(g) All wastes removed from the waste pile must be managed as a hazardous waste in compliance with all applicable requirements. Any point source discharge to waters of the State is subject to the requirements of the Water Pollution Control Act and all regulations promulgated thereunder.

8.10.07 Special Requirements for Ignitable or Reactive Waste

(a) Ignitable or reactive waste must not be placed in a pile unless the waste is treated, rendered, or mixed before or immediately after placement in the pile so that:

(1) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of ignitable or reactive waste and complies with Section 8.02.08; or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

8.10.08 Special Requirements for Incompatible Wastes

(a) Incompatible wastes, or incompatible wastes and materials must not be placed in the same pile, unless Section 8.02.08 is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device which will prevent fires, explosions, gaseous emissions, leaching, or other discharge which could result from the contact or mixing of incompatible wastes or materials.

(c) Hazardous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with Section 8.02.08.

8.10.09 Closure

(a) At closure, all hazardous waste and hazardous waste residues must be removed from the pile, except as provided in paragraph (c) of this Section. Any component of the liner system containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

(b) At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with these regulations that the waste removed from the waste pile is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with applicable requirements listed in Sections 8.02.02; 8.02.03; 8.02.04; 8.02.05; 8.02.06; 8.02.07; and 8.02.08.

(c) If, upon closure, the owner or operator determines that all hazardous wastes and hazardous waste residues can not be removed as required by paragraph (a) of this Section due to technical infeasibility, then the owner or operator must submit an application for modifying the permit pursuant to Section 11.17. Such application must contain all information which demonstrates compliance with the requirements for managing a landfill, pursuant to Sections 8.11, 11.00 and 13.00.

Section 8.11 Landfills

8.11.01 Applicability

The regulations in this section apply to owners and operators of

facilities that dispose of hazardous waste in landfills, except as Section 8.01 provides otherwise.

8.11.02 Design and Operating Requirements

(a) A landfill must have:

(1) A double liner system that is designed, constructed, and installed to prevent any migration of wastes and/or leachate out of the landfill to the adjacent subsurface, soil or groundwater or surface water at any time during the operating life, closure and the post closure period of the landfill. The primary liners (i.e. -- the liner in contact with the waste), must be constructed of materials that prevent wastes and/or leachate from passing into the liner during the operating life closure and the post closure period of the facility. The All liners must be:

(i) Constructed of materials that are chemically resistant to the waste and leachate expected to be generated and of sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste and leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation. The liner will be tested for compatibility with the waste and leachate expected to be generated to determine possible effects on the liner materials prior to installation.

(ii) Placed upon a foundation or base capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste and leachate; and

(iv) Constructed to be free of lenses, cracks, channels, holes, or other structural nonuniformities; and

~~(v) -- Soil-based and admixed liners must be at least 90 cm (3 feet) thick with a maximum saturated hydraulic conductivity of not more than 1×10^{-7} cm/sec throughout the total thickness and area of the liner.~~

(v) If a soil-based or admixed liner is to be used as the secondary liner (i.e. -- the liner underneath the primary liner), then such liner must be at least 90 cm (3 feet) thick with a maximum saturated hydraulic conductivity of no more than 1×10^{-7} cm/sec throughout the total thickness and area of the liner;

(2) A leachate collection and removal system immediately above the primary liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Chief will specify conditions for design and operation in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(ii) Must be overlain by a graded granular material assuring a hydraulic conductivity of 1×10^{-3} cm/sec placed with a minimum slope of 2%.

(iii) Designed and operated to function without clogging through the operating life and scheduled closure and post closure period of the landfill.

(3) A leachate detection system must be designed, constructed, maintained and operated between the liners to detect any migration of

liquid into the space between the liners.

(b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year 24-hour storm.

(c) The owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(f) The landfill (including the base of the lower most liner components) must be located at a minimum of 3 feet above the highest known seasonal water table elevation. This 3 foot distance may be achieved by elevating the waste disposal facility artificially or by the nonmechanical lowering of the water table. However, nonmechanical means (i.e. - pumps) may be used to lower the water table. All plans for alteration of the water level must be approved by the Chief and will become a part of the hazardous waste management permit.

(g) The Chief will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(h) The design specifications, construction and installation practices and operating conditions will be certified by an owner or operator and a registered professional engineer.

(i) Existing portions of landfills are exempt from the requirements of Section 8.11.02(a), 8.11.03(a), 8.11.04, 8.11.11(c) (2),

(c) (3), and (d) provided that paragraph ~~(i)~~ (1)(i), is complied with.

~~(i)~~ (1) The owner or operator, in order to qualify for the exemption in (i) above, must demonstrate that statistically significant increases of hazardous constituents do not occur in the groundwater or surface water during its active life and the post closure period, except as provided in paragraph (j) of this Section.

~~(ii)~~ (2) If statistically significant increases of hazardous constituents are detected as outlined in Section 8.13.08(d) in the groundwater beneath the facility (including the regulated unit) the owner or operator must comply with the corrective action outlined in Section 8.13.09 (if groundwater contamination has been determined).

(j) If the owner or operator determines that the corrective action program being implemented under Section 8.13.09 is sufficient for causing cessation of hazardous waste constituents migration, then the unit must be closed. However, if it is determined that the corrective action will adequately arrest and remove the contamination, the owner may choose one of the four options which will become part of the conditions of the permit:

(1) Retrofit the unit with liners; in accordance with Section 8.11.02 (a) (1);

(2) Stop the leak;

(3) Continue the operation of the unit, (while concurrently developing/implementing an alternate treatment, storage, or disposal method), for a period of five years at which time the unit must be closed; or

(4) Continue the operation of the unit provided a demonstration can be made and approved by the Chief that no adverse impact to human health or to the environment will result from the continued operation of the unit during the active life and closure and post closure period, provided that the facility continue to comply with an approved corrective action program. Such demonstration must include

and discuss the following:

- (i) Potential adverse effects on ground water quality, considering:
- (A) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
 - (B) The hydrogeological characteristics of the facility and surrounding land;
 - (C) The quantity of ground water and the direction of ground water flow;
 - (D) The proximity and withdrawal rates of ground water users;
 - (E) The current and future uses of ground water in the area;
 - (F) The existing quality of ground water, including other sources of contamination and their cumulative impact on ground water quality;
 - (G) The potential for health risks caused by human exposure to waste constituents;
 - (H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - (I) The persistence and permanence of the potential adverse effects; and
- (ii) Potential adverse effects on hydraulically connected surface water quality, considering:
- (A) The volume and physical and chemical characteristics of the waste in the regulated unit;
 - (B) The hydrogeological characteristics of the facility and surrounding land;
 - (C) The quantity and quality of ground water, and the direction of ground water flow;

- (D) The patterns of rainfall in the region;
- (E) The proximity of the regulated unit to surface waters;
- (F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
- (G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
- (H) The potential for health risks caused by human exposure to waste constituents;
- (I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
- (J) The persistence and permanence of the potential adverse effects.

(iii) In making any determination under paragraph (4) of this section concerning the use of ground water in the area around the facility, the Chief will consider any identification of underground sources of drinking water and exempted aquifers made under the West Virginia Administrative Regulations of the State Water Resources Board, Chapter 20, Article 5A, Series IX (1983).

8.11.03 Monitoring, Testing and Inspection

(a) During and immediately after construction or installation, liners and cover systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, and foreign materials).

- (1) Synthetic liners and covers (e.g., membranes, sheets or coatings) must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and
- (2) Soil-based and admixed liners and covers must be tested for

compaction density, moisture content, and permeability and inspected for imperfections including lenses, cracks, channels, root holes, animal borings or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

(3) Upon discovery of any imperfections, damage, or nonuniformities, the repair of the liner must be completed prior to placement of the wastes into the landfill.

(4) Any repair to the liner must be certified by a registered professional engineer.

(b) While a landfill is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems.

(2) The presence of liquids in leak detection systems were installed to comply with Section 8.11.02.

(3) Proper functioning of wind dispersal control systems, where present; and

(4) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) If liquid leaks into the leachate detection system, the owner or operator must:

(1) Immediately notify the Chief through the Division of Water Resources; Emergency Notification Number 1-800-642-3074 and follow with written notification within 7 days of detecting the leak.

(2) Within 15 days after detecting leak, submit to the Chief a written report of the problem and corrective measures taken.

(3) Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a registered professional engineer that, to the best of his knowledge and opinion, the leak has been stopped.

(4) File a report including all technical drawings and information detailing the repair of liner replacement work accomplished immediately after repairs are completed.

(d) The Chief will specify in the permit all conditions for design and operation that are necessary to ensure that the requirements of this section are satisfied.

8.11.04 Liner System Repairs, Contingency Plans

(a) Whenever there is any indication of a possible failure of the liner system, that system must be inspected in accordance with the provisions of that system's evaluation and repair plan required by (d) of this section. Indications of possible failure of the liner system include at least liquid detected in the leachate detection system, apparent or potential deterioration of the liner(s) based on observation or test samples of the liner materials, any mishandling of wastes placed in the landfill and foreign objects in the landfill.

(b) Whenever there is a positive indication of a failure of the liner system, the landfill must be removed from service. Indications of positive failure of the liner system include waste detected in the leachate detection system, or a breach (e.g., a hole, tear, crack or separation) in the liner system.

(c) If the landfill must be removed from service as required by (b) of this section, the owner or operator must:

- (1) Immediately stop the addition of wastes into the landfill.
- (2) Immediately contain any leakage which has occurred or is occurring.
- (3) Immediately cause the leak to be stopped.
- (4) If the leak cannot be stopped by any other means, remove the waste from the landfill.

(5) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074.

(6) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken.

(d) As part of the contingency plan required in Section 8.04 the owner or operator must specify:

(1) A procedure for complying with the requirements of (c) of this section; and

(2) A liner system evaluation and repair plan describing testing and monitoring techniques; procedures to be followed to evaluate the integrity of the liner system in the event of a possible failure; a schedule of actions to be taken in the event of a possible failure; and a description of the repair techniques to be used in the event of leakage due to liner system failure or deterioration which does not require the landfill to be removed from service.

(e) No landfill that has been removed from service in accordance with (b) of this section may be restored to service unless:

(1) The liner system has been repaired; and

(2) The liner system has been re-certified by a registered professional engineer as meeting the design specifications approved in the permit.

(f) A landfill that has been removed from service in accordance with (b) of this section and that is not being repaired must be closed in accordance with Section 8.11.11.

(g) All wastes removed from the landfill must be managed as a hazardous waste in compliance with all applicable requirements. Any point source discharge to waters of the State is subject to the requirements of the Water Pollution Control Act and all regulations promulgated thereunder.

8.11.05 - 8.11.09 [Reserved]

8.11.10 Surveying and Record Keeping

The owner or operator of a landfill must maintain the following items in the operating record required under Section 8.05.04:

- (a) On a map, the exact location and dimensions, including depth of each cell with respect to permanently surveyed reference points established from USGS and/or USCG benchmarks; and
- (b) The contents by hazardous waste type and quantity of each cell and the approximate location and quantity of each hazardous waste type within each cell.

8.11.11 Closure and Post Closure

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill of cell with a final cover designed and constructed to:

- (1) Provide long-term minimization of migration of liquids through the closed landfill;
- (2) Function with minimum maintenance;
- (3) Promote drainage and minimize erosion or abrasion of the cover ;
- (4) Accommodate settling and subsidence so that the cover's integrity is maintained; and
- (5) Have a permeability less than or equal to the least permeable component of the liner system or 1×10^{-7} cm/sec whichever value is less.

(b) During construction or installation, covers systems must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials).

- (1) Synthetic covers (e.g., membranes, sheets or coatings) must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and
- (2) Soil-based and admixed covers must be tested for compaction

density, moisture content, and permeability and inspected for imperfections including lenses, cracks, channels, root holes, animal borings or other structural nonuniformities that may cause an increase in the permeability of the cover.

(3) Upon discovery of any imperfections, damage or nonuniformities, the repair of the cover must be completed before final closure is authorized.

(4) Any repair to the cover system must be certified by an independent registered professional engineer.

(c) After final closure, the owner or operator must comply with all post closure requirements contained in Sections 8.06.07, 8.06.08 and 13.00 including maintenance and monitoring throughout the post closure period (specified in the permit under Section 8.06.07). The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effect of settling, subsidence, erosion, or other events. Any repair to the cover system must be certified by a registered professional engineer as meeting the design specifications approved in the permit;

(2) Maintain and monitor the leachate detection system in accordance with Section 8.11.03, where such a system is present between double liner systems;

(3) Continue to operate the leachate collection and removal system for the entire post closure period and until leachate is no longer detected;

(4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Section 8.13 of these regulations;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed benchmarks or reference points used in complying with Section 8.11.10.

(d) During the post closure period, if liquid leaks into a leachate detection system installed under Section 8.11.02, the owner or operator must;

(1) Immediately notify the Chief through the Division of Water Resources' Emergency Notification Number 1-800-642-3074 followed with written notification within 7 days of detecting the leak.

(2) Within 15 days after detecting the leak, submit to the Chief a written report of the problem and corrective measures taken.

(3) Begin remedial actions set forth in the contingency plan specified in the permit which shall at least include removing the accumulated liquid and begin corrective action to stop any leak and minimize the potential of possible groundwater contamination by some means within the time period prescribed.

(4) Manage as hazardous waste in accordance with all regulations governing the generation of such waste, the liquid removed from the detection system unless the owner or operator can demonstrate otherwise.

(5) Obtain a certification from a registered professional engineer that to the best of his knowledge and opinion, the leak has been stopped and that all necessary work and repairs has been completed to prevent or minimize any potential for groundwater contamination.

8.11.12 [Reserved]

8.11.13 Special Requirements for Ignitable or Reactive Waste

(a) Except as provided in paragraph (b) of this section, and in Section 8.11.17, ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in a landfill so that:

(1) The resulting waste, mixture, or dissolution of material no

longer meets the definition of ignitable or reactive waste under Section 3.03.02 or Section 3.03.04 of these regulations; and

(2) Section 8.02.08(b) is complied with.

(b) Non liquid ignitable wastes in containers may be landfilled without meeting the requirements of paragraph (a) of this section, provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered after placement with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

8.11.14 Special Requirements for Incompatible Wastes

Incompatible wastes, or incompatible wastes and materials, (see Appendix I of this section for examples) must not be placed in the same landfill cell, unless Section 8.02.08(b) is complied with.

8.11.15 Restrictions on Liquid Waste

(a) Bulk or non-containerized liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) Before disposal the liquid waste or waste containing free liquids is treated, solidified and stabilized, chemically or physically, so that free liquids are not longer present.

(b) Containers holding free liquids must not be placed in a landfill unless:

(1) The container is very small, such as an ampule; and

(2) The container is placed in an overpack drum (lab pack) as

defined in Section 8.11.17 and is disposed of in accordance with Section 8.11.17.

8.11.16 Special Requirements for Containers

Containers must be either:

- (a) At least 90 percent full when placed in the landfill; or
- (b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

8.11.17 Disposal of Small Containers of Hazardous Waste in Over Packed Drums (Lab Packs)

Small containers of hazardous waste may be placed in a landfill if the following requirements are met:

(a) Hazardous waste must be packaged in non-leaking containers. The inside containers must be of a design and constructed of a material that will not react dangerously or otherwise with, be decomposed by, or be ignited by the contained waste. The inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers must be packed in an open head DOT specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416 liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and absorbent material.

(c) The absorbent material used must not be capable of reacting

dangerously or otherwise with, being decomposed by, or being ignited by the contents of the inside containers in accordance with Section 8.02.02(b).

(d) Incompatible wastes, as defined in Section 2.00 of these regulations, must not be placed in the same outside container.

(e) Reactive wastes, other than cyanide - or sulfide-bearing waste as defined in Section 3.03.04(a)(5) of these regulations - must be treated or rendered non-reactive prior to packaging in accordance with paragraphs (a) through (d) of this section. Cyanide and sulfide bearing reactive waste may be packed in accordance with paragraphs (a) through (d) of this section without first being treated or rendered non-reactive.

8.11.18 Addition of New Wastes

Prior to approval of a permit modification for the addition of wastes not already authorized in the permit, the waste must be tested to determine its compatibility with the waste(s) already present and with the liner materials to determine if it will have any detrimental effects (e.g., causes cracks, dissolution, decreased mechanical strength, or increases permeability).

8.11.19 - 8.11.40 [Reserved]

Section 8.12 Land Treatment

8.12.01 Applicability

The regulations in this section apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as Section 8.01 provides otherwise.

8.12.02 Treatment Program

(a) An owner or operator subject to this section must establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The Chief will specify in the facility permit the elements of the treatment program, including:

(1) The wastes that are capable of being treated at the unit based on a demonstration under Section 8.12.03:

(2) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with Section 8.12.04(a); and

(3) Unsaturated zone monitoring provisions meeting the requirements of Section 8.12.09.

(b) The Chief will specify in the facility permit the hazardous constituents that must be degraded, transformed, or immobilized under this section. Hazardous constituents are constituents identified in Appendix VIII of Section 3.00 of these regulations that are reasonably expected to be in, or derived from waste placed in or on the treatment zone.

(c) The Chief will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the

land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone must be:

- (1) No more than 1.5 meters (5 feet) from the initial soil surface; and
- (2) More than 1.5 meters (5 feet) above the seasonal high water table.

8.12.03 Treatment Demonstration

(a) For each waste that will be applied to the treatment zone, the owner or operator must demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under paragraph (a) of this section, he must obtain a treatment or disposal permit under Section 11.0. The Chief will specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities) necessary to meet the requirements in paragraph (c) of this section.

(c) Any field test or laboratory analysis conducted in order to make a demonstration under paragraph (a) of this section must:

(1) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(i) The characteristics of the waste (including the presence of Appendix VIII constituents);

- (ii) The climate in the area;
 - (iii) The topography of the surrounding area;
 - (iv) The characteristics of the soil in the treatment zone (including depth); and
 - (v) The operating practices to be used at the unit.
- (2) Be likely to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and
- (3) Be conducted in a manner that protects human health and the environment considering:
- (i) The characteristics of the waste to be tested;
 - (ii) The operating and monitoring measures taken during the course of the test;
 - (iii) The duration of the test;
 - (iv) The volume of waste used in the test; and
 - (v) In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

8.12.04 Design and Operating Requirements

The Chief will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(a) The owner and operator must design, construct, operate and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under Section 8.12.02. At a minimum, the Chief will specify the following in the facility permit:

- (1) The rate and method of waste application to the treatment zone;

- (2) Measures to control soil pH;
- (3) Measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and
- (4) Measures to control the moisture content of the treatment zone.

(b) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year, 24-hour storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(g) The owner or operator must manage the unit to control the wind dispersal of aerosols/vapors during waste application.

(h) The owner or operator must inspect the unit weekly and after any precipitation event to detect evidence of:

- (1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and
- (2) Improper functioning of wind dispersal control measures.

8.12.05 - 8.12.06 [Reserved]

8.12.07 Food Chain Crops

The Chief may allow the growth of food chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Chief will specify in the facility permit the specific food chain crops which may be grown.

(a) (1) The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or indirect contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator must make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in Appendix VIII of Section 3 of these regulations that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner, or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and must;

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (e.g., pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he must obtain a permit for conducting such activities.

(b) The owner or operator must comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture must be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(ii) The annual application from cadmium from waste must not exceed .44 lbs/acre on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate must not exceed:

<u>Time Period</u>	<u>Annual Cd application rate lbs/acre</u>
Present to June 30, 1984	1.78
July 1, 1984 to December 31, 1986	1.11
Beginning January 1, 1987	.44

(iii) The cumulative application of cadmium from waste must not exceed 4.46 lbs/acre if the waste and soil mixture has a pH of less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste must not exceed: 4.46 lbs/acre if soil cation exchange capacity (CEC) is less than 5 meg/100g; 8.92 lbs/acre if soil CEC is 5-15 meg/100g; and 17.48 lbs/acre if soil CEC is greater than 15 meg/100g; or

(2)(i) Animal feed must be the only food chain crop produced;

(ii) The pH of the waste and soil mixture must be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occur later, and this pH level must be maintained whenever food chain crops are grown;

(iii) There must be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan must describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and

(iv) Future property owners must be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with paragraph (b) (2) of this section.

8.12.08 [Reserved]

8.12.09 Unsaturated Zone Monitoring

An owner or operator subject to this section must establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator must monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The Chief will specify the hazardous constituents to be monitored in the facility permit. The hazardous constituents to be monitored are those specified under Section 8.12.02.

(2) The Chief may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under Section 8.12.02(b). PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat,

considering the combined effects of degradation, transformation, and immobilization. The ~~Regional-Administrator, EPA, Region-III or the Director~~ Chief will establish PHCs if he finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment to at least equivalent levels for the other hazardous constituents in the wastes.

(b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

(c) The owner or operator must establish a background value for each hazardous constituent to be monitored under paragraph (a) of this section. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(1) The background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with paragraph (b)(1) of this section.

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Chief will specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator must implement procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures; and
- (4) Chain of custody control.

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under paragraph (d) of this section, to the background value for that constituent according to the statistical procedure specified in the facility permit under this paragraph.

(2) The owner or operator must determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Chief will specify that the time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

(3) The owner or operator must determine whether there is a statistically significant increase below the treatment zone using a

statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Chief will specify a statistical procedure in the facility permit that he finds:

- (i) Is appropriate for the distribution of the data used to establish background values; and
- (ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he must:

- (1) Notify the Chief of this finding in writing within seven (7) days. The notification must indicate what constituents have shown statistically significant increases.
- (2) Within 45 days, submit to the Chief an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(h) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(2) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(2) unless the demonstration made under this paragraph successfully shows that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Chief in writing within seven (7) days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this paragraph;

(2) Within 45 days, submit a report to the Chief demonstrating that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 45 days, submit to the Chief an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accord with the unsaturated zone monitoring program established under this section.

8.12.10 Record Keeping

The owner or operator must include hazardous waste application dates and rates in the operating record required under Section 8.05.04.

8.12.11 Closure and Post Closure Care

(a) During the closure period the owner or operator must:

(1) Continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under Section 8.12.04(a), except to the extent such measure are inconsistent with paragraph (a)(8) of this section;

(2) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under Section 8.12.04 (b);

(3) Maintain the run-on control system required under Section 8.12.04(c);

(4) Maintain the run-off management system required under Section 8.12.04(d);

(5) Control wind dispersal of hazardous waste if required under Section 8.12.04(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food chain crops under Section 8.12.07;

(7) Continue unsaturated zone monitoring in compliance with Section 8.12.09; except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) Establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with Section 8.06.06, when closure is completed the owner or operator may submit to the Chief certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period the owner or operator must:

(1) Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) Maintain a vegetative cover over closed portions of the facility;

(3) Maintain the run-on control system required under Section 8.12.04(c);

(4) Maintain the run-off management system required under Section 8.12.04(d);

(5) Control wind dispersal of hazardous waste if required under Section 8.12.04(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food chain crops under Section 8.12.07; and

(7) Continue unsaturated zone monitoring in compliance with Section 8.12.09 except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under paragraphs (a)(8) and (c) of this section if the Chief finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (d)(3) of this section. The owner or operator may submit such a demonstration to the Chief or at any time during the closure or post closure care periods. For the purposes of this paragraph:

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under Section 8.12.02(b).

(i) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(ii) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (d)(3) of this section.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of

soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under Section 8.13 of these regulations if the Chief finds that the owner or operator satisfies paragraph (d) of this section and if unsaturated zone monitoring under Section 8.12.09 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

8.12.12 Special Requirements for Ignitable or Reactive Waste

The owner or operator must not apply ignitable or reactive waste to the treatment zone unless.

(a) The waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Section 3.03.02 or 3.03.04 of these regulations; and

(2) Section 8.02.08(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

8.12.13 Special Requirements for Incompatible Wastes

The owner or operator must not place incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), in or on the same treatment zone, unless Section 8.02.08(b) is complied with.

8.12.14 - 8.12.30 [Reserved]

Section 8.13 Groundwater Protection

8.13.01 Applicability

(a) Except as provided in paragraph (b) of this section, the regulations in Section 8.13 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills. The owner or operator must satisfy the requirements of Section 8.13 for all wastes (or constituents thereof) contained in any such waste management unit at the facility that receives hazardous waste after the effective day of Section 8.13 (hereinafter referred to as a "regulated unit"). Any waste or waste constituent migrating beyond the waste management area under Section 8.13.05(b) is assumed to originate from a regulated unit unless the Chief finds that such waste or waste constituent originated from another source.

(b) The owner or operator is not subject to regulation under Section 8.13 if:

- (1) He is exempted under Section 8.01;
- (2) He designs and operates a pile in compliance with Section 8.10.01(c);
- (3) The Chief finds, pursuant to Section 8.12.11(d), that the treatment zone of land treatment unit does not contain concentrations of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of Section 8.12.09 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of Section 8.13 during the post closure care period.

(c) The regulations under Section 8.13 apply during the active

life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in Section 8.13:

(1) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post closure period under Section 8.06.07 in all other cases.

8.13.02 Required Programs

(a) Owners and operators subject to Section 8.13 must conduct a monitoring and corrective action program as follows:

(1) Whenever the Water Resources Board's Groundwater Protection Standard Regulations Series VII, Section 1 is exceeded, the owner or operator must institute a corrective action program under Section 8.13.09;

(2) In all other cases, the owner or operator must institute a groundwater monitoring program under Section 8.13.08.

(b) In order to prevent potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken, the owner or operator must institute each of these programs when they are required under Section 8.13.02(a).

The owner or operator must specify in the permit application the specific elements of the groundwater monitoring system and the elements of the corrective action program identified in paragraph (a) of this section. These will be included in the permit application as contingency plans and shall be accompanied by an engineering feasibility plan for the corrective action program.

The corrective action program must, at a minimum include the following information:

(1) A description of corrective actions that will achieve

compliance with the Water Resources Board's Groundwater Protection Standard Regulation Series VII, Section 1; and

(2) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a groundwater monitoring program developed to meet the requirements of Section 8.13.08.

8.13.03 [Reserved]

8.13.04 Hazardous Constituents

The Chief will specify in the permit the hazardous constituents to which the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 applies. Hazardous constituents are constituents identified in Appendix VIII of Section 3.00 of these regulations or constituents that caused the Director to list the hazardous waste in Section 3.04 of these regulations or constituents listed in Table 1 of Section 3.03.05 of these regulations, that are reasonably expected to be in or derived from waste contained in a regulated unit or that have been detected in groundwater in the uppermost aquifer underlying a regulated unit.

8.13.05 Point of Compliance

(a) The chief will specify in the permit the point of compliance at which the Water Resources Board's Groundwater Protection Standard Regulation Series VII, Section 1 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends through the uppermost aquifer underlying the regulated unit or as the Chief specifies in the permit.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the

active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area may be proposed in the permit application to be described by an imaginary line circumscribing the several regulated units. The Chief will determine whether such a proposal is acceptable based on the distance between the regulated units and the wastes contained in each unit.

8.13.06 Compliance Period

(a) The compliance period is the active life of the waste management area, the closure period and the post closure period.

(b) The compliance period begins when the owner or operator initiates a groundwater monitoring program meeting the requirements of Section 8.13.09.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 has not been exceeded for a period of three (3) consecutive years.

8.13.07 Groundwater Monitoring System Requirements

The owner or operator must comply with the following requirements for any groundwater monitoring program:

(a) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background groundwater that has

not been affected by leakage from the regulated unit; and

(2) Represent the quality of groundwater passing the point of compliance.

(b) Well construction must meet the following standards:

(1) Wells must be cased in a manner that maintains the integrity of the monitoring well bore hole:

(2) Wells must be screened and packed with sand or gravel throughout the total vertical distance of the uppermost aquifer except as provided under Section 8.13.07(c). The screened interval of an individual well should not exceed 20 feet (screened intervals greater than 20 feet may be permitted if the owner or operator can successfully demonstrate that the proposed interval will provide representative samples; such demonstration must be based on specific hydrogeologic conditions at the facility). In order to meet these requirements for screened intervals, nested wells or well clusters may be needed.

(3) Screening shall be designed to prevent the introduction of sediment, yet allow optimum entrance velocity for water;

(4) Screens and casing must be constructed of materials that are strong enough to prevent collapse and must be non-reactive, non-synergistic and non-catalytic to the hazardous constituents being monitored;

(5) The annular space (the space between the bore hole wall and the well casing) above the sampling depth must be sealed to prevent contamination of samples and groundwater by entrance of materials from the surface; and

(6) The wells must be installed, constructed and maintained using the best available techniques which will provide compliance with this section.

(c) In locations where multiple formations comprise the uppermost aquifer the owner or operator must establish a groundwater

monitoring system that isolates each strata containing water and allows for separate sampling of each strata containing water.

(d) If a facility contains more than one regulated unit, separate groundwater monitoring systems may not be required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the point of compliance of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer. Requests to use such a monitoring system must be submitted in the permit application as required under Section 8.13.05(b)(2).

8.13.08 Groundwater Monitoring Program

An owner or operator required to establish a groundwater monitoring program must, at a minimum, discharge the following responsibilities:

(a) General requirements:

(1) The owner or operator must monitor for indicator parameters (e.g., pH, specific conductance, total organic carbon, or total organic halogen), hazardous constituents under Section 8.13.04 and/or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Chief will specify the monitoring parameters (indicator parameters and/or reaction products) and constituents to be monitored in the permit, after considering the following factors:

(i) The types, quantities, and concentrations of hazardous constituents in wastes managed at the regulated unit;

(ii) The mobility, stability, and persistence of hazardous constituents or their reaction products in the unsaturated zone beneath the waste management area;

(iii) The detectability of indicator parameters, hazardous constituents, and reaction products in groundwater; and

(iv) The concentrations and coefficients of variation of proposed monitoring parameters or hazardous constituents in the background groundwater.

(2) The owner or operator must install a groundwater monitoring system at the point of compliance under Section 8.13.05. The groundwater monitoring system must comply with Section 8.13.07.

(3) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for:

- (i) Sample collection;
- (ii) Sample preservation and shipment;
- (iii) Analytical procedures; and
- (iv) Chain of custody control.

(4) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples. Recommended methods include those outlined in 40 CFR Part 136. The proposed sampling and analytical methods must be approved by the Chief and upon approval, become a condition of the hazardous waste management permit.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually and determine transmissibility during initial sampling or initial well development.

(6) The groundwater monitoring program must include a determination of the static water level and groundwater surface elevation each time groundwater is sampled.

(7) If the owner or operator determines that the groundwater monitoring program no longer satisfies the requirements of this

section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(8) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 are taken during the term of the permit.

(9) The groundwater monitoring wells must be sampled to allow detection of density separated hazardous constituents or monitoring parameters which may escape from the regulated unit.

(b) Establishing water quality concentrations:

(1) The groundwater monitoring program must establish background groundwater quality concentrations for each of the hazardous constituents or monitoring parameters specified in the permit.

(i) The background concentration for a hazardous constituent must be based on data from upgradient wells.

(ii) Samples shall be obtained from upgradient wells(s) each time downgradient wells are sampled. downgradient concentrations of hazardous constituents or monitoring parameters shall be compared with upgradient concentrations to determine whether the upgradient background concentrations have been exceeded.

(iii) In comparing concentrations of hazardous constituents or monitoring parameters at the point of compliance with background concentrations, the owner or operator shall use the background concentrations, the owner or operator shall use the background concentration values for the current quarter. At least four (4) background concentration values collected as required under (b) (1) (v) of this section must be used when utilizing the statistical test outlined in Section 8.13.08(c).

(iv) The owner or operator may propose to the Chief to use background concentrations of hazardous constituents or monitoring parameters based on sampling of wells that are not upgradient from

the waste management area where sampling at other wells will provide values that are as representative or more representative than those provided by the upgradient wells or in situations where the owner or operator cannot define or locate an upgradient well due to adverse hydrogeologic conditions. The owner or operator must submit the details of such a proposal to the Chief for his approval. The reasons for the proposal to utilize wells that are not upgradient must be included with the proposal.

(v) In developing the data base used to determine a background concentration for each monitoring parameter or hazardous constituent, the owner or operator must take a minimum of four (4) samples from each well and a minimum of four (4) samples from the entire system used to determine background groundwater quality, each time the system is sampled.

(2) The owner or operator must determine the concentration of each hazardous constituent and monitoring parameter at each monitoring well at the point of compliance and each upgradient well at least quarterly during the compliance period. Intervals between sampling and the frequency of sampling will be specified in the permit. The owner or operator must express the concentrations of each hazardous constituent and monitoring parameter at each monitoring well in a form necessary for the determination of statistically significant increases under (c) of this section.

(c) Statistical method:

The owner or operator must use the following statistical procedure in determining whether the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 has been exceeded:

(1) If, in a groundwater monitoring program, the concentration of a hazardous constituent or monitoring parameter at the point of compliance is to be compared to its respective background concentration, and both the background concentration data set and the point

of compliance monitoring well concentration data set have been determined to be normally distributed by an appropriate method approved by the Chief.

(i) The owner or operator must take at least four (4) samples at each well at the point of compliance and determine whether any increase between the mean concentration of each constituent at each well (using all samples taken) and the background concentration value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behren-Fisher Student's t-test as described in Appendix II. If the test indicates that the increase is significant, the owner or operator must repeat the same procedure (with at least the same number of samples as used in the first test) using fresh samples from the monitoring well. If this second round of analyses indicates that the increase is significant, the owner or operator must conclude that a statistically significant increase has occurred; or

(ii) The owner or operator may request in writing for authorization to use an equivalent statistical procedure for determining whether a statistically significant increase has occurred. The Chief will specify such a procedure in the permit if he finds that the alternative procedure reasonably balances the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in paragraph (c)(1)(i) of this section. This alternative procedure must be appropriate for the distribution of the data.

(2) In all other situations in a groundwater monitoring program the owner or operator must use a statistical procedure which provides a reasonable balance of the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit. The Mann-Whitney Test

(Appendix III is recommended. The owner or operator must supply to the Chief a written request to use such a statistical procedure, completely describing the details of the procedure and the reasons for using it.

(3) The Chief will approve statistical procedures in specific cases where he finds the procedure:

(i) Is appropriate for the distribution of the data used to establish concentration values; and

(ii) Provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit.

(4) In taking samples used in the determination of concentration values, the owner or operator must use a groundwater monitoring system that complies with Section 8.13.07 and which fulfills the requirements of Section 8.13.08.

(d) Determination of significant increases:

(1) The owner or operator must determine whether there is a statistically significant increase over background concentration values for any monitoring parameter or hazardous constituent specified in the permit pursuant to paragraph (a)(1) of this section each time he determines the concentration of hazardous constituents or monitoring parameters in the groundwater at the point of compliance under paragraph (b)(2) of this section.

(i) In determining whether a statistically significant increase has occurred, the owner or operator must compare the concentration of each hazardous constituent and monitoring parameter at each individual monitoring well at the point of compliance to the background concentration value for that parameter or constituent, according to the statistical procedure specified under Section 8.13.08(c)

(ii) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the

point of compliance. This will be done within the time period after completion of sampling specified in the permit. The Chief will specify that time period, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(2) If the owner or operator determines, pursuant to paragraph (d)(1) of this section, that there is a statistically significant increase in the concentrations of any monitoring parameter or hazardous constituents specified pursuant to paragraph (a)(1) of this section at any monitoring well at the point of compliance, he must:

(i) Notify the Chief of this finding in writing within seven (7) days. The notification must indicate what monitoring parameters(s) or hazardous constituents(s) have shown statistically significant increases;

(ii) Immediately sample the ground water in all monitoring wells and determine the concentration of all constituents identified in Appendix VIII of Section 3 of these regulations that are present in ground water;

(iii) Establish a background value for each Appendix VIII constituent that has been found at the compliance point under paragraph (d)(2)(ii) of this section as follows:

- (A) The owner or operator must comply with Section 8.13.08 (b) in developing the data base used to determine background values;
- (B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under Section 8.13.08(c); and
- (C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with Section 8.13.07(a), (b), (c), and (d);

(iv) Within 60 days submit to the Chief a written report including the following information:

- (A) Any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of Section 8.13.09;
- (B) Any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of Section 8.13.09;
- (C) An identification of the concentration of any Appendix VIII constituents found in the groundwater at each monitoring well at the compliance point; and
- (D) If such changes are proposed under (A) and (B) of this subsection, then an application for permit modification must be submitted, with the report, pursuant to Section 11.17; and,

(v) If the owner or operator determines, pursuant to paragraph (d)(1) of this section, that there is a statistically significant increase in the concentrations of hazardous constituents specified pursuant to paragraph (a)(1) of this section at any monitoring well at the point of compliance (thereby violating the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1), he must comply with the provisions of the corrective action program specified in the permit, unless the Chief determines that a demonstration made under paragraph (d)(3) of this section successfully shows that a source other than the regulated unit caused the increase or that the increase resulted from an error in sampling, analysis or evaluation.

(3) If the owner or operator determines, pursuant to paragraph (d)(1) of this section, that the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 is being

exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. In making a demonstration under this paragraph, the owner or operator must;

(i) Notify the Chief in writing within seven (7) days that he intends to make a demonstration under this paragraph;

(ii) Within 60 days, submit a written report to the Chief which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(iii) Within 90 days, submit to the Chief an application for a permit modification to make any appropriate changes to the groundwater monitoring program at the facility; and

(iv) Continue to monitor in accord with the groundwater monitoring program established under this section.

8.13.09 Corrective Action Program

An owner or operator, required to establish a corrective action program under Section 8.13 must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1.

(b) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective background concentrations in groundwater by removing the hazardous constituents from the groundwater. The contingency plan in the permit will specify the specific measure that will be taken.

(c) The owner or operator must begin corrective action within the time period specified in the permit contingency plan after the

Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1, is exceeded.

(d) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a groundwater monitoring program under Section 8.13.08 and must be as effective as that program in determining compliance with the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1.

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove any hazardous constituents under Section 8.13.04 that exceed their respective background concentrations in groundwater at the point of compliance under Section 8.13.06 or between the point of compliance and the downgradient facility property boundary. The contingency plans submitted in the permit application will specify the measures to be taken.

(1) Corrective action measures under this paragraph must be initiated and completed within a reasonable time considering the extent of contamination.

(2) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under Section 8.13.04 is reduced to levels below their respective background concentrations.

(f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1 is not exceeded. If the owner or operator is conducting corrective action, at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the above standard. The owner

or operator may terminate corrective action measures taken beyond the compliance period if he can demonstrate, based on data from the groundwater monitoring program under paragraph (d) of this section, that the Water Resources Board's Groundwater Protection Standard Regulation, Series VII, Section 1, has not been exceeded for a period of three (3) consecutive years.

(g) The owner or operator must report in writing to the Chief on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 60 days submit an application for a permit modification to make any appropriate changes to the program.

(i) If the owner or operator elects to pursue a corrective action program other than that outlined in the permit contingency plan, he must notify the Chief of his decision, in writing, within 15 days of the determination made under Section 8.13.08(d). The owner or operator must obtain approval to implement any alternate corrective action plan from the Chief and begin implementation of such plan, within 90 days of the determination made under Section 8.13.08(d). If the alternate plan is not approved or in effect within 90 days, the owner or operator must immediately begin implementation of the original corrective action program outlined in the permit contingency plan.

(j) If the Chief determines that groundwater quality has been affected by a regulated unit prior to or upon receipt of a Part B application, the owner or operator shall be required to implement a corrective action program immediately upon issuance of the permit.

8.13.10 - 8.13.20 [Reserved]

NOTE: This Appendix Contains All New Language

Section 8.00 APPENDIX I - Recordkeeping Instructions

The recordkeeping provisions of Section 8.05.04 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See Section 8.05.04(b) for additional recordkeeping requirements.

The following information must be recorded, as it become available, and maintained in the operating record until closure of the facility in the following manner:

(a) Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(1) A description by its common name and the EPA Hazardous Waste Number(s) from Section 3.00 which apply to the waste. The waste description also must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Section 3.04, the description also must include the process that produced it (for example, solid filter cake from production of _____, EPA Hazardous Waste Number W051).

Each hazardous waste listed in Section 3.04 and each hazardous waste characteristic defined in Section 3.03 has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA hazardous waste Numbers.

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units or measure specified in Table 1;

(3) The method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

TABLE 1

<u>Unit of Measure</u>	<u>Symbol</u> ¹	<u>Density</u>
Pounds	P	
Short tons (2000 lbs)	T	
Gallons (U.S.)	G	P/G
Cubic yards	Y	T/Y
Kilograms	K	
Tonnes (1000 kg)	M	
Liters	L	K/L
Cubic meters	C	M/C

¹Single digit symbols are used here for data processing purposes.

TABLE 2 - Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage

- S01 Container (barrel, drum, etc.)
- S02 Tank
- S03 Waste Pile
- S04 Surface Impoundment
- S05 Other (specify)

2. Treatment

- (a) Thermal Treatment
- T06 Liquid injection incinerator
- T07 Rotary kiln incinerator
- T08 Fluidized bed incinerator
- T09 Multiple hearth incinerator
- T10 Infrared furnace incinerator
- T11 Molten salt destructor
- T12 Pyrolysis
- T13 Wet Air oxidation
- T14 Calcination
- T15 Microwave discharge
- T16 Cement kiln

TABLE 2 (continued)

2. Treatment (cont.)

- T17 Lime kiln
- T18 Other (specify)
- (b) Chemical Treatment
- T19 Absorption mound
- T20 Absorption field
- T21 Chemical fixation
- T22 Chemical oxidation
- T23 Chemical precipitation
- T24 Chemical reduction
- T25 Chlorination
- T26 Chlorinolysis
- T27 Cyanide destruction
- T28 Degradation
- T29 Detoxification
- T30 Ion exchange
- T31 Neutralization
- T32 Ozonation
- T33 Photolysis
- T34 Other (specify)
- (c) Physical Treatment
- (1) Separation of components
- T35 Centrifugation
- T36 Clarification
- T37 Coagulation
- T38 Decanting
- T39 Encapsulation
- T40 Filtration
- T41 Flocculation
- T42 Flotation
- T43 Foaming
- T44 Sedimentation
- T45 Thickening
- T46 Ultrafiltration
- T47 Other (specify)
- (2) Removal of Specific Components
- T48 Absorption-molecular sieve
- T49 Activated carbon
- T50 Blending
- T51 Catalysis
- T52 Crystallization
- T53 Dialysis
- T54 Distillation
- T55 Electrodialysis
- T56 Electrolysis

TABLE 2 (continued)

2. Treatment (cont.)

T57 Evaporation
T58 High gradient magnetic separation
T59 Leaching
T60 Liquid ion exchange
T61 Liquid-liquid extraction
T62 Reverse osmosis
T63 Solvent recovery
T64 Stripping
T65 Sand filter
T66 Other (specify)
(d) Biological Treatment
T67 Activated sludge
T68 Aerobic lagoon
T69 Aerobic tank
T70 Anaerobic lagoon
T71 Composting
T72 Septic tank
T73 Spray irrigation
T74 Thickening filter
T75 Tricking filter
T76 Waste stabilization pond
T77 Other (specify)
T78-79 [Reserved]

3. Disposal

D80 Underground injection
D81 Landfill
D82 Land treatment
D83 Ocean disposal
D84 Surface impoundment (to be closed
as a landfill)
D85 Other (specify)

DNR
Adm. Reg. 20-5E
Series XV

Section 9.00

Section 9.00

[Reserved]

Section 10.00. [Reserved]

Section 11.00 Hazardous Waste Permitting Program.

Section 11.01 Scope of the Hazardous Waste Management Permit Requirements.

These regulations require a permit for the treatment, storage, or disposal of any hazardous waste unless expressly excluded by these regulations, or the State Act.

11.01.01 Specific Inclusions.

Without limiting in any way the scope of the permit requirements as set forth in Section 11.01, Hazardous Waste Management Permits are required for: treatment, storage or disposal of hazardous waste at facilities requiring an NPDES permit. The owner and operator of a POTW receiving hazardous waste will be deemed to have a Hazardous Waste Management Permit for that waste if they comply with the requirements of Section 11.08.01.

11.01.02 Specific Exclusions.

The following are not required to obtain a Hazardous Waste Management Permit:

- (a) Generators who accumulate hazardous waste on-site for less than ninety (90) days as provided in Section 6.03.05.
- (b) Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 6.05.02.
- (c) Persons who own or operate facilities operated solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this section by Sections 3.01.03 or 3.01.04.
- (d) Owners or operators of totally enclosed treatment facilities, as defined in Section 2.00.

(e) Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 2.00.

(f) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 6.03.01 at a transfer facility for a period of ten (10) days or less.

(g) A person is not required to obtain a Hazardous Waste Management Permit for those activities he carries out to immediately contain or treat a spill of hazardous waste or material, which, when spilled, becomes a hazardous waste. After the immediate response activities are completed, any treatment, storage or disposal of spilled material or spill residue or debris that is undertaken must be covered by a Hazardous Waste Management Permit, an emergency Hazardous Waste Management Permit or interim status.

(h) Persons adding absorbent material to hazardous waste in a container and persons adding hazardous waste to absorbent material in a container, provided that these actions occur at the time hazardous waste is first placed in the container and Sections 8.02.08(b), 8.07.02, and 8.07.03 are complied with.

11.01.03 [Reserved.]

Section 11.02. Application for a Permit

11.02.01 Permit Application

Any person who is required to have a Hazardous Waste Management Permit shall complete, sign and submit an application to the Chief as described in this section. Persons covered by permits by rule need not apply.

11.02.02 Who Applies?

When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit; however, the owner must also sign the permit application.

11.02.03 Completeness.

The Chief shall not issue a permit before receiving a complete application, except permits by rule or emergency permits. An application for a permit is complete when the Chief receives an application form and any supplemental information which are completed to the Chief's satisfaction.

11.02.04 Existing Hazardous Waste Management Facilities.

(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 11.04) of their permit application to the Chief or a copy of Part A if it was already submitted to EPA.

(b) 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 11.05) 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.

(c) 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 11.03.05.

11.02.05 New Hazardous Waste Management Facilities.

(a) No person shall begin physical construction on a new hazardous waste management facility without having submitted Part A and Part B of the permit application and having received a finally effective hazardous waste management permit.

(b) An application for a permit for a new hazardous waste management facility may be filed any time after the effective date of these regulations. The application shall be filed with the Chief. All applications shall be submitted at least one hundred eighty (180) days before physical construction is expected to commence.

(c) The Chief shall notify the applicant in writing within ninety (90) days from the date on which Part B application is filed if the application is complete; provided, however that if the Chief determines that the complexity of the application or other circumstances warrant an extension of the ninety (90) day period of review, the Chief shall so notify the applicant.

11.02.06 Updating Permit Applications.

(a) An amended Part A shall be filed with the Chief as necessary to comply with provisions of Section 11.03.03 for changes during interim status.

(b) The owner or operator of a facility who fails to comply with the updating requirements does not receive interim status as to the wastes not covered by a duly filed Part A application.

11.02.07 Reapplications.

Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty

(180) days before the expiration date of the effective permit, unless permission for a later date has been granted by the Chief.

11.02.08 Application Fees.

(a) Any person who applies for a permit for the construction and/or operation of a hazardous waste management facility shall submit as part of said application a money order or cashier's check payable to "the Hazardous Waste Management Fund" of the State Treasury. (Persons required to obtain a permit-by-rule pursuant to these regulations are not required to pay a permit application fee.)

(b) Such fee shall be determined by the schedule set forth below:

<u>EPA Code</u>	<u>Activity</u>	<u>STORAGE</u>	<u>Fee</u>
S01	Drum	< 100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
S02	Tank	< 100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
S03	Waste Pile	< 100 tons capacity \$1,500.00	≥100 tons capacity \$3,000.00
S04	Surface Impoundment	<1,000 tons capacity \$2,500.00	≥1,000 tons capacity \$3,000.00

DISPOSAL

<u>EPA Code</u>	<u>Activity</u>	<u>Fees</u>	
D80	Landfill	<1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00
D81	Land Application	<1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00
D83	Surface Impoundment	<1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00

TREATMENT

<u>EPA Code</u>	<u>Activity</u>	<u>Fees</u>	
T01	Tank	<100 tons capacity \$1,000.00	≥100 tons capacity \$3,000.00
T02	Surface Impoundment	<1,000 tons/year \$2,500.00	≥1,000 tons/year \$5,000.00
T03	<u>Incinerator</u>	<1,000 tons/year <u>\$1,000.00</u>	≥1,000 tons/year <u>\$3,000.00</u>
T04	Other		

(c) The Chief reserves his right to promulgate rules and regulations establishing a permit renewal fee at a later date.

(d) [Reserved.]

Section 11.03 Interim Status

11.03.01 Qualifying for Interim Status

(a) Any person who owns or operates an existing facility or a facility in existence as of July 10, 1981, shall have interim status and shall be treated as having been issued a permit to the extent they:

(1) Comply with the interim status requirements of the Federal EPA established pursuant to Section 3005 of the Federal Solid Waste Disposal Act;

(2) Operate the facility in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment; and

(3) Make a timely and complete application for such permit in accordance with these rules and regulations;

(b) If the Chief determines that a facility is not complying with the requirements of Section 11.03.01 he may terminate interim status of any owner or operator. Such termination will be in the form of an ORDER stating the reasons for the termination and shall inform the operator that he is subject to an enforcement action for operation without a permit;

(c) Any person who owns or operates an existing facility which was not previously required to have a permit under the Act because it managed no hazardous wastes identified or listed under Section 3.00 of these regulations, but which due to a revision of Section 3.00 is later required to have a permit, shall also have interim status and shall be treated as having been issued a permit to the extent such person:

(1) Has notified the Chief within ninety (90) days from the effective date of any revision of Section 3.00 of these regulations of such hazardous waste activity by the use of EPA Form 870012 or the provision of the same information in any other manner selected by the notifier; and

(2) Complies with and continues to operate in compliance with the interim status requirements of the federal Environmental Protection Agency established pursuant to Section 3005 of the Federal Solid Waste Disposal Act, as amended, if applicable within

ninety (90) days from the effective date of such revision to Section 3.00, and operates in such a manner as will not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment; and

(3) Makes a timely and complete application for a permit as required by Section 11.00 of these regulations.

11.03.02 Coverage.

During the interim status period the facility shall not:

(a) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application.

(b) Employ processes not specified in Part A of the permit application.

(c) Exceed the design capabilities specified in Part A of the permit application.

11.03.03 Changes During Interim Status.

(a) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change.

(b) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change, (along with a justification explaining the need for the change), and the Chief approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities.

(c) Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional

processes may be added if the owner or operator submits a revised Part A prior to such a change (along with a justification explaining the need for the change) and the Chief approves the change because:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation; or

(2) It is necessary to comply with Federal regulations or State or local laws; or

(3) Proposed changes are demonstrated to result in safer or environmentally more acceptable processes.

(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. 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.

(e) In no event shall changes be made to a Hazardous Waste Management facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent (50%) of the capital cost of a comparable entirely new hazardous waste management facility.

11.03.04 Interim Status Standards.

During interim status, owners or operators shall comply with the interim status standards at 40 C.F.R Part 265.

11.03.05 Grounds for Termination of Interim Status.

Interim status terminates when final disposition of a permit application is made; or when interim status is terminated by the Chief. Interim status may be terminated for:

(1) Failure to furnish requested Part B application on time, or to furnish in full the information required by the Part B application; or

(2) A determination is made by the Chief that the facility poses a substantial risk of a health hazard or a significant risk of an adverse effect upon the environment.

(3) A determination is made that the facility has failed to comply with the requirements of § 20-5E-10 and the corresponding federal requirements at 40 C.F.R. § ~~222~~ 270.23 and 40 C.F.R. Part 265.

Section 11.04 Contents of Part A.

Part A of the application shall include the following information:

(a) The activities conducted by the applicant which require it to obtain a Hazardous Waste Management Permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The latitude and longitude of the facility.

(e) The name, address, and telephone number of the owner of the facility.

(f) An indication of whether the facility is new or existing and whether it is a first or revised application.

(g) For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage and disposal areas.

(h) For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and site of future treatment, storage and disposal areas.

(i) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(j) A listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

- (1) Hazardous waste management program under RCRA;
- (2) UIC program under SDWA;
- (3) NPDES program under the Clean Water Act;
- (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- (5) Non-attainment program under the Clean Air Act;
- (6) National Emission Standards for Hazardous Pollutants (NESHAPS) pre-construction approval under the Clean Air Act;
- (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
- (8) Dredge or fill permits under Section 404 of CWA; and
- (9) Other relevant environmental permits, including local permits.

(k) A topographic map (or other map if a topographic map is

unavailable) extending at least one-quarter (1/4) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where non-hazardous fluids from the facility are injected underground, and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(l) A brief description of the nature of the business.

(m) A description of the processes to be used for treating, storing and disposing of hazardous waste, and the design capacity of these items.

(n) A specification of the hazardous wastes listed or designated under Section 3.00 to be treated, stored or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored or disposed annually, and a general description of the processes to be used for such wastes.

(o) The filing of a completed copy of an EPA Part A Application with the Chief shall constitute compliance with Section 11.04.

Section 11.05 Contents of Part B.

11.05.01 General Information Requirements.

The following information is required to be submitted with Part B of the application for all facilities:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store or dispose of the wastes properly in accordance with Section 8.00.

(c) A copy of the required waste analysis plan required by 8.02.04(b) and, if applicable, 8.02.04(c).

(d) A description of the security procedures and equipment required by 8.02.05 or a justification demonstrating the reasons for requesting a waiver of this requirement.

(e) A copy of the general inspection schedule required by Section 8.02.06(b). Include, where applicable, as part of the inspection schedule, specific requirements in Sections 8.07.06, 8.08.04, 8.09.05, 8.10.05, 8.11.03, and 8.12.04.

(f) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Section 8.03.

(g) A copy of the contingency plan required by Section 8.04. (Note: Include where applicable, as part of the contingency plan, specific requirements in Sections 8.09.06 and 8.10.06.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (e.g., ramps, special forklifts);

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (e.g., berms, dikes, trenches);

(3) Prevent contamination of water supplies;

(4) Mitigate effects of equipment failure and power outages;

and

(5) Prevent undue exposure of personnel to hazardous waste (e.g., protective clothing).

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with 8.02.08 including documentation demonstrating compliance with 8.02.08(c).

(j) Traffic pattern, estimated volume (number, types of vehicles), and control (e.g., show turns across traffic lanes, and stacking lanes [if appropriate]), describe access road surfacing and load bearing capacity; and show traffic control signals.

(k) [Reserved.]

(1) Facility location information: Applicants must submit documentation demonstrating that the proposed siting of a new facility is not restricted by the location standards of Section 12.00. The demonstrations may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The submitted information must include the source of data for such determinations, including copies of any maps, reports, results of surface or subsurface investigations, and calculations where applicable.

(i) Seismic considerations. The information submitted must show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

- (1) U. S. Geological Service (USGS) publications;
- (2) Aerial reconnaissance of the area within a five-mile radius from the facility, available from the USGS;
- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility; and

(4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility; or

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a

(C) Maps from the West Virginia Geological and Economic Survey.

(iv) Critical recharge. The information submitted must show that the site is not located in an area which serves to recharge a public groundwater supply that serves more than 15 connections or 25 residents on a permanent year-round basis. Sources of information include:

- (A) U. S. Geological Survey maps.
- (B) West Virginia Division of Water Resources.
- (C) West Virginia Department of Health.

(v) Wetlands. The demonstration must show that the site is not located in a wetland or in areas that may have an impact on wetlands. Sources of information include:

- (A) U. S. Geological Survey maps.
- (B) West Virginia Division of Wildlife.

(vi) Dam-related flood hazard areas. The demonstration must show that the site is not located in the "danger reach" of a dam not permitted by the state or within the floodpool area of any dam. Sources of information include:

- (A) Reports from the U. S. Army Corps of Engineers.
- (B) U. S. Geological Survey maps.
- (C) West Virginia Division of Reclamation.

(vii) Floodplains. The owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action)

facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted; based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of any faults found.

(ii) Karst terrain. The demonstration must show that no solution cavities underlie or may influence the site by subsidence. Sources of information include:

(A) Fracture trend maps and karst subsidence maps from the U. S. Geological Survey and the West Virginia Geological Survey.

(B) Test borings to determine the stability of the overburden;

(iii) Subsurface mining areas. The information submitted must show that the site is not located within 1,000 feet of the area likely to be influenced by subsidence, as determined by the angle of draw. Calculations must be included in the demonstration where applicable. Sources of information include:

(A) Maps and reports from the West Virginia Department of Mines.

(B) Maps from the U. S. Bureau of Mines.

which must be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

[Comment: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.]

(viii) Owners and operators of facilities located in the 100-year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (A) and (B) above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed.

(2) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under Section 8.00, and 11.00.

(3) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(4) The potential for accidental discharges of the waste during movement.

(ix) Existing facilities NOT in compliance with Section 12.01.07 shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(m) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the Hazardous Waste Management facility in a safe manner as required to demonstrate compliance with Section 8.02.07. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in Section 8.02.07(a)(3).

(n) A copy of the closure plan and, where applicable, the post-closure plan as required by 8.06.03 and 8.06.08. Include where applicable, as part of the plans, specific requirements in Sections 8.07.10, 8.08.05, 8.09.07, 8.10.09, 8.11.11, 8.12.11.

(o) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by Section 15.00.

(p) The most recent closure cost estimate for the facility prepared in accordance with Section 13.00 plus a copy of the financial assurance mechanism adopted in compliance with Section 13.00.

(q) Where applicable, the most recent post-closure cost estimates for the facility prepared in accordance with Section 13.00 plus a copy of the financial assurance mechanism adopted in compliance with Section 13.00.

(r) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of Section 13.00. For a new facility, documentation showing the amount of insurance meeting the specification of Section 13.00, and, if applicable, Section 13.00, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility may be submitted as specified in Section 13.00.

(s) [Reserved.]

(t) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet) if relief is less than 6.1 meters (20 feet). Owners and operators of hazardous waste facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (i) Map scale and date.
- (ii) 100-year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses (residential, commercial, agricultural, recreational).

- (v) A wind rose (i.e., prevailing wind-speed and direction).
- (vi) Orientation of the map (north arrow).
- (vii) Legal boundaries of the hazardous waste management facility site.
- (viii) Access control (fences, gates).
- (ix) Injection and withdrawal wells both on-site and off-site.
- (x) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).
- (xi) Barriers for drainage or flood control.
- (xii) Location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).
- (u) Where appropriate, proof of coverage by a financial mechanism in compliance with Section 13.00.

11.05.02 Specific Information Requirements.

The following additional information is required from owners or operators of specific types of hazardous waste management facilities that are used or to be used for storage or treatment:

(a) For facilities that store containers of hazardous waste except as otherwise provided in Section 8.07.01:

(1) A description of the containment system to demonstrate compliance with Section 8.07.07. Show at least the following:

(i) Basic design parameters, dimensions, and materials of construction.

(ii) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(iii) Capacity of the containment system relative to the number and volume of containers to be stored.

(iv) Provisions for preventing or managing run-on.

(v) How accumulated liquids can be analyzed and removed to prevent overflow.

(2) For storage areas that store containers holding hazardous wastes that do not contain free liquids, a demonstration of compliance with Section 8.07.07(c), including:

(i) Test procedures and results or other documentation of information to show that the wastes do not contain free liquids provided such test procedures, results and other documentation or information simulate in-situ waste management conditions and demonstrate the irreversibility of the liquid to solid phase of the waste during the time the waste is managed in the containers, based at least on in-situ temperature and pressure conditions, possible chemical and biological reactions, and the partition coefficients of the specific sorbant matrix with that of the particular waste; and

(ii) A description of how the storage area is designed or operated to drain and remove liquids and how containers are kept from contact with standing liquids.

(3) Sketches, drawings, or data demonstrating compliance with Section 8.07.08 (location or buffer zone and containers holding ignitable or reactive wastes) and Section 8.07.09(c) (location of incompatible wastes), where applicable.

(4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with Sections 8.07.09(a) and (b) and 8.02.08(b) and (c).

(b) For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in Section 8.08.02, description of design and operation procedures which demonstrate compliance with all applicable requirements of Section 8.00, including:

(1) References to design standards or other available information used (or to be used) in design and construction of the tank.

(2) A description of design specifications including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance).

(3) Tank dimensions, capacity, and shell thickness.

(4) A diagram of piping, instrumentation, and process flow.

(5) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).

(6) Description of procedures for handling incompatible, ignitable, or reactive wastes, including the use of buffer zone.

(c) For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in Section 8.09.01:

(1) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(2) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of Section 8.09.02 and 8.09.04. This submission must address the following items:

(i) The liner system.

(ii) Prevention of overtopping; and

(iii) Structural integrity of dikes.

(3) A description of how each surface impoundment, including the liner and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of Section 8.09.05. This information should be included in the inspection plan and submitted under paragraph (a)(5) of this section;

(4) A certification by a registered professional engineer

which attests to the structural integrity of each dike, as required under Section 8.09.05. For new units, the owner or operator must submit a statement by a registered professional engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(5) A description of the procedure to be used for removing a surface impoundment from service, as required under Section 8.09.06 and (c). This information should be included in the contingency plan submitted under paragraph (a) (7) of this section;

(6) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under Section 8.09.07. For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how Section 8.09.07 will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under ~~paragraph (a) (13) of this section~~; Section 11.05.01(n);

(7) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how Section 8.09.08 will be complied with;

(8) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how Section 8.09.09 will be complied with.

(d) For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in Section 8.01:

(1) A list of hazardous wastes placed or to be placed in each waste pile;

(2) If an exemption is sought to Section 8.10.02, a demonstration must be made sufficient to show compliance with Section 8.10.01(c). Such demonstration must include:

(i) Detailed plans and an engineering report describing how the pile is or will be designed, constructed, operated and maintained to meet the requirements of Section 8.10.02. This submission must address the following items as specified in Section 8.10.02:

- (A) The liner system;
- (B) Control of run-on;
- (C) Control of run-off;
- (D) Management of collection and holding units associated with run-on and run-off control systems; and
- (E) Control of wind dispersal of particulate matter, where applicable;
- (F) A description of how each waste pile, including the liner and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of Section 8.10.05. This information should be included in the inspection plan submitted under paragraph of this section;
- (G) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;
- (H) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of Section 8.10.07 will be complied with;
- (I) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how Section 8.10.08 will be complied with;
- (J) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under Section 8.06.

(e) For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in Section 8.01:

(1) A description of plans to conduct a treatment demonstration as required under Section 8.12.03. The description must include the following information:

(i) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(ii) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(iii) Any specific laboratory or field test that will be conducted, including:

(A) the type of test (e.g., column leaching, degradation);

(B) materials and methods, including analytical procedures;

(C) expected time for completion;

(D) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(2) A description of a land treatment program, as required under Section 8.12.03. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items;

(i) The wastes to be land treated;

(ii) Design measures and operating practices necessary to maximize treatment in accordance with Section 8.12.04 including;

(A) Waste application method and rate;

(B) Measures to control soil pH;

(C) Enhancement of microbial or chemical reactions;

(D) Control of moisture content;

(iii) Provisions for unsaturated zone monitoring, including:

- (A) Sampling equipment, procedures, and frequency;
 - (B) Procedures for selecting sampling locations;
 - (C) Analytical procedures;
 - (D) Chain of custody control;
 - (E) Procedures for establishing background values;
 - (F) Statistical methods for interpreting results;
 - (G) The justification for any hazardous constituents, in accordance with the criteria for such selection in Section 8.12.09;
- (iv) A list of hazardous constituents reasonable expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to Section 8.02.04;
 - (v) The proposed dimensions of the treatment zone;
- (3) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of Section 8.12.04. This submission must address the following items;
- (i) Control of run-on;
 - (ii) Collection and control of run-off;
 - (iii) Minimization of run-off of hazardous constituents from the treatment zone;
 - (iv) Management of collection and holding facilities associated with run-on and run-off control systems;
 - (v) Periodic inspection of the unit. This information should be included in the inspection plan submitted under paragraph (a)(5) of this section;
 - (vi) Control of wind dispersal of particulate matter, if applicable;
- (4) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under Section 8.12.07(a) will be conducted including;

(i) characteristics of the food-chain crop for which the demonstration will be made;

(ii) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(iii) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(iv) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(5) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of Section 8.12.07 will be complied with;

(6) a description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under Section 8.12.11. This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under ~~paragraph-(a)-(3)-of-this-section~~ Section 11.05.01(n).

(7) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of Section 8.12.12 will be complied with;

(8) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how Section 8.12.13 will be complied with.

(f) For facilities that dispose of hazardous waste in landfills, except as otherwise provided in Section 8.01:

(1) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(2) Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and

maintained to comply with the requirements of Section 8.11.04. This submission must address the following items as specified in Section 8.11.04:

(i) The liner system and leachate collection and removal system;

(ii) Control of run-on;

(iii) Control of run-off;

(iv) Management of collection and holding facilities associated with run-on and run-off control systems; and

(v) Control of wind dispersal of particulate matter, where applicable.

(3) A description of how each landfill, including the liner and cover systems will be inspected in order to meet the requirements of Section 8.11.03. This information should be included in the inspection plan submitted under paragraph (a) (5) of this section;

(4) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with Section 8.11.11, and a description of how each landfill will be maintained and monitored after closure in accordance with Section 8.11.11. This information should be included in the closure and post-closure plans submitted under paragraph (a) (13) of this section.

(5) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of Section 8.11.13 will be complied with;

(6) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how Section 8.11.14 will be complied with;

(7) If bulk or non-containerized liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of Section 8.11.15 will be complied with;

(8) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of Sections 8.11.16 or 8.11.17, as applicable, will be complied with.

(g) The following additional information regarding protection of ground water is required from owners or operators of hazardous waste surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in Section 8.13.01(G):

(1) A summary of the ground-water monitoring data obtained during the interim status period under 40 C.F.R. 265.90-265.94, were applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

This information should include the following:

(i) Characterization of the site hydrogeology:

- (A) Copies of any available geophysical logs of the site (Spontaneous potential, resistivity, gamma ray, etc.);
- (B) Depth to the top of each water-bearing formation;
- (C) Depth to the bottom of each water-bearing formation;
- (D) Areas of recharge and discharge for the uppermost aquifer;

- (E) Water level depth information (i.e., a watertable map);
 - (F) Depth to and type of bedrock present;
 - (G) Information available on the three dimensional flow of the site (including horizontal and vertical flow rates and directions); and
 - (H) Any additional information deemed necessary by the Chief.
- (ii) Characterization of each soil horizon underlying the hazardous waste management area:
- (A) pH;
 - (B) Cation exchange capacity;
 - (C) Particle size ratio and textured classification;
 - (D) Bulk density;
 - (E) Percent voids present;
 - (F) Permeability;
 - (G) Infiltration rate; and
 - (H) Any other information deemed necessary by the Chief.
- (3) On the topographic map required under Section 11.05.01 (t), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under Section 8.13.05, the proposed location of ground-water monitoring wells as required under Section 8.13.07 and, to the extent possible, the information required in paragraph (c) (2) of this section;
- (4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application is submitted that:
- (i) Delineates the extent of the plume on the topographic map required under Section 11.05.01(t);

(ii) Identifies the concentration of each Appendix VIII constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground-water monitoring program to be implemented to meet the requirements of Section 8.13.07 (including such information as proposed purging methods proposed development of wells, etc.);

(6) The owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of Section 8.13.09.

(7) The owner or operator must submit sufficient information, supporting data, and analyses to establish a ground-water monitoring program which meets the requirements of Section 8.13.08. This submission must address the following items as specified under Section 8.13.08:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background concentrations of each proposed monitoring parameter or hazardous constituent, or procedures to calculate such concentrations; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water at the point of compliance at concentrations which are determined to be significantly increased over background concentrations under Section 8.13.08(d), the owner or operator must submit sufficient information, supporting data, and analyses to

establish a corrective action program which meets the requirements of Section 8.13.09. To demonstrate compliance with Section 8.13.09, the owner or operator must address the following items (in addition to other Section 8.13.09 requirements):

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The background concentration for each hazardous constituent found in the ground water as set forth in Section 8.13.08(b);

(iii) Detailed plans and an engineering report describing the corrective action to be taken;

(iv) A description of how the ground-water monitoring program will assess the adequacy of the corrective action under Section 8.13.09(d);

(v) A proposed compliance schedule for beginning the corrective action; and

(vi) A description of the wastes previously handled at the facility.

11.05.03 Environmental Analysis.

In addition to the information to be submitted with Part B of the application, under Sections 11.05.02 and 11.05.03, major facilities not in existence on November 19, 1980, shall submit an environmental analysis which shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(a) The portion of the applicant's environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(1) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(2) A description of the expected effect of such facilities; and

(3) Recommendations for minimizing any adverse impact.

(b) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:

(1) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the site and estimates of the cost and charges to be made for material accepted, if any;

(2) Provisions for managing the site following cessation of operation of the facility; and

(3) Qualifications of owner and operator, including a description of the applicant's prior experience in hazardous waste management operations.

11.05.04 Additional Information.

In addition to the information required in Sections 11.05.01 through 11.05.03, the Chief may request that the applicant submit such other information as may be necessary for the Chief to carry out his duties under the Hazardous Waste Management Act.

Section 11.06 Recordkeeping.

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of three (3) years from the date the application is signed.

Section 11.07 Signatories to Permit Applications and Reports.

11.07.01 Applications.

All permit applications shall be signed as follows:

(a) For a corporation: by a principal executive officer of at least the level of vice-president.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: by either being a principal executive officer or ranking elected official.

11.07.02 Reports.

All reports required by permits and other information requested by the Chief shall be signed by a person described in Section 11.07.01 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in Section 11.07.01; and

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or an individual or a position having respon-

sibility for the facility's compliance with environmental laws and permits.

(c) The written authorization is submitted to the Chief.

11.07.03 Changes to Authorization.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or because a new individual or position has responsibility for the facility's compliance with environmental laws and permits, a new authorization satisfying the requirements shall be submitted to the Chief prior to or together with any reports, information or applications to be signed by an authorized representative.

11.07.04 Certification.

Any person signing a document under Section 11.07.01 or Section 11.07.02 shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachment and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

For the purpose of this section, the requirement that the signer have "personally examined" and is "familiar" with the information submitted means that the signer must have read the document and must sufficiently comprehend the information contained in the document and its regulatory consequences to enable him or her to make a reasonable inquiry as to the truth, accuracy, and completeness of the information. The requirement that the signer make "inquiry of those individuals immediately responsible for obtaining the information" means that the signer shall make a good faith effort to ascertain whether or not the information submitted complies with the requirements of this section.

Section 11.08 Permits by Rule.

Notwithstanding any other provisions of Section 11.00, the following shall be deemed to have a Hazardous Waste Management Permit if the conditions listed are met.

11.08.01 Publicly Owned Treatment Works.

A POTW which accepts for treatment hazardous wastes qualifies for a permit by rule if the owner or operator of the facility:

(a) Has an NPDES permit and a State Water Pollution Control Permit.

(b) Complies with the conditions of those permits.

(c) Complies with the appropriate sections of these regulations with respect to:

- (1) Identification number.
- (2) Use of manifest system.
- (3) Manifest discrepancies.
- (4) Operating record.
- (5) Annual report.

(6) Unmanifested waste report.

(d) If the waste meets all Federal, State, and local pre-treatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe or similar conveyance.

11.08.02 [Reserved]

11.08.03 Injection Wells.

The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(a) Has a UIC permit for underground injection issued by the Water Resources Division; and

(b) Complies with the regulatory and permitting requirements established by the Office of Oil and Gas and the Shallow Gas Well Review Board pursuant to the authority contained in West Virginia Code 20-5E et seq.

Section 11.09 Emergency Permits.

Notwithstanding any other provision of Section 11.00, in the event the Chief finds an imminent and substantial endangerment to human health or the environment, the Chief may issue a temporary emergency permit to a facility to allow treatment, storage or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

(a) May be oral or written. If oral, it shall be followed within five (5) days by a written emergency permit.

(b) Shall not exceed ninety (90) days in duration.

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal.

(d) May be terminated by the Chief at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment.

(e) Shall be accompanied by a public notice as required by these regulations including:

(1) Name and location of the permitted hazardous waste management facility.

(2) A brief description of the wastes involved.

(3) A brief description of the action authorized and reasons for authorizing.

(4) Duration of the emergency permit.

(5) Name and address of the office granting the emergency authorization.

(f) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of these regulations.

Section 11.10 Conditions Applicable to all Permits.

The following conditions apply to all hazardous waste management permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

11.10.01 Duty to Comply.

The permittee shall comply with all conditions of this permit. Any permit non-compliance constitutes a violation of these regula-

tions and is grounds for enforcement action, for permit termination, revocation, modification, or denial of a permit renewal application. The permittee need not comply with the conditions of the permit to the extent and for the duration such non-compliance is authorized in an emergency permit.

11.10.02 Duty to Reapply.

If the permittee wishes to continue a regulated activity after the expiration date of the permit, the permittee shall apply for and obtain a new permit.

11.10.03 Duty to Halt or Reduce Activity.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

11.10.04 Duty to Mitigate.

The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment to human health or resulting from non-compliance with this permit.

11.10.05 Proper Operation and Maintenance.

The permittee shall at all times maintain in good working order and operate efficiently all treatment and control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including quality assurance procedures.

Unless otherwise required by Federal or State law this provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

[Comment: The proper interpretation of this language is to permit the permittee to shut-down or operate these treatment and control facilities or systems to carry out such maintenance, repair, or overhaul as may be dictated by sound engineering and operating practice.]

11.10.06 Permit Actions.

The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, reissuance, termination, or a notification of planned changes or anticipated non-compliance does not stay any permit condition.

11.10.07 Property Rights.

The permit does not convey any property rights of any sort, or any exclusive privilege. Possession of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulation.

11.10.08 Duty to Provide Information.

The permittee shall furnish to the Chief within a specified time, any information which the Chief or an authorized representative may request to determine whether cause exists for modifying, revoking and reissuing, suspension, revoking, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Chief or an authorized representative, upon request, copies of records to be kept as part of the permit.

11.10.09 Inspection and Entry.

The permittee shall allow the Chief or an authorized representative, employee or agent, upon the presentation of credentials and at reasonable times to:

(a) Enter any building, property, premises, place, vehicle or permitted facility where hazardous wastes are or have been generated, treated, stored, transported or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the State Act and these regulations, or permits issued by the Chief.

(b) Enter any establishment or other place maintained by any person where hazardous wastes are or have been stored, treated, or disposed of to inspect and take samples of wastes, soils, surface water and groundwater and samples of any containers or labelings for such wastes. In taking such samples, the Division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the Chief or an authorized representative, employee or agent obtains any such samples, prior to leaving the premises, the owner or operator or agent in charge shall be given a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The Division shall promptly provide a copy of any analysis made to the owner, operator, or agent in charge.

(c) Shall be given access to examine all records relating to the storage, treatment, or disposal of hazardous waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste. The Chief or an authorized representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies.

11.10.10 Monitoring and Records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of three (3) years from the date of the sample, measurement, report, or application. This period may be extended by the Chief, at any time.

(c) The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(d) Records of monitoring information shall include:

- (1) The date, exact place, and time of sampling or measurements.
- (2) The individual(s) who performed the sampling or measurements.
- (3) The date(s) analyses were performed.
- (4) The individual(s) who performed the analyses.
- (5) The analytical techniques or methods used.
- (6) The results of such analyses.

11.10.11 Signatory Requirement.

All applications, reports, or information submitted to the Chief shall be signed and certified as specified in Section 11.07.

11.10.12 Reporting Requirements.

(a) Planned changes.

The permittee shall give written notice to the Chief as soon as possible of any planned major physical alterations or additions to the permitted facility. For a new hazardous waste management facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(1) The permittee has submitted to the Chief by certified mail or hand delivery, a letter signed by the permittee and a registered professional engineer, stating that the facility has been constructed or modified in compliance with the permit; and

(2) (i) The Chief has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(ii) Within fifteen (15) days of the date of submission of the letter in paragraph (a)(1) of this section, if the permittee has not received notice from the Chief of the intent to inspect, prior inspection is waived and the permittee may commence treatment, storage or disposal of hazardous waste.

(b) Anticipated non-compliance.

The permittee shall give advance written notice to the Chief of any planned changes in the permitted facility or activity which may result in non-compliance with permit requirements.

(c) [Reserved.]

(d) Transfers.

This permit is not transferable except after notice to the Chief, and modification or revocation and re-issuance of the permit to change the name of the permittee and incorporate such other

requirements as may be necessary under these regulations or the State Act. (See, 11.18.02.)

(e) Monitoring reports.

Monitoring results shall be reported at the intervals specified.

(f) Compliance schedules.

Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each schedule date.

(g) Immediate reporting.

The permittee shall report any non-compliance which may endanger health or environment immediately after becoming aware of the circumstances. A written submission shall also be provided within five (5) days. The written submission shall contain a description of the non-compliance and its cause; the period of non-compliance, including exact dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the non-compliance.

The following shall also be reported immediately:

(1) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

(2) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste management facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(i) Name, address and telephone number of the owner or operator.

- (ii) Name, address and telephone number of the facility.
- (iii) Date, time and type of incident.
- (iv) Name and quantity of material(s) involved.
- (v) The extent of injuries, if any.
- (vi) An assesment of actual or potential hazards to the environment and human health outside the facility; and,
- (vii) Estimated quantity and disposition of recovered material that resulted from the incident.
- (h) Other non-compliance.

The permittee shall report all instances of non-compliance not reported under Sections 11.10.12(a), (e), (f) and (g) above, at the time monitoring reports are submitted. The report shall contain the information listed in Section 11.10.12(g).

- (i) Other information.

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Chief, such facts or information shall be promptly submitted.

- (j) In addition, the following reports required by Section 8.00 shall be submitted:

(1) Manifest discrepancy report: if a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen (15) days, the permittee shall submit a written report including a copy of the manifest to the Chief. (See, 8.05.03.)

(2) Unmanifested waste report: must be submitted to the Chief within fifteen (15) days of receipt of unmanifested waste. (See, 8.05.05.)

(3) Annual report: must be submitted covering facility activities during the previous calendar year. (See, 8.05.06.)

(4) [Reserved.]

11.10.13 [Reserved.]

11.10.14 [Reserved.]

11.10.15 [Reserved.]

Section 11.11 Establishing Permit Conditions.

(a) In addition to conditions required in all permits, the Chief shall establish conditions as required on a case-by-case basis, for the duration of permits, schedules of compliance, monitoring, and to provide for and assure compliance with all applicable requirements of the Hazardous Waste Management Act and of these regulations, and any applicable statutory or regulatory requirement that takes effect prior to the final administrative disposition of a permit.

(b) New or reissued permits, and to the extent allowed under Section 11.18, modified ~~or~~ revoked and reissued permits, shall incorporate each of the applicable requirements in these regulations.

(c) All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

Section 11.12 Duration of Permits.

(a) Hazardous Waste Management Permits shall be effective for a fixed term not to exceed ten (10) years.

(b) Except as provided in Section 11.12(c), the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The conditions of an expired permit shall continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under Section 11.05 which is a complete application for a new permit; and

(2) The Chief, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

(d) Permits continued under subsection (b) remain fully effective and enforceable. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Chief may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue an Order of Denial for the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to an enforcement action for operating without a permit;

(3) Issue a new permit with appropriate conditions; or

(4) Take other actions authorized by statute or these regulations.

(e) The Chief may issue any permit for a duration that is less than the full allowable term under this section.

Section 11.13 Effect of a Permit.

Compliance with a permit during its term constitutes compliance, for purposes of enforcement with the State Hazardous Waste Management Act except under Section 17 of such Act; provided, however, that a permit may be modified, suspended, revoked, revoked and reissued, or terminated during its term for cause as set forth in these regulations.

Section 11.14 Transfer of Permits.

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified, or revoked and reissued, by the Chief under 11.18.02(b), to identify the new permittee and incorporate such other requirements as may be necessary to comply with these regulations and the State Act.

Section 11.15 Schedules of Compliance.

11.15.01 General.

The permit may, when appropriate, specify a schedule of compliance leading to compliance with these regulations.

(a) Any schedules of compliance under this section shall require compliance as soon as possible.

(b) Except as otherwise provided, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievements.

(1) The time between interim dates shall not exceed one (1) year.

(2) If the time necessary for completion of any interim requirement is more than one (1) year and is not readily divisible

into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, a permittee shall notify the Chief, in writing, of his compliance or non-compliance with the interim or final requirements.

11.15.02 Alternative Schedules of Compliance.

A permit applicant or permittee may cease conducting regulated activities rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(2) The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose terms will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(c) If the permittee is undecided whether to cease conducting regulated activities, the Chief may issue or modify a permit to contain two (2) schedules as follows:

(1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensure sufficient time to comply with applicable requirements in a timely manner if the decision is to continue regulated activities.

(2) One schedule shall lead to timely compliance with applicable requirements.

(3) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.

(4) Each permit containing two (2) schedules shall include a requirement that, after the permittee has made a final decision, a schedule leading to compliance shall follow if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Chief, such as a resolution of the Board of Directors of a corporation.

Section 11.16 Requirements for Recording and Reporting of Monitoring Results.

All permits shall specify:

(a) When appropriate, requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods and introduced tracer methods.

(b) Required monitoring including type, intervals and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in these regulations.

Section 11.17 Modification, Revocation and Reissuance, Suspension, Termination and Revocation of Permits.

(a) Permits may be modified, revoked and reissued, suspended, revoked, or terminated either at the request of any interested person (including the permittee) or upon the Chief's initiative. However, permits may only be modified, revoked and reissued, suspended, revoked or terminated for the reasons specified in Sections 11.18 and 11.19. All requests shall be submitted in writing and shall contain facts or reasons supporting the request.

(b) If the Chief tentatively decides to modify or revoke and reissue a permit and the modification is not made under Section 11.20, a draft permit under Section 11.21 shall be prepared incorporating the proposed changes. The Chief may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Chief shall require the submission of a new application.

(c) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other conditions of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being

reissued. During any revocation and reissuance proceedings the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(d) "Minor modifications" as defined in 11.20 are not subject to the requirements of this section.

(e) If the Chief tentatively decides to suspend, revoke or terminate a permit, a notice of such intent shall be issued. A notice of intent to suspend, revoke or terminate is a type of draft permit which follows the same procedure as any draft permit prepared under Section 11.21.

Section 11.18 Modification or Revocation and Reissuance of Permits.

When the Chief receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Section 11.17.01, or conducts a review of the permit file), a determination may be made whether or not one or more of the causes listed for modification or revocation and reissuance or both exist. If cause exists, the Chief may modify or revoke and reissue the permit accordingly, subject to the limitations of Section 11.18.03, and may request an updated application if necessary. If cause does not exist under this section or Section 11.20, the Chief shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Section 11.20 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

11.18.01 Causes for Modification.

The following are causes for modification but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:

(a) Alterations.

There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(b) Information.

If the Chief has received information pertaining to circumstances or conditions existing at the time the permit was issued that were not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance, the permit may be modified accordingly.

(c) New regulations.

The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permit may be modified during their terms for this cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(i) The permit condition requested to be modified was based on a promulgated hazardous waste regulation.

(ii) The Water Resources Board and/or the Director have revised, withdrawn, or modified that portion of the regulation on which the permit condition was based.

(iii) A permittee requests modification within ninety (90) days

after State Register notice of the action on which the request is based.

(2) For judicial decision, a court of competent jurisdiction has remanded and stayed State regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee within ninety (90) days of judicial remand.

(d) Compliance schedules.

The Chief determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is not reasonably available remedy.

(e) When the permittee has filed a request under Section 13 for a variance to the level of financial responsibility or when the Chief demonstrates under Section 13 that an upward adjustment of the level of financial responsibility is required.

11.18.02 Causes for Modification or Revocation and Reissuance.

The following are causes to modify or, alternatively, revoke and reissue a permit:

(a) Cause exists for revocation under Section 11.19, and the Chief determines that modification or revocation and reissuance is appropriate.

(b) The Chief has received notification of a proposed transfer of the permit.

11.18.03 Facility Siting.

The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance.

Section 11.19 Termination, Revocation or Suspension of Permits.

(a) The following are causes for revocation or suspension of a permit during its term, or for denying a permit renewal application:

(1) Non-compliance by the permittee with any condition of the permit; or

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit revocation.

(b) The Chief shall follow the applicable procedures set forth in the State Act for terminating, revoking, or suspending a permit.

Section 11.20 Minor Modification of Permits.

Upon the consent of the permittee, the Chief may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the required procedures for major modification. Any permit modification not processed as a minor modification under this section shall

be made for causes and with draft permit and public notice as required. Minor modifications may only:

- (a) Correct typographical errors.
- (b) Require more frequent monitoring or reporting by the permittee.
- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.
- (d) [Reserved.]
- (e) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan.
- (f) Change estimates of maximum inventory under Section 8.06.03.
- (g) Changes in ownership.
- (h) Changes in estimates of expected year of closure or schedules of final closure.

Section 11.21 Draft Permits.

(a) Once an application is complete, the Chief shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Chief decides to prepare a draft permit, a draft permit shall be prepared that contains the following information:

- (1) All conditions under Sections 11.10 and 11.11.
- (2) All compliance schedules under Section 11.15.
- (3) All monitoring requirements under Section 11.16.
- (4) Standards for treatment, storage, and disposal and other permit conditions under Section 11.00.

(c) A fact sheet prepared in accordance with Section 11.22 shall accompany the draft permit.

Section 11.22 Fact Sheet.

(a) A fact sheet shall be prepared by the Chief for every draft permit for each hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Chief shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not be limited to, the characteristics of the waste materials and the potential effects on public health and the environment.

(3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

(4) Reasons why any requested variances or alternatives to required standards do or do not appear justified.

(5) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period and the address where comments will be received.

(ii) Procedures for requesting a hearing and the nature of that hearing.

(iii) Any other procedures by which the public may participate in the final decision.

(6) Name and telephone number of a person to contact for additional information.

Section 11.23 Public Access to Information.

(a) Any records, reports, or information and any permit, permit applications, and related documentation within the Chief's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Chief that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Chief shall consider, treat and protect such records as confidential.

(b) It shall be the responsibility of the person claiming any information as confidential under the provisions of Section (a) above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

(c) Any document submitted to the Chief which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Chief. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

(d) No information shall be protected as confidential information by the Chief unless it is submitted in accordance with the

provisions of Section (c) above and no information which is submitted in accordance with the provisions of Section (c) above shall be afforded protection as confidential information unless the Chief finds that such protection is necessary to protect trade secrets. The person who submits information claimed as confidential shall receive written notice from the Chief as to whether the information has been accepted as confidential or not.

(e) All information which meets the tests of Section (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If said person fails to satisfactorily demonstrate to the Chief that such information in the form presented to him meets the criteria of Section (d) above, the Chief shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

(f) Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Chief or his/her designee.

(g) Nothing in this section may be construed as limiting the disclosure of information by the Division to any officer, employee or authorized representative of the State or Federal government concerned with effecting the purposes of this article.

(h) Persons interested in obtaining information pursuant to this section should submit a request in accordance with the Water Resources Board's Freedom of Information Act Regulations.

(i) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

Section 11.24 Public Participation in Permit Process.

11.24.01 Scope.

Public notice shall be given that the following actions have occurred:

- (a) A draft permit has been prepared; or
- (b) A hearing has been scheduled.

11.24.02 Timing.

(a) Public notice of the preparation of a draft permit required under this section shall allow at least forty-five (45) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing.

11.24.03 Methods.

Public notice of activities described in this section shall be given by the following methods:

(a) By mailing a copy of a notice to the following persons, any person otherwise entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits:

- (1) The applicant.
- (2) Any other Federal or State agency, including EPA, which the Chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES permit for the same facility or activity; including
- (3) Federal and State agencies with jurisdiction over fish and wildlife resources, and other appropriate government authorities.
- (4) To any unit of local government having jurisdiction over the area where the facility is proposed to be located.

- (5) Persons on a mailing list developed by:
- (i) Including those who request in writing to be on the list.
 - (ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area.
 - (iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in appropriate publications of the State.
- (6) By mailing a copy to each State agency having authority under State law with responsibility to the construction or operation of such facility.
- (7) Any other agency which the Chief knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity;
- (8) The US Fish and Wildlife Service, the US Forest Service, the WV Department of Culture and History, other appropriate government authorities including any affected States, US Army Corps of Engineers, and the Department of Health.
- (b) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

11.24.04 Personal Notification by Facility Owner or Operator to Individual Landowners and Water Users.

At the time a facility submits Part B of the application, the facility owner or operator shall notify by registered mail all landowners within 1/4 mile of the facility and all landowners within two miles downstream and/or downgradient of the facility who use water which may be potentially affected by the facility. Water

use includes public drinking supplies, industrial use, agricultural use, and recreational use.

11.24.05 Contents.

(a) All public notices issued under this section shall contain the following information:

(1) Name and address of the office processing the permit action for which notice is being given.

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted at the facility described in the permit application or the draft permit.

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application.

(5) A brief description of the comment procedures required by Sections 11.25 and 11.26 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

(b) In addition to the general public notice described in Section 11.24.05(a), the public notice of a hearing shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit.

(2) Date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Name and address of the nearest district office where the file will be available for inspection.

(d) In addition to the general public notice, all persons identified in Section 11.24.03 shall be mailed a copy of the fact sheet, the permit application and the draft permit.

Section 11.25 Public Comment and Requests for Public Hearings

During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Sections 11.28 and 11.29.

Section 11.26 Public Hearings

The Chief shall hold a public hearing whenever he finds, on the basis of requests a significant degree of public interest in a draft permit(s). The Chief may also hold a public hearing at his discretion whenever, for instance, such hearing might clarify one or more issues involved in the permit decision.

The Chief shall hold a public hearing upon receiving written notice of opposition to a draft permit and a request for a public hearing within forty-five (45) days of the public notice. Whenever possible the Chief shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility. Public notice of the hearing shall be given as specified in Section 11.24.

Section 11.27 [Reserved.]

Section 11.28 Reopening of the Public Comment Period.

(a) If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Chief may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under Section 11.00.

(2) Prepare a revised fact sheet under Section 11.00 and reopen the comment period under this section; or

(3) Reopen or extend the comment period under Section 11.00 to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 11.00 shall define the scope of the reopening.

Section 11.29 Response to Comments.

(a) At the time that any final permit is issued, the Chief shall issue a response to comments. This response shall be in writing and shall include:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) The response to comments shall be delivered to any person who commented or any person who requests the same.

NOTE: This Section Contains all New Language

Section 11.30 Permits for Land Treatment Demonstrations Using Field Test or Laboratory Analysis

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of Section 8.12.03, the Chief may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in Section 8.12.03(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction operation and maintenance of the land treatment unit.

(1) The Chief may issue a two-phase facility permit if he finds that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Chief finds that not enough information exists upon which he can establish permit conditions to attempt to provide for compliance with all of the requirements of Section 8.12, he must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Chief find that a phased permit may be issued, he will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which

NOTE: This Section Contains All New Language

the Chief finds may be necessary under Section 8.12.03(c). The Chief will include conditions in the second phase of the facility permit to attempt to meet all Section 8.12 requirements pertaining to unit design, construction, operation, and maintenance. The Chief will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application. The first and second phases of the permit shall become effective as specified by the Chief regarding that permit.

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he must submit to the Chief a certification, signed by a person authorized to sign a permit application or report under Section 11.07, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such test or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Chief approves a later date.

(d) If the Chief determines that the results of the field tests or laboratory analyses meet the requirements of Section 8.12.03, he will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Section 8.12, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed as a minor modification under Section 11.20, provided any such change is minor, or otherwise will proceed as a modification under Section 11.18.01(b).

NOTE: This Section Contains All New Language

(2) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the Chief will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in Section 124.15(b).

(3) If modification under Section 11.18.01(b) are necessary, the second phase of the permit will become effective only after those modifications have been made.

Section 12.00 Location Standards for Hazardous Waste Management Facilities.

Section 12.01 General.

These regulations describe the location restrictions for the construction or placement of new hazardous waste management facilities, except as specifically provided otherwise in this section.

12.01.01 Seismic Considerations.

(a) Portions of new facilities where treatment, storage or disposal of hazardous waste must not be located within sixty-one (61) meters (200 feet) of a fault which has had displacement in Holocene time.

(b) As used in Section 12.01.01 (a):

(1) "Fault" means a fracture along which rocks strata on one side have been displaced with respect to those on the other side.

(2) "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction.

(3) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

12.01.02 Karst Terrain.

(a) Facilities must not be located on areas of karst terrain.

(b) As used in Section 12.01.02 (a) karst terrain is that terrain underlain by carbonate (limestone and dolomite) bedrock containing voids, caves and underground streams into which surface drainage flows through solution openings and sink holes, being produced by solution of the carbonate rock.

(c) The location restriction of 12.01.02 (a) shall be limited to all disposal facilities, and to storage and/or treatment surface impoundments.

12.01.03 Subsurface Mining Areas.

(a) Portions of new facilities where hazardous waste management will be conducted must not be located within three hundred five (305) meters (1,000 feet) of a surface area likely to be influenced by underground mining. The outer limits of the surface area thus influenced are defined as that area beyond the point that may be considered the practical limit of subsidence as determined by the angle of the draw.

(b) As used in Section 12.01.03(a):

(1) Angle of draw is the angle between the vertical line drawn from the edge of the underground opening and the point at the surface where the subsidence diminishes to zero.

(c) The location restriction of 12.01.03(a) shall be limited to all disposal facilities, and to storage and/or treatment surface impoundments.

12.01.04 Critical Recharge Areas.

(a) Facilities must not be located in critical recharge areas.

(b) As used in Section 12.01.04(a): Critical recharge areas are those surface land areas which serve as recharge areas for those portions of aquifers used for public water supply.

(c) The location restriction of 12.01.04(a) shall be limited to those surface land areas which recharge portions of aquifers serving as a public ground water supply. A public ground water supply means a ground water supply system serving at least 15 service connections or an average of 25 or more permanent residents on a year round basis.

(d) The location restriction of 12.01.04(a) shall be limited to all disposal facilities, and to storage and/or treatment surface impoundments.

12.01.05 Wetlands.

(a) No facility shall be located in wetlands or in areas that may have an impact on wetlands.

(b) The location of facilities that have the potential for influencing wetlands shall be determined by the Chief.

(c) As used in Section 12.01.05(a):

(1) Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, wet meadows, mudflats, sandflats and natural ponds.

12.01.06 Dam-Related Flood Hazard Areas.

(a) No facility shall be located within dam-related "danger reach" flood hazard areas where a dam or any water impounding structure which when breached may cause inundation of the facility involved has not received the necessary permits or approvals from the appropriate state or federal agencies. In no case should facilities be located within the flood pool of any dam.

(b) As used in Section 12.01.06(a):

(1) The "danger reach" is the land area immediately adjacent to a river or stream below a water impounding structure or dam. The extent of the danger reach is that area which would be

inundated by the flow of water from the impoundment created by the dam if the dam were to fail.

(2) The "flood pool" is the land area above the dam or water impounding structure surrounding the impoundment which will flood due to increased water levels in the impoundment as a result of abnormally high run-off or precipitation events. The extent of the flood pool is limited by the land contour at the same elevation as the crest of the dam or impounding structure.

12.01.07 Floodplains.

(a) A new or existing hazardous waste management facility located in a 100-year floodplain must be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate to the Chief that procedures are in effect which will cause the waste to be removed safely before floodwaters can reach the facility, to a location where the wastes will not be vulnerable to floodwaters. [Comment: The location where wastes are moved must be an approved facility which is either permitted by EPA under 40 C.F.R. Part ~~122~~ 270, authorized to manage hazardous waste by a state with a hazardous waste management program authorized under 40 C.F.R. Part ~~123~~ 271, permitted by Section 11 of these regulations, or in interim status under 40 C.F.R. Parts ~~122~~ 270 and 265 and § 20-5E-10 of the Act.]

(b) As used in Section 12.01.07(a):

(1) "100-year floodplain" means any land area which is subject to a one percent (1%) or greater chance of flooding in any given year from any source.

(2) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) "100-year flood" means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year.
[Comment: Procedures for demonstrating compliance with each of these standards in Part B of the permit application are specified in Section 11.05.01(1).]

Section 13.00 Financial Requirements

The Director hereby adopts and incorporates by reference 40 CFR Parts 264 and 265, Subparts H. as published in the Code of Federal Regulations on July 1, 1982 with the following modifications: Sections 264.143(f), § 265.143(e) § 264.145(f), § 265.145(e), and § 264.147 (f), § 265.147(f) shall be amended by the addition of the following paragraph:

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

Section 264.149, § 265.149, § 264.150 and § 265.150 shall be deleted.

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

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

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

Section 14.00 [Reserved]

Section 15.00 Deed and Lease Disclosures; Approval for Land Disturbance.

Section 15.01 Notice in Deed to Property.

(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:

- (1) The land has been used to manage hazardous wastes;
- (2) Its use is restricted under Section 8.06.07(c); and
- (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.

(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 15.01(c).

(c) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal facility was located obtained approval by the Chief to remove the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may remove the notation on the deed to the facility property or other instrument normally examined during title search, or he may add a notation to the deed or instrument indicating the removal of the waste.

[Comment: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can be demonstrated that any waste removed is not a hazardous

waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements.]

Section 15.02 Approval for Land Disturbance.

(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 shall obtain authorization for such activity.

(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.]

Section 15.03 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.

Section 16.00 Notices of Changes to the Board or the Director.

Section 16.01

Persons desiring to call to the attention of the Board or Director amendments to the federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto, may do so by filing a notice with the Board or Director, as appropriate, identifying the amendment which has been made to the federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto and identifying the provision of these regulations which such person believes should be amended.

Section 16.02 Petitions for Waste Exclusions

(a) Persons desiring to exclude a waste at a particular generating facility from the lists in Section 3.04, must petition the Director for such an exclusion. The petition shall include:

(1) a copy of the petition submitted to the Administrator pursuant to 40 CFR § 260.22, including all demonstration information; and,

(2) a copy of the Administrator's approval granting the exclusion pursuant to 40 CFR § 260.20(d); and,

(3) any other additional information which may be required for the Director to evaluate the petition.

(b) Upon review of the petition, the Director shall notify the petitioner in writing of his decision to either deny the request or to grant the exclusion.

V. Economic, Environmental and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The total combined cost for disposal of the wastes as hazardous, assuming that all of these wastes would be managed for the first time as hazardous, and making conservative estimates as to costs, is approximately \$38 million. It must be noted though, that information available from the Section 3007 RCRA Industry Studies data base indicates that over two thirds of these wastes is already being managed as hazardous waste at RCRA facilities. For these wastes, listing will not add appreciably to the current cost of disposal except for the minimal additional cost of recordkeeping. It will also have very little additional cost impact on the permitting of these facilities since they are already handling hazardous wastes. Based on this reasoning, the estimated impact of this rule will be well under the \$100 million that constitutes a major regulation.

The addition of the two new toxicants of concern to Appendix VIII (2-chloro-1,3-butadiene and 3-chloropropene) will not result in any significant increased burden in groundwater monitoring requirement. The analytical techniques currently employed to test for the presence and concentration of other chlorinated organic toxicants on Appendix VIII (gas chromatography combined with mass spectroscopy) will simultaneously test for these new toxicants.

In addition, we do not expect that there will be adverse impacts on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, since this rule is not a major regulation, a Regulatory Impact Analysis is not being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by

Executive Order 12291. Any comments from OMB to EPA, and any EPA responses to those comments, are available for public inspection in Room S-212 at EPA.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency does not believe that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this amendment is unlikely to have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

VI. List of Subjects in 40 CFR Part 261

Hazardous materials; Waste treatment and disposal; Recycling.

Dated: February 8, 1984.

Alvin L. Alm,

Acting Administrator.

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APPENDIX VII - Basis For Listing
Hazardous Waste

APPENDIX VII—BASIS FOR LISTING
HAZARDOUS WASTE

EPA hazard-ous waste No	Hazardous constituents for which listed
F001.....	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons
F002.....	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane
F003.....	N.A.
F004.....	Cresols and cresylic acid, nitrobenzene
F005.....	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine
F006.....	Cadmium, hexavalent chromium, nickel, cyanide (complexed)
F007.....	Cyanide (salts)
F008.....	Cyanide (salts)
F009.....	Cyanide (salts)
F010.....	Cyanide (salts)
F011.....	Cyanide (salts)
F012.....	Cyanide (complexed)
F019.....	Hexavalent chromium, cyanide (complexed)
K001.....	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, cresosols, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benzo(e)anthracene, dibenz(a)anthracene, acenaphthalene
K002.....	Hexavalent chromium, lead
K003.....	Hexavalent chromium, lead
K004.....	Hexavalent chromium
K005.....	Hexavalent chromium, lead
K006.....	Hexavalent chromium
K007.....	Cyanide (complexed), hexavalent chromium
K008.....	Hexavalent chromium
K009.....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraaldehyde, formic acid
K010.....	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraaldehyde, formic acid, chloroacetaldehyde
K011.....	Acrylonitrile, acetonitrile, hydrocyanic acid
K013.....	Hydrocyanic acid, acrylonitrile, acetonitrile
K014.....	Acetonitrile, acrylamide
K015.....	Benzyl chloride, chlorobenzene, toluene, benzotrachloride
K016.....	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene
K017.....	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropane, dichloropropanols
K018.....	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene
K019.....	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride
K020.....	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride

EPA hazard-ous waste No	Hazardous constituents for which listed
K021.....	Antimony, carbon tetrachloride, chloroform
K022.....	Phenol, tars (polycyclic aromatic hydrocarbons)
K023.....	Phthalic anhydride, maleic anhydride
K024.....	Phthalic anhydride, 1,4-naphthoquinone
K025.....	Meta-dinitrobenzene, 2,4-dinitrotoluene
K026.....	Paraaldehyde, pyridines, 2-picoline
K027.....	Toluene disocyanate, toluene-2, 4-diamine
K028.....	1,1,1-trichloroethane, vinyl chloride
K029.....	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform
K030.....	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride
K031.....	Arsenic
K032.....	Hexachlorocyclopentadiene
K033.....	Hexachlorocyclopentadiene
K034.....	Hexachlorocyclopentadiene
K035.....	Cresols, chrysene, naphthalene, fluoranthene, benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene
K036.....	Toluene, phosphorodithioic and phosphorothioic acid esters
K037.....	Toluene, phosphorodithioic and phosphorothioic acid esters
K038.....	Phorals, formaldehyde, phosphorodithioic and phosphorothioic acid esters
K039.....	Phosphorodithioic and phosphorothioic acid esters
K040.....	Phorals, formaldehyde, phosphorodithioic and phosphorothioic acid esters
K041.....	Toxaphene
K042.....	Hexachlorobenzene, ortho-dichlorobenzene
K043.....	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol
K044.....	N.A.
K045.....	N.A.
K046.....	Lead
K047.....	N.A.
K048.....	Hexavalent chromium, lead
K049.....	Hexavalent chromium, lead
K050.....	Hexavalent chromium
K051.....	Hexavalent chromium, lead
K052.....	Lead
K059.....	Cyanide, naphthalene, phenolic compounds, arsenic
K061.....	Hexavalent chromium, lead, cadmium
K062.....	Hexavalent chromium, lead
K069.....	Hexavalent chromium, lead, cadmium
K071.....	Mercury
K073.....	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane
K083.....	Aniline, diphenylamine, nitrobenzene, phenylenediamine
K084.....	Arsenic
K085.....	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride
K086.....	Lead, hexavalent chromium
K087.....	Phenol, naphthalene
K093.....	Phthalic anhydride, maleic anhydride
K094.....	Phthalic anhydride
K095.....	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane
K096.....	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane

APPENDIX VII - Basis For Listing
Hazardous Waste, Cont.,

K097	Chlordane heptachlor
K098	Toxaphene
K099	2,4-dichlorophenol 2,4,6-trichlorophenol
K100	Hexavalent chromium lead cadmium
K101	Arsenic
K102	Arsenic
K103	Aniline nitrobenzene phenylenediamine
K104	Aniline benzene diphenylamine nitrobenzene, phenylenediamine
K105	Benzene monochlorobenzene dichlorobenzenes, 2,4,6-trichlorophenol
K106	Mercury

FO24 and FO25. Chloromethane, dichloromethane, trichloromethane, carbon tetra-
chloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-
1,2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethylene,
1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane,
1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane,
hexachloroethane, allyl chloride (3-chloropropene), dichloropropane,
dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexa-
chlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene,
dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, penta-
chlorobenzene, hexachlorobenzene, toluene, naphthalene

N.A. - Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity or reactivity.

APPENDIX VIII - Hazardous Constituents

Acetonitrile (Ethanenitrile)
Acetophenone (Ethanone, 1-phenyl)
3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts (Warfarin)
2-Acetylaminofluorene (Acetamide, N-(9H-fluoren-2-yl))
Acetyl chloride (Ethanoyl chloride)
1-Acetyl-2-thiourea (Acetamide, N-(amin-othioxomethyl))
Acrolein (2-Propenal)
Acrylamide (2-Propenamido)
Acrylonitrile (2-Propenenitrile)
Aflatoxins
Aldrin (1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a,8b-hexahydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
Allyl alcohol (2-Propen-1-ol)
Aluminum phosphide
4-Aminobiphenyl ([1,1'-Biphenyl]-4-amine)
6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methyl-carbamate azirino[2,3:3,4]pyrrolo[1,2-a]indole-4,7-dione, (ester) (Mitomycin C) (Azirino[2,3:3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[(aminocarbonyloxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-)
5-(Aminomethyl)-3-isoxazolol (3(2H)-Isoxazolone, 5-(aminomethyl)) 4-Aminopyridine (4-Pyridinamine)

Auramine (Benzenamine, 4,4'-carbonimidoylbis(N,N-Dimethyl- mono-hydrochloride)
Azaserine (L-Serine, diazoacetate (ester))
Barium and compounds, N.O.S.*
Barium cyanide
Benz(c)acridine (3,4-Benzacridine)
Benz(a)anthracene (1,2-Benzanthracene)
Benzene (Cyclohexatriene)
Benzeneearsonic acid (Arsonic acid, phenyl-)
Benzene dichloromethyl (Benzal chloride)
Benzene thiol (Thiophenol)
Benzidine ([1,1'-Biphenyl]-4,4 diamine)
Benzofluoranthene (2,3-Benzofluoranthene)
Benzofluoranthene (7,8-Benzofluoranthene)
Benzo(a)pyrene (3,4-Benzopyrene)
p-Benzoquinone (1,4-Cyclohexadienedione)
Benzotrifluoride (Benzene, trichloromethyl)
Amitrole (1H-1,2,4-Triazol-3-amine)
Aniline (Benzenamine)
Antimony and compounds, N.O.S.*
Aramite (Sulfurous acid, 2-chloroethyl-, 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester)
Arsenic and compounds, N.O.S.*
Arsenic acid (Orthoarsenic acid)
Arsenic pentoxide (Arsenic (V) oxide)
Arsenic trioxide (Arsenic (III) oxide)

* The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix

APPENDIX VIII - Hazardous Constituents, Cont.,

Benzyl chloride (Benzene, (chloromethyl)-)
Beryllium and compounds, N.O.S.*
Bis(2-chloroethoxy)methane (Ethane, 1,1'-(methylenebis(oxy))bis[2-chloro-1])
Bis(2-chloroethyl) ether (Ethane, 1,1'-(oxybis[2-chloro-1])
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chloronaphazine)
Bis(2-chloroisopropyl) ether (Propane, 2,2'-oxybis[2-chloro-1])
Bis(chloromethyl) ether (Methane, oxybis[chloro-1])
Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester)
Bromoacetone (2-Propanone, 1-bromo-)
Bromomethane (Methyl bromide)
4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)
Brucine (Strychnidin-10-one, 2,3-dimethoxy-)
2-Butanone peroxide (Methyl ethyl ketone, peroxide)
Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester)
2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol, 2,4-dinitro-6-(1-methylpropyl)-)
Cadmium and compounds, N.O.S.*
Calcium chromate (Chromic acid, calcium salt)
Calcium cyanide
Carbon disulfide (Carbon bisulfide)
Carbon oxyfluoride (Carbonyl fluoride)
Chloral (Acetaldehyde, trichloro-)
Chlorambucil (Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-)
Chlordane (alpha and gamma isomers) (4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3,4,7,7a-tetrahydro-) (alpha and gamma isomers)
Chlorinated benzenes, N.O.S.*
Chlorinated ethane, N.O.S.*
Chlorinated fluorocarbons, N.O.S.*
Chlorinated naphthalene, N.O.S.*
Chlorinated phenol, N.O.S.*
Chloroacetaldehyde (Acetaldehyde, chloro-)
Chloroalkyl ethers, N.O.S.*
p-Chloroaniline (Benzenamine, 4-chloro-)
Chlorobenzene (Benzene, chloro-)
Chlorobenzilate (Benzenoacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester)
p-Chloro-m-cresol (Phenol, 4-chloro-3-methyl)
1-Chloro-2,3-epoxypropane (Oxirane, 2-(chloromethyl)-)
2-Chloroethyl vinyl ether (Ethene, (2-chloroethoxy)-)
Chloroform (Methane, trichloro-)
Chloromethane (Methyl chloride)
Chloromethyl methyl ether (Methane, chloromethoxy-)
2-Chloronaphthalene (Naphthalene, beta-chloro-)
3-Chlorophenol (Phenol, o-chloro-)
1-(o-Chlorophenyl)thiourea (Thiourea, (2-chlorophenyl)-)
3-Chloropropionitrile (Propanenitrile, 3-chloro-)
Chromium and compounds, N.O.S.*
Chrysene (1,2-Benzphenanthrene)
Citrus red No. 2 (2-Naphthol, 1-[(2,5-dimethoxyphenyl)azo]-)
Coal tars
Copper cyanide
Creosote (Creosote, wood)
Cresols (Cresylic acid) (Phenol, methyl-)
Crotonaldehyde (2-Butenal)
Cyanides (soluble salts and complexes), N.O.S.*
Cyanogen (Ethanedinitrile)
Cyanogen bromide (Bromine cyanide)
Cyanogen chloride (Chlorine cyanide)
Cycasin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)
2-Cyclohexyl-4,6-dinitrophenol (Phenol, 2-cyclohexyl-4,6-dinitro-)
Cyclophosphamide (2H-1,3,2-Oxazaphosphorine, [bis(2-chloroethyl)amino]-tetrahydro-, 2-oxide)
Daunomycin (5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)
DDD (Dichlorodiphenyldichloroethane) (Ethane, 1,1-dichloro-2,2-bis(p-chlorophenyl)-)
DDE (Ethylene, 1,1-dichloro-2,2-bis(4-chlorophenyl)-)
DDT (Dichlorodiphenyltrichloroethane) (Ethane, 1,1,1-trichloro-2,2-bis(p-chlorophenyl)-)
Diallate (S-(2,3-dichloroallyl) diisopropylthiocarbamate)
Dibenz[a,h]acridine (1,2,5,6-Dibenzacridine)
Dibenz[a,j]acridine (1,2,7,8-Dibenzacridine)
Dibenz[a,h]anthracene (1,2,5,6-Dibenzanthracene)
7H-Dibenzo[c,g]carbazole (3,4,5,6-Dibenzcarbazole)
Dibenzo[a,e]pyrene (1,2,4,5-Dibenzpyrene)
Dibenzo[a,h]pyrene (1,2,5,6-Dibenzpyrene)
Dibenzo[a,i]pyrene (1,2,7,8-Dibenzpyrene)
1,2-Dibromo-3-chloropropane (Propane, 1,2-dibromo-3-chloro-)
1,2-Dibromoethane (Ethylene dibromide)
Dibromomethane (Methylene bromide)
Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)
o-Dichlorobenzene (Benzene, 1,2-dichloro-)
m-Dichlorobenzene (Benzene, 1,3-dichloro-)
p-Dichlorobenzene (Benzene, 1,4-dichloro-)
Dichlorobenzene, N.O.S.* (Benzene, dichloro-, N.O.S.*)
3,3'-Dichlorobenzidine ((1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-)
1,4-Dichloro-2-butene (2-Butene, 1,4-dichloro-)
Dichlorodifluoromethane (Methane, dichlorodifluoro-)
1,1-Dichloroethane (Ethylidene dichloride)
1,2-Dichloroethane (Ethylene dichloride)

APPENDIX VIII - Hazardous Constituents, Cont.,

- trans-1,2-Dichloroethene (1,2-Dichloroethylene)
Dichloroethylene, N.O.S.* (Ethene, dichloro-, N.O.S.*)
1,1-Dichloroethylene (Ethene, 1,1-dichloro-)
Dichloromethane (Methylene chloride)
2,4-Dichlorophenol (Phenol, 2,4-dichloro-)
2,6-Dichlorophenol (Phenol, 2,6-dichloro-)
2,4-Dichlorophenoxyacetic acid (2,4-D), salts and esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)
Dichlorophenylarsine (Phenyl dichloroarsine)
Dichloropropane, N.O.S.* (Propane, dichloro-, N.O.S.*)
1,2-Dichloropropane (Propylene dichloride)
Dichloropropanol, N.O.S.* (Propanol, dichloro-, N.O.S.*)
Dichloropropene, N.O.S.* (Propene, dichloro-, N.O.S.*)
1,3-Dichloropropene (1-Propene, 1,3-dichloro-)
Dieldrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo,exo-1,4:5,8-Dimethanonaphthalene)
1,2,3,4-Diepoxybutane (2,2-Bioxirane)
Diethylarsine (Arsine, diethyl-)
N,N-Diethylhydrazine (Hydrazine, 1,2-diethyl)
O,O-Diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester)
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)
Diethyl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)
O,O-Diethyl O-2-pyrazinyl phosphorothioate (Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester)
Diethylstilbesterol (4,4'-Stilbenediol, alpha, alpha-diethyl, bis(dihydrogen phosphate, (E)-)
Dihydrosafrole (Benzene, 1,2-methylene-dioxy-4-propyl-)
3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol (1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl-))
Diisopropylfluorophosphate (DFP) (Phosphorofluoric acid, bis(1-methylethyl) ester)
Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-(2-(methylamino)-2-oxoethyl) ester)
3,3-Dimethoxybenzidine ((1,1'-Biphenyl)-4,4 diamine, 3,3'-dimethoxy-)
p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo-))
7,12-Dimethylbenz[a]anthracene (1,2-Benzanthracene, 7,12-dimethyl-)
3,3'-Dimethylbenzidine ((1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-)
Dimethylcarbamoyl chloride (Carbamoyl chloride, dimethyl-)
1,1-Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)
1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl]oxime (Thiofanox)
alpha, alpha-Dimethylphenethylamine (Eth-
anamine, 1,1-dimethyl-2-phenyl-)
2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)
Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)
Dimethyl sulfate (Sulfuric acid, dimethyl ester)
Dinitrobenzene, N.O.S.* (Benzene, dinitro-, N.O.S.*)
4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)
2,4-Dinitrophenol (Phenol, 2,4-dinitro-)
2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)
2,6-Dinitrotoluene (Benzene, 1-methyl-2,6-dinitro-)
Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)
1,4-Dioxane (1,4-Diethylene oxide)
Diphenylamine (Benzenamine, N-phenyl-)
1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
Di-n-propyl nitrosamine (N-Nitroso-di-n-propylamine)
Disulfoton (O,O-diethyl S-(2-ethylthio)ethyl] phosphorodithioate)
2,4-Dithiobiuret (Thioimidodicarbonic diamide)
Endosulfan (5-Norbornene, 2,3-dimethanol, 1,4,5,6,7,7-hexachloro-, cyclic sulfite)
Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene, and metabolites)
Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)
Ethyl cyanide (propanenitrile)
Ethylenebisdithiocarbamic acid, salts and esters (1,2-Ethanediy]biscarbamodithioic acid, salts and esters)
Ethyleneimine (Aziridine)
Ethylene oxide (Oxirane)
Ethylenethiourea (2-Imidazolidinethione)
Ethyl methacrylate (2-Propenoic acid, 2-methyl-, ethyl ester)
Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)
Fluoranthene (Benzo[*j,k*]fluorene)
Fluorine
2-Fluoroacetamide (Acetamide, 2-fluoro-)
Fluoroacetic acid, sodium salt (Acetic acid, fluoro-, sodium salt)
Formaldehyde (Methylene oxide)
Formic acid (Methanoic acid)
Glycidylaldehyde (1-Propanol-2,3-epoxy)
Halomethane, N.O.S.*
Heptachlor (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)
Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene,

APPENDIX VIII - Hazardous Constituents, Cont.,

- 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-, alpha, beta, and gamma isomers)
Hexachlorobenzene (Benzene, hexachloro-)
Hexachlorobutadiene (1,3-Butadiene, 1,1,2,3,4,4-hexachloro-)
Hexachlorocyclohexane (all isomers) (Lindane and isomers)
Hexachlorocyclopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)
Hexachloroethane (Ethane, 1,1,1,2,2,2-hexachloro-)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene (Hexachlorohexahydro-endo,endo-dimethanonaphthalene)
Hexachlorophene (2,2-Methylenebis(3,4,6-trichlorophenol))
Hexachloropropene (1-Propene, 1,1,2,3,3,3-hexachloro-)
Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)
Hydrazine (Diamine)
Hydrocyanic acid (Hydrogen cyanide)
Hydrofluoric acid (Hydrogen fluoride)
Hydrogen sulfide (Sulfur hydride)
Hydroxydimethylarsine oxide (Cacodylic acid)
Indeno(1,2,3-cd)pyrene (1,10-(1,2-phenylene)pyrene)
Iodomethane (Methyl iodide)
Iron dextran (Ferric dextran)
Isocyanic acid, methyl ester (Methyl isocyanate)
Isobutyl alcohol (1-Propanol, 2-methyl-)
Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Kepone (Decachlorooctahydro-1,3,4-Methano-2H-cyclobutafcdipentalen-2-one)
Lasiocarpine (2-Butenoic acid, 2-methyl-, 7-[(2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester)
Lead and compounds, N.O.S.*
Lead acetate (Acetic acid, lead salt)
Lead phosphate (Phosphoric acid, lead salt)
Lead subacetate (Lead, bis(acetato-O)tetrahydroxytri-)
Maleic anhydride (2,5-Furandione)
Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)
Malononitrile (Propanedinitrile)
Melphalan (Alanine, 3-[p-bis(2-chloroethyl)aminophenyl-, L-)
Mercury fulminate (Fulminic acid, mercury salt)
Mercury and compounds, N.O.S.*
Methacrylonitrile (2-Propenenitrile, 2-methyl-)
Methanethiol (Thiomethanol)
Methapyrilene (Pyridine, 2-[(2-dimethylamino)ethyl]-2-thenylamino-)
Metholmyl (Acetimidic acid, N-[(methylcarbamoyloxy)thio-, methyl ester)
Methoxychlor (Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-)
2-Methylaziridine (1,2-Propylenimine)
3-Methylcholanthrene (Benz[*l*]aceanthrylene, 1,2-dihydro-3-methyl-)
Methyl chlorocarbonate (Carbonochloridic acid, methyl ester)
4,4'-Methylenebis(2-chloroaniline) (Benzenamine, 4,4'-methylenebis-(2-chloro-))
Methyl ethyl ketone (MEK) (2-Butanone)
Methyl hydrazine (Hydrazine, methyl-)
2-Methylacetonitrile (Propanenitrile, 2-hydroxy-2-methyl-)
Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)
Methyl methanesulfonate (Methanesulfonic acid, methyl ester)
2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime (Propanal, 2-methyl-2-(methylthio)-O-[(methylamino)carbonyl]oxime)
N-Methyl-N-nitro-N-nitrosoguanidine (Guanidine, N-nitroso-N-methyl-N-nitro-)
Methyl parathion (O,O-dimethyl O-(4-nitrophenyl) phosphorothioate)
Methylthiouracil (4-1H-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)
Mustard gas (Sulfide, bis(2-chloroethyl)-)
Naphthalene
1,4-Naphthoquinone (1,4-Naphthalenedione)
1-Naphthylamine (alpha-Naphthylamine)
2-Naphthylamine (beta-Naphthylamine)
1-Naphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)
Nickel and compounds, N.O.S.*
Nickel carbonyl (Nickel tetracarbonyl)
Nickel cyanide (Nickel (II) cyanide)
Nicotine and salts (Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)
Nitric oxide (Nitrogen (II) oxide)
p-Nitroaniline (Benzenamine, 4-nitro-)
Nitrobenzene (Benzene, nitro-)
Nitrogen dioxide (Nitrogen (IV) oxide)
Nitrogen mustard and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitrogen mustard N-Oxide and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitroglycerine (1,2,3-Propanetriol, trinitrate)
4-Nitrophenol (Phenol, 4-nitro-)
4-Nitroquinoline-1-oxide (Quinoline, 4-nitro-1-oxide-)
Nitrosamine, N.O.S.*
N-Nitrosodi-n-butylamine (1-Butanamine, N-butyl-N-nitroso-)
N-Nitrosodiethanolamine (Ethanol, 2,2-(nitrosoimino)bis-)
N-Nitrosodiethylamine (Ethanamine, N-ethyl-N-nitroso-)
N-Nitrosodimethylamine (Dimethylnitrosamine)
N-Nitroso-N-ethylurea (Carbamide, N-ethyl-N-nitroso-)

APPENDIX VIII - Hazardous Constituents, Cont.,

N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)
N-Nitroso-N-methylurea (Carbamide, N-methyl-N-nitroso-)
N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)
N-Nitrosomethylvinylamine (Ethanamine, N-methyl-N-nitroso-)
N-Nitrosomorpholine (Morpholine, N-nitroso-)
N-Nitrosornicotine (Nicotinine, N-nitroso-)
N-Nitrosopiperidine (Pyridine, hexahydro-, N-nitroso-)
Nitrosopyrrolidine (Pyrrole, tetrahydro-, N-nitroso-)
N-Nitrososarcosine (Sarcosine, N-nitroso-)
5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)
Octamethylpyrophosphoramidate (Diphosphoramidate, octamethyl-)
Osmium tetroxide (Osmium (VIII) oxide)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid (Endothal)
Paraldehyde (1,3,5-Trioxane, 2,4,6-trimethyl-)
Parathion (Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester)
Pentachlorobenzene (Benzene, pentachloro-)
Pentachloroethane (Ethane, pentachloro-)
Pentachloronitrobenzene (PCNB) (Benzene, pentachloronitro-)
Pentachlorophenol (Phenol, pentachloro-)
Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)
Phenol (Benzene, hydroxy-)
Phenylenediamine (Benzenediamine)
Phenylmercury acetate (Mercury, acetatophenyl-)
N-Phenythiourea (Thiourea, phenyl-)
Phosgene (Carbonyl chloride)
Phosphine (Hydrogen phosphide)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio)methyl ester (Phorate)
Phosphorothioic acid, O,O-dimethyl O-[p-(dimethylamino)sulfonyl]phenyl ester (Famphur)
Phthalic acid esters, N.O.S.* (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.*)
Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)
2-Picoline (Pyridine, 2-methyl-)
Polychlorinated biphenyl, N.O.S.*
Potassium cyanide
Potassium silver cyanide (Argentate(1-), dicyano-, potassium)
Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide)
1,3-Propane sultone (1,2-Oxathiolane, 2,2-dioxide)
n-Propylamine (1-Propanamine)
Propylthiouracil (Undecamethylenediamine, N,N'-bis(2-chlorobenzyl)-, dihydrochloride)
2-Propyn-1-ol (Propargyl alcohol)
Pyridine
Reserpine (Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyloxy)-, methyl ester)
Resorcinol (1,3-Benzenediol)
Saccharin and salts (1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts)
Safrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Selenious acid (Selenium dioxide)
Selenium and compounds, N.O.S.*
Selenium sulfide (Sulfur selenide)
Selenourea (Carbamimidoseleonic acid)
Silver and compounds, N.O.S.*
Silver cyanide
Sodium cyanide
Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)
Strontium sulfide
Strychnine and salts (Strychnidin-10-one, and salts)
1,2,4,5-Tetrachlorobenzene (Benzene, 1,2,4,5-tetrachloro-)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)
Tetrachloroethane, N.O.S.* (Ethane, tetrachloro-, N.O.S.*)
1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)
1,1,2,2-Tetrachlorethane (Ethane, 1,1,2,2-tetrachloro-)
Tetrachloroethane (Ethene, 1,1,2,2-tetrachloro-)
Tetrachloromethane (Carbon tetrachloride)
2,3,4,6-Tetrachlorophenol (Phenol, 2,3,4,6-tetrachloro-)
Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)
Tetraethyl lead (Plumbane, tetraethyl-)
Tetraethylpyrophosphate (Pyrophosphoric acid, tetraethyl ester)
Tetranitromethane (Methane, tetranitro-)
Thallium and compounds, N.O.S.*
Thallic oxide (Thallium (III) oxide)
Thallium (I) acetate (Acetic acid, thallium (I) salt)
Thallium (I) carbonate (Carbonic acid, dithallium (I) salt)
Thallium (I) chloride
Thallium (I) nitrate (Nitric acid, thallium (I) salt)
Thallium selenite
Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)
Thioacetamide (Ethanethioamide)
Thiosemicarbazide (Hydrazinecarbothioamide)
Thiourea (Carbamide thio-)
Thiuram (Bis(dimethylthiocarbamoyl) disulfide)
Toluene (Benzene, methyl-)
Toluenediamine (Diaminotoluene)
o-Toluidine hydrochloride (Benzenamine, 2-methyl-, hydrochloride)
Tolylene diisocyanate (Benzene, 1,3-diisocyanatomethyl-)
Toxaphene (Camphene, octachloro-)

APPENDIX VIII - Hazardous Constituents, Cont.,

Tribromomethane (Bromoform)
1,2,4-Trichlorobenzene (Benzene, 1,2,4-trichloro-)
1,1,1-Trichloroethane (Methyl chloroform)
1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)
Trichloroethene (Trichloroethylene)
Trichloromethanethiol (Methanethiol, trichloro-)
Trichloromonofluoromethane (Methane, trichlorofluoro-)
2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)
2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) (Acetic acid, 2,4,5-trichlorophenoxy-)
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex) (Propionic acid, 2-(2,4,5-trichlorophenoxy)-)
Trichloropropane, N.O.S.* (Propane, trichloro-, N.O.S.*)
1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)
O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester)
sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)
Tris(1-aziridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-))
Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)
Trypan blue (2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)]bis(5-amino-4-hydroxy-, tetrasodium salt)
Uracil mustard (Uracil 5-[bis(2-chloroethyl)amino]-)
Vanadic acid, ammonium salt (ammonium vanadate)
Vanadium pentoxide (Vanadium (V) oxide)
Vinyl chloride (Ethene, chloro-)
Zinc cyanide
Zinc phosphide

3-Chloropropene (allyl chloride)

2-Chloro-1,3-butadiene (chloroprene)

Section 4.00 Notification of Hazardous Waste Activity Regulations.

Section 4.01 General.

(a) Applicability.

Any person that engages in a hazardous waste activity in the State of West Virginia shall notify the Chief of these activities, unless such activities are exempted from the requirements of these regulations.

(b) Any person as described in paragraph (a) that has notified the EPA or is subject to the requirements to notify EPA as specified in [Volume 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754] is subject to the provisions of this section.

(c) The purpose of this section is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in paragraph (b) of these regulations and to assure that all persons who did not notify EPA as described in paragraph (b) of these regulations or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in paragraph (b), shall notify the Chief of their hazardous waste activities.

Section 4.02 Notification.

(a) Any person that notified EPA of hazardous waste activities as referenced above in Section 4.01 shall provide a copy of that notification to the Chief within thirty (30) days of the effective date of these regulations.

(b) Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as

referenced above in Section 4.01, but is subject to those requirements shall notify the Chief in writing of their hazardous waste activities within thirty (30) days of the effective date of these regulations. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

(c) Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in 3.01.04 and 3.01.05 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, which ever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provisions of the same information in any other manner selected by the notifier.

(d) One (1) notification form is required for each generator.

(e) A notification form is required for each storage, treatment, disposal or other facility. However, if one facility site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

(f) Generators that store, treat or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, and treatment and disposal activities, unless such activities are exempted from the requirements of these regulations.

(d) New generators and (those initiating activities subsequent to EPA notification period referenced in paragraph 4.01(b) of the regulations) shall comply with the EPA

identification number requirements and shall provide a copy of their application for an EPA identification number to the Chief.

Section 5.00 Standards Applicable to Transporters of Hazardous
Waste by Air and/or Water

The Director hereby adopts and incorporates by reference 40 CFR Part 263, as published in the Code of Federal Regulations on July 1, 1982 insofar as such regulations relate to the transportation of hazardous waste by air and water.

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

PREAMBLE

Introduction

In recognition of the express statutory provisions contained in § 20-5E et seq., regarding duplication and consultation, and for the purpose of achieving maximum effectiveness while imposing the least burden of duplicative requirements on those persons subject to these regulations, the Director has attempted in these regulations to create a workable hazardous waste management program. The complexity of the regulations and the number of rule-making agencies involved made this a difficult task, and there is likely to remain a number of areas which will require continued cooperation, coordination, and consultation among the agencies. Towards this effort, the Director of the Department of Natural Resources expects to employ the use of Memorandums of Agreement which will outline the specific areas of responsibilities between the various agencies, particularly with regard to the permits to be issued by the Chief of the Division of Water Resources and the Director of the Air Pollution Control Commission.

Summary of Specific Sections

Section 2 of these regulations is promulgated by the Director of the Department of Natural Resources and contains the definitions of the words and phrases used in these regulations.

Section 3 of these regulations is promulgated by the Director of the Department of Natural Resources and provides the criteria for identifying a hazardous waste and a list of hazardous wastes that have been identified by the Director.

Section 4 of these regulations is promulgated by the Director of the Department of Natural Resources and contains the notification requirements applicable to those persons engaged in hazardous waste activities, and is promulgated pursuant to authority contained in § 20-5E-6(a)(12). The purpose of Section 4.00 is to provide a means for the State of West Virginia to obtain information from all persons who engage in hazardous waste activities.

Section 5 of these regulations, is promulgated by the Director and established standards applicable to transporters of hazardous waste by air and/or water by adopting and incorporating by reference 40 CFR Part 263 and are promulgated under authority of § 20-5E-6(a)(12).

Section 6 of these regulations is promulgated by the Director of the Department of Natural Resources and contains requirements for generators of hazardous waste which include recordkeeping, reporting, and originating a manifest for off-site shipments.

Section 7 [Reserved]

Section 8 is promulgated by the Director and establishes the standards for owners and operators of hazardous waste treatment, storage and disposal facilities.

Section 9, in its proposed form, contained standards for facility owners and operators to comply with during interim-status. These standards have been deleted in the final regulations inasmuch as Chapter 20, Article 5E, Section 10 governs the hazardous waste activities of facilities during interim status. Section 9 has been reserved for future regulations to be promulgated by the Director.

Section 10 established interim standards for land disposal facilities. Section 10 standards have been deleted because they have been superceded upon final promulgation of the final Section 8 standards.

Section 11 of these regulations is promulgated by the Director under the authority of Chapter 20, Article 5E, Section 6(a)(4) and requires the Director to promulgate rules and regulations respecting compliance with permits for treatment, storage, or disposal under Chapter 20, Article 5E, Section 8. Additionally, the Director is required by Chapter 20, Article 5E, Section 6(a)(5) to promulgate rules and regulations specifying the terms and conditions under which the Chief shall issue, modify, suspend, revoke, or deny permits.

Section 12 is promulgated by the Director under the authority of Chapter 20, Article 5E, Section 6(a)(1), (a)(4), and (a)(12). This section establishes the location standards for all hazardous waste management facilities.

Sections 13 establishes financial requirements for existing and new facilities. The Director adopted and incorporated by reference 40 CFR Part 264, Subpart H, as published in the Code of Federal Regulations on July 1, 1982 with modifications.

Section 14 [Reserved]

Section 15 is promulgated by the Director and establishes the requirements on deed and lease disclosures, and approvals for land disturbance.

Section 16 is promulgated by the Director and provides a mechanism for persons desiring to notify the Water Resources Board or the Director of changes in the federal Solid Waste Disposal Act, or the regulations promulgated thereunder.